

# HITACHI ENERGY GENERAL TERMS AND CONDITIONS FOR PURCHASE OF GOODS AND/OR SERVICES (2022-04 NEW ZEALAND)

**FOR:** Hitachi Energy New Zealand Limited (NZBN 9429 047 346 833) ('Hitachi Energy') purchases Goods and/or Services on these General Terms and Conditions (the "Contract") unless otherwise expressly agreed in writing by Hitachi Energy New Zealand Limited.

## 1. DEFINITIONS AND INTERPRETATION

1.1 The following terms have the following meanings:

**"Affiliate"** means any entity which directly or indirectly controls, is controlled by, or is under common Control with a Party;

**"Anti-Slavery Policy"** means those parts of the Customer's Supplier Code of Conduct and other Customer policies or guidelines which relate to slavery and/or human trafficking, as amended by the Customer from time to time and provided to the Supplier or made available online at [www.hitachienergy.com/integrity](http://www.hitachienergy.com/integrity);

**"Completion"** means when all Goods and Services to be provided by the Supplier in accordance with the Contract have been provided;

**"Contract"** means a written agreement and/or the Order for the purchase of Goods and/or Services by the Customer from Supplier, including any other documents submitted by the Customer to form part thereof, such as, but without limitation to, any specifications;

**"Control"** means in relation to a person, the power (whether direct or indirect) to direct or cause the direction of its affairs, whether by means of holding shares, possessing voting power, exercising contractual powers or otherwise;

**"Customer"** means Hitachi Energy New Zealand Limited, as the party ordering Goods and/or Services from the Supplier;

**"Customer Data"** means any data or information, including Personal Data, acquired by the Supplier in preparation of or during the fulfilment of the Contract, irrespective of whether such data or information relates to the Customer, its Affiliates or their respective customers or suppliers;

**"Delivery"** means the delivery of Goods by the Supplier in accordance with clause 5.1;

**"Delivery Location"** means the Customer's nominated warehouse, factory or other premises for physical delivery of Goods and/or Services, which may be the premises of one of the Customer's Affiliates (including such location as may be listed in any relevant price list) or third party freight or logistics providers, or if no location is nominated, the Customer's place of business;

**"Embedded Software"** means the software necessary for operation of Goods, and embedded in and delivered by the Supplier as an integral part of Goods;

**"Environmental Performance Requirements"** means those characteristics of the purchased Goods (or any part of those Goods) that need to be present to ensure environmentally safe functioning in the intended application. They include meeting any mandatory external standards (such as Australian Standards and/or regulatory requirements e. g. energy efficiency) and any other standards specified in the Contract. For Services, they include ensuring that the Services are provided by suitably qualified personnel to a suitably accredited service standard.

**"Force Majeure"** means an event that prevents a Party from achieving any obligation under the Contract due to strikes, lockouts or other industrial unrest and disputes, riot, civil commotion, fire, flood, earthquake, drought, breakdowns, pandemic, epidemic or war;

**"Goods"** means the items to be delivered by the Supplier in accordance with the Contract and/or all materials, documents, or other deliverables which are the result of Services provided by the Supplier under the Contract in any form or media, including but without limitation to data, diagrams, drawings, reports and specifications;

**"Goods and Services Tax/GST"** means any tax, levy, charge or impost implemented under the Goods and Services Tax Act 1985 and subsequent amendments;

**"GTC"** means these Hitachi Energy General Terms and Conditions for Purchase of Goods and/or Services as may be amended from time to time;

**"Intellectual Property Rights"** means (i) patents, utility models, copyrights, database rights and rights in trademarks, trade names, designs, knowhow, and invention disclosures (whether registered or unregistered); (ii) applications, reissues, confirmations, renewals, extensions, divisions or continuations for any of these rights; and (iii) all other intellectual property rights and similar forms of worldwide protection;

**"Order"** means the Customer's formal purchase order issued to the Supplier for the purchase of Goods and/or Services, including any formal purchase order document issued electronically;

**"Party"** means the Customer or the Supplier, and collectively referred to as the "Parties";

**"Permitted Additional Recipients"** means the Supplier's auditors, counsels, consultants and advisors;

**"Personal Data"** means any data or information of an identified or identifiable natural person;

**"PPSA"** means the Personal Property Securities Act 1999;

**"Safety Performance Requirements"** means those characteristics of the purchased item that need to be present to ensure safe functioning in the intended application. They include meeting any mandatory standards or external standards (such as New Zealand Standards and/or regulatory requirements) and any other specifications applicable to the manufactured items that are necessary to guarantee the continued safe operation of the process in which they are used. For Services, they include ensuring that the Services are provided by suitably qualified personnel to a suitably accredited service standard;

**"Construction Contracts Act 2002"** means the applicable security of payment legislation in force (including any modifications, re-enactments or substitutions thereof) and relevant to the Order, such as the Construction Contracts Act 2002);

**"Services"** means the services to be provided by the Supplier in accordance with the Contract;

“Supplier” means the party providing the Goods and/or Services to the Customer (or any Customer Affiliate at the relevant Delivery Location); and

“Variation Order” means a change to the Order such as to alter, to amend, to omit, to add to, or otherwise to change the Order or any parts thereof.

- 1.2 References to “clauses” are references to clauses in the GTC.
- 1.3 Headings are for convenience only and do not affect the interpretation of the GTC.
- 1.4 Any words following the words “include”, “includes”, “including”, “in particular” or any similar words or expressions, will be construed without limitation and accordingly will not limit the meaning of the words preceding them.
- 1.5 Unless the context otherwise indicates, words used in the singular include the plural and vice versa.
- 1.6 A reference to all or any part of a law, regulation or standard includes that law, regulation or standard as amended, consolidated, re-enacted or replaced from time to time.
- 1.7 This Contract is not to be interpreted or construed against the interests of a Party merely because that party proposed or drafted this Contract or proposed or drafted a clause in this Contract.

## 2. APPLICATION

- 2.1 The GTC govern the Contract.
- 2.2 No terms or conditions delivered with or contained in the Supplier’s quotations, acknowledgements, acceptance, specifications or similar documents, will form part of the Contract, and the Supplier waives any right which it might have to rely on such terms or conditions.
- 2.3 The Supplier shall accept the Contract either expressly by written statement or impliedly by fulfilling the Contract in whole or in part.
- 2.4 Save as expressly noted otherwise in these GTC, any amendments to the Contract must be agreed in writing by the Parties.

