



## Terms and Conditions for Modifications to Tebodin's Premises

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## 1. Definitions and interpretation

1.1. In the Agreement (as hereinafter defined) the following words and expressions shall have the meanings hereby assigned to them, except where the context otherwise requires:

- (i) "Commencement Date" means the date upon which the design and execution of work under the Agreement is to commence.
- (ii) "Agreement Price" means the sum specified in the Agreement or otherwise ascertainable pursuant to the provisions of the Agreement as payable by TME to Contractor for the completion of the Works and the remedying of any defects therein in accordance with the provisions of the Agreement subject to such additions and adjustments thereto and deductions therefrom as may be made pursuant to the provisions of the Agreement.
- (iii) "Agreement" means the Agreement and all documents incorporated therein incorporating these Conditions for the Design and Works entered into by TME and Contractor.
- (iv) "Contractor's Equipment" means all appliances and things of whatsoever nature required for the execution and completion of the Works and the remedying of any defects therein, but does not include Plant, materials or other things intended to form or forming part of Works.
- (v) "Contractor's Representative" means the person appointed by Contractor to act as Contractor's Representative for the purposes of the Agreement.
- (vi) "Day" means calendar day.
- (vii) "Defects Liability Period" means the defects liability period agreed by the parties hereto but otherwise 12 (twelve) months calculated from the date of completion as certified in the Taking-Over Certificate.
- (viii) "Design" means the design for the Works.
- (ix) "Drawings" means all drawings, provided by Contractor under the Agreement.
- (x) "TME's Representative" means the person appointed by TME to act as TME's Representative for the purposes of the Agreement.
- (xi) "Plant" means machinery, apparatus and the like intended to form or forming part of the Works.
- (xii) "Programme" means the time frame for execution of the Works as defined in Section II of the Agreement.
- (xiii) "Site" means the places provided by TME where the Works are to be executed and any other places as may be specifically designated in the Agreement as forming part of the Site.
- (xiv) "Taking-Over Certificate" means a certificate of completion of the Works pursuant to Article 9.
- (xv) "Tests on Completion" means the tests specified in the Agreement or which are to be made by Contractor before the issue of the Taking-Over Certificate.
- (xvi) "Time for Completion" means the time for completing the execution of the Works up to the issue of the Taking-Over Certificate from the Commencement Date or the time otherwise fixed pursuant to the Agreement and such extended time (if any) as provided for pursuant

to the provisions of the Agreement.

- (xvii) "Variation" has the meaning ascribed to it pursuant to Article 11
- 1.2. The headings and marginal notes in these Conditions shall not be deemed part thereof or be taken into consideration in the interpretation or construction thereof or of the Agreement.
  - 1.3. Words importing persons or parties shall include firms and corporations and any organisation having legal capacity.
  - 1.4. Measurements which are given in figures or words and which are not obviously incorrect shall take precedence over scaled measurements.
  - 1.5. No amendment or other modification of the Agreement shall be effective unless it is in writing, is dated, expressly refers to the Agreement, and is signed by a duly authorised representative of each party hereto.
  - 1.6. If any provision or condition of the Agreement is prohibited or rendered invalid or unenforceable such prohibition, invalidity or unenforceability shall not affect the other provisions of the Agreement.
  - 1.7. Words importing the singular only also include the plural and vice versa where the context requires.
  - 1.8. Wherever in the Agreement provision is made for the giving or issue of any notice, approval, certificate or determination, unless otherwise specified such notice, approval, certificate or determination shall be in writing and the words "notify", "certify" or "determine" shall be construed accordingly. Any such approval, certificate or determination shall not unreasonably be withheld or delayed.

## **2. Scope of Services and Works**

Contractor shall perform all works and services required for the Design, procurement, construction and completion of the Works in accordance with Section II of the Agreement except for those works and services which will be provided or performed by TME.

## **3. TME's Principal Obligations in relation to the design and execution of the Works**

- 3.1. Unless expressly otherwise agreed in the Agreement as regards the choice of the Site TME shall be responsible for such choice and he shall deliver the Site to Contractor free from encumbrances and provide access to the Site upon the date fixed or provided for in the Agreement and including provision or facilities as required in the Agreement for the period of the Agreement.
- 3.1 TME shall transmit to Contractor the information and data required from him under the Agreement in due time in order to enable Contractor to carry out the Agreement in accordance with the Programme. TME shall be responsible for such information and data, in particular for its accuracy.
- 3.2 Any permits, approvals and/or licences, which must be obtained by TME in its name pursuant to the laws and the regulations applicable to the Design and the Works, shall be obtained by TME in due time at its own expense. All such permits, approvals, licenses and/or permissions shall be obtained by TME within such time as to allow Contractor to proceed in accordance with the Programme of the Works.
- 3.3 Where approvals are required or sought from TME under the Agreement, TME shall give timely



consideration to approval or disapproval. If TME has not approved or disapproved within 14 (fourteen) days of submission by Contractor to TME for approval, the approval shall be deemed to have been given.

