

**STANDARD TERMS AND CONDITIONS  
OF MYANMAR JAPAN TOBACCO COMPANY LIMITED**

**1. DEFINITIONS AND INTERPRETATION**

- 1.1 In this Agreement, unless the context requires otherwise:  
"Authorities" means all governmental, quasi-governmental, statutory and regulatory authorities and bodies, and "Authority" means any one of them;  
"Business Day" means a day (other than a Saturday, Sunday or gazetted public holiday) on which commercial banks are open for business in Myanmar;  
"Confidential Information" means all information in any form (including all oral and visual information and all information recorded in writing or electronically, or in any other medium or by any other method) disclosed to, or obtained by the Supplier from, MJT or any of the MJT Group Companies or a third party acting on MJT's behalf, and includes all information relating to MJT and/or any of the MJT Group Companies, including but not limited to the existence and/or the contents of this Agreement;  
"Goods" means the goods as specified in this Agreement;  
"Intellectual Property Rights" means  
(a) patents, trade marks, service marks, logos, get-up, trade names, internet domain names, rights in designs, copyright (including rights in computer software) and moral rights, database rights, semi-conductor topography rights, utility models, rights in know-how and other intellectual property rights, in each case whether registered or unregistered and including applications for registration, and all rights or forms of protection having equivalent or similar effect anywhere in the world;  
(b) rights under licences, consents, orders, statutes or otherwise in relation to a right under sub-paragraph (a) above;  
(c) rights of the same or similar effect or nature as or to those in sub-paragraphs (a) and (b) which now or in the future may subsist; and the right to sue for past infringements of any of the foregoing rights;  
(d) "Laws" or "Law" mean all laws, legislation, subsidiary legislation, statutes, ordinances, orders, rules, regulations, requirements, guidelines, by-laws, codes, notices and requirements of any Authorities now or hereafter in force;  
"MJT" means Myanmar Japan Tobacco Company Limited;  
"MJT Group Company" means any of MJT's parent or holding company, and the affiliate, subsidiary or related corporation of MJT or MJT's parent or holding company, and "MJT Group Companies" means all of them;  
"PD Purposes" means the purposes of processing this Agreement, provision of Goods or Services by the Supplier and/or any other existing or future programmes that the Supplier may participate in with MJT, internal and trade communications, administrative and business functions, compliance with any applicable laws, rules, regulations and guidelines, and related purposes and such other purposes as permitted and authorised by Law;  
"Personal Data" means personal data to which the relevant data protection laws apply;  
"PO" means the Purchase Order that accompanies these Terms.  
"Representatives" in relation to a person, means its affiliates, subsidiaries, related corporations and each of their respective officers, directors, employees, staff, representatives, agents and servants;  
"Services" means the services as specified in this Agreement;  
"Supplier" means the supplier of Goods and/or Services as specified in this Agreement;  
"Terms" means the terms and conditions in this Agreement.
- 1.2 In this Agreement, a reference to:  
(a) "Recital" and "Clause" shall be construed as references to a recital and clause of this Agreement (unless the context otherwise requires);  
(b) "Agreement" comprises the PO and the Standard Terms and Conditions herein that parties agree to, and includes all amendments, additions and variations thereto agreed to in writing between the Parties;  
(a) "month" is a reference to a period starting on one day in a calendar month and ending on the day immediately before the numerically corresponding day in the next succeeding calendar month;  
(c) "person" shall include an individual, corporation, company, partnership, firm, trustee, trust, executor, administrator or other legal personal representative, unincorporated association, joint venture, syndicate or other business enterprise, any governmental, administrative or regulatory authority or agency (notwithstanding that "person" may be sometimes used herein in conjunction with some of such words), and their respective successors, legal personal representatives and assigns, as the case may be, and pronouns shall have a similarly extended meaning; and  
(d) "written" and "in writing" include any means of visible reproduction.
- 1.3 For the avoidance of doubt, the PO is only an offer made by MJT to the Supplier and an agreement in accordance with these Terms ("Agreement") is formed only after the Supplier's written confirmation of the PO or the Supplier's delivery of the Goods and/or Services in accordance with this Agreement. Prior to the formation of the Agreement, MJT may revoke the PO and amend the terms of the PO at any time.
- 1.4 The headings in this Agreement are inserted for convenience only and shall not affect the construction of this Agreement.
- 1.5 Unless the context otherwise requires, words importing the singular shall include the plural and vice versa and words importing a specific gender shall include the other genders (male, female or neuter).
- 1.6 Any reference to a time of the day is to Myanmar time unless otherwise stated.
- 1.7 Any thing or obligation to be done under this Agreement which requires or falls to be done on a stipulated day, shall be done on the next succeeding Business Day, if the day upon which that thing or obligation is required or falls to be done falls on a day which is not a Business Day.
- 1.8 A statutory provision shall include that provision and any regulations made in pursuance thereof as from time to time modified or re-enacted, whether before or after the date of this Agreement and shall include also any past statutory provision or regulation (as from time to time modified or re-enacted) which such provision or regulation has directly or indirectly replaced.
- 2. PROVISION OF GOODS AND/OR SERVICES**
- 2.1 Subject to Clause 2.2, the Terms apply to all Goods and/or Services.
- 2.2 In the event that the Parties have executed or execute a separate agreement in

writing in respect of the Goods and/or Services, these Terms shall apply to all Goods and/or Services in addition to the terms in such separate agreement ("Additional Terms"). In the event of any ambiguity, inconsistency or conflict arising between the provisions in this Agreement and the Additional Terms, the provisions in this Agreement shall prevail to the extent of such ambiguity, inconsistency or conflict.