## 3. SUPPLIER’S RESPONSIBILITIES

- 3.1 The Supplier shall deliver the Goods and provide the Services:
  - (i) in accordance with the applicable laws and regulations;
  - (ii) in accordance with the Contract and all Customer instructions;
  - (iii) free from defects and from any rights of third parties; and
  - (iv) fit for any particular purpose specified in the Contract or, in absence thereof, fit for the purposes for which such Goods and/or Services would ordinarily be used.
- 3.2 The Supplier shall ensure that the Goods are packed according to:
  - (i) industry standards and any applicable laws and regulations;
  - (ii) in a manner adequate to preserve and protect the Goods; and

- (iii) sufficient to enable safe unloading and inspection at the relevant Delivery Location. Damage to any Goods, material or equipment resulting from improper packing shall be paid by the Supplier.

- 3.3 When the Customer (or a Customer Affiliate at the relevant Delivery Location) identifies quality related issues on the part of the Supplier, the Customer (or the relevant Customer Affiliate) will notify the Supplier thereof. Notwithstanding other remedies available to the Customer under the Contract, the Customer may instruct the Supplier to undertake, at the Supplier’s risk and expense, an analysis into the root cause(s) of the quality related issues. The Supplier must begin to undertake such analysis and provide a written report to the Customer within ten (10) calendar days of the notification of the quality related issue(s). The Customer reserves the right to audit the Supplier (either by the Customer’s nominated personnel, appointed third party experts, or the Customer’s staff), as a result of the root cause analysis or where the Supplier fails to comply with this clause 3.3. The Supplier must proactively advise the Customer if it becomes aware of any quality related issues that may affect the Goods and/or Services, and the provisions of this clause 3.3 shall apply as if the issue had been notified by the Customer.
- 3.4 The Supplier must notify the Customer of all “hazardous materials” (as that term is defined in applicable laws and regulations) which are contained in the Goods.
- 3.5 The Supplier shall provide the Customer with copies of all applicable “material safety data sheets” for, or relevant to, the Goods, no later than the shipment date stated in the Order.
- 3.6 The Customer may issue Variation Orders to the Supplier at any time before the Delivery of the Goods or Completion of the Services. The Supplier shall promptly carry out such Variation Orders. If any Variation Order causes an increase or decrease in the cost of, or the time required for the performance of the Services or Delivery of the Goods, an equitable adjustment shall be made to the Order price or Delivery schedule (or both), in writing. Any claim made by the Supplier for an adjustment under this clause 3.6 will be deemed waived unless asserted in writing within thirty (30) calendar days from the Supplier’s receipt of the Variation Order. Variation Orders requested by the Supplier only become effective after written confirmation by the Customer. Alternatively, the Customer may request that the Supplier provides a quotation for a variation prior to issuing a Variation Order. As soon as possible after receipt of a request for a variation, the Supplier shall notify the Customer in writing, stating:
  - (i) how the variation will be carried out;
  - (ii) the resulting alteration to the Order price (if any);
  - (iii) the resulting alteration to the time for Completion or Delivery (if any); and
  - (iv) any other relevant information. The Supplier shall not commence work on any variation until it has received a Variation Order from the Customer instructing the variation.
- 3.7 The Supplier must not suspend or delay the Delivery of any Goods or the provision of any Services, unless required, by written notice from the Customer to do so.

**3.8** To the fullest extent permitted by law, the Supplier assumes full and exclusive responsibility for any occupational accident or disease occurring to its employees and its subcontractors in relation to the Delivery of the Goods and/or provision of Services.

**3.9** To the maximum extent permitted by law, the Supplier is solely and exclusively responsible for any claims and/or lawsuits filed by its employees and/or subcontractors, and shall, without any limitations, defend, indemnify and hold the Customer (and any relevant Customer Affiliate) harmless from and against any claim, proceeding, action, fine, loss, cost, damages and expenses arising out of or relating to any such claims and/or lawsuits, and any non-compliance with legislation, regulations, codes of practice, guidance and other requirements of any relevant government or governmental agency applicable to the Supplier, its employees or subcontractors. The Supplier undertakes to appear in court at its own cost if requested by the Customer, acknowledging its status as sole and exclusive employer, and to provide the Customer (and any relevant Customer Affiliate) with all requested documentation and information necessary to ensure proper legal defence of the Customer or its Affiliates in court. Nothing in this clause 3.9 seeks to restrict or exclude the Customer's liability for matters which it cannot restrict or exclude in law.

**3.10** The Customer is authorised to make any payments due to the Supplier's employees and any subcontractors performing Services, or providing Goods under the Contract, in order to avoid lawsuits, liens or encumbrances. Such payments may be made through withholding Supplier's credits, offsetting or in any other way. The Supplier shall provide any support requested by the Customer with regard to such payments and indemnify the Customer for any payments made.

(i) If the Customer consents to the Supplier subcontracting any or all of the Supplier's obligations in accordance with clause 16, the Supplier must ensure that any subcontract conditions of contract and payment obligations are compatible with this Contract.

(ii) If the Construction Contracts Act applies, the Supplier must ensure that upon becoming aware that a subcontractor is entitled to suspend work in accordance with the Construction Contracts Act, immediately give the Customer a copy of any written communication of whatever nature in relation to the Construction Contracts Act which the Supplier receives from a subcontractor.

(iii) The Supplier indemnifies the Customer and its Affiliates against from and against any claim, proceeding, action, fine, loss, cost, damages and expenses arising out of:

(a) a suspension under the Construction Contracts Act by the Supplier's subcontractor(s) of all or any part of the provision of Services or Delivery of Goods; or

(b) the Supplier's breach of clause 3.10.

**3.11** Where it is necessary for the Supplier to enter the Customer's premises, the Supplier will need to complete

the necessary occupational health and safety and security on site inductions before commencing work.

**3.12** The Supplier must, in delivering the Goods to the Delivery Location and performing the Services:

(i) use its best efforts not to interfere with any of the Customer's activities, or the activities of any other person, on the Delivery Location; and

(ii) be aware of, comply with, and ensure that the Supplier's personnel comply with:

(a) all applicable laws regulations and industrial awards and agreements, including all applicable safety, health and environment laws and regulations;

(b) all safety, health and environment guidelines, rules and procedures applicable to the Delivery Location or specified in the Contract;

(c) all directions and orders given by the Customer's representatives; and

(d) ensure that the Delivery Location is left secure, clean, orderly and fit for immediate use.

