

THESE CONDITIONS CONTAIN EXCLUSION AND LIMITATION CLAUSES

Buyer's attention is particularly drawn to the provisions of Clause 12 (Limitation of liability).

1. INTERPRETATION

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

Business Day: a day other than a Saturday, Sunday or a bank or public holiday in Hong Kong.

Buyer: the person or firm or entity which purchases the Goods and/or Services from DYWIDAG whose order for Goods is accepted by DYWIDAG.

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 16.8.

Contract: the contract between DYWIDAG and Buyer for the supply of Goods and/or Services in accordance with these Conditions; DYWIDAG's order confirmation; and any special terms expressly agreed in writing as forming part of the Contract.

Customer: the person or firm who purchases the Goods and/or Services from DYWIDAG.

Deliverables: the deliverables, if any, set out in the Order produced by DYWIDAG for Buyer.

Delivery Point: the point of delivery to Buyer in accordance with the agreed Incoterm.

DYWIDAG: DYWIDAG-Systems International SPP – Asia Ltd.

Force Majeure Event: has the meaning given to it in Clause 15.

Goods: the goods (or any part of them) set out in the Order to be supplied under the Contract

Goods Specification: any specification for the Goods, including any relevant plans or drawings, that is agreed in writing by Buyer and DYWIDAG to be the description of the Goods to be supplied by DYWIDAG under the Contract.

Incoterm: a current trade term of the International Chamber of Commerce.

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: Buyer's order for the supply of Goods and/or Services, as set out in Buyer's purchase order form or Buyer's written acceptance of DYWIDAG's quotation, as the case may be.

Services: the services, including the Deliverables, if any, supplied by DYWIDAG to Buyer as set out in the Service Specification.

Service Specification: the description or specification for the Services provided in writing by DYWIDAG to Buyer.

Supplier Materials: has the meaning given in Clause 8.1(h).

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 personal representatives, 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 Buyer to purchase Goods and/or Services in accordance with these Conditions. No Contract exists until DYWIDAG sends its order confirmation form. No terms and conditions proposed by Buyer (whether before or after any DYWIDAG confirmation of order) shall apply. Any request by the Buyer for delivery or acceptance by Buyer of Goods delivered shall, notwithstanding any terms or conditions proposed by the Buyer or other action of Buyer, constitute complete acceptance of these Conditions.

2.2 The Order shall only be deemed to be accepted when DYWIDAG issues written acceptance of the Order at which point and on which date the Contract shall come into existence (Commencement Date). Confirmation of the order is subject to the express condition subsequent of supplies being available or becoming available. If supplies are not available for delivery by the estimated delivery date, DYWIDAG reserves the right to delay delivery subject to the Buyer's right to cancel under clause 4.4.

2.3 Any samples, drawings, descriptive matter, or advertising issued by DYWIDAG and any descriptions of the Goods or illustrations or descriptions of the Services contained in DYWIDAG's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Services and/or Goods described in them. They shall not form part of the Contract nor have any contractual effect.

2.4 These Conditions apply to the Contract to the exclusion of any other terms that Buyer seeks to impose or incorporate, or which are implied by law, trade custom, practice, or course of dealing.

2.5 Any quotation given by DYWIDAG shall not constitute an offer and shall only be valid for a period of twenty (20) Business Days from its date of issue. All quotations are based on current prices and orders are accepted on the understanding that DYWIDAG's Goods are charged at prices in force at the date of dispatch. All quotations are made on the understanding that the whole of the quantity quoted for will be ordered; otherwise, DYWIDAG reserves the right to revise the quotation.

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

2.7 Buyer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of Buyer that is inconsistent with these Conditions.

3. GOODS

3.1 The Goods are described in the Goods Specification.

3.2 DYWIDAG reserves the right to amend the Goods Specification if required by any applicable statutory or regulatory requirement, subject to not materially affecting quality or performance, and DYWIDAG shall notify Buyer in any such event.

3.3 To the extent that the Goods are to be manufactured in accordance with a Goods Specification supplied by Buyer, Buyer shall indemnify DYWIDAG 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 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 DYWIDAG's use of the Goods Specification. This Clause 3.3 shall survive termination of the Contract.

3.4 If the Buyer requests and DYWIDAG in its sole discretion accepts the amendment or cancellation of the Buyer's order DYWIDAG shall be entitled to impose a charge for losses, costs and expenses suffered or incurred by DYWIDAG as a direct result of the amendment or cancellation which the Buyer shall be obliged to pay.