3.4 TME shall promptly take over the Works in accordance with the Agreement.

#### **4. Contractor's Principal Obligations in relation to the design and execution of the Works**

- 4.1. The Design and the Works shall be executed and completed by Contractor with due care and diligence in accordance with the Agreement.
- 4.2. Contractor will execute the Work using proper skill and care of professional designers and craftsmen experienced in that type of design. Contractor will be fully responsible for the Design and construction except for those matters in respect of which TME has made a decision for which Contractor expressly disclaims responsibility at the time of approval.
- 4.3. Contractor will carry out and complete the construction of the Works with due diligence and with workmanship and materials of a good quality in accordance with the Design to meet the requirements of the Agreement.
- 4.4. In relations to the Design and execution and completion of the Works Contractor confirms that he has entered into the Agreement on the basis of reasonable examination of data relating to the Works provided by TME and information which he could have obtained from a visual inspection of the Site (if access thereto was available) and other data readily available to him relating to the Works.
- 4.5. Contractor shall provide TME with a Programme for the Works showing the organisation to be established by Contractor for carrying out the Works including the identities and curriculum vitae of key personnel to be employed on the Agreement and showing the sequence and methods in which the Works are to be carried out. Contractor shall transmit to TME any further information and data required from him under the Agreement in accordance with the Programme.
- 4.6. Contractor shall be obliged to inform TME of any circumstances and conditions adversely affecting or which may adversely affect the execution of the Agreement and shall further inform TME without delay of any circumstance and conditions which cause or which may be likely to cause significant alteration to the Programme and without delay submit a revised Programme to TME taking account of such circumstances and conditions.
- 4.7. If Contractor shall, in connection with the Design and the execution of the Works, encounter circumstances which, having due regard to the obligations of Contractor could not reasonably be expected to have been taken into account by an experienced Contractor undertaking the responsibilities of Contractor, then Contractor shall give notice thereof to TME referring to this Sub-Clause with his initial appraisal of the consequences and, unless the same renders the Agreement physically or legally impossible to complete, nevertheless carry out and complete the Works incorporating such circumstances (if any) as are appropriate.
- 4.8. In the event of such circumstances and conditions as is referred to in Section 4.7 above Contractor shall be entitled to an appropriate extension of time and the Agreement Price shall be adjusted to take account of the circumstances and conditions by any increase or decrease as may be appropriate.
- 4.9. Contractor shall deliver the Works to TME within the time specified in the Programme in accordance with the Agreement save and except such work and services as are of no material significance and save and except such work and services as are Contractor's responsibility during the Defects Liability Period.



- 4.10. During the Defects Liability Period or as soon thereafter as is reasonably practical Contractor shall carry out and complete all outstanding work and services pursuant to the Agreement.

**5. TME's General Obligations in relation to the execution of the Works**

- 5.1 TME shall appoint TME's Representative who shall be responsible to TME and shall carry out such duties and exercise such authority as may be provided for in the Agreement or additionally delegated to him by TME. Any such additional delegation shall be in writing and shall not take effect until a copy thereof has been delivered to Contractor. Any communication given by TME's Representative to Contractor in accordance with such additional delegation shall have the same effect as though it had been given by TME.
- 5.2 TME shall assist Contractor to obtain in due time any permits, approvals and/or licences, which must be obtained by Contractor, sub-Contractors and/or their employees pursuant to the laws and regulations applicable to the Works.
- 5.3 TME will use all reasonable endeavours by assisting Contractor to obtain in due time clearance through the customs of Plant, Contractor's Equipment, materials and other things required for the Works.
- 5.4 In respect of any Contractor's Equipment which Contractor has imported for the purposes of the Works, TME will use all reasonable endeavours to assist Contractor, where required, in procuring any necessary Government consent to the re-export of such Contractor's Equipment by Contractor upon the removal thereof pursuant to the terms of the Agreement.

**6. Contractor's General Obligations in relation to the execution of the Works**

- 6.1 Contractor shall comply with the local statutes and regulations prescribed for use of the Site and performance of the Works.
- 6.2 Contractor shall provide on the Site in connection with the execution and completion of the Works such skilled staff and labour as is necessary for the execution of the Works.
- 6.3 Unless otherwise provide in the Agreement, Contractor shall be responsible for the recruitment, transportation, accommodation and catering of all staff and labour, local or expatriate, as required for the execution of the Works and for all costs in connection therewith. Contractor shall at all times during the progress of the Works use all reasonable endeavours to prevent any unlawful conduct or misbehaviour by or amongst staff and labour.
- 6.4 Contractor shall, in all dealings with staff and labour, pay due regard to all recognized festivals, official holidays and religious or other recognized customs.
- 6.5 Contractor shall be responsible for applying for and handling all administrative measures in order to obtain, with the assistance of TME, all necessary permit(s) or visa(s) from the appropriate authorities for the entry of all labour and personnel to be employed on Site.
- 6.6 Contractor shall be responsible at his own expense for the repatriation to the countries from which they were recruited of all his personnel employed on Site.
- 6.7 Contractor shall throughout the execution and completion of the Works:
- a. have full regard for the safety of all persons entitled to be upon the Site and keep the Site and the Works (so far as the same is under his control) in orderly state appropriate for the avoidance of danger, provide and maintain at his own cost all lights, guards, fencing, warning signs and watching, when and where necessary or required by any duly constituted authority, for the



protection of the Works or for the safety and convenience of the public or others, **BILFINGER** take all reasonable steps to protect the environment on and off the Site and to avoid damage or nuisance to persons or to property of the public or others resulting from pollution, noise or other causes arising as a consequence of his methods of operation