## 4. PAYMENT, INVOICING

**4.1** Subject to the Supplier providing an unconditional undertaking in the form approved by the Customer, and given by an approved financial institution, as security to the value specified in the Order within fourteen (14) calendar days of the date of the Order, in consideration of the Goods delivered and/or the Services provided by the Supplier in accordance with the Contract, the Customer shall pay to Supplier the Order price stated in the Contract provided the invoice fulfils the requirements defined in the Contract.

**4.2** Unless otherwise stated, all prices specified in the Order under this Contract are in New Zealand currency, fixed and not subject to escalation.

**4.3** Unless the Contract provides otherwise, the price is inclusive of:

(i) all charges for packaging, packing, insurance and Delivery of the Goods in accordance with the Contract;

(ii) the cost of the Services and any items used or supplied in conjunction with the Services; and

(iii) all taxes except GST.

**4.4** The Supplier shall submit invoices in an auditable form, complying with applicable laws, generally accepted accounting principles and the specific the Customer requirements, containing the following minimum information:

(i) Supplier name, address and reference person including contact details;

(ii) invoice date; invoice number;

(iii) Order number and Supplier number;

(iv) address of the Customer; quantity; specification of Goods and/or Services;

(v) price (total amount invoiced);

(vi) currency; tax or GST amount; tax or GST number; Authorised Economic Operator and/or Approved

Exporter Authorisation number and/or other customs identification number, if applicable; and

(vii) payment terms as agreed.

**4.5** Invoices must be sent to the billing address specified in the Order, and:

(i) unless the Contract states that progress payments are to be made, Supplier must, where all requirements under the Contract have been met, invoice Customer upon delivery of the Goods and/or upon completion of the Services; and

(ii) where progress or milestone payments are to be made, the Supplier must invoice the Customer at the end of each calendar month (or other period specified in the Contract) for Goods delivered and/or Services performed or milestones achieved by the Supplier in that month or that period (as the case may be).

**4.6** When submitting an invoice under clause 4, the Supplier must provide the Customer with all relevant records to enable the Customer to calculate and/or verify the amount of the invoice together with the valid Order number.

**4.7** The Customer will pay all invoices rendered to it under clause 4.5 (i) or 4.5 (ii), in accordance with the payment terms agreed in the Contract, except where the Customer:

(i) exercises its right to retain part of the price pursuant to clauses 4.11 and 12.4; or

(ii) disputes the invoice, in which case:

- a) the Customer will pay the undisputed part of the relevant invoice (if any) and dispute the balance; and
- b) if the resolution of the dispute determines that the Customer is to pay an amount to the Supplier, the Customer will pay that amount as soon as practicable after resolution of that dispute.

**4.8** Invoices from the Supplier to the Customer must be either posted or emailed to the following addresses.

Post: Hitachi Energy New Zealand Ltd  
PO Box 11690  
Ellerslie, Auckland 1542, New Zealand

Email: [NZAPG@eportal.doc.com](mailto:NZAPG@eportal.doc.com)

*(Note – this email address is not to be used for reciprocal communication and is for the receiving of invoices only.)*

Invoices sent by email are to be sent each separately as an attachment in PDF or TIFF format, using the correct layout (e. g. portrait invoices must be sent in portrait layout). Any support documentation to an invoice must be included within the same PDF or TIFF document that contains the invoice.

The Customer cannot accept more than one invoice containing the same invoice number. Invoices submitted to the Customer containing the same invoice number as previous invoices submitted may be returned to the Supplier, resulting in possible payment delay.

**4.9** The Customer will reimburse the Supplier for expenses only at cost and to the extent agreed in writing in advance of the expense being incurred.

**4.10** Services charged on the basis of hourly rates require written confirmation of the Supplier's timesheets by the Customer. The Supplier shall submit such time sheets to for confirmation as may be instructed by the Customer but a the latest together with any related invoice. Confirmation of timesheets cannot be construed as acknowledgement of any claims. The Customer is not obliged to pay invoices based on time sheets which are not confirmed by the Customer in writing.

**4.11** The Customer reserves the right to set off or withhold payment for Goods and/or Services not provided in accordance with the Contract or retain part payment where the Supplier has failed to provide security under clause 4.1.

## 5. DELIVERY, PERFORMANCE OF SERVICES

**5.1** Unless agreed otherwise in the Contract, the Goods shall be delivered in accordance with INCOTERMS 2020 FCA, to the Delivery Location, if no such place has been defined, to the Customer's place of business.

**5.2** Where the Customer is to provide cranes, lifting equipment, measuring and testing instruments and/or equipment for transport on the site, the Supplier shall specify in writing its requirements concerning such cranes, lifting equipment, measuring and testing instruments and equipment, at the latest five weeks before the agreed dates for starting the Services which are to be carried out on site.

**5.3** The Supplier shall by the date specified in the Contract, or if no date is specified in good time, provide free of charge information and drawings showing the manner in which the Goods are to be installed and commissioned, together with all information required for preparing suitable foundations, for providing access for the Goods and any necessary equipment to the site, and for making all necessary connections to the Goods and/or Services.

**5.4** The Supplier shall, not later than the date of Delivery, provide free of charge, all information and drawings which are necessary to permit the Customer to operate and maintain the Goods, such information and drawings are to be supplied in the number of copies agreed upon or if no agreement at least one copy of each.

**5.5** The Services shall be provided at the Delivery Location, if no such place has been specified, at the Customer's place of business.

**5.6** The Supplier shall provide no later than at the time of acceptance of the Contract the following minimum information: number of packages and contents, the customs tariff numbers of the country of consignment, and the countries of origin for all Goods. For controlled Goods, the relevant national export control numbers must be indicated and, if the Goods and/or Services are subject to U.S. export regulations, the U.S. Export Control Classification Numbers (ECCN) or classification numbers of the International Traffic in Arms Regulations (ITAR) must be specified. Proofs of preferential origin as well as conformity declarations and marks of the country of



consignment or destination are to be submitted without being requested with certificates of origin being provided upon request. The supplier shall state the Order number on all invoices (in particular but not limited to commercial, pro forma or customs invoices).