4. DELIVERY OF GOODS

4.1 DYWIDAG shall ensure that:

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

(b) it states clearly on the delivery note any requirement for Buyer to return any packaging material to DYWIDAG. Buyer shall make any such packaging materials available for collection at such times as DYWIDAG shall reasonably request. Returns of packaging materials will be at DYWIDAG's expense.

4.2 DYWIDAG shall deliver the Goods to Delivery Point at any time after DYWIDAG notifies Buyer that the Goods are ready.

4.3 Unless otherwise agreed in writing by DYWIDAG, delivery of the Goods shall be completed upon loading of the Goods at the Delivery Point.

4.4 Any dates quoted for delivery of the Goods are estimates and are approximate only, and the time of delivery is not of the essence. DYWIDAG shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or Buyer's failure to provide DYWIDAG with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods. If DYWIDAG fails to deliver on an estimated delivery date (otherwise than in accordance with Clauses 4.6 and Clause 4.7) the Buyer shall only be entitled to terminate the Contract or claim damages if the Product remains undelivered on the expiry of 28 days' notice in writing delivered to DYWIDAG by the Buyer on or after the estimated delivery date.

4.5 If DYWIDAG fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by Buyer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. DYWIDAG shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or Buyer's failure to provide DYWIDAG with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

4.6 Without prejudice to any other rights or remedies, DYWIDAG may suspend all deliveries under the Contract or any other contract DYWIDAG has with Buyer if:

(a) payment is overdue under the Contract or such other contract; or

(b) upon the happening of any event described in Clause 13.1(b) through 13.1(d) until DYWIDAG receives or is satisfied that it will receive any outstanding payments and/or as the case may be, that it will be paid for such pending or future deliveries.

4.7 DYWIDAG may, without liability to the Buyer, suspend delivery or cancel an order if, in the reasonable opinion of DYWIDAG, delivery would not comply with DYWIDAG's safety, health and environmental policies or relevant laws and regulations.

4.8 If Buyer fails to take delivery of the Goods within three (3) Business Days of DYWIDAG notifying Buyer that the Goods are ready or in the event of DYWIDAG's non-delivery in accordance with Clause 4.7, then except where such failure, delay, or non-delivery is caused by a Force Majeure Event or by DYWIDAG's failure to comply with its obligations under the Contract in respect of the Goods:

(a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day following the day on which DYWIDAG notified Buyer that the Goods were ready; and

(b) DYWIDAG shall store the Goods until delivery takes place and charge Buyer for all related costs and expenses (including insurance), including without limitation costs of return transport, demurrage, storage, redelivery, or disposal.

4.9 If fourteen (14) Business Days after the day on which DYWIDAG notified Buyer that the Goods were ready for delivery, Buyer has not taken actual delivery of them, DYWIDAG may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to Buyer for any excess over the price of the Goods or charge Buyer for any shortfall below the price of the Goods.

4.10 If DYWIDAG delivers up to and including 5% more or less than the quantity of Goods ordered Buyer may not reject them, but on receipt of notice from Buyer that the wrong quantity of Goods was delivered, DYWIDAG shall make a pro rata adjustment to the invoice for the Goods. DYWIDAG's ex works weights verification shall be final. Calculations and estimates are based on the nominal sizes of bars which are sold by the metre and not by weight and bars will be charged according to the lengths dispatched. No claims for variations in weight will be admitted.

4.11 DYWIDAG may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle Buyer to cancel any other instalment.

4.12 Buyer shall advise the carrier and DYWIDAG in writing (otherwise than by a qualified signature on the carrier's consignment note or delivery document) within the following time limits:

(a) for loss from a package or from an unpacked consignment or for damage to or non-delivery of any part of a consignment or for short or over delivery within 3 working days of delivery of the consignment or part consignment followed by a valued claim in writing within 7 Business Days after the termination of carriage; and

(b) for non-delivery of a whole consignment within 28 days of notice of dispatch followed by a valued claim in writing within 42 days after the commencement of carriage.

5. QUALITY OF GOODS

5.1 DYWIDAG warrants that on delivery, the Goods shall conform in all material respects with their description in the Goods Specification and be free from material defects in design, material and workmanship. No warranty is given as to the Goods quality or fitness for any particular purpose and all implied statutory or common law terms as to quality, description or fitness for purpose are excluded except to the extent that it is unlawful to exclude such terms.

