

**GENERAL TERMS AND CONDITIONS
FOR
PURCHASING**



Mitsubishi Heavy Industries Engine & Turbocharger, Ltd.

GC-P-MP-1200

as of March 31, 2016

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1. DEFINITIONS

In these General Terms and Conditions for Purchasing:

- 1) "Buyer" means Mitsubishi Heavy Industries Engine & Turbocharger, Ltd. or its division, subsidiary, affiliate or an entity authorized by the foregoing, as may be described in the Order.
- 2) "Seller" means the person or company with whom the Buyer enters into the Contract
- 3) "Contract" means the entire agreement entered into by and between the Buyer and the Seller as defined in the Long Term Purchase Agreement and/or Clause 2 and Clause 3 herein.
- 4) "Goods" means the equipment, machinery, materials, related service, and critical documents thereof to be furnished by the Seller pursuant to the Contract.
- 5) "LTPA" means the Long Term Purchase Agreement entered into by and between the Buyer and the Seller for the supply of the Goods under specific terms and conditions for a specific period of time. In the absence of a Long Term Purchase Agreement (LTPA) between the Buyer and the Seller, "LTPA" shall be read as "Order" in these General Terms and Conditions.
- 6) "Order" means the purchasing order(s) including any appendix issued by the Buyer for the supply of a specific quantity of the Goods at a specific time.
- 7) "Specifications" means any technical description, drawing of the Goods, quality control requirements, or packing instructions contained or referred in the Contract.

2. CONTRACT

- 1) A Contract is entered into by and between the Buyer and the Seller when the Seller accepts the terms and conditions of the Contract at whichever is the earlier of:
 - (a) Receipt by the Buyer of the Seller's acceptance of the LTPA in writing, within seven (7) days unless otherwise specified by the Buyer,
 - (b) The Seller's commencement of any work on the Goods to be supplied pursuant to the Contract, or
 - (c) Delivery of any Goods in response to any Order issued by the Buyer in accordance with the LTPA.
- 2) These General Terms and Conditions shall constitute an integral part of the Contract.
- 3) The Contract constitutes the entire agreement between the Buyer and the Seller. The parties are not, and will not be bound by any statement, representation, promise, inducement, or understanding of any kind not set forth in the Contract. Any change, amendment, or modification of any of the terms and conditions of the Contract or waiver of any of the terms hereof shall be made in writing and executed upon the agreement of both parties.
- 4) Any acknowledgment or other form containing terms and conditions submitted by the Seller shall not have the effect of modifying the terms and conditions hereof and/or of adding any different terms and conditions. The Buyer will consider the Seller's requests for changes only if such requests are in writing and are directed to specific clauses in the Contract. No change shall be binding upon the Buyer unless specifically accepted in writing.

3. ORDER OF PRECEDENCE

- 1) If any conflict, inconsistency or ambiguity exists among any of the documents comprising or relating to the Contract or among any of the requirements or provisions thereof, the conflict, inconsistency or ambiguity shall be resolved by

applying the order of precedence provided in the LTPA. If no such provision is included in the LTPA, the following documents shall constitute the Contract with the order of the precedence as set out below:

- (a) The Order
 - (b) The LTPA
 - (c) The General Terms and Conditions for Purchasing
 - (d) The Specifications
 - (e) The General Technical Conditions, if any
- 2) If the Seller is unable to resolve any conflict, inconsistency or ambiguity among any of the Contract documents or among any of the requirements or provisions thereof by referring to the order of precedence set out in the Contract, or if the Seller suspects that resolution according to the order of precedence set out in the Contract would conflict with the Buyer's actual intent, then the Seller shall notify the Buyer immediately. In such case, the Buyer shall determine in writing the proper resolution of such conflict, inconsistency or ambiguity, and both parties shall be bound by that determination. If the Seller resolves any such conflict, inconsistency or ambiguity without the Buyer's written determination, and without respect to the order of precedence as set out in the Contract, then the Seller proceeds at its own risk and expense, and the Buyer shall be free thereafter to resolve the conflict, inconsistency or ambiguity without regards to the Seller's actions, without any adjustment in the Contract price, and without incurring any liability to the Seller because of the Seller having proceeded in accordance with its own interpretation.