- 6.8 Contractor will at his own expense, but with the assistance of TME, handle the import of all Plant, Contractor's Equipment, and other things required for use on or incorporation in the Works at the place of import and any formalities for customs clearance except where the applicable laws or regulations require that TME be responsible for the same, subject to the obligation of TME to bear all customs and import duties imposed by the law of the country in which the Works are situated on such Plant, Contractor's Equipment, materials and other things in accordance with Section 16.2.
- 6.9 Upon the Taking-Over Contractor shall clear away and remove from the Site all Contractor's Equipment, surplus materials and rubbish, and leave the Site and Works clean and in a workmanlike condition. Provided that Contractor shall be entitled to retain on Site, until the end of the Defects Liability Period, such materials and Contractor's Equipment as are required by him for the purpose of fulfilling his obligations during the Defects Liability Period.
- 6.10 In the event of a subcontractor having undertaken towards Contractor in respect of the work executed, or the goods, materials, Plant or services supplied by such subcontractor, any continuing guarantee or warranty extending for a period exceeding that of the Defects Liability Period under the Agreement, Contractor shall at any time, after the expiration of such Period, assign to TME, at TME's request and cost, the benefit of such guarantee or warranty for the unexpired duration thereof.
- 6.11 At the request of TME Contractor shall allow TME, and any person authorised by him at all reasonable times to have access to the Site and to all workshops and places where materials or Plant are being manufactured, fabricated or prepared for the Works.
- 6.12 Contractor shall save harmless and indemnify TME from and against all claims and proceedings for or on account of infringement of any patent rights, design trademark or name or other protected rights in respect of the Design or any Contractor's Equipment, materials or Plant used for or in connection with or for incorporation in the Works and from and against all damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto, except where such infringement is the reasonable consequence of compliance with any requirement of TME.
- 6.13 Two copies of the drawings shall be provided by Contractor to TME free of charge. Contractor shall at TME's expense supply any further copies required from him by TME. Following issue of the Taking-Over Certificate, Contractor shall supply to TME 2 (two) copies of as built drawings.

## **7. Common Obligations of TME and Contractor in relation of the Works**

- 7.1 Both TME and Contractor shall exchange with each other any and all information which reasonably can be considered to be of importance for the satisfactory and correct Design and execution and completion of the Works. Contractor shall within 14 (fourteen) Days after the end of the last Day of each month submit a report to TME of the progress of the Works.
- 7.2 In accordance with Article 21 the parties undertake to maintain, during and after the implementation of the Agreement, the confidential nature of any manufacturing or business information and know-how received, and not to disclose to third parties except so far as necessary for the furtherance of the Agreement any information or experience which they obtain as a result of their collaboration.



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## **8. Performance Security**

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## **9. Commencement, Completion and Acceptance of the Works**

- 9.1 Contractor shall commence the Design and the Works at the Commencement Date. Upon approval of the Design by TME Contractor shall proceed with the Works with due expedition and without delay.
- 9.2 The Commencement Date shall be the date stated in Section II of the Agreement as the Commencement Date unless otherwise agreed in the Agreement. The whole of the Works shall be completed in accordance with the provisions of the Agreement within the Time for Completion.
- 9.3 In the event of
- a. the amount or nature of extra or additional work, or
  - b. any cause of delay referred to in these Conditions expressly or implicitly whether or not expressly stating that Contractor is entitled to an extension of time, or
  - c. exceptionally adverse climatic conditions, or
  - d. any delay, impediment or prevention by TME, or
  - e. other special circumstances which may occur, other than through a default of or breach of Agreement by Contractor or for which he is responsible, or
  - f. without limiting the foregoing or being limited thereby force majeure or any operation of the forces of nature or other circumstances (if not force majeure) beyond the reasonable control of either of the parties hereto,

which if Contractor could not reasonably have foreseen, being such as fairly to entitle Contractor to an extension of the Time for Completion of the Design and the Works, Contractor shall without prejudice to any other right or remedy be entitled to such extension of time overall for completion of the Works as is reasonable taking account of all the circumstances and shall give notice of the extension to TME without delay. Contractor shall be entitled to revision of the length of extension if the cause continues or if the effects have consequences which were not or not fully taken into account.

- (a) When the whole of the Works have been substantially completed and have satisfactorily passed any Tests on Completion in accordance with the Agreement, Contractor shall give notice to that effect to TME. Such notice and undertaking shall be deemed to be a request by Contractor for TME to issue a Taking-Over Certificate in respect of the Works. TME shall, within 21 (twenty-one) days of the date of such notice either issue to Contractor a Taking-Over Certificate confirming the date of such notice as the date when the Works were substantially completed in accordance with the Agreement, or identify in writing to Contractor the work and services which TME considers is required to be done pursuant to the Agreement before the issue of such Certificate. TME shall also notify Contractor of any such defects in the Works that have to be rectified before issue of the Taking-Over Certificate. TME's notice hereunder is without prejudice to section 9.5
- (b) Contractor shall be entitled to receive a Taking-Over Certificate within 7 (seven) days of completion of the whole or part of the Works and services so specified and remedying any defects so notified at (b) above, effective as at the date of completion thereof.
- (c) In case of occupancy or use of the Works by TME Contractor shall be entitled to a Taking-Over Certificate for such Works or part thereof effective as at the date of occupancy or use thereof.
- (d) Contractor shall notify TME within 14 (fourteen) Days of the notice at (b) above of any





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such work and services which Contractor either

- i. considers do not form part of the Agreement, or
- ii. considers do not require to be done before issue of the Taking-Over Certificate and specifying which.

- 9.4 Contractor shall complete any work outstanding on the date stated in the Taking-Over Certificate as soon as reasonably practicable after such date including remedying any defect until the end of the Defects Liability Period.
- 9.5 Contractor shall at request of TME made during the Defects Liability Period execute all such other work in relation to the Agreement as requested by TME so that at the end of the Defects Liability Period or as soon as possible thereafter the Works shall be in the condition required by the Agreement and Contractor shall be entitled to an addition to the Agreement Price for the same.