- 5.7** The Goods shall be delivered, and Services shall be provided during the Customer's business hours (or those of the requested Delivery Location) unless otherwise requested by the Customer.
- 5.8** Upon Delivery, the Supplier (or its appointed carrier) shall provide the Customer with a delivery note and any other required export and import documents not mentioned in clause 5.6. If the Customer has approved partial delivery, such delivery note shall also include the outstanding balance.
- 5.9** Ownership of the Goods passes to the Customer on Delivery. To the extent that the Goods contain Embedded Software, ownership of such Embedded Software will not pass to the Customer, but the Supplier shall grant, or as applicable shall procure that the third party owner grants, the Customer and all users a worldwide, irrevocable, perpetual, transferable, non-exclusive, royalty-free right to use the Embedded Software as an integral part of such Goods and/or for servicing either of them.

## **5.10 Shipping**

The Supplier agrees that:

- (i)** A full set of documents are to be rendered for each shipment and forwarded only to the Customer on the day of shipment. Bills of lading must be forwarded under separate registered mail. All invoices and shipping documents must show the Order number as set out herein;
- (ii)** Any loss of profits, bonding or wharf charges or consequential damages arising from not adhering to these and the following requirements shall be payable by the Supplier; and
- (iii)** For domestic shipments or deliveries, invoices (original only), delivery dockets and/or shipping specifications (in triplicate) are required. For foreign shipments, customs invoices, bill of lading and shipping specifications all in quadruplicate, the whole properly completed and certified in accordance with New Zealand customs regulations.

## **6. ACCEPTANCE**

- 6.1** Delivery of Goods or provision of the Services may not be deemed acceptance of such Goods or Services by the Customer. The Customer (or its nominated Affiliate at the Delivery Location) shall have reasonable time to inspect or test the Goods and/or Services and to report any defects to the Supplier. If a defect in the Goods and/or Services was not reasonably detectable during the inspection, the Customer (or its nominated Affiliate at the Delivery Location) shall have reasonable time to provide notice of such defect after it has become apparent and/or to reject the Goods and/or Services.
- 6.2** The Parties may agree on a certain acceptance procedure, in which case acceptance will be subject to

the Customer's written acceptance statement. The Supplier shall inform the Customer in writing within a reasonable time period in advance when the Goods and/or Services are ready for acceptance.

- 6.3** The Customer may enforce any remedy defined in the Contract or available at law for any rejected Goods or Services.

## **7. DELAY**

- 7.1** If the Supplier anticipates that it will not be able to fulfil its obligations for Delivery of the Goods or the provision of the Services before or at the time for Delivery or Completion, it shall forthwith notify the Customer thereof in writing, stating the reason and the time when Delivery and/or Completion is expected. If the Supplier fails to give such notice, the Customer shall be entitled to compensation for any additional costs which it incurs and which it could have avoided had it received such notice.
- 7.2** If the Delivery of Goods or the provision of Services does not comply with the agreed date(s), the Customer may:
- (i)** terminate the Contract in whole or in part;
  - (ii)** refuse any subsequent delivery of the Goods or provision of the Services;
  - (iii)** recover from the Supplier any expenses reasonably incurred by the Customer in obtaining the Goods and/or Services in substitution from another supplier;
  - (iv)** claim damages for any cost, loss, expenses and liquidated damages incurred by the Customer which are attributable to Supplier's delay; and
  - (v)** claim liquidated damages as agreed in the Contract.
- 7.3** It is agreed that the Customer may select one or more of such remedies, and recovering costs or damages under any of the clauses 7.2(iii) to 7.2(v) shall not exclude the Customer from recovering other costs or damages under the other parts of this clause 7.

## **8. WARRANTY AND REMEDIES**

- 8.1** The Supplier warrants that the Goods and/or Services comply with the Contract, including but without limitation the Supplier's responsibilities as defined in clause 3.1.
- 8.2** The Supplier warrants that the Goods and/or Services meet the Safety Performance Requirements and Environmental Performance Requirements of the intended purpose.
- 8.3** The Supplier warrants that the Goods are new and unused at the date of Delivery and remain free from defects during the warranty period.
- 8.4** The warranty period for Goods and/or Services is twenty-four (24) months from Delivery or such other period as agreed between the Parties in writing.
- 8.5** In case of breach of any warranty which is not remedied within forty-eight (48) hours from the Customer's notification, or in case of any other breach of the Contract, the Customer is entitled to enforce any or more of the following remedies at its discretion and at Supplier's risk and expense:

- (i) to give the Supplier another opportunity to carry out any additional work necessary to ensure that the Contract is fulfilled, and/or to obtain prompt repair or replacement of the defective Goods and/or Services;
- (ii) to carry out (or to instruct a third party to carry out) any additional work necessary to make the Goods and/or Services comply with the Contract;
- (iii) to refuse any further Goods and/or Services;
- (iv) to claim such damages as may have been sustained by the Customer as a result of the Supplier's breach of the Contract;
- (v) to terminate the Contract; and in such event:
  - a) the Customer has no obligation to compensate the Supplier, including paying for the Goods and/or Services which have been rejected;
  - b) at the Customer's option, the Supplier shall pay back to the Customer any remuneration received from the Customer for the Goods and/or Services and take back the Goods at the Supplier's own cost and risk; and
  - c) the Customer may source equivalent replacement Goods and/or Services from an alternative supplier, with any incremental costs incurred in doing so being a debt due and payable by the Supplier.

- 8.6** In case of a breach of any warranty, the entire warranty period shall be restarted for the defective Goods/Services from the date the remediation is completed to the Customer's satisfaction.
- 8.7** The rights and remedies available to the Customer under the Contract are cumulative and are not exclusive of any rights or remedies available at law or in equity.