4. PRICE AND PAYMENT

- 1) Unless otherwise expressly stated in the Contract, all prices for the Goods are firm and are not subject to price escalation for any reason whatsoever and include any applicable sales, use or similar taxes levied in the country of manufacturing and/or shipping, export charges, fees, and all other expenses.
- 2) Payment will be made in accordance with the applicable provisions of the Contract; however, the Buyer may at any time by a written notice, deduct or set-off any payment to the Seller by an amount of equal value to any outstanding claim or charge that the Buyer has against the Seller.

5. DELIVERY

- 1) Time of delivery is of the essence of the Contract and the Seller shall deliver the Goods in accordance with the requirements specified in the Contract.
- 2) Unless otherwise stated in the Contract, the terms and conditions of delivery shall be interpreted in accordance with INCOTERMS 2000 (International Rules for the Interpretation of Trade Terms) and its supplements published by the International Chamber of Commerce in 1999.

6. TITLE AND RISK

- 1) Unless otherwise stated in the Contract, the Goods or any part thereof shall become the property of the Buyer free from liens and other encumbrances at whichever is the earlier of: (a) completion of delivery by the Seller in accordance with the delivery terms of the Contract; or (b) when the Seller is entitled to payment of the value of the Goods or part thereof under the Contract. Notwithstanding the foregoing, the Seller shall remain responsible for and shall bear any and all risk of loss of or damage to the Goods until completion of delivery in accordance with the terms of the Contract.

- 2) The Seller shall pass to the Buyer good title to the Goods. In the event of any defect in title, the Seller shall, at the request of the Buyer and at the Seller's expense, remove such defect or replace the Goods with other Goods free from such defect. The Seller shall bear all charges and expenses for such removal or replacement, including transportation charges.

7. PRODUCTION AND QUALITY CONTROL

- 1) The Seller shall comply with any quality control and/or inspection standards established or directed by the Buyer.
- 2) Every two (2) weeks, the Seller shall submit to the Buyer a status report summarizing the scheduled dates for completion of production, and for cargo readiness of all outstanding Orders.
- 3) The Seller shall notify the Buyer in writing of any actual, anticipated or potential causes of delay in the delivery of the Goods that conform with the requirements of the Contract, within three (3) days whenever such causes are observed.
- 4) The Buyer may for expediting or quality assurance purposes, send its own staff or other personnel whom the Buyer has retained to any place where the Goods are manufactured, packed or transported as provided in Clause 17 hereof. The Seller shall bear the cost of corrective measures or improvements reasonably required by the Buyer in order to enable or ensure timely delivery of the conforming Goods.
- 5) Nothing in this Clause 7 shall in any way relieve the Seller from its obligation of timely delivery of the Goods pursuant to Clause 5 hereof.

8. ERRONEOUS, EXCESS OR SHORTAGE OF DELIVERY

- 1) Seller shall deliver the Goods in the quantities and at the times specified by the Buyer in the Order. Buyer is not obligated to accept any early, late, partial, or excess deliveries.
- 2) Unless otherwise instructed by the Buyer, the Seller shall withdraw, at its own expense and no later than the date designated by the Buyer, any and all items delivered in error or excess of the Order. In the event of the Seller's failure to accomplish a timely withdrawal of the erroneously delivered or excess items, the Buyer may arrange to return such items to the Seller at the Seller's expense.
- 3) In the event that Seller delivers less than the quantity of Goods stated in the Order, it shall be deemed a Delay in Delivery and Buyer's rights and Seller's obligations shall be as prescribed in Clause 10 hereof.

