1. DEFINITIONS AND INTERPRETATION

In these Conditions:

1.1 the following terms have the following meanings:

“Affiliate” any persons that Control, are Controlled by or are under common Control with us from time to time

“Change” any mechanical, software or other change in design, manufacturing process, supply chain, specifications, materials or product standards (including part substitutions or internal relocation of parts) which affects or potentially affects the performance, reliability, safety, functionality, appearance, quality, dimensions, tolerances or any other Specifications of Deliverables.

“Claims” claims or proceedings made, brought or threatened against us by any person;

“Confidential Information” any Contract and any information that relates to a party (or any of its Affiliates) disclosed to the other party in connection with the Contract, but excluding information received by the other party that: (i) is publicly available (other than through a breach of Condition 11); (ii) was received from a third party who did not acquire it in confidence; or (iii) is developed or discovered before the Contract;

“Contract” a contract for the supply and/or sale of Deliverables by us, our Affiliates or our or their Customers infringes the IPR of any person;

“Liability” liability arising out of or in connection with a Contract, whether in contract, tort, misrepresentation, restitution or otherwise; including any liability under an indemnity contained in a Contract and/or arising from a breach of, failure to perform, or delay in performing any of a party’s obligations under a Contract, however caused including if by negligence;

“Losses” all losses, liabilities, costs, damages and expenses that are or will be incurred by us or our Affiliates in regarding in respect of any Claims, including IPR Claims;

“Order” our written acceptance of your quotation for the supply of Deliverables to us AND/OR any purchase order submitted by us to you for Deliverables;

“Price” (i) the lower of the price for the Deliverables set out in the Order and your price for the Deliverables in the force of the time of Delivery of Goods or completion of Services; or (ii) where there is a Framework Agreement in place, the price for the Deliverables as set out in the Framework Agreement;

“Services” the services set out in the Order or any Specification or referred to in the Framework Agreement;

“Specification” any requirements and specifications for the Deliverables set out or referred to in the Order or as defined in the Framework Agreement;

“we” or “our” the person named as the customer in the Order and/or referred to as “Customer” in a Framework Agreement;

“Work Product” any reports, documents, product work or other materials created for us by you or on your behalf, arising from the Services;

“you” the person named as the supplier in the Order and/or referred to as the “Supplier” in a Framework Agreement.

1.2 headings are for ease of reference and do not affect the interpretation of these Conditions;

1.3 references to a “person” include any individual, body corporate, partnership, government authority, agency or department, state or any other entity (in each case whether or not having separate legal personality);

1.4 any words following the words “include”, “in particular” or any similar expressions will be construed without limitation and accordingly;

1.5 an obligation on a party to procure or make sure the performance or standing of another person will be construed as a primary obligation of that party;

1.6 a reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision; and

1.7 a reference to a statute or statutory provision is the binding version as between you and us. Any translation has been prepared for convenience only. In the event of any conflict, ambiguity or inconsistency between the English language version of these Conditions and any translated version, the English language version shall prevail.

2. CONTRACT FORMATION

2.1 A Contract is formed when we accept any quotation issued by you (verbal or written) by issuing an Order (whether or not there is a Framework Agreement in place) OR where you perform any act consistent with fulfilling an Order submitted by us for Deliverables. We are not obliged to accept any quotation issued by you.

2.2 These Conditions are the only terms and conditions on which we will purchase Deliverables. They apply in place of any terms and conditions that you may seek to apply or which may otherwise be implied, including any which are written, delivered with or contained in your quotation, Order acknowledgement, on your website or other sales materials or media or on any delivery note (“Seller T&Cs”) and you waive any rights to rely on any such Seller T&Cs. Delivery of Goods and/or commencement of performance of Services is conclusive evidence of your acceptance of these Conditions.