5.2 Subject to Clause 4.8, Buyer shall examine the Goods on receipt and notify DYWIDAG within 14 days of receipt of any defect that is reasonably apparent from such examination. Any defects not so apparent shall be notified within 14 days of discovery. Immediately after a non-apparent defect is discovered, Buyer shall stop using the Goods; return, in accordance with DYWIDAG's instructions, any Goods still available and in any event provide all necessary assistance to allow DYWIDAG to investigate. Buyer must in all cases notify a non-apparent defect within six (6) months of receipt. If these conditions are satisfied, DYWIDAG will replace any non-conforming Goods (or, if that is not reasonably practicable, refund the price (or an appropriate proportion)) and refund all reasonable return costs. This undertaking is DYWIDAG's sole liability for non-conforming Goods.

5.3 DYWIDAG shall not be liable for the Goods' failure to comply with the warranty set out in Clause 5.1 if:

(a) Buyer makes any further use of such Goods after giving a notice in accordance with Clause 5.2;

(b) the defect arises because Buyer failed to follow DYWIDAG's oral or written instructions as to the storage, installation, commissioning, use, or maintenance of the Goods or (if there are none) good trade practice regarding the same;

(c) the defect arises as a result of DYWIDAG following any drawing, design or Goods Specification supplied by Buyer;

(d) Buyer alters or repairs such Goods without the written consent of DYWIDAG;

(e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or

(f) the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory standards.

5.4 Recommendations or suggestions as to the use, application, storage, handling or disposal of the Goods given (whether before or after delivery) in sales or technical literature or in response to an enquiry or in any other form are given in good faith but it is for the Buyer's sole assessment (by trial processing if necessary) and DYWIDAG accepts no liability for such recommendations or suggestions.

5.5 Except as provided in Clause 5, DYWIDAG shall have no liability to Buyer in respect of the Goods' failure to comply with the warranty set out in Clause 5.1.

5.6 These Conditions shall apply to any repaired or replacement Goods supplied by DYWIDAG.

6. TITLE AND RISK

6.1 The risk in the Goods shall pass to Buyer upon delivery of the Goods at the Delivery Point.

6.2 Title to the Goods shall not pass to Buyer until DYWIDAG receives payment in full (in cash or cleared funds) for the Goods and any other goods that DYWIDAG has supplied to Buyer in respect of which payment has become due. Title in any Goods worked on continues to belong to DYWIDAG unless they are irretrievably incorporated with other Goods or materials. Until title passes, the Goods shall be held as DYWIDAG's bailee and fiduciary agent and the Goods shall be separately stored and identified as those of DYWIDAG and insured for their full reinstatement value.

6.3 Until title to the Goods has passed to Buyer, Buyer shall:

- (a) store the Goods separately from all other goods held by Buyer so that they remain readily identifiable as DYWIDAG's property;
- (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- (c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on DYWIDAG's behalf from the date of delivery;
- (d) notify DYWIDAG immediately if it becomes subject to any of the events listed in Clause 13.1(b) through Clause 13.1(d); and
- (e) give DYWIDAG such information as DYWIDAG may reasonably require from time to time relating to: (i) the Goods; and (ii) the ongoing financial position of Buyer.

6.4 Subject to Clause 6.5, Buyer may resell or use the Goods in the ordinary course of its business (but not otherwise) before DYWIDAG receives payment for the Goods. However, if Buyer resells the Goods before that time:

- (a) it does so as principal and not as DYWIDAG's agent; and
- (b) title to the Goods shall pass from DYWIDAG to Buyer immediately before the time at which resale by Buyer occurs.

6.5 At any time before title to the Goods passes to Buyer, DYWIDAG may:

- (a) by notice in writing, terminate Buyer's right under Clause 6.4 to resell the Goods or use them in the ordinary course of its business; and
- (b) require Buyer to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product, and if Buyer fails to do so promptly, enter any premises of Buyer or of any third party where the Goods are stored in order to recover them.

6.6 Buyer's right to use the Goods shall cease and any sums due to DYWIDAG under the Contract shall become immediately due and payable if the Buyer becomes subject to any of the events listed in Clause 13.1(b) through Clause 13.1(d) or where DYWIDAG believes that any of the events listed in Clause 13.1(b) through 13.1(d) is about to occur.

7. SUPPLY OF SERVICES

7.1 DYWIDAG shall supply the Services to Buyer in accordance with the Service Specification in all material respects.

7.2 DYWIDAG shall use all reasonable endeavours to meet any performance dates for the Services specified, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.

7.3 DYWIDAG reserves the right to amend the Service Specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and DYWIDAG shall notify Buyer in any such event.

