

# STANDARD TERMS AND CONDITIONS OF JT INTERNATIONAL SINGAPORE PTE. LTD.

## 1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement and in the present purchase Order ("**PO**"), 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 Singapore;

**"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, JTI or any of the JTI Group Companies or a third party acting on JTI's behalf, and includes all information relating to JTI and/or any of the JTI Group Companies, including but not limited to the existence and/or the contents of this Agreement;

**"Cover Page"** means the first page of 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, semiconductor 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

(d) the right to sue for past infringements of any of the foregoing rights; **"JTI Group Company"** means any of JTI's parent or holding company, and the affiliate, subsidiary or related corporation of JTI or JTI's parent or holding company, and **"JTI Group Companies"** means all of them; **"Laws"** or **"Law"** means 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;

**"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 JTI, 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;

**"PDPA"** means the Personal Data Protection Act (Act 26 of 2012 of Singapore) as modified from time to time;

**"Personal Data"** means personal data to which the relevant data protection laws (including PDPA) apply;

**"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;

**"S\$"** or **"Singapore Dollars"** means the lawful currency of the Republic of Singapore;

**"Terms"** means the terms and conditions in this Agreement.

1.2 In this Agreement and the PO, 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) **"this Agreement"** includes all amendments, additions and variations thereto agreed to in writing between the Parties;

(c) **"corporation"** has the meaning ascribed to it in Section 4 of the Companies Act (Chapter 50 of Singapore);

(d) **"subsidiary"** and **"related corporation"** has the meaning ascribed to each of them in Sections 5 and 6 respectively of the Companies Act (Chapter 50 of Singapore);

(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;

(e) **"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

(f) **"written"** and **"in writing"** include any means of visible reproduction. 1.3 The headings in this Agreement are inserted for convenience only and shall not affect the construction of this Agreement.

1.4 The PO form a part of this Agreement and have the same force and effect as if expressly set out in the body 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 Singapore 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 consideration of the mutual covenants and conditions contained in this Agreement, the Supplier agrees to provide to JTI, and JTI agrees to accept from the Supplier, the Goods and/or Services in accordance with the specifications, requirements, standards and timings set forth in the PO and in this Agreement.

## 3. PRICE

3.1 Subject to Clause 3.3, in consideration of the Supplier providing the Goods and/or Services to JTI, JTI agrees to pay to the Supplier the price as set out in the PO ("**Price**").

3.2 Other than as provided in this Clause 3, JTI 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 JTI under this Agreement, at law or in equity, JTI shall have the right 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 JTI; (b) the Supplier does not comply fully with the specifications, requirements, standards and/or timings relating to the Goods, Goods and/or Deliverables as set out in the PO, this Agreement or otherwise as required by JTI; 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. The Supplier shall be paid the amounts due to it only after it remedies such non-compliance, non-performance and/or breaches ("**Defects**") to the satisfaction of JTI, within a maximum period of two (2) weeks as of the day of its receipt of a written notice sent by JTI to remedy such Defects.

## 4. PAYMENT TERMS

The Supplier shall invoice JTI for the Price ("**Invoice**"), which shall be inclusive of all taxes and/or charges thereon, according to the schedule of amounts and dates agreed in the PO. JTI shall pay the amount set out in the Invoice within 60 working days after JTI's receipt of the Invoice, unless JTI disputes the amount thereon, in which case JTI shall pay within 90 working days from the date the disputed amount is agreed to by the Parties or unless otherwise agreed by the Parties.

## 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 the PO. If the Goods and/or Services are delivered by installments, the Supplier will advise JTI 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 JTI, 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 JTI 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 or the Goods and/or Services are rejected by JTI or this Agreement is terminated by JTI under Clauses 10 or 11, JTI 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 JTI and deemed by JTI 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 all additional costs in obtaining such Substitutes, shall be borne by the Supplier. 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 JTI, whether physical or intellectual property thereto, shall be the property of JTI. The Supplier may use them only for the performance of this Agreement, must maintain them in good condition, and return them to JTI immediately upon JTI's request.