9. PACKING

- 1) The Seller shall pack the Goods in accordance with the Specifications and/or instructions provided in the Contract. In the absence of specific instruction by the Buyer concerning the method of packing, the Seller shall, in accordance with internationally accepted customary export packing and anti-rust standards for the delivery method specified by the Buyer or in the Contract, take all reasonable steps to prevent damage to or deterioration of the Goods in transit to their destination as specified in the Order.
- 2) The Contract price includes the cost of packing required in paragraph 1), above.
- 3) Unless otherwise stated in the Contract, the Seller shall submit a proforma packing list which shows approximate dimensions and weight of the packed Goods and the place of shipment, no later than two (2) weeks before delivery.
- 4) At the Buyer's discretion, the Buyer may dispatch its nominated carrier or freight

forwarder to the Seller's facilities to hold a pre-shipment meeting to confirm transport mode and procedure.

10. DELAY IN DELIVERY

In the event that the delivery of the Goods, whether partially or in whole, is delayed beyond the delivery time specified in the Contract, and such delay is not excusable pursuant to Clause 22 hereof, the Buyer shall, at its sole discretion and without prejudice to its rights under Clause 19 hereof or otherwise, have the right to:

- (a) Require the Seller to bear the premium freight costs of an expedited shipping method to be designated by the Buyer, and
- (b) Cancel the respective Order(s), and undertake to procure from an alternative source Goods meeting approximately the same specifications required by the Contract, and in such an event, the Seller shall pay all costs and other expenses incurred by the Buyer in excess of the purchase price specified in the Contract, and
- (c) Recover from the Seller any costs or damages incurred by the Buyer as a result of the Seller's failure to comply with delivery requirements.

The rights of Buyer as outlined above may be exercised individually, or in any combination at the Buyer's option.

11. INSPECTION AND TEST BY SELLER

- 1) Before shipping, the Seller shall carefully inspect and test the Goods for compliance with all applicable requirements of the Contract including, without limitation, the inspection of quantities and packing conditions. The Seller shall, in accordance with the inspection and test requirements in the Specifications and/or the Contract, give the Buyer reasonable notice of such inspection or test and the Buyer (or Buyer's authorized agent) shall be entitled to attend such inspection or test. The Seller shall submit to the Buyer, at the Buyer's request, all data and other records relating to the inspection or test.
- 2) The Buyer's and/or the Buyer's agent's attendance or non-attendance at such inspection or test does not constitute acceptance of the Goods or the inspection or test results, and in no way relieves the Seller of any liabilities or responsibilities for any defects.

12. INSPECTION AT THE DESTINATION

- 1) If, as a result of an inspection carried out after receipt of the Goods, the Buyer finds that the Goods do not comply with the Contract, the Buyer may, by written notice to the Seller, reject such non-complying Goods and may require the Seller to repair or replace at the Seller's cost the rejected Goods with Goods which comply with the Contract.
- 2) Alternatively, the Buyer may, at its option, accept the non-complying Goods, and
 - (a) elect to undertake to cure the items at the Seller's expense, or
 - (b) make an equitable adjustment in the purchase price.
- 3) In any case, however, upon receipt of notice of non-complying Goods issued by the Buyer, the Seller shall immediately initiate countermeasures to ensure that for all further deliveries under the LTPA the Goods will comply with the Contract. The Seller shall submit the countermeasure plan to the Buyer within three days of receipt of the notice of non-complying Goods.
- 4) The Buyer's inspection, or failure to inspect, in no way relieves the Seller of any liabilities or responsibilities for any defects (latent or otherwise) or non-compliance of the Goods to requirements of the Contract. Notwithstanding any of the above, if

during an inspection of a sample of a shipment of Goods received by the Buyer, non-complying Goods are found at a rate of five (5) percent or more in a single shipment of Goods received by the Buyer, the Buyer may, at its discretion:

- (a) reject the entire respective shipment and require the Seller to repair or replace the rejected Goods with Goods that comply with the Contract, or,
- (b) reject the entire respective shipment, cancel the respective Order(s), and undertake to procure from an alternative source Goods meeting approximately the same specifications required by the Contract, and in such case, the Seller shall pay all costs and other expenses incurred by the Buyer in excess of the purchase price specified in the Contract, or,
- (c) undertake to carry out an inspection of the entire respective shipment, and reject the portion of Goods that do not comply with the Contract requirements. In such case, Seller shall pay all costs incurred by the Buyer for such inspection of the Goods. Repair or replacement of the rejected Goods shall be directed by the Buyer with the same rights and obligations outlined in sub-clause 12-4) (a) and (b) above.