7.4 DYWIDAG warrants to Buyer that the Services will be provided using reasonable care and skill.

8. CUSTOMER'S OBLIGATIONS

8.1 Buyer shall:

- (a) ensure that the terms of the Order, and any information it provides in the Service Specification and/or the Goods Specification, are complete and accurate;
- (b) cooperate with DYWIDAG in all matters relating to the Services;
- (c) provide DYWIDAG, its employees, agents, consultants and subcontractors, with access to Buyer's premises, office accommodation and other facilities as reasonably required by DYWIDAG to provide the Services;
- (d) provide DYWIDAG with such information and materials as DYWIDAG may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
- (e) if applicable, ensure Buyer's premises are suitable for the supply of the Services;
- (f) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
- (g) comply with all applicable laws, including health and safety laws; and
- (h) keep all materials, equipment, documents and other property of DYWIDAG at Buyer's premises in safe custody at its own risk, maintain DYWIDAG Materials in good condition until returned to DYWIDAG, and not dispose of or use DYWIDAG Materials other than in accordance with DYWIDAG's written instructions or authorization.

8.2 Buyer shall not supply import or export the Goods contrary to:

- (a) United States, United Kingdom, United Nations, European Community or other sanctions; or
- (b) other applicable export or import restrictions.

8.3 Goods must not in any way be used or disposed of in connection with any actual or suspected use relating to:

- (a) nuclear, chemical or biological weapons or their delivery systems; or
- (b) precursors for prohibited or controlled substances.

8.4 If DYWIDAG's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by Buyer or failure by Buyer to perform any relevant obligation (Customer Default):

- (a) without limiting or affecting any other right or remedy available to it, DYWIDAG shall have the right to suspend performance of the Services until Buyer remedies Buyer Default, and to rely on Buyer Default to relieve it from the performance of any of its obligations in each case to the extent Buyer Default prevents or delays DYWIDAG's performance of any of its obligations;
- (b) DYWIDAG shall not be liable for any costs or losses sustained or incurred by Buyer arising directly or indirectly from DYWIDAG's failure or delay performing any of its obligations as set out in this Clause 8.4; and
- (c) Buyer shall reimburse DYWIDAG on written demand for any costs or losses sustained or incurred by DYWIDAG arising directly or indirectly from Buyer Default.

9. CHARGES AND PAYMENT

9.1 The price for Goods:

- (a) shall be the price set out in the Order or, if no price is quoted, the price set out in DYWIDAG's published price list as at the date of dispatch; and
- (b) shall be exclusive of all costs and charges of packaging, insurance, and transport of the Goods, which shall be invoiced to Buyer.

9.2 DYWIDAG reserves the right to:

- (a) increase the charges for the Services on an annual basis with effect from each anniversary of the Commencement Date in line with the percentage increase in the Retail Prices Index in the preceding 12-month period and the first such increase shall take effect on the first anniversary of the Commencement Date and shall be based on the latest available figure for the percentage increase in the Retail Prices Index;
- (b) increase the price of the Goods, by giving notice to Buyer at any time before delivery, to reflect any increase in the cost of the Goods to DYWIDAG that is due to: (i) any factor beyond the control of DYWIDAG (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials, and other manufacturing costs); (ii) any request by Buyer to change the delivery date(s), quantities or types of Goods ordered, or the Goods Specification; or (iii) any delay caused by any instructions of Buyer in respect of the Goods or failure of Buyer to give DYWIDAG adequate or accurate information or instructions in respect of the

Goods.

9.3 Buyer shall pay each invoice submitted by DYWIDAG in net cash or other cleared payment within 30 days of the date of the invoice unless otherwise agreed by DYWIDAG and confirmed in writing to Buyer. Time for payment shall be of the essence of the Contract.

9.4 All amounts payable by Buyer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (VAT) and any other duties or levies. Where any taxable supply for VAT purposes is made under the Contract by DYWIDAG to Buyer, Buyer shall, on receipt of a valid VAT invoice from DYWIDAG, pay to DYWIDAG such additional amounts in respect of VAT as are chargeable on the supply of the Services or Goods at the same time as payment is due for the supply of the Services or Goods.

9.5 If Buyer fails to make a payment due to DYWIDAG under the Contract by the due date, then, without limiting DYWIDAG's remedies under Clause 13, DYWIDAG shall be entitled but not obliged to charge the Buyer interest on overdue amounts from the due date until payment of the overdue sum, whether before or after judgment. Interest under this Clause 9.5 will accrue each day at 4% a year above the China Bank Lending Rate from time to time, but at 4% a year for any period when that rate is below 0%. Such interest shall accrue on a daily basis and be compounded quarterly.

9.6 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction, or withholding (other than any deduction or withholding of tax as required by law).

