

## 1. INTERPRETATION

The following definitions and rules of interpretation apply in these Conditions.

### **1.1 Definitions:**

**Business Day:** a day other than a Saturday, Sunday or public holiday in the jurisdiction in which DYWIDAG's office indicated in this Agreement is located.

**Commencement Date:** has the meaning given in Clause 2.2.

**Conditions:** these terms and conditions as amended from time to time in accordance with Clause 16.9.

**Contract:** any contract agreed between DYWIDAG and the Supplier for the supply of Goods and/or Services, including, without limitation, call-off contracts lasting for an agreed period of time or one-off orders, and which shall comprise these Conditions and the Order.

**DYWIDAG:** DSI International Luxembourg S.à.r.l. or that member of the DYWIDAG-Systems International group of companies named in or deemed under the Contract to be the purchaser or buyer (or similar) of Goods or Services.

**Customer Materials:** has the meaning set out in Clause 5.3(i).

**Deliverables:** all documents, products and materials developed by the Supplier or its agents, contractors and employees as part of or in relation to the Services in any form or media, including drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications, and reports (including drafts).

**Delivery Location:** has the meaning given in Clause 4.2(b).

**Goods:** goods of any description, as set out in the Order, including equipment, machinery, materials (whether raw or partly or wholly manufactured), plant and vehicles, and/or any goods supplied to DYWIDAG in connection with the supply of Services to DYWIDAG.

**Goods Specification:** any specification for the Goods, including any related plans and drawings, that is agreed in writing by DYWIDAG and the Supplier.

**Intellectual Property Rights:** patents, rights to inventions, copyright and related rights, trademarks and service marks, business names, domain names, rights in get-up, trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered, and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**Order:** DYWIDAG's written instruction for the supply of Goods and/or Services (or DYWIDAG's written acceptance of the Supplier's offer to supply the same), including any associated technical specification or other delivery requirements.

**Price:** the price of the Goods and/or Services as set out in the Contract or otherwise agreed in writing.

**Services:** the services, including any Deliverables, described in the Order, and all work carried out by the Supplier under the Contract as set out in the Service Specification.

**Service Specification:** the description or specification for Services agreed in writing by DYWIDAG and the Supplier.

**Supplier:** the person(s), firm or company named in the Contract or to whom or to which the Order is addressed (including its successors and approved assignees) and from whom DYWIDAG purchases the Goods and/or Services.

### **1.2 Interpretation:**

(a) A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

(b) A reference to a party includes its successors and permitted assigns.

(c) A reference to legislation or a legislative provision is a reference to it as amended or re-enacted. A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision.

(d) Any words following the terms including, include, in particular, for example, or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase, or term preceding those terms.

(e) A reference to writing or written includes email.

## 2. BASIS OF CONTRACT

**2.1** The Order constitutes an offer by DYWIDAG to purchase Goods and/or Services from the Supplier in accordance with these Conditions.

**2.2** The Order shall be deemed to be accepted on the earlier of:

(a) the Supplier issuing written acceptance of the Order; or

(b) any act by the Supplier consistent with fulfilling the Order, at which point and on which date the Contract shall come into existence (Commencement Date).

**2.3** Any conditions sought to be imposed by the Supplier (including, without limitation, any terms or conditions which the Supplier purports to apply in any quotation, acknowledgement or acceptance of Order, specification or similar document) or which are implied by law, trade custom, practice, or course of dealing, are excluded, except where otherwise agreed in writing and signed by the parties' authorised representatives.

**2.4** All of these Conditions shall apply to the supply of both Goods and Services except where the application to one or the other is specified.

**2.5** The Supplier waives any right it might otherwise have to rely on any term endorsed upon, delivered with, or contained in any documents of the Supplier that is inconsistent with these Conditions.