13. CHANGES

- 1) The Seller shall not make any change to or deviate from any requirements of the Contract, including without limitation, those under the Specifications with respect to inspection, testing or quality control, quantities, methods of shipment, schedule or places of delivery without prior written consent of the Buyer.
- 2) The Buyer may at any time direct, in writing, changes in the Specifications, quantities, methods of shipment, schedule or place of delivery of the Goods, and the Seller shall thereby be bound, unless the Seller demonstrates that such changes will reduce the safety or suitability of the Goods.
- 3) If the Buyer directs any such changes, the Seller shall submit in writing, as soon as practicable but within ten (10) days of the Buyer's notice of such changes, its proposal for adjustment in the price of the Contract and/or in the time of delivery of the Goods. The Buyer shall then, as soon as practicable after receiving such proposal, respond with approval, disapproval or comments. Buyer reserves the right to request Seller to submit documentation evidencing the reasonable impact on the price and/or time of delivery of the Goods. In the event the Seller fails to submit its proposal within ten (10) days, the Buyer may adjust the price and the time of delivery at its sole discretion. The Seller shall not delay any work whilst awaiting a response or a price adjustment agreement to be reached.

14. SELLER'S DOCUMENTS

The Seller shall submit documents such as drawings for approval, drawings for installation, drawings showing the finished condition of the Goods, shipping documents, instruction books and operation manuals, etc. to the Buyer in accordance with any requirements stated in the Contract.

The Seller shall be responsible for any inconsistencies, errors or omissions contained in such drawings, shipping documents, instruction books and operation manuals etc. and shall be liable for any damage that may arise from the Seller's failure to comply with the requirements under the Contract.

The Buyer's approval of the Seller's documents shall not relieve the Seller of any of its obligations and responsibilities under the Contract.

15. WARRANTIES

- 1) The Seller warrants that the Goods conform to the requirements of the Contract and

the Specifications and that the Goods are new, merchantable, of good design, material and workmanship, free from defects, and fit and safe for the purpose intended.

These warranties shall be in addition to all other warranties, expressed, implied or statutory. Payment for, inspection of, or receipt of the Goods shall not release the Seller from any of its warranty obligations.

- 2) Unless otherwise stated in the Contract, the Seller warrants that the Goods will meet or exceed the Seller's representations and will conform to any and all the provisions of the Contract for a period of twelve (12) months from the date when the Goods are delivered to their end user.
- 3) Any weakness, deficiency, failure, breakdown or deterioration beyond normal wear and tear for the intended service that appears or is discovered in the Goods or any part thereof, within the period set out in paragraph 2 of this clause 15 shall be repaired or replaced or otherwise made good by the Seller at the Seller's expense within the time designated by the Buyer. Without limiting the generality of the foregoing, and without prejudice to any rights of the Buyer under the Contract or otherwise, the Seller shall, pursuant to the instructions of the Buyer, deliver any repaired and/or replacement Goods or any part thereof, and shall bear all freight costs of expedited shipping method designated by Buyer, customs duties and all other expenses up to the final destination for any repaired and/or replaced Goods or any part thereof. The Seller shall reimburse the Buyer all damages, costs, and expenses arising out of or resulting from the Seller's breach of any of the foregoing warranties, including without limitation, costs of removal, inspection, detection, and costs of recall, return and warehousing.
- 4) When the Seller cannot repair or replace within the time designated by the Buyer, the Buyer may undertake to repair or replace at the Seller's expense. The Buyer may, at its option, elect to accept the defective Goods, whereupon an equitable adjustment in the price of the Contract shall be made.
- 5) In the event that defective or non-complying Goods are found at a rate of 5% or more in a representative sample of a single shipment or lot of Goods received by the Buyer, the Buyer may at its discretion require the Seller to repair or replace the entire shipment or lot in accordance with the conditions outlined above.