## 9. INTELLECTUAL PROPERTY RIGHTS

- 9.1** Subject to clause 9.2, the Supplier hereby grants the Customer and its Affiliates, or undertakes to procure that the Customer and its Affiliates are granted, a worldwide, irrevocable, transferable, sub-licensable, non-exclusive, royalty-free license to use the Intellectual Property Rights in the Goods, including Embedded Software, if any.
- 9.2** The Supplier herewith assigns to the Customer (or will assign to the Customer's nominated Affiliate) full ownership rights in any Intellectual Property Rights in the Goods resulting from the Services. The Supplier further agrees, upon the Customer's request and at its cost, to take all further steps necessary to perfect the Customer's ownership (or that of the Customer's nominated Affiliate) to the Intellectual Property Rights.
- 9.3** Intellectual Property Rights in any Goods created by or licensed to the Supplier prior to or outside a Contract (Pre-Existing IPR) will remain vested in the Supplier (or the third-party owner). To the extent that Pre-Existing IPR are embedded in any Goods resulting from the Services, the Supplier grants, or undertakes to procure that the third-party owner grants, the Customer and the Customer's Affiliates a worldwide, irrevocable, transferable, non-exclusive, royalty-free license to use

the Pre-Existing IPR as part of such Goods, including the right to improve, develop, market, distribute, sublicense or otherwise use such Pre-Existing IPR.

- 9.4** The Supplier must specify in writing and prior to Delivery all open-source software contained in or used by Embedded Software, if any, and request the Customer's written approval. The Supplier agrees to replace at its own cost any open-source software components rejected by the Customer with software of at least the same quality and functionality.
- 9.5** If any claim is made against the Customer (or any Customer Affiliate) that the Goods and/or Services infringe a third party's Intellectual Property Rights, the Supplier shall at its cost, but at the Customer's discretion:
- (i) procure for the Customer, the Customer's Affiliates and the Customer's clients, as the case may be, the right to continue using the Goods and/or Services;
  - (ii) modify the Goods and/or Services so they cease to be infringing; or
  - (iii) replace the Goods and/or Services by non-infringing equivalents.

Otherwise, the Customer is entitled to terminate the Contract and to reclaim all sums which it has paid to the Supplier thereunder.

## 10. COMPLIANCE, INTEGRITY

- 10.1** The Supplier shall provide the Goods and/or Services in compliance with all relevant laws, regulations, standards and codes of practice.
- 10.2** The Supplier and its subcontractors must comply with the Customer's 'List of Prohibited and Restricted Substances' and report to the Customer (and/or to the Customer's nominated Affiliate operating at the relevant Delivery Location) the substances contained in the Goods. The Supplier must also comply with the reporting and other requirements regarding 'Conflict Minerals' made available under [www.hitachienergy.com/about-us/supplying](http://www.hitachienergy.com/about-us/supplying) – **Material Compliance** or otherwise and shall provide the Customer with documents, certificates and statements as requested. Any statement made by the Supplier to the Customer (whether directly or indirectly) with regard to materials used for or in connection with the Goods and/or Services will be deemed to be a representation under the Contract.
- 10.3** The Supplier represents and warrants that it is and will remain fully compliant with all applicable trade and customs laws, regulations, instructions, and policies, including, but not limited to, satisfying all necessary clearance requirements, proofs of origin, export and import licenses and exemptions from, and making all proper filings with appropriate governmental bodies and/or disclosures relating to the provision of services, the release or transfer of goods, hardware, software and technology.
- 10.4** No material or equipment included in or used for the Goods and/or Services must originate from any company or country listed in any relevant embargo issued by the authority in the country where the Goods and/or Services will be used or an authority otherwise having influence over the equipment and material forming part of the

Goods and/or Services. If any of the Goods and/or Services are or will be subject to export restrictions, it is the Supplier's responsibility to promptly inform the Customer in writing of the particulars of such restrictions.

- 10.5** Each Party warrants that it will not, directly or indirectly, and that each has no knowledge that other persons will, directly or indirectly, make any payment, gift or other commitment to its customers, to government officials or to agents, directors and employees of each Party, or any other party in a manner contrary to applicable laws (including but not limited to the U. S. Foreign Corrupt Practices Act, the UK Bribery Act 2010 and, where applicable, legislation enacted by member states and signatories implementing the OECD Convention Combating Bribery of Foreign Officials), and shall comply with all relevant laws, regulations, ordinances and rules regarding bribery and corruption. Nothing in the Contract will render either Party or any of its Affiliates liable to reimburse the other for any such consideration given or promised.
- 10.6** The Supplier herewith acknowledges and confirms that the Supplier has received a copy of the Customer's 'Code of Conduct' and the Customer's 'Supplier Code of Conduct' or has been provided information on how to access both of the Customer's codes of conduct online under [www.hitachienergy.com/integrity](http://www.hitachienergy.com/integrity). The Supplier agrees to perform its contractual obligations in accordance with both of the Customer's codes of conduct.
- 10.7** The Customer has established reporting channels where Supplier and its employees may report suspected violations of applicable laws, policies or standards of conduct: Web portal: [www.hitachienergy.com/integrity](http://www.hitachienergy.com/integrity) – **Reporting Channels**; contact details specified on this web portal.
- 10.8** Any violation of an obligation contained in this clause 10 is a material breach of the Contract and entitles the other Party to terminate the Contract with immediate effect and without prejudice to any further rights or remedies available thereunder or at law. Notwithstanding anything to the contrary in the Contract, the Supplier shall, without any limitations, indemnify and hold harmless the Customer for all liabilities, damages, cost or expenses incurred as a result of any such violation and/or termination of the Contract, or arising from export restrictions concealed by the Supplier.
- 10.9** The Customer reserves the right for its representatives to carry out quality audits and investigations at the Supplier's or its sub-supplier's premises, at all reasonable times, in respect of any part of the Contract requirements.

## 11. CONFIDENTIALITY, DATA SECURITY, DATA PROTECTION

- 11.1** The Supplier shall keep in strict confidence all Customer Data and any other information concerning the Customer's or its Affiliates' business, their products and/or their technologies which the Supplier obtains in connection with the Goods and/or Services to be provided (whether before or after acceptance of the Contract). The Supplier shall restrict disclosure of such confidential

material to such of its employees, agents or subcontractors or other third parties as need to know the same for the purpose of the provision of the Goods and/or Services to the Customer. The Supplier shall ensure that such employees, agents, subcontractors or other third parties are subject to and comply with the same obligations of confidentiality as applicable to the Supplier and will be liable for any unauthorised disclosures.

- 11.2** The Supplier shall apply appropriate safeguards, adequate to the type of Customer Data to be protected, against the unauthorised access or disclosure of Customer Data and protect such Customer Data in accordance with the generally accepted standards of protection in the related industry, or in the same manner and to the same degree that it protects its own confidential and proprietary information – whichever standard is higher. The Supplier may disclose confidential information to Permitted Additional Recipients provided always that:
- (i) such information is disclosed on a strict need-to-know basis, and
  - (ii) such Permitted Additional Recipients sign with the Supplier a confidentiality agreement with terms substantially similar hereto or, where applicable, are required to comply with codes of professional conduct ensuring confidentiality of such information.