- 2.3 In consideration of the mutual covenants and conditions contained in this Agreement, the Supplier agrees to provide to MJT, and MJT agrees to accept from the Supplier, the Goods and/or Services in accordance with the specifications, requirements, standards and timings set forth in this Agreement.
- 2.4 It is hereby agreed that MJT may at its sole and absolute discretion and where it deems fit, amend, change or vary the specifications (including quantity), requirements, standards and/or timings set forth in the Schedule and in this Agreement in connection with the Goods and/or Services from time to time by way of written notice to be provided to the Supplier.
- 3. PRICE**
- 3.1 Subject to Clause 3.3, in consideration of the Supplier providing the Goods and/or Services to MJT, MJT agrees to pay to the Supplier the price as set out in this Agreement ("Price").
- 3.2 Other than as provided in this Clause 3, MJT shall not be liable for any costs, expenses, fees, disbursements and/or reimbursements incurred or to be incurred by the Supplier or in connection with the Goods and/or Services.
- 3.3 Without prejudice to any other rights or remedies available to MJT under this Agreement, at law or in equity, MJT shall have the right, in its sole and absolute discretion, to withhold, suspend or deduct from the Price, any payment due or which may become due in the event (a) the Goods and/or Services delivered are of unsatisfactory quality as determined by MJT; (b) the Supplier does not comply fully with the specifications, requirements, standards and/or timings relating to the Goods and/or Services as set out in the Schedule, this Agreement or otherwise as required by MJT; or (c) the Supplier does not perform any of its obligations according to the terms and conditions of this Agreement or breaches any provision hereof, irrespective of whether (a), (b) and/or (c) is/are wholly, partly, directly or indirectly caused by the Supplier (or its employees or agents) or by any third party. The Supplier shall be paid the amounts due to it only after such non-compliance, non-performance and/or breaches ("Defects") are remedied to the satisfaction of MJT, at the Supplier's costs and expenses, within a maximum period of two (2) weeks as of the day of its receipt of a written notice sent by MJT to remedy such Defects. Notwithstanding the abovementioned and for the avoidance of doubt, MJT shall have the right to decide, at its sole and absolute discretion, to obtain from other sources, substitute or alternative goods and/or services acceptable to MJT and deemed by MJT to fulfil the purpose for which the Goods and/or Services were intended to fulfil and Clause 5.3 shall then apply in this context.
- 4. PAYMENT TERMS**
- The Supplier shall invoice MJT for the Price ("Invoice"), which shall be inclusive of all taxes and/or charges thereon (including but not limited to all withholding taxes payable), according to the schedule of amounts and dates agreed in this Agreement. MJT shall pay the amount set out in the Invoice within 30 working days after MJT's receipt of the Invoice, unless MJT disputes the amount thereon, in which case MJT shall pay within 60 days from the date the disputed amount is agreed to by the Parties or unless otherwise agreed by the Parties. Without limiting the generality of the foregoing, the Supplier expressly agrees to MJT deducting and withholding from the Price, the withholding tax payable and the Supplier shall have no claims whatsoever against MJT for such amount withheld.
- 5. TERM & DELIVERY**
- 5.1 This Agreement shall become effective during the period set forth in the PO, where applicable, unless earlier terminated pursuant to the terms and conditions of this Agreement.
- 5.2 Any deadline will apply not only to the satisfactory delivery of all Goods and/or Services, but also to the submission of all technical, administrative and dispatch documents provided for in this Agreement. If the Goods and/or Services are delivered by installments, the Supplier will advise MJT promptly once the final instalment has been delivered. Should any of the stipulated deadlines at any stage be exceeded, the delivery of any Goods and/or Services is delayed or the Goods and/or Services delivered are of unsatisfactory quality as determined by MJT, interest at 0.5% of the Price per week will be due from the Supplier as liquidated damages. For the avoidance of doubt, such interest is in addition to any other relief that MJT may seek against the Supplier.
- 5.3 Time of delivery is of the essence. If the Supplier fails to deliver the Goods and/or Services in accordance with this Agreement (whether or not such failure is caused wholly, partly, directly or indirectly by the Supplier (or its employees or agents) or by any third party) or the Goods and/or Services are rejected by MJT or this Agreement is terminated by MJT under Clauses 9 or 10, MJT shall be entitled, without prejudice to its rights against the Supplier for failure of or late delivery of the Goods and/or Services, to obtain from other sources, substitute or alternative goods and/or services acceptable to MJT and deemed by MJT to fulfil the purpose for which the Goods and/or Services were intended to fulfil ("Substitutes") and in such event to reject late delivery of the Supplier's Goods and/or Services in favour of delivery of such Substitutes and the Supplier shall be liable to reimburse MJT all reasonable costs that may be incurred by MJT in obtaining such Substitutes or in carrying out the work through third parties. MJT may, at its sole and absolute discretion and option, deduct such costs from the payments due to the Supplier (provided always that such costs shall not exceed the Price). Notwithstanding the aforesaid, any date, time or period mentioned in any provision of this Agreement may be extended by prior written agreement between the Parties. However, as regards any time, date or period originally fixed and not extended or any time, date or period so extended as aforesaid, time shall be of the essence as aforesaid.