5.5 Upon JTI'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 JTI until the Goods have been delivered. JTI 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 JTI, 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 JTI 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 the PO and 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 JTI 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 the PO and 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 provided and Deliverables supplied by the Supplier to JTI under this Agreement shall:
  - (i) conform in all respects with such specifications, requirements and standards as advised by JTI 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 JTI 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 JTI; and
  - (ii) address any queries from JTI 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 JTI;
- (e) all action 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 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, Goods and its delivery of the Deliverables 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, Goods and/or Deliverables 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 (including but not limited to the PDPA), regulations, guidelines and practice notes which may be applicable from time to time and with any requests, directions or guidelines which JTI 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 the PDPA and any other relevant applicable data protection legislation from time to time.

6.2 The Supplier acknowledges the reliance placed by JTI on the representations and warranties given by the Supplier under the provisions of Clauses 5, 6, 7 and 10 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 JTI's receipt of the Goods in accordance with the specifications of the PO and 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 JTI's request, the Supplier shall immediately replace the defective Goods or refund a proportionate amount of the Price to JTI.

## 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 this Agreement or the provision of Goods and/or Services (and any Intellectual Property Rights therewith) shall definitively become the exclusive property of JTI and/or the JTI Group Companies, unless they have been unequivocally rejected by JTI 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 JTI and/or the JTI Group Companies without limitation of place and time. The Supplier shall, at JTI'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 JTI, the JTI Group Companies and/or another group company nominated by JTI.

7.3 JTI shall be free, both during this Agreement and after its termination, to use the Works at its sole 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 JTI for purposes of performing its obligations under this Agreement, the Supplier agrees to obtain and supply at its own cost to JTI and the JTI Group Companies a written license to enable JTI and the JTI Group Companies to use the third party materials for the agreed purposes in connection with the Goods, Goods and Deliverables under this Agreement. The Supplier shall obtain the prior written consent of JTI and the JTI Group Companies before using such materials created by third parties.

7.5 In relation to any designs created by the Supplier for use by JTI and the JTI Group Companies pursuant to any project, the Supplier will ensure that such designs, as approved by JTI, 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 JTI and the JTI 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 JTI ("**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 JTI and the JTI 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 JTI and the JTI 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 Goods or Services performed by the Supplier for JTI ("**Developments**") shall become JTI and the JTI Group Companies' property.
- 7.9 The Supplier agrees to hold all Developments confidential in accordance with Clause 11.
- 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 JTI or any of the JTI 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 JTI or any of the JTI 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 JTI's prior written consent, the Supplier shall not apply any JTI corporate or brand logo or any elements pertaining to JTI'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 JTI and (subject to JTI's prior written consent) shall obtain a written licence to enable JTI to use the Third Party Materials for the agreed purposes.
- 7.12 Where the Supplier wishes to procure the Goods 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 JTI requires of the Supplier.
- 7.13 The Supplier confirms to JTI 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 JTI 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 JTI of the rights assigned to it under this Agreement will not infringe the rights of any third party.

## **8. CONFLICTS OF INTEREST**

- 8.1 The Supplier shall not act for, represent or provide any Goods to any of JTI's competitors in the tobacco business or any business in the tobacco industry ("**Competitors**"), whether on the Supplier's own account or jointly, or as a consultant to or as a partner, agent, trustee, employee, shareholder, member or director, or otherwise directly or indirectly interested, engaged or concerned in, or assisting financially or in any other way, any Competitors, without the prior written consent of JTI.
- 8.2 Without prejudice to Clause 8.1, in the event that the above were to occur, JTI shall have the right to terminate this Agreement with immediate effect by giving a written notice to the Supplier.