16. SPARE AND REPLACEMENT PARTS

The Seller shall make available to the Buyer at least for a period of seven (7) years following delivery of the Goods, repair or replacement parts for the Goods at a charge not to exceed the lowest price charged by the Seller to any third party for such repair or replacement parts.

17. THE BUYER'S REPRESENTATIVE

The Buyer may, with a written notice to the Seller, send its own staff or other personnel retained by the Buyer to monitor the Seller's performance of the Contract or to provide the Seller with expediting or quality assurance advice. The Seller shall provide these personnel with reasonable and free access to the plants of the Seller and its subcontractors and to any other places where the Goods, in whole or in part, are manufactured, packed or transported.

18. SUSPENSION

The Buyer may, by written notice, suspend all or part of the work to be performed under this Contract for any period not to exceed ninety (90) days. Within such period, or any extension thereof to which the parties may agree, the Buyer shall either cancel such suspension or terminate the work covered by the suspension in accordance with Clause 19 or Clause 20 hereof. The Seller shall immediately resume the work whenever a suspension is canceled or expires.

An equitable adjustment shall be made in the delivery schedule or the price of the Contract, or both, if the suspension results in a change in the Seller's cost of performance or ability to maintain the delivery schedule, provided the Seller asserts a claim for adjustment within twenty (20) days after the end of the period of suspension, and provided the suspended work is not terminated in accordance with Clause 19 hereof.

19. TERMINATION FOR DEFAULT

- 1) If the Seller (a) repeatedly fails to deliver the Goods at the times specified in the Order(s), (b) fails to perform any other obligations under the Contract, (c) or fails to make progress so as to endanger timely and proper delivery of the Goods and does not cure such failure within a period of ten (10) days (or such shorter period of time as commercially reasonable under the circumstances) after receipt of written notice from the Buyer specifying such failure, (d) becomes insolvent, makes an assignment in favor of creditors, or enters bankruptcy or dissolution procedures, (e) is merged into another company and/or is expropriated or nationalized, or (f) the Buyer has reasonable grounds to believe that the Seller is unable to deliver the Goods at the time specified in the Contract, the Buyer may, by written notice to the Seller terminate the Contract, in whole or in part, without any liability to the Seller, and without prejudice and in addition to any other rights and/or remedies which it may have hereunder or at law or equity or otherwise.
- 2) Upon such termination the Buyer shall have the right to:
 - (a) cancel in whole or in part, without any liability to the Seller, any Order(s) that have not yet been delivered by the Seller;
 - (b) cancel in whole or in part any Order(s) that have already been delivered by the Seller, with the sole liability of the Buyer being to return to the Seller the Goods delivered under the canceled portion of the Order(s) at the Seller's cost; and
 - (c) purchase elsewhere Goods meeting approximately the same specifications of the Goods to be furnished under any canceled Orders and, in such event, the Seller shall pay all excess costs and other expenses incurred by the Buyer in excess of the purchase price specified in the Contract.

20. TERMINATION OF ORDER AT THE BUYER'S OPTION

- 1) The Buyer may terminate any Order(s) in whole or in part at any time by giving written notice to the Seller. Upon receipt of any such notice, the Seller shall, unless the notice requires otherwise:
 - (a) Immediately discontinue work on the date and to the extent specified in the notice;
 - (b) Place no further orders for materials other than those required for completion of such portion of the work that is not terminated;
 - (c) Promptly make every reasonable effort to obtain cancellation on terms satisfactory to the Buyer of all orders to sub-contractors, if the Buyer so requests, or assign (or cause its subcontractors to assign) those orders to the