## **10. Liquidated Damages and Bonuses**

- 10.1 If Contractor fails to complete the Works within the Time for Completion in accordance with the Agreement, then Contractor shall pay to TME any relevant sum stated in Section II of the Agreement as liquidated damages for such default and not as a penalty (which sum shall be the only monies due from Contractor for such default) for every week which shall elapse between the Time for Completion and the date specified in the Taking-Over Certificate for the Works, subject to any limit stated in Section II of the Agreement. The payment of such damages shall not relieve Contractor from his obligation to complete the Works, or from any other of his obligations and liabilities under the Agreement but shall be in full discharge of Contractor's liability for delay in completion
- 10.2 If Contractor achieves completion of the Works prior to the Time for Completion, TME shall pay to Contractor a sum as a bonus in addition to the Agreement Price as stated in Section II of the Agreement for every week which shall elapse between the date of the achievement and the Time for Completion up to the limit stated in Section II of the Agreement
- For the purpose of this Article 10 the date of completion of the Works shall be the date of substantial completion thereof in accordance with section 9.4 above.
- 10.3 If prior to the time of completion Contractor in its absolute discretion following the request of TME agrees to allow TME to use or occupy the Works in whole or part then liquidated damages shall be reduced in the proportion which the value of the part so used or occupied bears to the value of the whole of the Works, as applicable. This limitation shall only apply to the rate of liquidated damages and shall not affect the limit thereof.

## **11. Variations**

- 11.1 TME has the right, at any time, by giving a written notice to Contractor, to propose any changes, modifications, additions or omissions to, in or from the Works (hereinafter referred to as "Variation").
- 11.1.1 Whenever TME shall desire to make such Variation(s) in work, TME shall so notify Contractor in writing, describing the Variation(s) desired in sufficient detail so as to enable Contractor to appraise its nature and extent.
- 11.1.2 Within 28 (twenty-eight) days of receipt of the notice of proposed Variation(s) from TME Contractor shall inform TME of the cost of such Variation(s) including a reasonable cost break down in a form mutually agreed indicating adjustment of the Agreement Price, any required extension of the Time for Completion and/or changes of the Design. Within 28 (twenty-eight) days after receipt of said information from Contractor TME shall approve the execution of such Variation(s) in accordance





with the terms set out by Contractor or on such other terms as TME and Contractor may agree in writing prior to the execution of such Variation(s).

- 11.2 Contractor may suggest any Variation(s) it considers necessary or desirable during the execution of the Agreement. Any such Variation(s) shall be submitted for the approval of TME together with an explanation of the ground therefore, the cost of such Variation(s), any required extension of the Time for Completion and/or any changes of the Design. TME shall approve and/or comment in writing to Contractor within 28 (twenty-eight) days of the receipt of the proposal. The proposed Variation(s) shall be considered valid only if approved by TME.
- 11.3 Until the approval for the Variation(s) is given in accordance with this Clause and the terms of the execution and the payment therefore have been agreed in writing, Contractor shall not execute any Variation(s) to the Works and/or to the Design nor shall any change be made to the Time for Completion.
- 11.4 After such approval, the Agreement Price, the Time for Completion and any other obligations under the Agreement shall be modified to the extent so agreed by TME and Contractor and Contractor shall promptly execute such Variation(s) and shall make any revision in the Agreement documents as may be necessary.

## **12. Risk and Responsibility**

- 12.1 Contractor shall take full responsibility for the care of the Works and materials and Plant from the Commencement Date until the date stated in the Taking-Over Certificate, when the responsibility for such care shall pass to TME, notwithstanding Contractor's obligation to perform any outstanding Works or to rectify any defects during the Defects Liability Period.
- 12.2 If any loss or damage happens to the Works, or any part thereof, or materials or Plant during the period for which Contractor is responsible for the care thereof, other than the risks defined in Sub-Clause 12.8, Contractor shall, at his own cost, rectify such loss or damage so that the Works conform in every respect with the provisions of the Agreement. The total liability of Contractor to TME under the Agreement with regard to the Works after issue of the Taking-Over Certificate shall not exceed 5% of the Agreement Price. This limitation of liability shall not apply in cases of fraud, wilful misconduct or illegal or unlawful acts by Contractor.
- 12.3 In the event of any such loss or damage happening from any of the risks defined in section 12.8 below or in combination with other risks, Contractor shall, if and to the extent required by TME, rectify the loss or damage and Contractor shall be entitled to an addition to the Agreement Price. In the case of a combination of risks causing loss or damage any such entitlement shall take into account the proportional responsibility of Contractor and TME.
- 12.4 Contractor shall, except if and so far as the Agreement provides otherwise, indemnify TME against all losses and claims in respect of:
  - a. death of or injury to any person, or
  - b. loss of or damage to any property (other than the Works), caused by the execution and completion of the Works and the remedying of any defects therein, and against claims, proceedings, damages, costs, charges and expenses in respect thereof, subject to the exceptions defined in section 12.7 below.
- 12.5 TME shall not be liable for or in respect of any damages or compensation payable to any workman or other person in the employment of Contractor or any subcontractor, other than death or injury resulting from any act or default of TME, his agents or servants. Contractor shall indemnify and keep indemnified TME against all such damages and compensation, other than those for which



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TME is liable as aforesaid, and against all claims, proceedings, damages, costs, charges, and expenses whatsoever in respect thereof or in relation thereto.