## **9. INDEMNITY**

In addition to and without prejudice to any other rights or remedies available to JTI under this Agreement, at law or in equity, the Supplier irrevocably undertakes to keep JTI and each of its Representatives, fully and effectively indemnified and hold them harmless 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 JTI 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 JTI or in which the Supplier has engaged at variance from JTI's instructions, including without limitation, acts or omissions that do not comply with JTI's marketing policies, Code of Conduct, Global Marketing Standards or 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 Goods 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 the 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;
- any act, error, omission, breach, defect, default or failure by the Supplier or any of its Representatives; or
- any termination of this Agreement and/or the PO by the Supplier pursuant to Clause 11.1.

## **10. COMPLIANCE PROVISIONS**

- 10.1 In addition to the Supplier's obligations set out in the other provisions hereunder, the Supplier undertakes to JTI that the Supplier shall, in the performance of its obligations hereunder, comply with the following:
- all Laws applicable in Singapore; and
  - all of JTI's internal policies and guidelines and JTI's Code of Conduct (posted on JTI's website at <http://www.jti.com>), including without limitation to the provisions relating to anti-corruption, conflicts of interest, JTI's Global Marketing Principles, and JTI's Supplier Standards (<https://www.jti.com/jti-supplier-standards.pdf>).
- 10.2 If JTI suffers any loss or damages, including being prosecuted or brought into litigation directly or indirectly, as a result of the Supplier's noncompliance with the provisions of this Clause 10, the Supplier shall indemnify JTI for all fines, penalties and compensation paid (including the legal costs of the prosecuting party) and its own costs of defending the claim and/or prosecution.
- 10.3 The Supplier warrants and undertakes to JTI 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 JTI or third party for the purpose of securing the award of and/or concluding this Agreement; and that it shall not, for whatever reason, commit any of the aforementioned acts in the performance of its obligations under this Agreement; and
  - in performing its obligations under this Agreement, the Supplier shall not offer, pay, provide or promise to pay or provide any money, valuable gift or financial advantage to any staff of JTI or any third party for whatever reason.
- 10.4 If the Supplier is in breach of any provisions of this Clause 10:
- JTI may immediately terminate this Agreement and discontinue any transaction with the Supplier and JTI has the right to forthwith not pay the Supplier the Price or any part thereof or any payment under this Agreement;
  - the Supplier shall pay to JTI 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 10. The Supplier agrees that the amount set out in this Clause 10 is a genuine pre-estimate of the damages that might be suffered by JTI arising from early termination under the provisions of this Clause 10 and not a penalty; and
  - JTI 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.

## **11. TERMINATION**

- 11.1 Without affecting any other right or remedy available to it, either Party may terminate this Agreement and/or the PO at any time and without cause upon giving not less than 30 (thirty) days prior written notice to the other Party without any charge, penalty or liability, except as provided for in this Agreement. Termination of this Agreement shall automatically terminate any outstanding PO, except if agreed otherwise in writing by the Parties.

Upon receipt of JTI's notice of termination, the Supplier shall immediately cease performance under the Agreement and/or PO and shall reimburse JTI any fees already paid in advance for any Goods and/or Services not actually provided and delivered to JTI.

If JTI terminates pursuant to this provision, JTI shall reimburse the Supplier for any unavoidable costs and expenses that the Supplier has reasonably incurred in fulfilling the outstanding PO up until the date of receipt of JTI's notice of termination which the supplier is unable to recoup or otherwise mitigate. JTI's liability under this provision is subject to the Supplier providing all supporting documents and other evidence that the Supplier directly incurred such costs and expenses in fulfilling the outstanding PO and has taken all reasonable efforts to recoup or otherwise mitigate such costs and expenses, which shall not in any case exceed the Price or value of the outstanding PO (whichever is lower).