2.3 You may not cancel a Contract. Unless you notified us in writing before we placed an Order that we may not cancel it, we may cancel a Contract in whole or part at any time before Delivery or completion of performance of Services. Our sole Liability will be to pay you a fair and reasonable recharging charge. Such compensation will not include any loss of profits OR any indirect or consequential loss;

3. QUALITY CONTROL & TESTING

3.1 The quality and specification of Deliverables will be as set out in the Order. You must not make any Change to Deliverables without our prior written consent. You will carry out any reasonable

[[ Bahasa Melayu ]]
4. DELIVERY OF GOODS / SUPPLY OF SERVICES

4.1 Unless otherwise specified in an Order, you will deliver the Goods DDP (Incoterms 2010) to the address specified in the Order during our normal business hours on the date specified in the Order. We will be responsible for the payment of all duties and taxes applicable to the delivery vehicle. The Delivery of the Goods will occur when they have been off-loaded at the delivery address.

4.2 You will perform Services in accordance with the applicable timetable communicated to you or as set out in the Order, and we will use our best endeavours to ensure that the delivery address is accessible to the delivery vehicle.

4.3 Time is of the essence for performance of your obligations under the Contract. If you are late performing your obligations under the Contract, you will pay to us a sum equal to 1% of the Price for each week or part of a week up to a maximum of 15% of the Price. You and we agree that this amount is reasonable and proportionate AND the most effective way of compensating us for part or all of our losses arising from late performance. However, you and we intend that we should be able to recover general damages as well as such sums in circumstances where we have suffered loss in excess of such sums as a result of your late performance. Therefore, our rights to any such sums under this Conditions 4.3 is without prejudice to any other rights which we may have under the Contract or otherwise in respect of late performance, including the right to sue for damages or other relief and/or to terminate the Contract. A claim for general damages for underperformance will be calculated by estimating the amount of such sums under this Conditions 4.3 actually applied or paid in respect of such late performance.

4.4 Services will be accepted by us when we are satisfied that the Services comply with the specifications and requirements set out in the Order.

4.5 You will make sure that the Goods are marked in accordance with our instructions and any applicable laws, rules and regulations and are properly packed and secured, marked with information on the outside of the packaging.

4.6 Goods are delivered within the period permitted by law and ten (10) years from the date of Delivery (or such other period of time as set out in the Order).

4.7 Goods will be delivered for us at your expense, repaired or have a third party repair the Goods or reperform or have a third party reperform the Services and you will indemnify us for all reasonable costs, losses and expenses that we may suffer as a result of your breach of Condition 4.6.

4.8 You will notify us in writing at so soon as you are aware that any of the Goods or the product support for the Goods are to be discontinued or made of "end of sale" or "end of life". At our request, you and we will agree to delivery of the Goods and we will not accept the delivery of Goods that are not in accordance with our instructions.

5. YOUR OBLIGATIONS

5.1 You will make sure that the Goods will:

5.1.1 be of satisfactory quality, comprise genuine, new materials (which are not used, refurbished, reconditioned, remanufactured, counterfeit or of such age as to impair usefulness or safety) and be fit for any purpose notified to you in writing;

5.1.2 conform to, satisfy and be capable of the Specifications;

5.1.3 be free from defects in design, materials and workmanship;

5.1.4 be sold to us with all full and unencumbered title and not infringing the IPR of any third party;

5.1.5 comply with all (i) applicable laws, (ii) regulatory requirements and (iii) standards and regulations of relevant statutory and regulatory bodies;

5.1.6 be safe and without risk to health.

5.2 In respect of Services, you will:

5.2.1 perform Services with the best care, skill and diligence in accordance with best practice;

5.2.2 use personnel (and sufficient number of personnel) who are suitably skilled and experienced to perform the Services;

5.2.3 make sure that the Services conform with our reasonable instructions, and contain specifications, with Specifications, are performed to meet the purposes notified by us to you and do not infringe the IPR of any third party;

5.2.4 provide all equipment, tools and vehicles and other items required to provide the Services;

5.2.5 obtain and maintain all licences and consents required for the provision of the Services;

5.2.6 comply with all applicable laws, regulations, regulatory policies, guidelines or industry codes which may apply to the provision of the Services; and

5.2.7 do not do anything which may cause us or our Affiliates to lose any licence, authority, consent or permission required for our or the business.

5.3 You will observe all health and safety rules and regulations and any other security requirements that apply at any of our premises and ensure that your personnel are insured against all risks while working on our premises.