The Supplier shall comply with, and ensure that the Permitted Additional Recipients comply with, any security procedure, policy or standard provided to the Supplier by the Customer or any of its Affiliates from time to time, and in particular with the Customer's 'Cyber Security Requirements for Suppliers' as made available under [www.hitachienergy.com/about-us/supplying](http://www.hitachienergy.com/about-us/supplying) – **Supplier Cyber Security** or as otherwise set out in the Contract.

- 11.3** The Supplier must not:
- (i) use the Customer Data for any other purposes than for providing the Goods and/or Services;
  - (ii) reproduce the Customer Data in whole or in part in any form except as may be required by the Contract; or
  - (iii) disclose the Customer Data to any third party, except to Permitted Additional Recipients or with the prior written consent of the Customer.
- 11.4** The Supplier shall install and update at its own cost adequate virus protection software and operating system security patches for all computers and software utilised in connection with providing the Goods and/or Services.
- 11.5** The Supplier shall inform the Customer without delay about suspicion of breaches of data security or other serious incidents or irregularities regarding any Customer Data.
- 11.6** The Supplier agrees that the Customer may provide any information received from the Supplier to Affiliates of the Customer and to third parties.
- 11.7 Protection of Personal Data**
- If the Customer discloses Personal Data to the Supplier:
- (i) the Supplier shall comply with all applicable data protection laws and regulations;

- (ii) the Supplier shall apply appropriate physical, technical and organisational measures to ensure a level of security of Personal Data appropriate to the respective risk and the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services;
- (iii) the Supplier agrees that it will not withhold or delay its consent to any changes to this clause 11 which in the Customer's or its Affiliates' reasonable opinion are required to be made in order to comply with applicable data protection laws and regulations and/or with guidelines and advice from any competent supervisory authority, and agrees to implement any such changes at no additional cost to the Customer; and
- (iv) the Supplier acknowledges that the processing of Personal Data in accordance with the Contract may require the conclusion of additional data processing or data protection agreements with the Customer or its Affiliates. To the extent such additional agreements are not initially concluded as part of the Contract, the Supplier, its relevant Affiliates or subcontractors shall upon the Customer's request promptly enter into any such agreement(s), as designated by the Customer and as required by mandatory law or a competent data protection or other competent authority.

## 12. LIABILITY AND INDEMNITY

- 12.1** Without prejudice to applicable mandatory law, the Supplier shall, without any limitations, indemnify and hold harmless the Customer and the Customer's Affiliates, for all liabilities, damages, cost, losses or expenses incurred as a result of Supplier's breach of the Contract. The Supplier shall, without any limitations, indemnify and hold harmless the Customer and the Customer's Affiliates, for any claim made by a third party against the Customer in connection with the Goods and/or Services, including but without limitation to claims that such Goods and/or Services infringe a third party's Intellectual Property Rights. Upon the Customer's request, the Supplier shall defend the Customer and the Customer's Affiliates, against any third-party claims.
- 12.2** Notwithstanding anything else contained in the Contract or otherwise to the contrary, the Customer shall not be liable whether by way of indemnity, guarantee, or by reason of any breach of contract, or of statutory duty (to the fullest extent permitted at law) or by reason of tort (including but not limited to negligence) or any other legal principle or doctrine for any loss of profits, loss of use, loss of revenue or loss of anticipated savings, business interruption, loss of power, costs of capital or costs of replacement of power, increased costs of or loss of anticipated savings or for any financial or economic loss (whether direct or indirect) or for any consequential or indirect loss or damage whatsoever. The Customer's total liability under, arising out of or in connection with the Contract howsoever caused and under any legal theory or doctrine, shall never exceed the price paid by the Customer for the Goods and/or Services.

**12.3** The Supplier is responsible for the control and management of all of its employees, suppliers and/or subcontractors, and it is responsible for their acts or omissions as if they were the acts or omissions of the Supplier.

**12.4** The Customer reserves the right to set off any claims under a Contract against any amounts owed to the Supplier.

## 13. TERMINATION

**13.1** The Customer may terminate the Contract for convenience in whole or in part by giving the Supplier thirty (30) calendar days written notice. In such event the Customer shall pay to the Supplier the value of the delivered but unpaid Goods and/or Services and proven direct cost reasonably incurred by the Supplier for the undelivered Goods and/or Services, however in no event shall this exceed the price for the Goods and/or Services agreed under the Contract. No further compensation will be due to the Supplier.

**13.2** In the event of the Supplier's breach of the Contract, the Customer is entitled to terminate the Contract in accordance with clause 8.5.

**13.3** The Customer may terminate the Contract with immediate effect by notice in writing in the event that:

- (i) an interim order is applied for or made, or a voluntary arrangement approved, or a petition for a bankruptcy order is presented or a bankruptcy order is made against the Supplier;
- (ii) any circumstances arise which entitle the court or a creditor to appoint a receiver or administrator or to make a winding-up order;
- (iii) other similar or analogous action is taken against or by the Supplier by reason of its insolvency or in consequence of debt; or
- (iv) there is a change of Control of the Supplier.

**13.4** Upon termination the Supplier shall immediately and at the Supplier's expense return to the Customer all Customer or Customer Affiliate property (including any Customer Data, documentation, and transfer of Intellectual Property Rights) then under the Supplier's control and provide the Customer with the complete documentation about the delivered Goods and/or Services.

## 14. QUALIFYING CAUSE OF DELAY

**14.1** The Supplier shall be entitled to such extension of time for Delivery as the Customer, acting reasonably, assesses if Delivery is or will be delayed by a qualifying cause of delay, and the Supplier gives the Customer, within seven (7) calendar days of when the Supplier should reasonably have become aware of that causation occurring, a written claim for an extension of time evidencing the facts of causation and of the extent of the delay to Delivery.

**14.2** A qualifying cause of delay means any act, default or omission of the Customer in breach of the Customer's obligations under the Contract that has caused a delay in the critical path of the performance of the Contract and in relation to which the Supplier has taken all reasonable



steps to mitigate the effects thereof on Delivery or Completion (as applicable).