- 12.6 Contractor shall in no event be liable to TME, by way of indemnity or by reason of any breach of the Agreement or in tort or otherwise, for loss of production, loss of profit or loss of any Agreement or for any indirect special or consequential loss or damage which may be suffered by TME in connection with the Agreement
- 12.7 TME shall indemnify Contractor against all claims, proceedings, damages, costs, charges and expenses in respect of the "exceptions" referred to in section 12.4 above, which are:
- a. the use or occupation of land by the Works, or any part thereof or access thereto,
  - b. the right of TME to execute the Works, or any part thereof, on, over, under, in or through any land,
  - c. damage to property which is the unavoidable result of the execution and completion of the Works, or remedying of any defects therein, in accordance with the Agreement,
  - d. death of or injury to persons or loss of or damage to property resulting from any act or neglect of TME, his agents, servants or other Contractors, not being employed by Contractor, or in respect of any claims, proceedings, damages, costs, charges and expenses in respect thereof or in relation thereto or, where the injury or damage was contributed to by Contractor, his servants or agents, such part of the said injury or damages as may be just and equitable having regard to the extent of responsibility of TME, his servants or agents or other Contractors for the injury or damage.
- 12.8 TME's risks are:
- a. war, hostilities (whether war be declared or not), invasion act of foreign enemies,
  - b. rebellion, revolution, insurrection, sabotage or military or usurped power, or civil war
  - c. ionising radiations, or contamination by radio-activity from any nuclear fuel, or from any nuclear waste from the combustion of nuclear fuel, radio-active toxic explosive, or other hazardous properties of any explosive nuclear assembly of nuclear component thereof,
  - d. pressure waves caused by aircraft or other devices travelling at sonic or supersonic speeds,
  - e. riot, commotion or disorder, unless solely restricted to employees of Contractor or of his subcontractors and arising from the conduct of the Works,
  - f. without limiting the foregoing or being limited thereby force majeure or any operation of the forces of nature or other circumstances (if not force majeure) beyond reasonable control of either of the parties hereto,
  - g. destruction, damage, injury or loss of life caused by the explosion or impact, whenever and wherever occurring, of any mine, bomb, shell, grenade, or other projectile, missile, ammunition, or explosive of war,
  - h. loss or damage due to the use or occupation by TME of any Section or part of the Works, except as may be provided for in the Agreement,
  - i. loss or damage due to the Design of the Works to the extent that such loss or damage is due to TME's decision as to the Design in respect of which Contractor has expressly disclaimed responsibility in writing within a reasonable time.

Contractor shall be under no liability in consequence of any of the risks referred to in this Sub-Clause, whether by way of indemnity or otherwise.

### 13. Insurance

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- 13.2 Contractor shall, at its own expense, procure and maintain during the performance of Contractor's obligations under this Agreement, as a minimum, Public Liability Insurance (Third Party Risks) to cover liabilities for claims and damages due to Contractor's fault or that of its personnel up to an amount of €2,500,000 (Say Two Million Five Hundred Thousand Euro) per occurrence. In all insurances required by Contractor under this Agreement or any other insurances, Contractor shall have the insurance policy extended to indemnify TME, its officers, directors, employees, agents or appointed representatives against claims made against them for which Contractor may be legally and/or contractually liable.
- 13.3 Contractor shall be responsible vis-à-vis TME that subcontractor shall be covered by the insurances set forth in section 13.2 hereinabove or shall take out and maintain similar such insurances for their acts and acts of their personnel, representatives and agents.
- 13.4 TME and Contractor agree that the insurance coverage described in Article 13 shall serve as primary coverage and is the minimum coverage required to be carried and maintained.
- 13.5 TME and Contractor shall render such assistance as necessary to each other in providing information and documentation needed for the pursuance of any insurance claim related to this Agreement.
- 13.6 The terms of coverage for the policies mentioned in Sub-Clause 13.3 hereinabove shall be evidenced by Certificates of Insurance to be furnished by Contractor on the request of TME.

#### **14. Agreement Price**

- 14.1 TME shall pay to Contractor the Agreement Price in consideration of Contractor's obligations pursuant to the Agreement.
- 14.2 The Agreement Price shall be as stated Section II of the Agreement. The Agreement Price shall form part of and be construed with these conditions subject to the provisions hereof and shall when paid be in full satisfaction of Contractor's entitlement pursuant to the Agreement.
- 14.3 Without prejudice to any other right or remedy under the Agreement if there is delay in payment by TME to Contractor of any sums payable pursuant to the Agreement, TME shall pay interest to Contractor at the rate per annum specified in Section II of the Agreement calculated on a Day to Day basis
- 14.4 Where there is any adjustment to the Agreement Price pursuant to the provisions hereof the sum to be ascertained by way of addition or deduction shall make due allowance for overhead and profit of Contractor and Contractor shall provide to TME such supporting information as is reasonable.
- 14.5 The parties acknowledge that the Agreement Price represents the fair and proper price and that the Agreement provisions to adjust the Agreement Price including (without limiting the scope of such provisions) for Variations, escalation formulae, currency exchange clause as applicable are to maintain the Agreement Price as a fair and proper price for the carrying out and completion of the Agreement in accordance with actual trends of costs and/or currencies to avoid undue loss or profits to either party as a consequence of circumstances affecting the carrying out and completion of the Agreement.

#### **15. Payment**

- 15.1 The Agreement Price shall be paid by TME to Contractor in instalments at the times and in the manner provided for in Section II of the Agreement. The terms of payment shall form part of and be construed with these conditions.