- 5.4 All diagrams, sketches, models, and equipment ("**Material and Equipment**") provided by the Supplier to MJT, whether physical or intellectual property thereto, shall be the property of MJT. The Supplier may use them only for the performance of this Agreement, must maintain them in good condition, and return them to MJT immediately upon MJT's request.
- 5.5 Upon MJT's request, the Supplier will submit samples of the Goods for approval before the bulk of the order is delivered. Such samples will be marked for identification by the Supplier and will be retained by MJT until the Goods have been delivered. MJT reserves the right to appoint a Representative to supervise the performance of this Agreement at the workshops of the Supplier and its subcontractors.
- 5.6 Unless otherwise stated in this Agreement or explicitly agreed in writing between the Supplier and MJT, all deliveries will be effected "DDP" or "Delivered Duty Paid" as defined in Incoterms. If the ordered products are packaged or palletized with raw unprocessed wood, the Supplier warrants and guarantees that it will strictly comply with No. 15 of the International Standards for Phytosanitary Measures (Guidelines for Regulating Wood Packaging Material in International Trade) of the Food and Agriculture Organization of the United Nations.
- 6. WARRANTY**
- 6.1 The Supplier represents, warrants and undertakes to MJT that:
- (a) the Supplier has the expertise and knowledge to provide the Goods and/or Services and warrants that the Goods and/or Services;
- (i) conform in accordance with the quantity, quality, specifications, requirements, standards and timings set forth in this Agreement;
- (ii) are of sound material, workmanship and of satisfactory quality and fit for the purposes held out by the Supplier or made known to the Supplier by MJT and satisfy all relevant industry standards for quality and care;
- (iii) are free from defects (manifest or latent) in design, material and workmanship;
- (iv) are equal in all respects to the specifications and samples agreed to by the Parties, if any;
- (v) are capable of any standard of performance and fit for the purpose as expressed in or implied by this Agreement; and
- (vi) comply in all respects with all relevant Laws;
- (b) the Supplier shall perform its duties and obligations under this Agreement (i) in a professional and timely manner with the level of skill, care and diligence reasonably expected of a supplier experienced in providing the relevant Goods and/or Services comparable to the Goods and/or Services; (ii) in accordance with best practices in the industry; (iii) in accordance with the terms as set out in this Agreement; and (iv) in compliance with all applicable Laws;
- (c) the Goods and/or Services provided and Deliverables supplied by the Supplier to MJT under this Agreement shall:
- (i) conform in all respects with such specifications, requirements and standards as advised by MJT to the Supplier;
- (ii) be of satisfactory quality and fit for the purposes held out by the Supplier or made known to the Supplier by MJT and satisfy all relevant industry standards for quality and care;
- (iii) be free from defects (manifest or latent) in design, material and workmanship;
- (d) where the Goods and/or Services relate to market research and/or data the Supplier shall:
- (i) ensure the accuracy and integrity of all data collected (including the statistical projections made from such data collected) and all figures contained in the market research data provided to MJT; and
- (ii) address any queries from MJT arising from any of the data collected, the statistical projections made from such data collected and all figures contained in the market research data provided to MJT;
- (e) all action will have been taken so that the execution and delivery of, and the performance by the Supplier of its obligations under this Agreement shall not (i) conflict with or result in a breach of the Supplier's memorandum (if applicable) and articles of association or other constitutive documents; (ii) infringe, or constitute a default under, any instrument, contract, document or agreement to which the Supplier is a party or by which its assets are bound; and/or (iii) result in a breach of any Laws, order, judgment or decree of or undertaking to any Authorities or court, administrative or supervisory body (including without limitation, any relevant stock exchange or securities council) to which the Supplier is a party or by which it or its assets are bound;
- (f) all relevant statutory, governmental or other approvals required by the Supplier to enter into and perform its obligations under this Agreement (including but not limited to its provision of the Goods and/or Services in accordance with this Agreement) have been obtained, are and will continue to be in full force and effect, and the Supplier shall do any other matter, act or things as may be required by any Laws;
- (g) the Supplier has full power and authority to execute and deliver this Agreement and the agreements contemplated herein, and to consummate the transactions contemplated hereby and provide the Goods and/or Services herein and that this Agreement and all such other agreements and obligations entered into and undertaken in connection with the transactions contemplated hereby constitute its legal, valid and legally binding obligations, enforceable against it in accordance with their respective terms;
- (h) without prejudice to the generality of Clause 6.1(b), (i) the Supplier shall, in respect of any Personal Data collected, used, disclosed, accessed and/or processed by it in connection with this Agreement and/or the Goods and/or Services, comply with the relevant data protection legislation, regulations, guidelines and practice notes which may be applicable from time to time and with any requests, directions or guidelines which MJT may provide it from time to time; and (ii) all necessary and appropriate consents have been obtained from the relevant parties for the collection, use and disclosure of