## 15. FORCE MAJEURE

**15.1** Neither Party (nor any Customer Affiliate receiving the Goods and/or Services) will be liable for any delay or failure to perform its obligations under the Contract if the delay or failure to perform results from an event of Force Majeure and the affected Party provides notice to the other Party, within five (5) calendar days from occurrence of the Force Majeure event. A Force Majeure event is one that was not foreseeable by the affected Party at the time of execution of the Contract, is unavoidable and outside the reasonable control of the affected Party and cannot be overcome despite all reasonable efforts. The affected Party shall give notice in writing to the other Party without delay upon cessation of the event of Force Majeure. If a Party fails to give such notices, the other Party shall be entitled to compensation for any additional costs which it incurs, and which could have avoided had it received such notice.

**15.2** If a Force Majeure event exceeds thirty (30) calendar days, either Party may terminate the Contract by written notice and without liability. Each Party shall use reasonable efforts to minimise the effects of the Force Majeure event.

## 16. ASSIGNMENT AND SUBCONTRACTING

**16.1** The Supplier may neither assign, nor transfer, encumber nor subcontract the Contract, nor any parts thereof (including any monetary receivables from the Customer) without prior written approval of the Customer.

**16.2** The Customer may assign, transfer, encumber, subcontract or deal in any other manner with the Contract or parts thereof to its Affiliates, or to any successor-in-interest or title which acquires that part of the Customer's group of companies' business to which the relevant Contract relates.

**16.3** Nothing in this Contract will create any contractual relationship between the Customer and any of the Supplier's subcontractors.

## 17. NOTICES

Any notice must be given duly signed by registered mail, courier, or by e-mail to the address of the relevant Party as stated in the Contract or to such other address as such Party may have notified in writing. The Supplier's reply, correspondence, information or documentation related to the Contract must be provided in the language used in the Contract.

## 18. WAIVERS

Failure to enforce or exercise any term of the Contract does not constitute a waiver of such term and does not affect the right later to enforce such or any other term therein contained.

## 19. GOVERNING LAW AND DISPUTE SETTLEMENT

**19.1** The Contract is governed by the laws of the country (and/or the state, as applicable) where the Customer is registered. The term of the United Nations Convention on International Sale of Goods does not apply to this Contract and is entirely and expressly excluded.

**19.2** If the Customer and the Supplier are registered in the same country, any dispute arising in connection with the Contract which cannot be settled amicably shall be submitted for resolution to the jurisdiction of the competent courts at the Customer's place of registration.

**19.3** If the Customer and the Supplier are registered in different countries, any dispute arising in connection with the Contract which cannot be settled amicably shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one arbitrator appointed in accordance with the rules. The place of arbitration shall be the Customer's place of registration. The language of the proceedings and of the award, shall be English.

## 20. SEVERABILITY

The invalidity or unenforceability of any term of the Contract will not adversely affect the validity or enforceability of the remaining terms. The Contract will be given effect as if the invalid or unenforceable term had been replaced by a term with a similar economic effect.

## 21. SURVIVAL

**21.1** Provisions of the Contract which either are expressed to survive its termination or from their nature or context it is contemplated that they are to survive such termination will remain in full force and effect notwithstanding such termination.

**21.2** The obligations set forth in clauses 8 (Warranty and Remedies), 9 (Intellectual Property Rights), 11 (Confidentiality, Data Security, Data Protection) and 12 (Liability and Indemnity) exist for an indefinite period of time and survive expiration or termination of the Contract for any reason.

## 22. ENTIRETY

The Contract constitutes the entire agreement between the Parties and replaces any prior agreement between them with regard to its subject.

## 23. RELATIONSHIP OF PARTIES

**23.1** The relationship of the Parties is that of independent parties dealing at arm's length and nothing in the Contract may be construed to constitute the Supplier as an agent or employee of the Customer or so as to have any kind of partnership with the Customer, and the Supplier must not represent itself as or act on behalf of the Customer.

**23.2** The Contract does not imply any employment relationship between the Customer and the Supplier, or between the Customer and the Supplier's employees assigned to the execution of the Contract. The Customer remains free of any responsibility or liability for labour, superannuation or taxes with respect to the Supplier and its employees assigned to the execution of the Contract.

## 24. INSURANCE

**24.1** The Supplier must effect or cause to be effected all risks property insurance for the Goods and for any specialised plant and equipment used in relation to the supply of Goods against the risk of loss, damage or destruction caused by insurable risks including theft, malicious

damage, fire, lightening, storm and tempest for their full reinstatement or replacement value and including cover while the Goods and specialised plant and equipment are in transit or, in temporary storage during the course of transit.

**24.2** The Supplier must effect or cause to be effected:

- (i) a broad form public and products liability policy written on an occurrence basis with a limit of indemnity of not less than \$ 20 million for each occurrence and, with respect to products liability only, also in the aggregate for all occurrences during the policy period, which covers Supplier's liability (including to the Customer) in respect of:
  - (a) loss of, damage to, or loss of use of property; and
  - (b) the injury (including disease or illness) to, death of or illness of any person arising out of or in the course of or in connection with the performance by the Supplier of the Contract. The definition of products under the policy is to be sufficiently wide to include all Goods to be supplied by the Supplier;
- (ii) comprehensive motor vehicle insurance with a limit of liability of not less than \$ 20 million for each occurrence which covers third party property damage arising from or in relation to any plant or vehicles (registered or unregistered) or any injury to or death of any person arising from or in relation to the use of any plant or vehicle (registered or unregistered) in the course of performing the Contract; and
- (iii) compulsory third-party vehicle insurance for all registered vehicles used in the course of performing the Contract.
- (iv) Professional Indemnity insurance with a limit of liability of not less than \$10 million for each occurrence for professional services performed under the Contract.

**24.3** The Supplier must affect or cause to be affected insurance which fully insures any injury, damage, expense, loss or liability suffered or incurred by any person engaged by the Supplier in the performance of the Contract (or their dependants) giving rise to a claim under any statute relating to workers or accident compensation or for employers liability at common law and where possible at law extending to indemnify the Customer as principal for principal's liability to persons engaged in performing the Contract by the Supplier.