5.4 Without affecting any of our other rights or remedies, if you materially breach any of these Conditions of Supply of Goods or Services (or any part of such a contract in whole or in part) do not conform with Condition 5.1 during the longer of (a) 12 months from Delivery Date of any Services covered by Condition 5.2, then we may:

5.4.1 terminate the Contract and any other existing Contracts immediately with notice;

5.4.2 require you to correct your option, to promptly repair or replace the relevant Goods or reperform the relevant Services free of charge;

5.4.3 reject the Deliverables (in whole or in part) and require you to refund the Price for the relevant Deliverables;

5.4.4 accept the Deliverables subject to an equitable Price reduction; or

5.4.5 at your expense, repair or have a third party repair the Goods or reperform or have a third party reperform the Services and indemnify us and our Affiliates against our losses (including from any IPR Claims) arising from such breach.

5.5 Condition 5.4.5 will apply to any repaired or replaced Goods supplied under Condition 5.4.2.
5.6 If, as a result of any Goods not conforming with Condition 5.1 or Services not conforming with Condition 5.2 or otherwise representing an unreasonable risk of harm to the public or the environment, we determine a recall, removal or correction campaign ("Campaign") is necessary or are required to carry out a campaign, we may terminate such a campaign and you will indemnify us and our Affiliates against all Losses incurred as a result of any such campaign.

6. OUR PROPERTY
6.1 All patterns, dies, moulds or other tooling or materials, supplied by us or prepared or obtained by you at our request, ("Tooling") will be marked with our name or otherwise specified by us and will be and remain our exclusive property returnable in good condition on demand.

6.2 You will insure against all risks Tooling and any of your own tooling or property which may be kept on our premises for the purpose of propelling Tooling to belong to you (or your suppliers), and will make Tooling available in good condition while in your custody and/or under your control. All Tooling will be kept separately from your stock and other inventory.

6.3 We reserve the right to charge you the cost of any Tooling if it is destroyed or damaged or rendered unfit for the purpose for which it was originally manufactured while under your control.

6.4 You will not dispose of any Tooling other than in accordance with our prior written instructions. You will not, at any time, use Tooling, nor will you allow Tooling to be used by anyone else for any purpose other than that for which it was supplied by us, unless we have prior written consent to do so.

6.5 We will have the right to enter your premises and remove Tooling at any time without being liable for trespass or for damages of any sort.

7. ASSIGNMENT OF RIGHTS
7.1 This Condition 7 will apply if the Goods are to be made, modified or redESCIBED to our Specification. Any bespoke Specification or Work Product you create or have created for us will be treated as "Goods" for the purposes of this Condition 7.

7.2 We will own all present and future IPR (together with all economic and proprietary rights) in the Goods and our specification. Accordingly, you will not use our specification other than to manufacture the Goods for us. With full title guarantee, you:

7.2.1 assign to us all IPR in the Goods which subsist as at the date of the Contract;

7.2.2 assign to us (by way of present assignment of the future copyright) all future copyright in the Goods immediately upon its creation; and

7.2.3 agree to assign to us in the Goods immediately upon its creation.

7.3 You will:

7.3.1 at your own cost, execute all such documents and do all such things as we may request from time to time in order to register any IPR in the Goods;

7.3.2 obtain the waiver of all moral rights (and any broadly equivalent rights) in the Goods;

7.3.3 agree to the exception to Condition 7.2 above that any IPR existing in products, materials or data used to manufacture the Goods continues to belong to you (or your suppliers). You grant (and, where applicable, will ensure that your suppliers grant) to us, our Affiliates and our and their end customers, a non-exclusive, perpetual, royalty-free, irrevocable licence to use and to have used Existing Materials which form part of any Goods.

8. PRICE AND PAYMENT
8.1 As long as you perform your obligations in accordance with the terms of the Contract, we will pay the Price to you in accordance with Condition 8.

8.2 The only sums of money we will pay in connection with the supply of the Deliverables are the Price.

8.3 Goods and Services will not be invoiced to us until we have paid for them in accordance with these Conditions.

8.4 We will have the right to refuse any invoice, or part of any invoice, which does not conform with any of these Conditions, or which includes goods, services, price or the like which we consider to be unreasonable.