- Personal Data in connection with this Agreement and/or the Goods and/or Services in accordance with all relevant applicable data protection legislation from time to time.
- 6.2 The Supplier acknowledges the reliance placed by MJT on the representations and warranties given by the Supplier under the provisions of this Clause 6 and Clause 9 in accepting the provision of the Goods and/or Services from the Supplier.
- 6.3 In relation to Goods, the Supplier shall guarantee against both material and/or defects for one (1) year following MJT's receipt of the Goods in accordance with the specifications of this Agreement.
- 6.4 Any Goods and/or Services not in accordance with this Agreement may be returned to the Supplier at the Supplier's costs and expenses, and at MJT's request, the Supplier shall immediately replace the defective Goods at the Supplier's costs and expenses or refund a proportionate amount of the Price to MJT as determined by MJT in its sole and absolute discretion.
- 6.5 All equipment & services purchased from vendors and contractors have to be considered energy saving and energy efficiency as determined by MJT.
- 7. INTELLECTUAL PROPERTY RIGHTS**
- 7.1 The Supplier agrees that any and all Works created by the Supplier or its employees or freelancers under or in connection with to this Agreement or the provision of Goods and/or Services (and any Intellectual Property Rights therewith) shall definitively become the exclusive property of MJT and/or the MJT Group Companies, unless they have been unequivocally rejected by MJT in writing. For the purposes of this Agreement, "**Works**" means all packaging, reports, documents, copy, creations, data, text, slogans, artwork, video, audio, story boards, devices, samples, databases, inventions, ideas, discoveries, developments, improvements, papers, drawings, designs, prototypes, transparencies, photos, graphics, logos, typographical arrangements, software, and all other materials in whatever form, including electronic form, prepared by the Supplier.
- 7.2 The Supplier hereby renounces, without any additional compensation, ownership to any and all Intellectual Property Rights which may be created under or in connection with this Agreement and hereby expressly assigns all rights, title and interest thereto exclusively and irrevocably to MJT and/or the MJT Group Companies without limitation of place and time. The Supplier shall, at MJT's request, and without further payment, execute (and shall procure that its employees and freelancers shall execute) any such further assignments or other document as may be necessary or desirable to confirm the vesting of the Intellectual Property Rights in MJT, the MJT Group Companies and/or another group company nominated by MJT.
- 7.3 MJT shall be free, both during this Agreement and after its termination, to use the Works at its sole and absolute discretion. These rights of use include, but shall not be limited to, the right of publication, reproduction, alteration, adaptation, modification, translation and, if applicable, synchronization, usage in unlimited print, audio and visual and electronic media (CD-ROM's, internet sites, database, etc.), and exploitation in part and use by any third parties.
- 7.4 Where the Supplier uses any materials created by a third party on behalf of MJT for purposes of performing its obligations under this Agreement, the Supplier agrees to obtain and supply at its own cost to MJT and the MJT Group Companies a written license to enable MJT and the MJT Group Companies to use the third party materials for the agreed purposes in connection with the Services and Deliverables under this Agreement. The Supplier shall obtain the prior written consent of MJT and the MJT Group Companies before using such materials created by third parties.
- 7.5 In relation to any designs created by the Supplier for use by MJT and the MJT Group Companies pursuant to any project, the Supplier will ensure that such designs, as approved by MJT, comply with the Laws of the territory for which they are intended and will ensure that any product manufactured from such approved designs shall be safe and without risk to the person or property of the user when properly used.
- 7.6 The Supplier agrees that MJT and the MJT Group Companies shall have the sole, unrestricted and exclusive right to use anywhere in the world any tools, methodologies, ideas, reports, data, recommendations, or other materials or work product gathered or prepared by the Supplier or developed in cooperation with MJT ("**Deliverables**") under this Agreement and to reproduce, alter, and change the Deliverables in any way.
- 7.7 The Supplier shall cooperate in any measures necessary to protect MJT and the MJT Group Companies' rights to any Deliverables against third parties, including without limitation, executing any additional documents needed to perfect the vesting of those rights in MJT and the MJT Group Companies and shall not use, disclose, license, or otherwise seek to exercise any rights to the Deliverables in any country in the world.
- 7.8 All written materials and other works which may be subject to copyright and all patentable inventions, discoveries, and ideas (included but not limited to any computer software) which are made, conceived or written by the Supplier during the term of this Agreement, and for 90 days after it expires, and which are based upon the Services performed by the Supplier for MJT ("**Developments**") shall become MJT and the MJT Group Companies' property.
- 7.9 The Supplier agrees to hold all Developments confidential in accordance with Clause 12.
- 7.10 The Supplier shall have no rights (other than for the performance of this Agreement) to use the corporate name or any trademarks or trade names of MJT or any of the MJT Group Companies. The Supplier agrees that it shall not register, or cause to be registered, in any territory, any trademark or trade name utilized by MJT or any of the MJT Group Companies, or any other trademark, trade name, word or symbol identical or similar to any such trademark or trade name.