## 3. SUPPLY OF GOODS

**3.1** The Supplier shall ensure that the Goods shall, when delivered:

(a) correspond with the quantity and description specified in the Contract and any applicable Goods Specification;

(b) be of satisfactory quality and fit for any purpose held out by the Supplier or made known to the Supplier by DYWIDAG, expressly or by implication, and in this respect DYWIDAG relies on the Supplier's skill and judgement;

(c) where they are manufactured products, be (i) of satisfactory quality; (ii) fit for their normal purpose and any specific purpose of DYWIDAG made known to the Supplier or for any other purpose of DYWIDAG of which the Supplier ought reasonably to have been aware; (iii) and free from defects in design, materials and workmanship and remain so for a minimum twelve months after delivery, or longer if expressly required in the Goods Specification; and

(d) comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods.

**3.2** The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract in respect of the Goods.

**3.3** The Supplier, at its own expense, shall perform quality control testing in accordance with its own procedures to ensure that the Goods meet the requirements of the Contract and any applicable Goods Specification.

**3.4** The Supplier shall permit DYWIDAG or its authorised representative to inspect and test the Goods at any time during the manufacturing, processing or storage stages, and to inspect and test performance of the Services. The Supplier shall take any steps reasonably required by DYWIDAG where DYWIDAG deems the steps necessary to ensure compliance with the Contract. For the avoidance of doubt, DYWIDAG's right to inspect and require steps to be taken does not indicate DYWIDAG's acceptance or approval of work done nor does it reduce or remove the obligation of the Supplier to comply with the Contract.

## 4. DELIVERY OF GOODS

**4.1** The Supplier shall ensure that:

(a) the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition, and, if required by DYWIDAG, each delivery shall be accompanied by a certificate of analysis and/or up-to-date material safety data sheet in a form acceptable to DYWIDAG;

(b) each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, the Order number (if any), the type and quantity of the Goods (including the code number of the Goods (where applicable)), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and

(c) it states clearly on the delivery note any requirement for DYWIDAG to return any packaging material for the Goods to the Supplier. Any such packaging material shall only be returned to the Supplier at the cost of the Supplier.

The Supplier must ensure that any export / import licences, certificates of origin and any other governmental authorisations or necessary documentation has been obtained prior to shipment.

**4.2** Time of delivery is of the essence. The Supplier must comply with the delivery dates and addresses set out in the Contract. Unless otherwise agreed, delivery shall be made to DYWIDAG's premises or such other location as set out in the Order or as instructed by DYWIDAG before delivery (Delivery Location), during DYWIDAG's normal hours of business on a Business Day, or as instructed by DYWIDAG, and the Supplier shall off-load the Goods. The Supplier must notify DYWIDAG promptly if it is unable to so comply, take every possible step to remedy the same, and shall pay any costs incurred in meeting the late or alternate delivery. DYWIDAG may cancel the Order and/or terminate the Contract, without prejudice to any other rights it may have, if any Goods and/or Services are not delivered strictly in accordance with the Order.

**4.3** Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location and accepted in writing by an authorised officer of DYWIDAG. DYWIDAG shall not be deemed to have accepted the Goods without its written confirmation until it has had a reasonable time to inspect the Goods, or, within a reasonable time of any latent defect becoming apparent.

**4.4** If Seller delivers more or less than the quantity of Goods ordered, DYWIDAG may reject all or any excess Goods. Any such rejected Goods shall be returned to Seller at Seller's sole risk and expense. If DYWIDAG does not reject the Goods and instead accepts the delivery of Goods at the increased or reduced quantity, the Price for the Goods shall be adjusted on a pro-rata basis.

**4.5** The Supplier shall not deliver the Goods in instalments without DYWIDAG's prior written consent. Where it is agreed that the Goods are delivered by instalments, they may be invoiced and paid for separately. However, failure by the Supplier to deliver any one instalment on time or at all or any defect in an instalment shall entitle DYWIDAG to the remedies set out in Clause 6.1. If the Goods are to be delivered by instalments, the Contract shall be treated as a single contract and not severable.

**4.6** Without prejudice to DYWIDAG's rights to reject any Goods, title and risk in the Goods shall pass to DYWIDAG on satisfactory completion of delivery. The Supplier warrants that DYWIDAG shall receive good and marketable title to the Goods, free of any claims, liens or encumbrances.