10. INTELLECTUAL PROPERTY RIGHTS

10.1 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by Buyer) shall be owned by DYWIDAG.

10.2 DYWIDAG grants to Buyer, or shall procure the direct grant to Buyer of, a fully paid-up, worldwide, non-exclusive, royalty-free licence during the term of the Contract to copy the Deliverables (excluding materials provided by Buyer) for the purpose of receiving and using the Services and the Deliverables.

10.3 Buyer shall not sub-license, assign, or otherwise transfer the rights granted by Clause 10.2.

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

10.5 The Buyer shall not use any DYWIDAG trademarks or trade names in the re-sale of the Goods.

11. CONFIDENTIALITY

11.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by Clause 11.2.

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

- (a) to its employees, officers, representatives, contractors or subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with the Contract. Each party shall ensure that its employees, officers, representatives 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 No party shall use any 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. LIMITATION OF LIABILITY: ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

12.1 The restrictions on liability in this Clause 12 apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution, deliberate default, or otherwise.

12.2 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:

- (a) death or personal injury relating to the supply of the Product(s) and arising from DYWIDAG's negligence; or
- (b) fraud or fraudulent misrepresentation.

12.3 Subject to Clause 12.2, DYWIDAG's total liability to the Buyer for a claim or series of related claims in contract, tort (including without limitation negligence), breach of statutory duty, misrepresentation (unless fraudulent), strict liability or otherwise is limited to a sum equal to the invoice value of the Product the claim relates to plus the invoice value of any other of the Goods the claim relates to purchased and paid for by the Buyer in the 90 day period immediately preceding the event giving rise to the liability in each case net of VAT (or equivalent sales tax) and all associated transport costs.

12.4 Subject to Clause 12.2, DYWIDAG shall not in any event be liable to the Buyer for: (i) loss of profits; (ii) loss of margin; (iii) loss of sales or business; (iv) loss of agreements or contracts; (v) loss of anticipated savings; (vi) loss of use or corruption of software, data, or information; (vii) loss of or damage to goodwill; (viii) delay losses or damages; or (ix) indirect or consequential loss.

12.5 This Clause 12 shall survive termination of the Contract.

13. TERMINATION

13.1 Without affecting any other right or remedy available to it, DYWIDAG may terminate the Contract with immediate effect by giving written notice to Buyer if:

- (a) Buyer is in material breach of its obligations under the Contract and fails to remedy that breach within thirty (30) days after receipt of notice in writing to do so;
- (b) Buyer suspends, threatens to suspend, ceases, or threatens to cease to carry on all or a substantial part of its business;
- (c) Buyer becomes subject to any form of receivership, administrative receivership or administration (whether out of court or otherwise); liquidation (other than for a bona fide and solvent amalgamation or reconstruction); bankruptcy; any form of composition with creditors; any of the foregoing under any analogous foreign provisions or proceedings affecting the Buyer or if the Buyer proposes any of the foregoing; or
- (d) Buyer's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.

13.2 Without affecting any other right or remedy available to it, DYWIDAG may terminate the Contract with immediate effect by giving written notice to Buyer if:

- (a) Buyer fails to pay any amount due under the Contract on the due date for payment; or
- (b) there is a change of control of Buyer.

13.2 Without affecting any other right or remedy available to it, DYWIDAG may suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between Buyer and DYWIDAG if Buyer fails to pay any amount due under the Contract on the due date for payment, Buyer becomes subject to any of the events listed in Clause 13.1(b) through Clause 13.1(d), or DYWIDAG reasonably believes that Buyer is about to become subject to any of them.

14. CONSEQUENCES OF TERMINATION

14.1 On termination of the Contract:

- (a) Buyer shall immediately pay to DYWIDAG all of DYWIDAG's outstanding unpaid invoices and interest and, in respect of Services and Goods supplied but for which no invoice has been submitted, DYWIDAG shall submit an invoice, which shall be payable by Buyer immediately on receipt;
- (b) Buyer shall return all of DYWIDAG's materials and any Deliverables or Goods which have not been fully paid for. If Buyer fails to do so, then DYWIDAG may enter Buyer's premises and take possession of them. Until they have been returned, Buyer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.

14.2 Termination or expiry of the Contract shall not affect any rights, remedies, obligations, and liabilities of the parties that have accrued up to the date of termination or expiry, 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.

14.3 Any provision of the Contract that expressly or by implication is intended to have effect after termination or expiry shall continue 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 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 16.2, 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 16.2 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.

16.3 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.

16.4 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.

16.5 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.

16.6 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.

16.7 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.

16.8 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).

16.9 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.