- 7.11 Unless with MJT's prior written consent, the Supplier shall not apply any MJT corporate or brand logo or any elements pertaining to MJT's corporate and/or brand identity on any documents, including but not limited to, research reports and presentations, issued by the Supplier. Where proposals prepared by the Supplier shall require the use of any pre-existing materials in which rights are already owned by a third party or parties ("**Third Party Materials**"), the Supplier shall so notify MJT and (subject to MJT's prior written consent) shall obtain a written licence to enable MJT to use the Third Party Materials for the agreed purposes.
- 7.12 Where the Supplier wishes to procure the services of any third parties to assist the Supplier, the Supplier shall notify those third parties of its obligations hereunder, before entering into any commitment with them, and shall require of them such assignment of Intellectual Property Rights as MJT requires of the Supplier.
- 7.13 The Supplier confirms to MJT the irrevocable and unconditional waiver by all personnel involved of all moral rights or rights of a similar nature to which such persons may be entitled now or in the future in any part of the world.
- 7.14 The Supplier warrants to MJT that:
- the Works have not been copied wholly or substantially from any other work or material owned by a third party;
  - it has not given and will not give permission to any third party to use any of the Works nor any of the Intellectual Property Rights in the Works anywhere in the world;
  - to the best of its knowledge it is unaware of any use by any third party of any of the Works; and
  - the exercise by MJT of the rights assigned to it under this Agreement will not infringe the rights of any third party.
- 8. INDEMNITY**
- In addition to and without prejudice to any other rights or remedies available to MJT under this Agreement, at law or in equity, the Supplier irrevocably undertakes to keep MJT and each of its Representatives, fully and effectively indemnified against any and all losses, costs, damages, claims, demands, actions, proceedings, liabilities and expenses whatsoever (including but not limited to all legal costs or attorney's fees on a full indemnity basis) that MJT or any of its Representatives may incur or suffer arising out of or in connection with:
- any activity that the Supplier has undertaken without prior written, explicit instructions from MJT or in which the Supplier has engaged at variance from MJT's instructions, including without limitation, acts or omissions that do not comply with MJT's marketing policies, JTI Supplier Standards, Code of Conduct, Global Marketing Standards and applicable Laws;
  - negligent or wrongful acts or omissions of the Supplier or its employees or authorized subcontractors in providing the Goods and/or performing the Services hereunder and with respect to complying with the terms of this Agreement or provision of the Goods and/or Services;
  - any third party allegation that any deliverables, materials or Goods and/or Services provided under this Agreement infringe such third-party's Intellectual Property Rights;
  - any breach of any representations, warranties and/or undertakings under this Agreement by the Supplier;
  - any breach or non-observance of any provision of this Agreement by the Supplier or any of its Representatives, and without prejudice to the generality of this paragraph (e), shall include, without limitation, any late or non-delivery of any Goods and/or Services or failure to deliver the Goods and/or Services in accordance with this Agreement, whether or not caused wholly, partly, directly or indirectly by the Supplier (or its employees or agents) or by any third party; or
  - any act, error, omission, breach, defect, default or failure by the Supplier or any of its Representatives.
- 9. COMPLIANCE PROVISIONS**
- 9.1 In addition to the Supplier's obligations set out in the other provisions hereunder, the Supplier undertakes to MJT that the Supplier shall, in the performance of its obligations hereunder:
- comply with all Laws applicable in Myanmar;
  - comply with all of JTI and MJT's internal policies and guidelines, JTI and MJT's Supplier Standards, Code of Conduct (in particular the provisions relating to conflicts of interest and anti-bribery and corruption) and JTI and MJT's Know Your Supplier ("**KYS**") programs, which are both available at <http://www.jti.com>;
  - fully co-operate with any investigation relating to the contraband or counterfeit ("**Illicit Trade**") of tobacco products whether or not produced by MJT, its affiliates, MJT Group Companies or third parties;
  - fully cooperate with MJT Global Logistics and MJT Corporate Security requirements;
  - not sell raw materials and equipment, or pieces of equipment, or spare parts thereof, nor provide services, including but not limited to storage, shipment, or transportation of the said materials, nor assist in the distribution of finished tobacco products, to any person or entity whom it knows or reasonably should know, is engaged in any Illicit Trade and/or who is a blocked vendor (as defined in JTI and MJT's KYS policy);
  - inform MJT forthwith (within 24 hours) of any changes or events that affect the Supplier's legal structure, its control over or by any other entities, or its beneficial ownership, including, without limitation, any internal restructuring exercise, or of the appointment of a liquidator (including a provisional liquidator), receiver, judicial manager, trustee, administrator, agent, or similar officer of the Supplier or over all or any part of the assets of the Supplier, or of any legal action brought against the Supplier that are relevant to this Clause 9 including JTI and MJT's KYS program, and the Supplier shall provide MJT with any relevant documents thereto. Communications to that effect must be sent to the attention of General Manager, Myanmar Japan Tobacco Company Limited at #08-01 to #08-10, Junction City Tower, 3/A, Corner of Bogyoke Aung San Road and 27<sup>th</sup> Street, Pabedan Township, Yangon, Myanmar; and
  - fully co-operate in JTI and MJT's KYS certification process and the renewal of the said certification as per JTI and MJT's KYS program.