## 5. SUPPLY OF SERVICES

**5.1** The Supplier shall, from the Commencement Date and for the duration of the Contract, supply the Services to DYWIDAG in accordance with the terms of the Contract.

**5.2** The Supplier shall meet any performance dates for the Services specified in the Order or that DYWIDAG notifies to the Supplier, and time is of the essence in relation to any of those performance dates.

**5.3** In providing the Services, the Supplier shall:

(a) cooperate with DYWIDAG in all matters relating to the Services, and comply with all instructions of DYWIDAG;

(b) perform the Services: (i) efficiently, safely, and competently, with the best care, skill, and diligence in conformity with any applicable industry code of practice by suitably qualified and experienced personnel; and (ii) to the highest quality which reasonably would be expected from a skilled and experienced operator providing a similar type of services in similar circumstances

(c) use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with the Contract;

(d) ensure that the Services will conform with all descriptions, standards and specifications set out in the Service Specification, and that the Deliverables shall be fit for any purpose that DYWIDAG expressly or impliedly makes known to the Supplier;

(e) provide all equipment, tools and vehicles and such other items as are required to provide the Services;

(f) use the best quality goods, materials, standards and techniques, and ensure that the Deliverables, and all goods and materials supplied and used in the Services or transferred to DYWIDAG, will be free from defects in workmanship, installation and design;

(g) obtain and at all times maintain all licences and consents which may be required for the provision of the Services;

(h) observe all health and safety rules and regulations and any other security requirements that apply at any of DYWIDAG's premises;

(i) hold all materials, equipment and tools, drawings, specifications and data supplied by DYWIDAG to the Supplier (Customer Materials) in safe custody at its own risk, maintain the Customer Materials in good condition until returned to DYWIDAG, and not dispose or use the Customer Materials other than in accordance with DYWIDAG's written instructions or authorisation;

(j) not do or omit to do anything which may cause DYWIDAG to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business, and the Supplier acknowledges that DYWIDAG may rely or act on the Services; and

(k) comply with any additional obligations as set out in the Service Specification.

**5.4** Where DYWIDAG provides free issue materials or equipment to the Supplier, these shall remain the property of DYWIDAG but shall be at the risk of the Supplier while in the Seller's possession or control. The Supplier shall maintain all such materials and equipment in good order and condition, shall use the

same solely for and strictly in accordance with the Contract, and otherwise shall comply with all DYWIDAG directions given from time to time in respect of the same. Waste or loss shall be made good at the Supplier's expense.

**5.5** If the Services are to be performed by instalments, the Contract shall be treated as a single contract and not severable.

## **6. REMEDIES**

**6.1** The Supplier warrants its expertise and confirms the accuracy of all statements and representations made in respect of the Goods and/or the Services prior to entering into the Contract and acknowledges DYWIDAG's reliance upon the same. If the Supplier fails to deliver the Goods by the applicable date or to perform the Services by the applicable date, or both, DYWIDAG shall, without limiting or affecting other rights or remedies available to it, have any one or more of the following rights and remedies:

- (a) to terminate the Contract with immediate effect by giving written notice to the Supplier;
- (b) to refuse to accept any subsequent performance of the Services and/or delivery of the Goods which the Supplier attempts to make;
- (c) to recover from the Supplier any costs incurred by DYWIDAG in obtaining substitute goods and/or services from a third party;
- (d) to require a refund from the Supplier of sums paid in advance for Services that the Supplier has not provided and/or Goods that it has not delivered; and
- (e) to claim damages for any additional costs, loss or expenses incurred by DYWIDAG which are in any way attributable to the Supplier's failure to meet such dates.