- 11.2 JTI shall have the right to terminate this Agreement with immediate effect by giving a written notice to the Supplier ("**JTI Termination Notice**") in the event any of the following were to occur:
- any breach of any representations, warranties and/or undertakings under this Agreement by the Supplier or any of its Representatives;
  - any breach, default, non-performance or non-observance of any provision of this Agreement by the Supplier or any of its Representatives;
  - any act, error, omission, breach, defect, default or failure by the Supplier or any of its Representatives;
  - 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, has 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;
  - the Supplier delivers Goods and/or Services that do not conform with the description in the PO;
  - the Supplier delivers poor quality Goods and/or Services as determined by JTI;
  - the Supplier delivers Goods and/or Services that are not fit for the purpose(s) they are intended for; and/or
  - the Supplier fails to deliver or supply the Goods and/or Services in accordance with the delivery terms as set out in the PO and this Agreement.

- 11.3 JTI's right to terminate under the provisions of this Clause 11 is without prejudice to its other rights to seek compensation and/or any indemnity in accordance with the provisions of this Agreement or otherwise.
- 11.4 Upon issuance of the written notice by JTI, JTI 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 JTI prior to the termination of this Agreement.
- 11.5 Notwithstanding anything herein contained, the provisions of Clauses 7 to 24 shall survive and continue in full force and effect notwithstanding the termination of all of part of this Agreement.

## **12. INDEPENDENT CONTRACTOR**

- 12.1 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 JTI or make any commitment on behalf of JTI.
- 12.2 In the performance of its obligations under this Agreement, the Supplier and each of the Supplier's principals, partners, sub-contractors (if approved by JTI) and each of its Representatives shall be an independent contractor and not an agent or employee of JTI or a JTI 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, JTI 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 JTI) or any of the Representatives of any of the aforesaid (a) shall be deemed an employee or act as an agent or employee of JTI or a JTI Group Company; and (b) shall have the authority to enter into binding obligations in the name of and/or on behalf of JTI.
- 12.3 For the avoidance of doubt, JTI shall not be held responsible for any of the Supplier's acts while performing its obligations under this Agreement.
- 12.4 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 Goods under this Agreement may be provided. The Supplier agrees to indemnify JTI 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 Goods under this Agreement.

## **13. CONFIDENTIALITY**

- 13.1 The Supplier undertakes to JTI that the Supplier shall (and shall procure that each of its Representatives shall):
- not, without the prior written consent of JTI, use or disclose to any person Confidential Information the Supplier and/or its Representatives has or acquires; and
  - make every effort to prevent the use or disclosure of Confidential Information.
- 13.2 The confidentiality obligation under this Clause 13 shall not apply to:
- 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;
  - 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); or
  - any information which is required to be disclosed pursuant to any legal process issued by any court or tribunal whether in Singapore or elsewhere.
- 13.3 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.

## **14. NOTICE**

- 14.1 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 the Cover Page or from time to time updated by that Party in writing.
- 14.2 A demand, notice or other communication made or given by one Party to another Party in accordance with the provisions of this Clause 14 shall be effected and deemed to be duly served:
- if it is delivered by hand, when left at the address required by this Clause 14;
  - if it is sent by prepaid post (air-mail, if international), two (2) Business Days after it is posted; or
  - if it is sent by facsimile transmission, on the day of dispatch.
- 14.3 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.

## **15. ASSIGNMENT AND SUB-CONTRACTORS**

- 15.1 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 JTI.
- 15.2 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 JTI, and if JTI approves such appointment of sub-contractors, the Supplier shall be responsible and liable for all acts or omissions of its sub-contractors.

## **16. COSTS AND EXPENSES**

Each Party shall pay its own legal costs and expenses for the negotiation, preparation and completion of this Agreement.

## **17. VARIATIONS**

- 17.1 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.
- 17.2 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.

## **18. ENTIRE AGREEMENT**

- 18.1 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.
- 18.2 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 JTI, and the Supplier waives any right which it otherwise might have to rely on such terms.
- 18.3 No telephone, electronic or other communication shall be binding on the Parties with respect to the subject matter of this Agreement.
- 18.4 **FORCE MAJEURE**
- 18.1 A Party's failure or delay in performing any of its obligations under this Agreement will not be deemed a breach of this Agreement to the extent that such failure or delay is directly due to any Force Majeure Event.