- 9.2 If MJT suffers any loss or damages, including being prosecuted or brought into litigation, as a result of the Supplier's non-compliance with any of the provisions of this Clause 9, the Supplier shall indemnify MJT for all fines, penalties and compensation paid (including the legal costs of the prosecuting party) and costs involved for defending the claim and/or prosecution.
- 9.3 The Supplier shall make commercially reasonable efforts to ensure that substantively equivalent provisions to Clause 9.1(a) through to 9.1(g) of this Clause 9 are inserted progressively, on the first practical occasion, into the Supplier's contracts with the Supplier's business partners (vendors, contractors, etc.).
- 9.4 Moreover, the Supplier hereby acknowledges and accepts that the information provided to MJT in the context of the KYS programs will be maintained by MJT on a dedicated database, whose access shall be limited to MJT's employees on a need to know basis only. Upon request made by an official authority to access certain data contained in the database, MJT shall provide the requested information and shall inform the Supplier of the occurrence of such a request, unless it is prohibited to do so by the authority. Under no circumstances shall MJT be forced to file an opposition against the order or the decision made by the above-mentioned authority.
- 9.5 In order to comply with its internal policies and as a best practice approach, the Parties agree that MJT shall be entitled, at any point of time during the contractual relationship, to screen the Supplier against sanctions or other applicable governmental lists. In the event of a verified positive match to these lists, MJT shall have the right to terminate the contractual relationship with the Supplier immediately, without having to compensate the Supplier for the termination; however, confidentiality obligations will remain valid for both Parties. Upon such a termination, the Supplier shall cooperate fully with MJT in returning any relevant product back to MJT.
- 9.6 MJT will only make and/or accept payments to/from the Supplier in the following manner and from the following sources:
- wire transfers or cheques to/from a bank account nominated during the KYS process and in the name of the Supplier or to/from a bank account in the name of a proven affiliate of the Supplier;
  - cashier's cheques and bank drafts issued by a bank of good standing in the country in which the Supplier is located.
- 9.7 MJT may make periodic visits to the Supplier's place(s) of business in order to assess the Supplier's ability and commitment to maintain its compliance with all such Laws and with MJT's KYS programs, including visits to the premises of subcontractors employed by the Supplier. MJT will make best efforts to pre-arrange these visits with the Supplier, but occasionally, MJT may carry out unannounced visits to inspect the Supplier's premises and records. The Supplier hereby agrees to cooperate at all times with such inspections by granting MJT personnel (or MJT nominated third party auditors) reasonable access to its premises, and by reasonably making available all relevant employees, documents and any other further evidence as requested by MJT.
- 9.8 The Supplier additionally gives MJT the following warranties and undertakings: (i) that in tendering for or negotiating this Agreement, the Supplier has not offered, paid, provided, or promised to pay or provide any money, valuable gift or financial advantage to any staff of MJT or third party for the purpose of securing the award of and/or concluding this Agreement, and (ii) that in performing its obligations under this Agreement, Supplier shall not offer, pay, provide or promise to pay or provide any money, valuable gift or financial advantage to any staff of MJT or third party for whatever reason.
- 9.9 If the Supplier is in breach of any provisions of this Clause 9:
- MJT may immediately terminate this Agreement and discontinue any transaction with the Supplier and MJT has the right to forthwith not pay the Supplier the Price or any part thereof under this Agreement;
  - the Supplier shall pay to MJT a sum equivalent to five (5) times the amount of the fees it is entitled to receive for the whole term of this Agreement but for early termination under the provisions of this Clause 9. The Supplier agrees that the amount set out in this Clause 9 is a genuine pre-estimate of the damages that might be suffered by MJT arising from early termination under the provisions of this Clause 9 and not a penalty; and
  - MJT may bring a civil claim against the Supplier, report the Supplier to the authorities for prosecution or do such other act as appropriate in the circumstances.
- 9.10 The Parties enter into this Agreement on the basis of, and in reliance on, the following warranties given by each party to the other: (i) it has power and authority to enter into and perform this Agreement; (ii) this Agreement constitutes valid, legal and binding obligations on it under the terms of the Agreement; and (iii) compliance with the terms of this agreement shall not breach or constitute a default under any provision of its articles of incorporation, agreement or instrument to which it is a party or by which it is bound, or of any order, judgment, decree or other restriction applicable to it.
- 9.11 The Supplier further acknowledges that MJT will not tolerate any form of bribery or corruption in any of its business activities. The Supplier shall comply fully with this position as a condition of doing business with MJT. The Supplier warrants to MJT that throughout the term of this Agreement, the Supplier:
- shall not engage in any activity, practice or conduct which may constitute a breach of any anti-bribery and corruption laws applicable to the Supplier or MJT in performing this Agreement ("**applicable ABC laws**");
  - shall not use any payments received from MJT in order to procure, directly or indirectly, an improper benefit from any public official or other person on behalf of MJT or for any other purpose that would be in violation of any applicable ABC laws;
  - shall ensure that each of its directors, employees, representatives or subcontractors acting on behalf of MJT under this Agreement review and comply with the standards of conduct set out in this Agreement;