**6.2** DYWIDAG may inspect and test the Goods. If the Supplier has delivered Goods that do not comply with the undertakings set out in Clause 3.1, then, without limiting or affecting other rights or remedies available to it, DYWIDAG shall have one or more of the following rights and remedies, whether or not it has accepted the Goods:

- (a) to terminate the Contract with immediate effect by giving written notice to the Supplier;
- (b) to reject the Goods (in whole or in part) whether or not title has passed and to return them to the Supplier at the Supplier's own risk and expense;
- (c) to require the Supplier to repair or replace the rejected Goods within a reasonable time (being not more than fifteen days after notice of rejection) with Goods complying with the standards referred to in the Goods Specification, or to provide a full refund of the price of the rejected Goods (if paid);
- (d) to refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;
- (e) to recover from the Supplier any expenditure incurred by DYWIDAG in obtaining substitute goods from a third party; and
- (f) to claim damages for any additional costs, loss or expenses incurred by DYWIDAG arising from the Supplier's failure to supply Goods in accordance with Clause 3.1.

**6.3** If the Supplier has supplied Services that do not comply with the requirements of Clause 5.3(d) then, without limiting or affecting other rights or remedies available to it, DYWIDAG shall have one or more of the following rights and remedies:

- (a) to terminate the Contract with immediate effect by giving written notice to the Supplier;
- (b) to return the Deliverables to the Supplier at the Supplier's own risk and expense;
- (c) to require the Supplier to provide repeat performance of the Services, or to provide a full refund of the price paid for the Services (if paid);
- (d) to refuse to accept any subsequent performance of the Services which the Supplier attempts to make;
- (e) to recover from the Supplier any expenditure incurred by DYWIDAG in obtaining substitute services or deliverables from a third party; and
- (f) to claim damages for any additional costs, loss or expenses incurred by DYWIDAG arising from the Supplier's failure to comply with Clause 5.3(d).

**6.4** These Conditions shall extend to any substituted or remedial services and/or repaired or replacement goods supplied by the Supplier.

**6.5** DYWIDAG's rights and remedies under the Contract are in addition to, and not exclusive of, any rights and remedies implied by statute and common law.

**6.6** The Supplier shall promptly make good, at its cost by repair or replacement, defects or any shortfall in the Goods and/or Services occurring within twelve months of delivery/performance and shall be responsible for any associated costs incurred in making good the same.

## **7. CHARGES AND PAYMENT**

**7.1** The price for the Goods shall be:

- (a) the price set out in the Order, or if no price is quoted, the price set out in the Supplier's published price list in force at the Commencement Date;
- (b) exclusive of sales tax (or any equivalent local tax) (if applicable); and
- (c) inclusive of the costs of packaging, shipping, carriage, insurance and delivery of any Goods to the delivery address specified in the Order and any other sales and export or import duties or levies.

No extra charges shall be effective unless agreed in writing and signed by DYWIDAG.

**7.2** The charges for the Services shall be set out in the Order and shall be the full and exclusive remuneration of the Supplier in respect of the performance of the Services. Unless otherwise agreed in writing by DYWIDAG, the charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services. No extra charges shall be effective unless agreed in writing and signed by DYWIDAG.

**7.3** In respect of the Goods, unless stated otherwise in the Order, the Supplier may invoice DYWIDAG on or at any time after delivery of the Goods and/or Services. In respect of Services, the Supplier shall invoice DYWIDAG on completion of the Services. Each invoice shall include such supporting information required by DYWIDAG to verify the accuracy of the invoice, including the relevant purchase order number.

**7.4** Invoices, and all other correspondence relating to the Contract, must quote: the date of delivery, Order number, delivery address, product name, quantity and description, and must be sent to the invoice address specified in the Order referencing the appropriate individual contact at DYWIDAG. Failure to comply with this requirement shall entitle DYWIDAG to return the invoice, unpaid, to the Supplier.

**7.5** In consideration of the supply of Goods and/or Services by the Supplier, unless otherwise agreed in writing between DYWIDAG and the Supplier, DYWIDAG shall pay the invoiced amounts within ninety days from the end of the month in which a correctly rendered invoice is received by DYWIDAG, or if later, after DYWIDAG has accepted the Goods and/or Services in question. Payment does not constitute acceptance by DYWIDAG of the Goods or Services.