8.5 You may invoice us for the Price for the Goods following Delivery and for Services following completion.

8.6 Other than as set out in Conditions 8.7 and 8.9, each invoice will be payable by us within 60 days following the date on which the invoice is received by us. You will send invoices to the address specified in the Order.

8.6.1 No payment made by us will constitute acceptance by us of any Deliverables or otherwise affect any rights or remedies which we may have against you including the right to recover any amount overpaid or wrongly paid to you.

8.7 If any unpaid sum payable under the Contract is not paid when due you may charge us interest daily on that sum at 3% per year subject to any maximum or minimum rate of interest on overdue invoices specified by applicable law, from the due date until the date of payment (whether before or after judgment).

8.8 We may set off, deduct or withhold any liability which you have to us against any liability which we have to you.

9. TERMINATION
9.1 Without limiting any other right we may have to terminate a Contract, if you commit a material breach of any of these Conditions we may terminate the Contract and any other existing Contracts immediately with written notice. Any breach of Conditions 11, 12 or 15.9 will be deemed to be a material breach.

9.2 Without limiting any other right we may have to terminate a Contract, we may terminate the Contract immediately by giving you written notice if you (a) have a receiver, administrator or liquidator (provisional or otherwise) appointed; (b) are subject to a notice of intention to appoint an administrator or any other resolution on insolvency; (c) pass a resolution for your winding-up; (d) have a winding up order made by a court in respect of you; (e) enter into any composition or arrangement with creditors; (f) cease to carry on business; (g) are the subject of anything similar or equivalent to that set out in (a) to (f) under applicable laws; or (h) you are subject to any change of Control and you will notify us immediately upon the occurrence of any such event or circumstances.

9.3 Following expiry or termination of the Contract:

9.3.1 any Conditions which expressly or impliedly continue to have effect after expiry or termination of the Contract will continue in force; and

9.3.2 all other rights and obligations will immediately stop but will not affect any of your or our rights, obligations, claims and liabilities which may exist prior to the date of expiry or termination; and

9.3.3 each party will immediately stop using the other party’s Confidential Information and will as soon as reasonably possible destroy or (if requested to do so, return to the other party all of the other party’s Confidential Information (including all copies and extracts) in its possession or control or confirm its secure destruction; and

9.3.4 each party may keep any of the other party’s Confidential Information which it has to keep to comply with applicable law and Condition 9.3.3 will not apply to such Confidential Information. Condition 11 will continue to apply to retained Confidential Information.

9.4 If we terminate a Contract, we may require you to deliver to us any supplies, materials or drawings produced or acquired by you for the terminated part of the Contract and we will, in good faith, on the amount payable for the same.

10. LIABILITY AND INSURANCE
10.1 You will indemnify us and our Affiliates against all our and their Losses arising from your breach of

5.2.7 you have received or are continuing to receive the benefit of, including the right to recover any amount overpaid to you; and

5.2.8 that you have failed to pay the Price for the Goods as agreed under the Contract.

9.3.1 Following expiry or termination of the Contract will continue in force; and

9.3.2 none of the provisions of the Contract will be deemed to have ceased to have effect.

9.4.1 we may terminate the Contract and any other existing Contract immediately and if we do so, you will (a) pay all sums payable under the Contract; (b) remove all Goods and returnable in good condition on demand, at our cost; (c) pay all sums payable under the Contract; and (d) (if we purchase or manufacture the Goods) pay all sums payable under the Contract.

9.4.2 Nothing in this Condition 9.4.1 will affect any right we may have to recover damages for breach of contract.

9.5 If we terminate a Contract, you will indemnify us against all our and their Losses arising from your breach of

5.2.7 any term or condition of the Contract or these Conditions; and

5.2.8 any term or condition of these Conditions.

9.6 We may terminate a Contract immediately and if we do so, you will (a) pay all sums payable under the Contract; (b) remove all Goods and returnable in good condition on demand, at our cost; (c) pay all sums payable under the Contract; and (d) (if we purchase or manufacture the Goods) pay all sums payable under the Contract.