- (d) shall establish, maintain and enforce appropriate policies, procedures and training to prevent acts of bribery and corruption by its directors and employees; and
- (e) shall immediately notify MJT of any act of bribery and corruption, committed in the course of performing this Agreement.

The Supplier agrees that the Supplier's involvement in bribery or corruption could be considered by MJT as a material breach of this Agreement and that MJT may terminate this Agreement with immediate effect if it determines that the Supplier has been involved in bribery or corruption.

## 10. TERMINATION

- 10.1 MJT shall have the right to terminate this Agreement with immediate effect by giving a written notice to the Supplier ("**MJT Termination Notice**") in the event any of the following were to occur:
- (a) any breach of any representations, warranties and/or undertakings under this Agreement by the Supplier or any of its Representatives;
  - (b) any breach, default, non-performance or non-observance of any provision of this Agreement by the Supplier or any of its Representatives;
  - (c) any act, error, omission, breach, defect, default or failure by the Supplier or any of its Representatives;
  - (d) an order is made or a resolution is passed for the winding up, dissolution of the Supplier or for the appointment of a liquidator (including a provisional liquidator), receiver, judicial manager, trustee, administrator, agent, or similar officer of the Supplier or over all or any part of the assets of the Supplier, the Supplier becomes insolvent or is unable to pay its debts as they mature, ceases to pay its debts as they mature in the ordinary course of business, have a bankruptcy application or bankruptcy order made against it, makes an assignment for the benefit of its creditors or the Supplier suffers any similar process under the Laws of its domicile or place of its jurisdiction;
  - (e) the Supplier delivers Goods and/or Services that do not conform with the description in this Agreement;
  - (f) the Supplier delivers poor quality Goods and/or Services as determined by MJT;
  - (g) the Supplier delivers Goods and/or Services that are not fit for the purpose(s) they are intended for; or
  - (h) the Supplier fails to deliver or supply the Goods and/or Services in accordance with the delivery terms as set out in this Agreement.
- 10.2 MJT's right to terminate under the provisions of this Clause 10 is without prejudice to its other rights to seek compensation and/or any indemnity in accordance with the provisions of this Agreement or otherwise.
- 10.3 Upon issuance of the written notice by MJT, MJT shall be immediately released and discharged from its obligations under this Agreement, but termination of this Agreement shall not operate to release the Supplier from any obligation or liability incurred under the terms of this Agreement prior to or upon termination hereof, nor prejudice any rights and remedies accrued or available to MJT prior to the termination of this Agreement.
- 10.4 Notwithstanding anything to the contrary, MJT may terminate this Agreement without cause by giving at least 60 days prior written notice to the Supplier.
- 10.5 Notwithstanding anything herein contained, the provisions of Clauses 7 to 21 shall survive and continue in full force and effect notwithstanding the termination of all of part of this Agreement.
- ## 11. INDEPENDENT CONTRACTOR
- 11.1 Nothing in this Agreement shall be deemed to constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in this Agreement. The Supplier shall not have, nor represent that it has, any authority to act for, represent, bind or obligate MJT or make any commitment on behalf of MJT.
- 11.2 In the performance of its obligations under this Agreement, the Supplier and each of the Supplier's principals, partners, sub-contractors (if approved by MJT) and each of its Representatives shall be an independent contractor and not an agent or employee of MJT or a MJT Group Company and the Supplier shall have the authority to control and direct the performance of the Goods and/or Services to be provided hereunder. Notwithstanding the aforesaid, MJT shall have the general right of inspection, consultation and verification provided herein in order to secure the satisfactory completion of any of the Goods and/or Services to be performed hereunder. None of the Supplier nor its principals, partners, sub-contractors (if approved by MJT) or any of the Representatives of any of the aforesaid (a) shall be deemed an employee or act as an agent or employee of MJT or a MJT Group Company; and (b) shall have the authority to enter into binding obligations in the name of and/or on behalf of MJT.
- 11.3 For the avoidance of doubt, MJT shall not be held responsible for any of the Supplier's acts while performing its obligations under this Agreement.
- 11.4 The Supplier acknowledges and agrees that it will be responsible for any claim made by any of its Representatives under the corresponding local legislation where the provision of the Goods and/or performance of the Services under this Agreement may be provided. The Supplier agrees to indemnify MJT with respect to any claim that may be made for death, loss, damage or suffering relating to any of the Supplier's Representatives in relation to the provision of the Goods and/or performance of the Services under this Agreement.
- ## 12. CONFIDENTIALITY
- 12.1 The Supplier undertakes to MJT that the Supplier shall (and shall procure that each of its Representatives shall):
- (a) not, without the prior written consent of MJT, use or disclose to any person Confidential Information the Supplier and/or its Representatives has or acquires; and
  - (b) make every effort to prevent the use or disclosure of Confidential Information.
- 12.2 The confidentiality obligation under this Clause 12 shall not apply to:
- (a) any information which becomes generally known to the public, other than by

reason of any wilful or negligent act or omission of the Supplier or any of its Representatives;