**7.6** All amounts payable by DYWIDAG under the Contract are exclusive of amounts in respect of valued added tax chargeable from time to time (VAT). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to DYWIDAG, DYWIDAG shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the

supply of the Goods and/or Services at the same time as payment is due for the supply of the Goods and/or Services.

**7.7** If a party fails to make any payment due to the other party under the Contract by the due date for payment, then the defaulting party shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause will accrue each date at the China Bank Lending Rate. Where a payment is disputed in good faith, interest is only payable after the dispute is resolved, on sums found or agreed to be due, from the due date until payment.

**7.8** The Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in providing the Services, and the Supplier shall allow DYWIDAG to inspect such records at all reasonable times on request.

**7.9** DYWIDAG may at any time, without notice to the Supplier, set off any liability of the Supplier to DYWIDAG against any liability of DYWIDAG or any affiliate or associated company to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the Contract. If the liabilities to be set off are expressed in different currencies, DYWIDAG may convert either liability at a market rate of exchange for the purpose of set-off. Any exercise by DYWIDAG of its rights under this clause shall not limit or affect any other rights or remedies available to it under the Contract or otherwise.

**7.10** On receiving written instructions from DYWIDAG to vary the Goods or Services the Supplier shall use its best endeavours to so vary the Goods or Services. Any reasonable costs incurred or savings that could reasonably have been made by the Supplier in varying the Contract shall be charged or credited to DYWIDAG. The rates or prices specified in the Order shall form the basis for calculating costs or savings.

**7.11** DYWIDAG may cancel any Order in respect of all or any part of the Goods or Services by giving notice to the Supplier at any time prior to delivery or performance and shall in such event not be liable to pay the Price for such Goods or Services but shall reimburse the Supplier's reasonable administrative costs arising directly from such cancellation.

**7.12** The Supplier agrees that the fact that one or more Orders have been placed by DYWIDAG with the Supplier does not entitle the Supplier to future Orders or to an entitlement to damages or other relief where DYWIDAG does not place future Orders with the Supplier. Any volume indications or estimates given by or on behalf of DYWIDAG to the Supplier (whether before or after the formation of the Contract) do not impose any contractual obligations to purchase on DYWIDAG.

## **8. INTELLECTUAL PROPERTY RIGHTS**

**8.1** All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any Customer Materials) shall be owned by the Supplier.

**8.2** The Supplier shall, upon request, assign and transfer free of charge, with full title guarantee, any intellectual property rights (including patents, patent applications and know-how) in documents, specifications, plans, drawings, samples, information or Goods created or prepared by the Supplier specifically for DYWIDAG. The Supplier grants to DYWIDAG, or shall procure the direct grant to DYWIDAG of, a fully paid-up, worldwide, non-exclusive, royalty-free, perpetual, and irrevocable licence to copy the Deliverables (excluding Customer Materials) for the purpose of receiving and using the Services and the Deliverables.

**8.3** DYWIDAG grants the Supplier a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy any materials provided by DYWIDAG to the Supplier for the term of the Contract for the purpose of providing the Services to DYWIDAG.

**8.4** The Supplier acknowledges that all rights in the Customer Materials are and shall remain the exclusive property of DYWIDAG.

The Supplier may not use DYWIDAG's name or the names of its affiliates or associated companies for the purposes of discussions with any third party regarding the supply of Goods or the performance of Services, or for the purposes of any advertisement or publicity, without obtaining the prior written consent of DYWIDAG.

Any documents, specifications, plans, drawings, samples, information or Goods supplied by DYWIDAG shall remain DYWIDAG's property and the Supplier shall return these and any copies to DYWIDAG, upon DYWIDAG's request, or permit DYWIDAG access to the Supplier's premises to recover the same.