- Buyer; and
- (d) Assist the Buyer, upon request, in maintenance, protection, and disposition of property acquired by the Buyer as a result of termination.
- 2) If claimed in writing within thirty (30) days after the notice of termination and proved to the satisfaction of the Buyer, the Buyer will pay to the Seller an adjustment of the price of the Contract which consists of:
 - (a) All amounts due to the Seller for the Goods completed in accordance with the Contract prior to such notice;
 - (b) A reasonable amount for any Goods and materials then in production provided that no such adjustment be made in favor of the Seller with respect to any Goods which are the Seller's standard stock; and
 - (c) Cost of settling and paying claims arising out of the canceled orders;
 - 3) Payment under this Clause constitutes the Buyer's only obligation to the Seller in the event that any Order is terminated as provided in this Clause. The Seller's acceptance of such payment constitutes an acknowledgment that the Buyer has discharged that obligation under the Contract. The provisions of this Clause do not apply to any termination by the Buyer for the default of the Seller or for any other cause allowed by law or under this Contract.
 - 4) Termination, or expiration of the Contract, or of any individual Order(s), regardless of the reason(s), shall not relieve the Seller of any obligations or liabilities affected upon Seller under this Contract prior to the termination or expiration.

21. RIGHT TO ADEQUATE ASSURANCE OF PERFORMANCE

- 1) When reasonable grounds for insecurity arise with respect to the Seller's performance, the Buyer may in writing demand adequate assurance of due performance and, until it receives such assurance, may suspend any of its performance under the Contract in whole or in part.
- 2) Acceptance of any improper delivery does not prejudice the Buyer's right to demand adequate assurance of future performance.
- 3) When, after receipt of such a demand, the Seller has failed to provide within a reasonable time not exceeding thirty (30) days such assurance of due performance as is adequate under the circumstances of the particular case, the Buyer may by written notice to the Seller terminate the Contract, in whole or in part, without any liability to the Seller, and may, without prejudice and in addition to any other rights or remedies which it may have hereunder or at law or otherwise, return part or all of any shipment of the Goods delivered prior to the date of such termination at the Seller's cost.
Sub-Clause 19-2) hereof shall be applicable in case of the above termination.

22. FORCE MAJEURE

- 1) "Force Majeure" means unforeseeable and unavoidable causes beyond the reasonable control and without fault or negligence of the Seller and/or the Buyer, including but not restricted to, acts of God, war (declared or undeclared), acts of any governmental authorities, riot, revolution, civil commotion, fires, or epidemic, but shall not include unforeseen difficulties in manufacture, difficulty in obtaining raw materials or supplies (unless itself due to Force Majeure), shortage of labor, or non-performance by the Seller's subcontractors, strike, inclement weather, difficulty in transportation or failure of suppliers to deliver.
- 2) Should Force Majeure prevent the total or partial performance required under the Contract, the party claiming Force Majeure shall advise the other party of the

beginning and the expected period of such Force Majeure with reasonable evidence within ten (10) days after the occurrence of Force Majeure and furnish the other party with convincing evidence, such as an official certificate from competent authorities substantiating the occurrence and nature of the alleged contingencies, within seven (7) days after the end thereof.

- 3) In the event a condition of Force Majeure is declared and substantiated as set forth in paragraph 2), the parties shall consult with each other to extend the delivery date of the Goods; however, such delivery date shall not be extended beyond thirty (30) days from the delivery date set forth in the Order. For delays and/or non-performance of the obligations due to Force Majeure, neither party shall be entitled to claim against the other party any penalty, interest, damage or any other compensation arising from Force Majeure for such period of Force Majeure.
- 4) In the event that the delay and/or non-performance of the obligations exceeds thirty (30) days due to Force Majeure, the Buyer, without any obligation to pay any termination charge, shall be entitled to terminate the Contract by so notifying the Seller in writing.