- (b) any information which is required to be disclosed pursuant to any applicable Laws or to any competent Authority or pursuant to rules or regulations of any relevant regulatory, administrative or supervisory body (including, without limitation, any relevant stock exchange or securities council);
  - (c) any information which is required to be disclosed pursuant to any legal process issued by any court or tribunal whether in Myanmar or elsewhere.
- 12.3 Save as aforesaid, the Supplier shall not use the Confidential Information for any purpose other than the performance of its obligations in accordance with the terms and conditions of this Agreement.
- ## 13. NOTICE
- 13.1 Each and every communication under this Agreement shall be made by facsimile or otherwise in writing. Each communication or document to be delivered by either Party shall be sent to that Party at the facsimile number or address and marked for the attention of the person (if any), as set out in this Agreement or from time to time updated by that Party in writing.
- 13.2 A demand, notice or other communication made or given by one Party to another Party in accordance with the provisions of this Clause 13 shall be effected and deemed to be duly served:
- (a) if it is delivered by hand, when left at the address required by this Clause 13;
  - (b) if it is sent by prepaid post (air-mail, if international), two (2) Business Days after it is posted;
  - (c) if it is sent by facsimile transmission, on the day of despatch.
- 13.3 In proving such service, it shall be sufficient to prove that delivery by hand was made or that the envelope containing such notice or document was properly addressed and posted as a prepaid ordinary mail letter or that the facsimile confirmation note indicates the transmission was successful.
- 13.4 All documents from the Supplier shall refer to the PO number and the Supplier shall send invoices as per the instructions on the PO.
- ## 14. ASSIGNMENT AND SUB-CONTRACTORS
- 14.1 The Supplier shall not assign, transfer, charge or deal in any other manner with this Agreement or with the Supplier's rights or obligations or any part of them, or purport to do any of the same, under this Agreement without the prior written consent of MJT.
- 14.2 The Supplier shall not appoint any sub-contractors to perform any of its obligations under this Agreement unless it has obtained prior written approval from MJT, and if MJT approves such appointment of sub-contractors, the Supplier shall be responsible and liable for all acts or omissions of its sub-contractors.
- ## 15. COSTS AND EXPENSES
- Each Party shall pay its own legal costs and expenses for the negotiation, preparation and completion of this Agreement.
- ## 16. VARIATIONS
- 16.1 No variation of this Agreement (or of any of the documents referred to in this Agreement) shall be valid unless it is in writing and signed by or on behalf of each Party. The expression "variation" shall include any amendment, supplement, deletion or replacement however effected.
- 16.2 Unless expressly agreed, no variation shall constitute a general waiver of any provisions of this Agreement, nor shall it affect any rights, obligations or liabilities under or pursuant to this Agreement which have already accrued up to the date of variation, and the rights and obligations of the Parties under or pursuant to this Agreement shall remain in full force and effect, except and only to the extent that they are so varied.
- ## 17. ENTIRE AGREEMENT
- 17.1 This Agreement and the documents referred to in it constitute the entire agreement and understanding between the Parties relating to the subject matter of this Agreement and no Party has entered into this Agreement in reliance upon any representation, warranty or undertaking of the other Party which is not set out or referred to in this Agreement.
- 17.2 Save only to the extent expressly set out in this Agreement, none of the terms endorsed upon, delivered with or contained in any of the Supplier's documents (including brochures, quotations, acknowledgments, acceptances, confirmations and specifications) shall be binding on MJT, and the Supplier waives any right which it otherwise might have to rely on such terms.
- 17.3 No telephone, electronic or other communication shall be binding on the Parties with respect to the subject matter of this Agreement.
- ## 18. REMEDIES AND WAIVERS
- 18.1 No failure on the part of either Party to exercise, and no delay on its part in exercising, any right or remedy under this Agreement will operate as a waiver thereof, and any single or partial exercise of any right or remedy shall not preclude any other or further exercise thereof or the exercise of any other right or remedy. The rights provided in this Agreement are cumulative and not exclusive of any rights or remedies provided by law.
- 18.2 Without prejudice to any of the remedies, damages, actions, exemptions or indemnities of MJT as available under the laws or as otherwise provided in this Agreement, MJT shall, in its sole and absolute discretion, be entitled to set off any sums for which MJT may be liable under this Agreement to the Supplier against any claims, fees, payments or charges which may be due or payable by the Supplier to MJT pursuant to the terms of this Agreement as determined by MJT in its sole and absolute discretion, and in doing so, MJT shall have the discretion to take into consideration the other claims, fees, payments or charges that MJT may have against the Supplier, in which case all such claims, fees, payments or charges shall immediately become due and payable by the Supplier to MJT.

**19. TIME OF ESSENCE**

Any date, time or period mentioned in any provision of this Agreement may be extended by mutual agreement between the Parties but as regards any time, date or period originally fixed and not extended or any time, date or period so extended as aforesaid, time shall be of the essence.

**20. ILLEGALITY**

20.1 The illegality, invalidity or unenforceability of any provision of this Agreement under the law of any jurisdiction shall not affect its legality, validity or enforceability under the law of any other jurisdiction nor the legality, validity or enforceability of any other provision.

20.2 In the event that any of the provisions of this Agreement shall be determined to be invalid, void or unenforceable, such provision shall be deemed to be deleted from this Agreement and the remaining provisions of this Agreement shall continue in full force and effect.

**21. GOVERNING LAW AND DISPUTE RESOLUTION**

21.1 This Agreement shall be governed by and construed in accordance with the laws of Myanmar. For the avoidance of doubt, the terms of the United Nations Convention on Contracts for the International Sale of Goods, concluded in Vienna on 11 April 1980, do not apply to this Agreement.

21.2 (a) Any dispute arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration administered by the Singapore International Arbitration Centre ("**SIAC**") in accordance with the Arbitration Rules of the Singapore International Arbitration Centre ("**SIAC Rules**") for the time being in force, which rules are deemed to be incorporated by reference in this Clause 21.

(b) The seat of the arbitration shall be Singapore. The number of arbitrator(s) shall be one (1). The language of the arbitration shall be English. This arbitration agreement shall be governed by the laws of Singapore.