19.2 "Force Majeure Event" means any event:

- that is beyond the affected Party's reasonable control;
  - the occurrence of which the affected Party could not reasonably be expected to take into account at the time of entering into this Agreement; and
  - the effects of which the affected Party could not reasonably have avoided or overcome.
- 19.3 A default or delay by a third party whom the affected Party has engaged to perform the whole or part of this Agreement will be deemed a force Majeure Event if and to the extent that:
- the affected Party establishes the requirements set out in Clause 19.2; and
  - the affected Party proves that the same requirements apply to the third party.
- 19.4 In the absence of proof to the contrary, and unless otherwise agreed in this Agreement expressly or impliedly, a Party invoking a Force Majeure Event shall be presumed to have established the conditions described in Clause 19.2 in case of the occurrence of one or more of the following events:
- war (whether declared or not), armed conflict or the serious threat of same (including but not limited to hostile attack, blockade, military embargo) hostilities, invasion, act of a foreign enemy, extensive military mobilization;
  - civil war, riot, rebellion and revolution, military or usurped power, insurrection, civil commotion or disorder, mob violence, act of civil disobedience;
  - act of terrorism, sabotage or piracy;
  - act of authority whether lawful or unlawful, compliance with any law or governmental order, rule, regulation or direction, curfew restriction, expropriation, compulsory acquisition, seizure of works, requisition, nationalization;
  - act of God, plague, epidemic, natural disaster such as but not limited to violent storm, cyclone, typhoon, hurricane, tornado, blizzard, earthquake, volcanic activity, landslide, tidal wave, tsunami, flood, damage or destruction by lightning, drought;
  - explosion, fire, destruction of machines, equipment, factories and of any kind of installation, prolonged break-down of transport, telecommunication or electric current; and
  - general labor disturbance such as but not limited to boycott, strike and lock-out, go-slow, occupation of factories and premises.

Adverse economic conditions or general financial or operational constraints are not deemed to be a Force Majeure Event.

- 19.5 The consequences set out in Clause 19.1 apply from the time at which the Force Majeure Event causes the failure to perform or the delay, if the affected Party has given notice thereof without delay, or, if the affected Party has not given notice thereof without delay, from the time at which notice thereof reaches the other Party.
- 19.6 Where the effect of the Force Majeure Event is temporary, the consequences set out under Clause 19.1 shall apply only to the extent that and as long as the Force Majeure Event impedes performance by the affected Party of its contractual duties. Where this Clause applies, the affected Party shall notify the other Party as soon as the Force Majeure Event ceases to impede performance of its contractual duties.
- 19.7 The affected Party shall:
- (a) consult with the other Party concerning suitable interim arrangements and exercise due diligence to eliminate or remedy the Force Majeure Event; and
  - (b) continue performance as soon as reasonably possible after such cause of failure is removed.
- 19.8 JTI reserves the option to call, at its own expense, on another service provider for the entire duration required for the Supplier to again be in a position to perform all of the obligations as defined in this Agreement or for the entire period necessary for performance.

**20. REMEDIES AND WAIVERS**

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.

**21. 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.

**22. ILLEGALITY**

22.1 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.

22.2 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.

**23. GOVERNING LAW AND DISPUTE RESOLUTION**

23.1 This Agreement shall be governed by and construed in accordance with the laws of Singapore. 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.

23.2 The Parties agree to submit to the non-exclusive jurisdiction of the courts of Singapore.

**24. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT**

Save that any JTI Group Company shall be entitled to enforce any provision of Clause 7 intended to benefit such JTI Group Company, a person who is not party to this Agreement has no rights under the Contracts (Rights of Third Parties) Act (Chapter 53B of Singapore) to enforce any term of this Agreement, but this does not affect any right or remedy of a third party which exists or is available apart from the said Act.