23. CONTRACT CONSTRUCTION

- 1) The failure of the Buyer to enforce any of its rights under the Contract shall in no way be construed as a waiver of such rights by the Buyer, nor in any way affect the right of the Buyer thereafter to enforce any such provisions.
No waiver by the Buyer of any default of the Seller hereunder constitutes a waiver of any subsequent default, regardless of the nature of the subsequent default.
- 2) The rights and remedies herein reserved to the Buyer are cumulative and are in addition to any other or further rights or remedies available to the Buyer under the law or equity or otherwise
- 3) The provisions of the Contract are severable. If and to the extent that any provision of the Contract proves to be or becomes invalid, illegal or unenforceable in any respect under any law, the validity, legality and enforceability of the other provisions of the Contract will not be affected or impaired in any way.
- 4) The following clauses shall survive the expiration or earlier termination (for any reason) of the Contract: 1. DEFINITIONS; 15. WARRANTIES; 19. TERMINATION FOR DEFAULT; 20. TERMINATION AT THE BUYER'S OPTION; 23 CONTRACT CONSTRUCTION; 24. INDEMNITIES; 25. CONFIDENTIALITY; 26. INTELLECTUAL PROPERTY; 28. ARBITRATION; 29. GOVERNING LAW.

24. INDEMNITY

The Seller shall defend, indemnify and hold harmless the Buyer, its employees, and its agents from and against any and all losses, costs, damages, consequential or special damages, expenses (including expenses and fees of attorneys), claims and legal actions, whether groundless or not, including any and all claims for personal injuries or death, for loss of or damage to property, arising out of the breach by the Seller of any of the terms contained herein or under the Contract, the failure by the Seller to perform any of its obligations hereunder or under the Contract or any act or omission or negligent work of the Seller or its employees, agents or subcontractors in connection with performing any work relating to the Contract.

The Seller also shall defend, indemnify and hold harmless the Buyer, its employees, and its agents from and against any and all losses, costs, damages, expenses (including expenses and fees of attorneys), claims and legal actions, whether groundless or not, including any and all claims for personal injuries or death, damage to or loss of property, consequential or special damages, in connection with any product liability action or claim wherein it is alleged that the Goods were defective in

design, manufacture, repair and/or instructions.

25. CONFIDENTIALITY

- 1) The Specifications and any other drawings, designs, technical data and other information (written or not) furnished by the Buyer to the Seller shall be treated as confidential, shall be used exclusively for the purpose of performing of the Contract, shall not be used, disclosed or reproduced in whole or in part for any other purpose and shall be returned to the Buyer upon completion of the Contract or whenever the Buyer so demands.
- 2) The confidentiality obligation stipulated herein shall remain forever in full force and effect even after the Seller's completion of the Contract.
- 3) The Seller shall comply with, and shall ensure compliance by its employees, subcontractors, and agents with the confidentiality requirements set out herein.
- 4) The requirements of paragraph 1) of this Clause shall not apply to any specifications or other drawings, designs, technical data or other information that the Seller demonstrates, promptly after Seller's receipt of such information from the Buyer and to the Buyer's satisfaction, to be in the public domain or already in the lawful possession of the Seller.

26. INTELLECTUAL PROPERTY

- 1) The Seller shall defend, indemnify and hold harmless the Buyer from any and all claims, actions, damages, losses and expenses, including attorney's fees, arising from any claim that the Goods (or any part of the Goods or process related to the Goods) purchased by the Buyer from the Seller infringe or allegedly infringe on any patent, trademark, copyright, trade secret or other intellectual property right.
- 2) In the event the Buyer is enjoined from the possession or use of the Goods in connection with any said claim, the Seller at its sole expense shall take all reasonable steps to procure for the Buyer the right to possess and use the Goods (or any part of the Goods or process related to the Goods). If the Seller cannot promptly obtain such a right, the Seller shall at its sole expense and in accordance with the instructions of the Buyer either:
 - (a) modify the Goods so as to avoid infringement of any intellectual property right with substantially equal quality to the satisfaction of the Buyer, or
 - (b) replace the Goods with substantially equal Goods that do not infringe or violate any intellectual property right.In addition, the Seller shall reimburse the Buyer for any and all losses and/or damages incurred by the Buyer as a result of being enjoined from the possession or use of the Goods.
- 3) The Seller may, with the Buyer's prior written consent, rightfully apply any patent or other intellectual property right to which the Seller becomes entitled during the course of manufacturing the Goods if such intellectual property was developed or created by the Seller without the use of any information provided by the Buyer. In such event, the Seller shall grant to the Buyer a non-exclusive and royalty-free license to manufacture, use and/or sell in accordance with the patent or other intellectual property right as long as its registration is lawfully maintained.