**24.4** The Supplier must affect or cause any other insurances reasonably required by the Customer from time to time.

**24.5** The Supplier must ensure that each insurance referred to in this clause 24 is in effect from the date of the Contract and are maintained:

- (i) in the case of the insurance referred to in clause 24.1, until the Goods are delivered and installed (if required) in the case of the Goods, and until the expiration or termination of the Contract in the case of the specialised plant and equipment;

- (ii) in the case of the insurances referred to in clause 24.2 and clause 24.3 for six years after the expiry or earlier termination of the Contract; and

- (iii) in the case of any insurance required by the Customer under clause 24.4, until the date notified by the Customer.

**24.6** The Supplier must, if requested by the Customer, in respect of each of the insurances referred to in this clause 24 provide the Customer with a copy of the policy wording and a certificate of currency at the date of the Contract.

**24.7** If the Supplier does not comply with clause 24.6, the Customer may, but is not obliged to, effect the relevant insurances and may recover the cost of doing so as a debt from the Supplier or deduct the premiums payable from any amounts payable to Supplier under the Contract.

**24.8** The Supplier must notify the Customer immediately where it receives a notice of cancellation or any other notice in respect of the insurances required to be maintained under this clause 24 from any insurer, including providing a copy of that notice without undue delay.

**24.9** The Supplier must ensure that the insurance referred to in clause 24.2 extends to insure the Customer for its vicarious liability for acts or omissions by the Supplier and the Supplier's personnel and the policy must provide that the insurer waives all rights of subrogation which it may otherwise be entitled against the Customer to the extent that the Customer is insured under the policy.

**24.10** In respect of any insurance affected which insures multiple insureds, the Supplier must ensure that the policy includes a cross-liability clause, a clause in which the insurer agrees not to impute the acts or omissions of one insured to another insured and, a clause in which the insurer agrees that any non-disclosures or misrepresentations prior to the effecting of the policy by any person will not be imputed to any other insured.

**24.11** The Supplier must inform the Customer immediately if it becomes aware of any actual, threatened or likely claims under any of the insurances referred to in this clause 24 which could materially reduce the available limit.

**24.12** The provisions of this clause 24 are not to be read so as to reduce the Supplier's liability under any other provision of the Contract or these GTC.

## **25. COMPLIANCE WITH ANTI-SLAVERY AND HUMAN TRAFFICKING LAWS AND POLICIES**

**25.1** In performing its obligations under the Contract, the Supplier shall:

- (i) comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force;
- (ii) comply with the Anti-Slavery Policy;
- (iii) include in its contracts with its subcontractors and suppliers, anti-slavery and human trafficking provisions that are at least as onerous as those set out in this clause 25.

**25.2** Supplier represents and warrants that:

- (i) its responses to the Customer's slavery and human trafficking due diligence questionnaire are complete and accurate;
  - (ii) it conducts its business in a manner that is consistent with the Anti-Slavery Policy; and
  - (iii) neither the Supplier nor any of its officers, employees or other persons associated with it:
    - (a) has been convicted of any offence involving slavery and human trafficking; and
    - (b) to the best of its knowledge, has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking.
- 25.3** The Supplier shall implement due diligence procedures for its subcontractors and suppliers to ensure that there is no slavery or human trafficking in its supply chains.
- 25.4** The Supplier shall notify the Customer as soon as it becomes aware of any actual or suspected breach of the Anti-Slavery Policy.
- 25.5** The Supplier shall prepare and deliver to Customer by the anniversary of the date of the Contract each year, an annual slavery and human trafficking report setting out the steps it has taken to ensure that slavery and human trafficking is not taking place in any of its supply chains or in any part of its business.
- 25.6** The Supplier shall:
- (i) maintain a complete set of records to trace the supply chain of all Goods and Services provided to the Customer in connection with the Contract;
  - (ii) permit the Customer and its third-party representatives, on reasonable notice during normal business hours (but without notice in case of any reasonably suspected breach of this clause 25) to have access to and take copies of the Supplier's records and any other information and to meet with the Supplier's personnel to audit the Supplier's compliance with its obligations under this clause 25; and
  - (iii) implement annual audits of its compliance and its subcontractors' and suppliers' compliance with the Anti-Slavery Policy, either directly or through a third-party auditor.
- 25.7** The Supplier shall implement a system of training for its employees, suppliers and subcontractors to ensure compliance with the Anti-Slavery Policy.
- 25.8** The Supplier shall keep a records of all training offered and completed by its employees, suppliers and subcontractors to ensure compliance with the Anti-Slavery Policy and shall make a copy of the record available to the Customer on request.
- 25.9** The Supplier shall indemnify the Customer against any losses, liabilities, damages, costs (including but not limited to legal fees) and expenses incurred by or awarded against the Customer as a result of any breach of the Anti-Slavery Policy.
- 25.10** The Customer may terminate the Contract with immediate effect by giving written notice to the Supplier if the Supplier commits a breach of this clause 25.
- 26. PPSA**
- 26.1** If this Contract or any transaction contemplated by it gives rise to a security interest for the Customer under the PPSA then this clause 26 applies.
- 26.2** In this clause "security interest" and "perfected" have the meanings given to them in the PPSA.
- 26.3** To the extent permitted by the PPSA:
- (i) all provisions of the PPSA listed in sections 114(1) (a), 133 and 134 are excluded in full and will not apply;
  - (ii) the Supplier waives its rights under section 116, 120 (2), 121, 126, 127, 129, 131 and 132 of the PPSA;
  - (iii) the Supplier waives its right to receive any notice under any provision of the PPSA, including notice of a verification statement under section 148 of the PPSA;
  - (iv) the Supplier waives its right to receive anything from the Customer under section 177 of the PPSA and agrees not to make any request of the Customer under that section;
  - (v) For the purposes of section 177 of the PPSA, the information of the kind mentioned in section 177(1) of the PPSA must not be disclosed by the Supplier except where required by section 177(2) of the PPSA.
- 26.4** The Supplier, when requested to do so by the Customer, must do all things requested of it by the Supplier to ensure that this Contract and any security interest granted under it is fully effective, enforceable and perfected with the priority required by the Customer. This may include:
- (i) doing anything to make, procure or obtain any consent, authorisation, registration or approval in respect of anything, or to facilitate it;
  - (ii) creating or executing (or procuring the creation or execution of) any document, including any form, notice, consent or agreement; and
  - (iii) delivering documents or evidence of title or otherwise giving possession or control with respect to any personal property or other asset.