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- 15.2 When the Agreement Price is expressed in any particular currency then unless the parties otherwise agree, payment shall be made in that currency at the place stipulated by Contractor and where there is more than one currency the Agreement Price shall be paid in such currency of Contractor's choice at the place stipulated in Section II of the Agreement.
- 15.3 Before payment of the final amount outstanding to Contractor, Contractor shall submit a final account to TME for the sole purpose of determining and approving final payment to Contractor. The final account shall, if so permitted in Section III of this Agreement, detail the final quantity of billable units of work performed by Contractor and the valuation of the performed unit in accordance with the Agreement

## **16. Taxes and Duties**

- 16.1 Except as in section 12.14 above and as otherwise specifically provided in the Agreement, Contractor shall bear and pay all taxes, duties, levies and charges assessed on Contractor, its subcontractors or their employees by all local, state or national government authorities in connection with the Works in and outside the country where the Site is located.
- 16.2 Notwithstanding section 16.1 above, TME shall bear and promptly pay or reimburse all customs and import duties imposed by the law of the country where the Site is located on materials, Plant and goods to be incorporated into the Works and on Contractor's Equipment.
- 16.3 If any tax exemptions, reductions, allowances or privileges are available in the country where the Site is located, TME shall use its best endeavours to enable Contractor to benefit from any such tax savings to the maximum allowable extent.
- 16.4 For the purpose of the Agreement it is agreed that the Agreement Price is based on the taxes, duties, levies and charges (hereinafter called "tax" in this Article 16) prevailing 28 (twenty-eight) Days prior to the date of the signing of the Agreement. If any of the rates of tax is increased or decreased or a new tax is introduced or an existing tax abolished or any change in interpretation or application of any tax occurs in the course of the performance of the Agreement, which was or is to be assessed on Contractor, subcontractors or their employees in connection with the execution of the Agreement, an equitable adjustment of the Agreement Price shall be made to reflect any such change by addition to the Agreement Price or deduction therefrom as the case may be.

## **17. Discharge of Obligations Warranties**

- 17.1 Contractor undertakes that upon the date stated in the Taking-Over Certificate the Works will have been completed in accordance with the Agreement and that during the Defects Liability Period Contractor will remedy any defects which are the responsibility of Contractor pursuant to its obligations hereunder and otherwise fulfil its obligations.
- 17.2 Contractor further undertakes that insofar as Contractor is able, where Contractor has a benefit of any warranty in respect of any Plant, which will continue after completion of the Works, Contractor will at the end of the Defects Liability Period (and when no work or services remain outstanding which Contractor requires to be carried out or performed) transfer the benefit thereof to TME.
- 17.3 When Contractor has completed all Works and services pursuant to Article 9.5 above then apart from the obligation to transfer pursuant to section 17.2 above and the liability of Contractor pursuant to section 17.1 above and matters involving third parties arising during the execution of the Works, Contractor shall be under no further liability to TME pursuant to the Agreement.



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## 18. Contractor's Default

- 18.1 If Contractor is deemed by law unable to pay his debts as they fall due, or enters into voluntary or involuntary bankruptcy, liquidation or dissolution (other than a voluntary liquidation for the purpose of amalgamation or reconstruction) or becomes insolvent, or makes an arrangement with, or assignment in favour of, his creditors, or agrees to carry out the Agreement under a committee of inspection of his creditors, or if a receiver, administrator, trustee or liquidator is appointed over any substantial part of his assets, or if, under any law or regulation relating to reorganization, arrangement or readjustment of debts, proceedings are commenced against Contractor or resolutions passed in connection with dissolution or liquidation or if any steps are taken to enforce any security interest over a substantial part of the assets of Contractor, or if any act is done or event occurs with respect to Contractor or his assets which, under any applicable law has a substantially similar effect to any of the foregoing acts or events, or has an execution levied on his goods (not remedied within 28 <twenty-eight> Days)
- or if Contractor
- a. has without lawful justification abandoned the Agreement, or
  - b. without reasonable excuse fails to commence the Works in accordance with Clause 9 or to proceed with the Works, with due diligence, within 28 (twenty-eight) Days after receiving notice to that effect from TME, or
  - c. following previous warning from TME, in writing, otherwise persistently neglects without reasonable excuse to carry out its obligations under the Agreement,
- then TME may, after giving 28 (twenty-eight) Days' notice to Contractor, enter upon the Site and the Works and terminate the employment of Contractor without thereby releasing Contractor from any of his obligations or liabilities under the Agreement, or affecting the rights and authorities conferred on TME by the Agreement, and may himself complete the Works or may employ any other Contractor to complete the Works. TME or such other Contractor may use for such completion so much of Contractor's Equipment, temporary works and materials as he or they may think proper.
- 18.2 Contractor shall, within 56 (fifty-six) Days after any such entry and insofar as is practicable after such investigation or enquiries as is proper to make or institute issue a statement to TME stating
- a. the amount (if any) at the time of such entry and termination, reasonably earned by or which would reasonably accrue to Contractor in respect of work then actually done and services provided by him under the Agreement, and
  - b. the value of any of the said unused or partially used materials and Plant and Contractor's Equipment.
- 18.3 If TME terminates Contractor's employment under this Clause, he shall not be liable to pay to Contractor any further amounts (including any damages) in respect of the Agreement until the costs of design, execution, completion and remedying of any defects, damages for delay in completion pursuant to section 10 above (if any) and all other expenses reasonable and properly incurred by TME to complete the Works have been finally established. Contractor shall be entitled to receive such sums (if any) as would have been payable to him. If such amount exceeds the sum which would have been payable to Contractor on due completion by him then Contractor shall, upon demand, pay to TME the amount of such excess and it shall be deemed a debt due by Contractor to TME and shall be recoverable accordingly.
- 18.4 Unless prohibited by law, Contractor shall, if requested by TME, within 14 (fourteen) Days of such entry determination referred to in section 18.1 assign to TME the benefit of any agreement for the supply of any goods or materials or services and/or for the execution of any work for the purposes



of the Agreement, which Contractor may have entered into upon due credit being given by TME to Contractor for the cost thereof with such indemnity and/or security to Contractor as may be reasonable.