9.6.2 Nothing in this Condition 9.6.1 will affect any right we may have to recover damages for breach of contract.

9.7 If we terminate a Contract, you will indemnify us against all our and their Losses arising from your breach of

5.2.7 any term or condition of the Contract or these Conditions; and

5.2.8 any term or condition of these Conditions.
or negligent performance of or your failure to perform or delay in performing any part of these Conditions. We may, at our discretion, control the defence of any claim in respect of which you are required to indemnify us under a Contract.

9.3.3 Nothing in these Conditions or any Contract will operate to exclude or restrict one party’s Liability (if any) to the other (including for a person for whom it is vicariously liable).

10.3 Nothing in these Conditions or any Contract will operate to exclude or restrict one party’s Liability for any (i) loss of profit, goodwill or revenue; or (ii) any indirect, consequential or special loss.

11. CONFIDENTIALITY

11.1 Except as set out in Condition 11.2, each party will:

11.1.1 only use the other party’s Confidential Information for the purpose of performing its obligations and exercising its rights under the Contract;

11.1.2 keep the other party’s Confidential Information secret, safe and secure; and

11.1.3 not disclose the other party’s Confidential Information to any other person.

11.2 Each party may disclose the other party’s Confidential Information:

11.2.1 to the extent required by law, any court of competent jurisdiction or the rules of any government or other regulatory body having jurisdiction over it; and

11.2.2 to its officers, directors, employees and professional advisers and, in our case, our Affiliates, agents and sub-contractors, who need the Confidential Information in order for that party to perform its obligations and exercise its rights under the Contract. A party disclosing the other party’s Confidential Information under Condition 11.2.2 will make sure that each person to whom it discloses that Confidential Information is bound by obligations of confidentiality no less onerous than those set out in this Condition 11.

11.3 Each party acknowledges and agrees that damages alone would not be an adequate remedy for breach of Condition 11.1 by the other party and, accordingly, each party will be entitled, without having to prove special damages, to injunctive relief, equitable relief and/or specific performance for any breach or threatened breach of Condition 11 by the first party.

12. ETHICAL CONDUCT

12.1 You will conduct your business ethically and lawfully and in accordance with our Supplier Code of Business Ethics (http://www.smiths.com/responsibility-supplier-code-of-business-ethics.aspx) or an equivalent code of ethics.

12.2 You represent and warrant that you and your subcontractors and suppliers do not use or permit unacceptable labour practices, such as child or forced labour, or unsafe working conditions and comply with all applicable labour and employment laws, regulations, standards and conventions, including the UN’s Guiding Principles on Business & Human Rights and the International Labor Organization’s Conventions and any similar or equivalent laws applying in the jurisdiction in which we are registered.

12.3 You hereby acknowledge that you are aware of, and agree to comply with all applicable anti-terror and anti-corruption laws, including but not limited to the Foreign Corrupt Practices Act (FCPA) (and related regulation and guidance) and any similar or equivalent laws applying in the jurisdiction in which we are registered.

12.4 You represent and warrant that you only supply minerals to us and our Affiliates from sources that do not contribute to conflict; and/or (ii) benefit or finance armed groups in the Democratic Republic of Congo.

13. NOTICE

13.1 Notices and other communications provided for the purposes of a Contract will be in writing, and delivered by courier or by hand to the relevant party’s address as specified on the Order (or such other address which is notified to the other party in writing from time to time), in the case of a notice to us, marked as before the date of expiry or termination of any Contract.

14. EXPORT / IMPORT / ECONOMIC SANCTIONS CONTROLS

14.1 You agree to comply with all applicable export controls and import and economic sanctions laws and regulations, including those of your country of incorporation, from where the Goods will be supplied, where the Goods will be received and any other relevant jurisdiction. You will also obtain, as required, and comply with all applicable government authorizations and their provisions in supplying the Goods. Without limiting the foregoing, you represent and warrant that you will not supply Goods, data or services by or on behalf of the Contract, to include transfer to any person, including those persons employed by or associated with, or under contract to you or your lower-tier suppliers, without the authority of an applicable licence, exemption or exception.

14.2 You will promptly provide all information necessary to support any regulatory or government authorizations we require regarding the Goods.

14.3 You will indemnify us and our Affiliates for all Losses arising out of any breach by you of this Clause 14.2.3.
will not affect the remainder of the Contract which will continue in full force and effect.