27. COMPLIANCE

- 1) The Seller shall comply with, and shall ensure compliance by its employees, sub-contractors and agents with, any and all applicable laws, regulations, and lawful orders including, without limitation, applicable export/re-export control laws, guidelines and/or regulations including, but not limited to the export administration regulations of the United States, issued by competent authorities, relating to the manufacture, sale, and/or delivery of the Goods (including any technology information contained therein) in the country of manufacture of the Goods, and in the country of intermediate and/or final delivery of the Goods or provision of services.
- 2) The Seller shall be responsible for obtaining approvals, licenses, permits or authorization in a timely manner from the competent authorities necessary for the exportation of the Goods (and, as the case may be, the Specifications and any other drawings, technical data, technologies and information) to the country of destination.
- 3) In the event that the Goods or the Specifications or any part thereof are, or are likely to be, subject to any restriction arising from such applicable laws, regulations or otherwise as stated herein, the Seller shall so notify the Buyer and shall, at its cost, take any and all necessary actions to ensure the strict compliance with the same, and submit upon the request from the Buyer the certificate or instrument certifying such compliance.
- 4) The Seller warrants all the Goods and the Specifications (and any part thereof) shall be in strict compliance with all applicable laws, regulations, orders or by-laws of any local or national authority having the force of law in the country where the Goods are placed in operation including but not limited to safety, fire protection and structure. In addition, the Seller shall comply with the safety requirement specified in the Contract and/or the Specifications.
- 5) The Seller shall submit all the documents necessary to comply with the requirement described in this Clause.

28. ARBITRATION

The parties shall exercise their best efforts to resolve by negotiation any and all disputes, controversies or differences between the Buyer and the Seller arising out of or relating to the Contract, or the breach thereof. All disputes, controversies or differences between the Buyer and the Seller arising out of or relating to the Contract, or breach thereof, that are not settled by negotiation shall be settled by arbitration in Tokyo, Japan, in accordance with the Commercial Arbitration Rules (the "Rules") of the Japan Commercial Arbitration Association.

The arbitration will be conducted in the English language. The arbitration panel will be appointed in accordance with the Rules. Seller agrees to continue production pending resolution of any such dispute at the Buyer's sole election.

The award rendered by the arbitrator(s) shall be final and binding upon both parties, and judgment upon the award may be entered in any court having jurisdiction thereof.

29. GOVERNING LAW

This Contract shall be interpreted under and governed by the laws of Japan without reference to its rules concerning conflict of law.

This Contract shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded.

30. ASSIGNMENT

The Seller shall not assign or transfer the Contract or any part of it, to any third party without prior written approval by the Buyer.

Notwithstanding the foregoing, in no event does any approval by the Buyer or any (subsequent) assignment by the Seller relieve the Seller of any of its obligations under the Contract.

31. LANGUAGE

The language to be used in all documents comprising or relating to the Contract, and in all other communications relating to the Contract shall be English, unless otherwise stated in the Contract.

32. PUBLICITY

The Seller shall not issue any news release nor permit any publicity or advertisement concerning the Contract without the Buyer's prior written approval.

33. SUBCONTRACTING

The Seller shall not subcontract all or any substantial portion of its obligations under the Contract without prior written approval of the Buyer.

Upon the Buyer's request, the Seller shall, submit the Seller's complete subcontractors' list for the Buyer's approval. The subcontractors' list shall include of the name and scope of work of each subcontractor.

The Buyer's approval or disapproval of the Seller's subcontractors shall not relieve the Seller of any of its obligations under the Contract.

34. FORECAST QUANTITIES

From time to time as required by the LTPA and/or upon Seller's request, the Buyer may provide the Seller with forecasts of required quantities and/or required delivery dates of the Goods. However, such forecasts are provided only to facilitate the on-time delivery of Goods under future Orders. In no way will the Buyer be obligated, or limited, by such forecasts. Buyer is required to purchase only the Goods that are specified in, and delivered in accordance with specific Orders falling under the Contract.