- 18.5 If, by reason or any accident, or failure, or other event occurring to, in, or in connection with the Works, or any part thereof, either during the execution of the Works, or during the Defects Liability Period, any remedial or other work is urgently necessary for the safety of the Works and Contractor is unable or unwilling within the time necessary having regard to circumstances to do such work, TME shall be entitled to carry out such work. If the Work or repair so done by TME is work which Contractor was liable to do at his own cost under the Agreement, then the cost thereof or so much as is reasonable shall, after consultation between TME and Contractor, be recoverable from Contractor by TME, and may be deducted by TME from any monies due or to become due to Contractor, provided that TME shall, as soon after the occurrence of any such emergency as may be reasonably practicable, notify Contractor thereof.

### **19. TME's Default**

- 19.1 In the event of TME
- a. failing to pay to Contractor the amount due within 28 (twenty-eight) Days after the expiry of the time within which payment is to be made, subject to any deduction that TME is entitled to make under the Agreement, or
  - b. without reasonable excuse following previous warning from Contractor otherwise persistently neglects to carry out its obligations under the Agreement, or
  - c. becoming bankrupt or, being a company, if liquidation is initiated, other than for the purpose of a scheme of reconstruction or amalgamation,

Contractor shall notwithstanding the provisions of section 19.4 be entitled to terminate his employment under the Agreement by giving notice to TME. Such termination shall take effect 14 (fourteen) Days after the giving of the notice.

- 19.2 Upon the expiry of the 14 (fourteen) Days' notice referred to section 19.1 Contractor shall, with all reasonable dispatch, remove from the Site all Contractor's Equipment brought by him thereon and shall give similar facilities to his subcontractors to do so.
- 19.3 In the event of such termination TME shall be under the same obligations to Contractor in regard to payment as if the Agreement had been terminated under the provisions of section 22, but, in addition to the payments specified in section 22.4, TME shall pay to Contractor the amount of any loss or damage to Contractor arising out of or in connection with or by consequence of such termination.
- 19.4 Without prejudice to Contractor's entitlement to any interest and to terminate under section 19.1, Contractor may, if TME fails to pay Contractor any amount due within 14 (fourteen) days, subject to any deduction that TME is entitled to make under the Agreement, after giving 7 (seven) Days' prior notice to TME, suspend work, services and other activities. If Contractor suspends work, services or other activities or reduces the rate of work, services or other activities in accordance with the provisions of this Clause and thereby suffers delay or incurs cost, Contractor shall be entitled to an extension of time for delay to the completion of the Works arising as a consequence thereof and TME shall be liable to Contractor for an addition to the Agreement Price in respect thereof for additional cost and expense.
- 19.5 Where Contractor suspends work, services or other activities or reduces the rate of work services or other activities, having given notice in accordance with section 19.4 and TME subsequently pays the amount due including any interest, Contractor's entitlement under section 19.1 shall, if





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notice of termination has not been given, lapse and Contractor shall resume normal working as soon as is reasonable possible but without prejudice to Contractor's rights in respect of any future breach.

## **20. Intellectual Property/Copyright**

- 20.1 On the date stated in the Taking-Over Certificate Contractor will be deemed to grant to TME and his successors title to the Works without further fee a non-exclusive right to utilise patents, know-how and other industrial property incorporated or utilised in the Works for the purpose envisaged by the Agreement provided or procured by Contractor, provided that when the incorporated patents, know-how or other intellectual property have been derived from or procured by TME (other than pursuant to the Agreement) the same shall as between TME and Contractor be the property of TME to the extent so derived or procured.
- 20.2 Copyright in all drawings, documents and data and other information, provided to TME by or on behalf of Contractor hereunder shall, as between TME and Contractor be vested in Contractor.

## **21. Confidentiality**

- 21.1 TME and Contractor shall keep confidential and shall not, without the written consent of the other party hereto, divulge to any third party or use any Drawings, documents, data or other information furnished directly or indirectly by the other party hereto in connection with the Agreement whether such information has been furnished prior to, during or following termination of the Agreement. Notwithstanding the above, the parties may each utilise and disclose such documents, data and other information it receives from the other to the extent required for the purposes of the Agreement and to make use of the Works.
- 21.2 The obligation of a party under section 21.1 above shall not apply to Drawings, documents, data or other information which:
- a. now or hereafter enters the public domain through no fault of that party,
  - b. can be proved to have been in the possession of that party at the time of disclosure and which was not previously obtained, directly or indirectly, from the other party hereto, or
  - c. otherwise lawfully becomes available to that party from a third party under no obligation of confidentiality.