## **9. INDEMNITY**

**9.1** The Supplier shall indemnify DYWIDAG in full against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by DYWIDAG arising out of or in connection with: (i) any breach of the Contract; (ii) any act or omission of the Supplier or its employees, agents, or sub-contractors in supplying the Goods and/or the Services, except that nothing shall render the Supplier liable to indemnify DYWIDAG insofar as and to the extent that the matter in respect of which DYWIDAG seeks indemnity has been caused by the negligence of DYWIDAG or its employees acting in the course of their employment; (iii) any claim made against DYWIDAG for actual or alleged infringement of a third party's intellectual property rights arising out of, or in connection with, the manufacture, supply or use of the Goods, or receipt, use or supply of the Services (excluding the Customer Materials), or by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in the Goods, as delivered, or the Deliverables; or (iv) any claim made against DYWIDAG by a third party arising out of or in connection with the supply of the Goods, as delivered, or the Services.

**9.2** The indemnification obligation in Clause 9.1 is an ongoing obligation and this Clause 9 shall survive any termination or expiration of the Contract or other purported completion of the Services or delivery of Goods.

## **10. INSURANCE**

During the term of the Contract, the Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance, product liability insurance, public liability insurance, and any other insurance as necessary to insure itself against any and all potential liabilities that may arise under or in connection with the Contract, and shall, on DYWIDAG's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

## **11. CONFIDENTIALITY**

**11.1** The Supplier undertakes that it shall not at any time during the Contract and for a period of two years after termination or expiry of the Contract, disclose to any other party any confidential information belonging to or relating to the business affairs, customers, clients, or suppliers of DYWIDAG or of any associated company (including, without limitation, specifications, formulae, manufacturing processes, know-how and any technical, business or economic information) or use such information for any purpose except as permitted by Clause 11.2 or as expressly authorised in writing by DYWIDAG. The Supplier is responsible for any unauthorised disclosures made by its employees and agents and shall take all reasonable precautions to prevent such disclosures. This obligation of confidence continues during the Contract period and for so long as the information remains confidential thereafter.

**11.2** Each party may only disclose the other party's confidential information:

(a) to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under the Contract. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this Clause 11; or

(b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

**11.3** Neither party shall use the other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

## **12. COMPLIANCE WITH LAWS AND POLICIES**

**12.1** In performing its obligations under the Contract, the Supplier shall comply with all applicable laws, statutes, regulations, and codes from time to time in force.

**12.2** The Supplier warrants that any Goods and Services provided shall: (i) comply with all applicable statutory requirements and regulations, including without limitation those relating to the manufacture, packaging, packing, carriage and delivery of the Goods and the performance of the Services, and health and safety and environmental laws for the same; (ii) not infringe the intellectual property rights of any third party; and (iii) conform to any specification or other requirements referred to in the Contract.

**12.3** Any hazardous material supplied must be marked by the Supplier with its international danger symbol(s) and the name displayed in English. Transport and other documents must contain the same, together with emergency information in English. The Supplier's attention is drawn to all local and international agreements, regulations and codes of practice in the country of delivery relating to the packing, labelling and carriage of hazardous goods, with which the Supplier must ensure that it complies.

## **13. TERMINATION**

**13.1** Without affecting any other right or remedy available to it and notwithstanding any term to the contrary in the Contract, DYWIDAG at its sole option may unilaterally terminate all or part of the Contract:

(a) with immediate effect by giving written notice to the Supplier if: (i) there is a change of control of the Supplier; or (ii) the Supplier commits a breach of Clause 12.

(b) for convenience by giving the Supplier ninety days' written notice.

**13.2** Without affecting any other right or remedy available to it and notwithstanding any term to the contrary in the Contract, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

(a) the other party commits a material breach of any term of the Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of twenty days after being notified in writing to do so;

(b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction; or

(c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business.

## **14. CONSEQUENCES OF TERMINATION**

**14.1** On termination of the Contract, the Supplier shall:

(a) immediately deliver to DYWIDAG all Deliverables whether or not then complete and return all Customer Materials. If the Supplier fails to do so, then DYWIDAG may enter the Supplier's premises and take possession of them. Until they have been returned or delivered, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract; and

(b) refund promptly advance payments made by DYWIDAG to the Supplier for Goods and Services not yet supplied.

**14.2** Termination or expiry of the Contract shall not affect the parties' rights and remedies that have accrued as at termination or expiry or which thereafter may accrue, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry, nor does it affect the survival of any right, duty, or obligation which is expressly or impliedly stated to survive termination.