15.4 Except to the extent otherwise specified in these Conditions, variations to the Contract must be agreed in writing and signed by both parties.

15.5 No partnership, agency or joint venture between the parties will be created by the Contract.

15.6 Each party agrees that it is an independent contractor and is entering into the Contract as principal and not as agent for or for the benefit of any other person.

15.7 Each of our Affiliates will be entitled to enforce in their own capacity the terms of any Contract under which that Affiliate receives a benefit.

15.8 Save as provided in Condition 15.7, the parties do not intend that any term of a Contract will be enforceable by any person who is not a party to it.

15.9 You may not assign, transfer, charge, hold on trust for any person or deal in any other manner with any of your rights under the Contract or sub-contract any of your obligations under the Contract. We may assign a Contract to our Affiliates.

16. GOVERNING LAW AND JURISDICTION

16.1 The Contract and any non-contractual obligations arising in connection with it are governed by the law of the jurisdiction in which we are registered or incorporated. The courts of such jurisdiction (and if applicable to the relevant jurisdiction any district in which we are registered) have exclusive jurisdiction to determine any dispute arising in connection with the Contract.

16.2 Notwithstanding any other provision hereof, no prejudice shall be given to any jurisdiction to which a party is subject to the extent that it may bring an action against any or all of the Sellers for the recovery of any amount of goods or any damages for the breach of any contract of the Sellers to deliver the goods, or as damages for the loss of or damage to the goods, whether the contract of sale be express or implied.

16.3 The Contract and any non-contractual obligations arising in connection with it are governed by the law of the jurisdiction in which we are registered or incorporated. The courts of such jurisdiction (and if applicable to the relevant jurisdiction any district in which we are registered) have exclusive jurisdiction to determine any dispute arising in connection with the Contract.

16.4 Notwithstanding any other provision hereof, no prejudice shall be given to any jurisdiction to which a party is subject to the extent that it may bring an action against any or all of the Sellers for the recovery of any amount of goods or any damages for the breach of any contract of the Sellers to deliver the goods, or as damages for the loss of or damage to the goods, whether the contract of sale be express or implied.

16.5 The Contract and any non-contractual obligations arising in connection with it are governed by the law of the jurisdiction in which we are registered or incorporated. The courts of such jurisdiction (and if applicable to the relevant jurisdiction any district in which we are registered) have exclusive jurisdiction to determine any dispute arising in connection with the Contract.

16.6 The Contract and any non-contractual obligations arising in connection with it are governed by the law of the jurisdiction in which we are registered or incorporated. The courts of such jurisdiction (and if applicable to the relevant jurisdiction any district in which we are registered) have exclusive jurisdiction to determine any dispute arising in connection with the Contract.

16.7 The Contract and any non-contractual obligations arising in connection with it are governed by the law of the jurisdiction in which we are registered or incorporated. The courts of such jurisdiction (and if applicable to the relevant jurisdiction any district in which we are registered) have exclusive jurisdiction to determine any dispute arising in connection with the Contract.

16.8 The Contract and any non-contractual obligations arising in connection with it are governed by the law of the jurisdiction in which we are registered or incorporated. The courts of such jurisdiction (and if applicable to the relevant jurisdiction any district in which we are registered) have exclusive jurisdiction to determine any dispute arising in connection with the Contract.

16.9 The Contract and any non-contractual obligations arising in connection with it are governed by the law of the jurisdiction in which we are registered or incorporated. The courts of such jurisdiction (and if applicable to the relevant jurisdiction any district in which we are registered) have exclusive jurisdiction to determine any dispute arising in connection with the Contract.

16.10 The Contract and any non-contractual obligations arising in connection with it are governed by the law of the jurisdiction in which we are registered or incorporated. The courts of such jurisdiction (and if applicable to the relevant jurisdiction any district in which we are registered) have exclusive jurisdiction to determine any dispute arising in connection with the Contract.

16.11 The Contract and any non-contractual obligations arising in connection with it are governed by the law of the jurisdiction in which we are registered or incorporated. The courts of such jurisdiction (and if applicable to the relevant jurisdiction any district in which we are registered) have exclusive jurisdiction to determine any dispute arising in connection with the Contract.

© Smiths Group – July 2018