## **22. Termination including Termination at TME's Convenience**

- 22.1 If, during the currency of the Agreement, there is an outbreak of war, whether war is declared or not, in any part of the world which, whether financially or otherwise, materially affects the Works, Contractor shall, unless and until the Agreement is terminated under the provisions of this Clause, continue to use all reasonable endeavours to complete the Works. Provided that either party shall be entitled, at any time after such outbreak of war, to terminate the Agreement by giving notice to the other party and, upon such notice being given, the Agreement shall, except as to the rights of the parties under this Clause and to the operation of Clause 19, terminate, but without prejudice to the rights of either party in respect of any antecedent breach thereof.
- 22.2 TME shall be entitled to terminate the Agreement at any time for TME's convenience after giving 56 (fifty-six) Days prior notice to Contractor and the provisions of section 22.4 shall apply.
- 22.3 If:
- a. the Agreement terminates or is terminated as a consequence of any circumstances outside the control of a party or which arises after the Agreement has been entered into which renders it impossible or unlawful for either party fulfil its contractual obligations, or





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- b. under the law governing the Agreement the parties are released from further performance, or
- c. TME gives notice to Contractor that for unforeseen reasons, due to economic dislocation, it is impossible for TME to continue to meet his contractual obligations

then the sum(s) payable by TME to Contractor in respect of services provided and work executed shall be in accordance with Sub-Clause 22.4 below.

22.4 If the Agreement terminates or is terminated as under any of the provisions of section 22.1 to 22.3 inclusive, Contractor shall be paid by TME, insofar as such amounts or items have not already been covered by payments on account made to Contractor, for all work done and services provided by Contractor including overheads and profit prior to the date of termination and upon request by Contractor in addition, without limiting the foregoing:

- a. the cost of materials, Plant, Contractor's Equipment or goods reasonably ordered for the Works which have been delivered to Contractor or of which Contractor is legally liable to accept delivery, such materials, Plant, Contractor's Equipment or goods becoming the property of TME upon such payments being made by him,
- b. a sum being the amount of any expenditure reasonably incurred by Contractor in the expectation of completing the whole of the Works insofar as such expenditure has not been covered by any other payments referred to in this Clause,
- c. any additional sum in relation to the provisions of Sub-Clauses 12.8 and 12.9,
- d. such proportion of the cost as may be reasonable, taking into account payments made or to be made for services provided and work executed, of removal of Contractor's Equipment under Sub-Clause 22.2 and, if required by Contractor, return thereof to Contractor's main yard in his country of registration or to order destination, at no greater cost,
- e. the reasonable cost of repatriation of all Contractor's staff and workmen employed on or in connection with the Works at the time of such termination

provided that against any payment due from TME under this Clause, TME shall be entitled to be credited with any outstanding balances due from Contractor for advances in respect of Contractor's Equipment, materials and Plant and any other sums which, at the date of termination, were recoverable by TME from Contractor under the terms of the Agreement. Any sums payable under this Clause shall, after consultation by Contractor with TME as far as practicable, be determined by Contractor who shall notify TME accordingly.

22.5 If the Agreement is terminated under the provisions of Sub-Clause 22.1, Contractor shall so far as he is reasonably able, with all reasonable dispatch, remove from the Site all Contractor's Equipment and shall give similar facilities to his subcontractors to do so.

### **23. Settlement of Disputes**

22.6 This Agreement shall exclusively be governed construed, interpreted and applied in accordance with the laws of Abu Dhabi and the U.A.E..

22.7 All disputes arising in connection with the Agreement shall be finally settled by the competent civil court in Abu Dhabi, the United Arab Emirates in accordance with the rules of the Abu Dhabi Commercial Conciliation and Arbitration Center at the Abu Dhabi Chamber of Commerce and Industry. The arbitration proceedings shall be conducted in the English language.

22.8 Unless expressly permitted in writing by TME, Consultant shall not for reason of disputes and/or proceedings delay or suspend the execution of the work.



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**24. Change of Law**

24.1. If, after the date 28 (twenty-eight) Days prior to the date of the signing of the Agreement there occur in the country in which the Works are being or are to be executed changes to any National or State Statute, Ordinance, Decree or other Law or any regulation or by-law of any local or other duly constituted authority, or the introduction of any such State Statute, Ordinance, Decree, Law, regulation or by-law which causes additional or reduced cost to Contractor in the execution of the Agreement, such additional or reduced cost shall after consultation with TME and Contractor, be added to or deducted from the Agreement Price and Contractor shall be entitled to an extension of time for delay arising as a consequence to completion of the Works.

**25. General**

25.1. TME shall not without the prior consent of Contractor assign the Agreement or any part thereof, or any benefit or interest therein or thereunder.

25.2. Contractor shall not, without the prior consent of TME assign the Agreement or any part thereof, or any benefit or interest or thereunder, otherwise than by:

- a. a charge in favour of Contractor's bankers of any monies due or to become due under the Agreement, or
- b. assignment to Contractor's insurers including credit insurers (in cases where the insurers have discharged Contractor's loss or liability) of Contractor's right to obtain relief against any other party liable.

25.3. Subject to TME's approval which shall not be unreasonably withheld Contractor may subcontract the whole or any part or parts of the design and execution of the Works.

**26. Vendor Declaration.**

26.1 Contractor confirms, by signature to this Agreement, that it has endorsed the Vendor declaration required by Bilfinger SE and all its group companies and will abide by Declaration

**27. Entire Agreement**

27.1. This Agreement embodies the entire Agreement between Company and Contractor with respect to Works. Parties shall not be bound by or be liable for any statement, representation, promise, inducement or understanding of any kind or nature not set forth herein. No changes, amendments or modifications of the terms or conditions of the Agreement shall be valid unless reduced to writing and signed by both Parties

**28. Survival**

28.1. **The** provisions of this Agreement which by their nature are intended to survive the termination, cancellation, completion or expiration of this Agreement shall continue as valid and enforceable obligations of the parties notwithstanding any such termination, cancellation, completion or expiration.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement in duplicate, intending each duplicate to serve as an original, on the day and year below written, but effective as of the day and year first set forth above.