**14.3** Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

## **15. FORCE MAJEURE**

No party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached the Contract, for any failure or delay in fulfilling or performing any term of the Contract (except for any obligations of Buyer to make payments to DYWIDAG hereunder), when and to the extent such failure or delay is caused by or results from acts beyond the impacted party's ("Impacted Party") reasonable control, including, without limitation, Acts of God, flood, earthquake, or other natural disaster; epidemic or pandemic; war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, breaking off of diplomatic relations or similar actions; terrorist attack, civil war, civil commotion or riots; nuclear, chemical or biological contamination or sonic boom; any law or government order, rule, regulation or direction, or any action taken by a government or public authority, including but not limited to imposing an embargo, export or import restriction, quota or other restriction or prohibition, or failing to grant a necessary license or consent; fire, explosion or accidental damage by a third party; loss during transportation; adverse weather conditions; interruption or failure of utility service, including but not limited to electric power, gas or water; any labor dispute, including but not limited to walkouts, strikes, industrial action or lockouts (other than by DYWIDAG's employees); non-performance by DYWIDAG's suppliers, inability to obtain raw materials; and unexpected failure of plant machinery, machinery, computers or vehicles, and other similar events beyond the reasonable control of the Impacted Party. The Impacted Party shall give written notice of the Force Majeure Event to the other party, stating the period of time the occurrence is expected to continue. The Impacted Party shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized. The Impacted Party shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause. In the event that the Impacted Party's failure or delay remains uncured for a period of 90 days following written notice given by it under this Section 19, DYWIDAG shall be entitled to terminate its obligations under the Contract without penalty by notice to Buyer and shall be entitled to payment by Buyer of a pro-rata sum of the Price to reflect Goods and/or Services delivered by DYWIDAG up to the date on which it terminated its obligations under the Contract. DYWIDAG reserves the right to allocate its available supply of Materials among any or all purchasers, as well as departments and divisions of DYWIDAG on such basis as it may deem reasonable, fair and practical, without liability for any failure of performance relating to the Contract.

## **16. GENERAL**

**16.1** Neither party shall assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over,

or deal in any other manner with any of its rights and obligations under the Contract without the other party's prior written consent (such consent not to be unreasonably withheld or delayed) provided that DYWIDAG is permitted (without the need to obtain consent) to assign or transfer the rights and benefits under the Contract in whole or in part to any subsidiary, holding company or subsidiary of such holding company of DYWIDAG.

**16.2** The Supplier may not subcontract any or all of its rights or obligations under the Contract without the prior written consent of DYWIDAG. If DYWIDAG consents to any subcontracting by the Supplier, the Supplier shall remain responsible for all the acts and omissions of its subcontractors as if they were its own.

**16.3** Any notice given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case) or sent by email. Any notice shall be deemed to have been received: (i) if delivered by hand, at the time the notice is left at the proper address; (ii) if sent by pre-paid first-class post or other next working day delivery service, on the second Business Day after posting; or (iii) if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this Clause 16.3, business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt. This Clause 16.3 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

**16.4** Any provision of the Contract that is or may be void or unenforceable shall to the extent of such invalidity or unenforceability be deemed severable and shall not affect any other provision of the Contract.

**16.5** No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

**16.6** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.

**16.7** The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. Each party acknowledges that in entering into the Contract it does not rely on and has not relied on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not expressly set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in the Contract. Nothing in this clause shall limit or exclude any liability for fraud.

**16.8** Unless it expressly states otherwise, the rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

**16.9** Except as set out in these Conditions, no amendment, variation, or waiver of the Contract shall be effective unless it is agreed in writing and signed by the parties (or their authorised representatives).

**16.10** The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of the jurisdiction in which DYWIDAG's office indicated in this Agreement is located without giving effect to any choice or conflict of law provision or rule that would cause the application of the laws of any other jurisdiction, and each party irrevocably agrees that the courts of such jurisdiction shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.