

SCHEDULE 3: SPECIFIC AND LOCAL TERMS AND CONDITIONS FOR PROCUREMENT OF REACH STACKERS

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PART A: SPECIFIC TERMS AND CONDITIONS

1. DEFINITIONS

Acceptance Certificate	has the meaning ascribed to it at clause 10.5 of this Schedule 3;
Certificate of Fitness	has the meaning ascribed to it at clause 10.3 of this Schedule 3;
Contractor Insurances	has the meaning ascribed to it at clause 15.2 of this Schedule 3;
Date of Commissioning	means the date on which the Deliverable(s) is to be fully commissioned and the word “commission” and “commissioning” shall be construed accordingly;
Defects Liability Period	means the period of not less than twelve (12) months from the date of Acceptance Certificate in respect of each Deliverable, during which the Contractor shall guarantee that each of the Deliverable(s) will be in good operational order to the satisfaction of the Company, as more specifically described in clause 14 of this Schedule 3;
Non-Conformity or equivalent	has the meaning ascribed to it in clause 6.2 of this Schedule 3; The term “or equivalent” means applicability of the “or equivalent” component, where its installation does not adversely affect any other part of the system in service and where total performance of the “or equivalent” component enables it to function as effectively with no increase in required maintenance or need for premature replacement. Other factors to be considered in selecting an “or equivalent” component shall include without limitation reliability, size and weight depending upon their relative importance in each installation;
Personal Data	means data, whether true or not, about an individual who can be identified (a) from that data, or (b) from that data and other information to which the organisation has or is likely to have access;
Place of Delivery	has the meaning ascribed to it at clause 8.1 of this Schedule 3;
Public Holidays	means all days which are declared days of rest or holidays by law in the Country;
Superintending Officer	has the meaning ascribed to it at clause 17.1 of this Schedule 3;
Test Reports¹	shall have the meaning as set out in the Deliverable(s) Specifications;
Working Life	means in respect of each Deliverable a period of no less than fifteen (15) years from the date of the Acceptance Certificate issued in respect of such Deliverable.

2. ADDITIONAL SCOPE

- 2.1 The scope of the Contract and the Contract Price includes the following, whether or not explicitly stated in the Contract Documents but which may be inferred to be obviously necessary by an experienced contractor:
- (a) all that is necessary for the proper construction of the Deliverable(s);
 - (b) all that is necessary for the continuous, safe, efficient and stable functioning of the Deliverable(s) under actual operating conditions at the Company Terminal throughout Working Life of the Deliverable(s);
 - (c) all materials, fittings and Services for the purposes of proper construction and operation of the Deliverable(s);
 - (d) all minor parts that are obviously necessary for the completion and proper operation of the Deliverable(s); and
 - (e) all items and components required for the compliance with the Applicable Laws or by any Authority.
- 2.2 Each Deliverable delivered shall be fully fitted out in all respects including painting and lettering to the Company's requirements, where applicable.
- 2.3 Each Deliverable shall be delivered to the Place of Delivery in a fully assembled condition and/or in parts in accordance with the Deliverable(s) Specifications and as set out in the Contract.
- 2.4 In addition to clause 2.1 of this Schedule 3, the Contractor shall provide everything necessary for the proper construction of the Deliverable(s) according to the true intent and meaning of the Drawings and Deliverable(s) Specifications taken together whether the same may or may not be particularly shown or described provided that the same is reasonably to be inferred therefrom. It shall be the Contractor's responsibility to determine intent and meaning any highlight discrepancies (if any) immediately and in writing to the Company for the Company to provide directions.
- 2.5 In order to meet the Deliverable(s) Specifications, the Contractor shall also take into account the Drawings, detailed written instructions, directions and explanations issued by the Company, from time to time, in respect of:
- (a) any modification to the design of the Deliverable(s) or the addition or omission or substitution of any part of the Deliverable(s) which is required by the Company to meet the intended performance of the Deliverable(s);
 - (b) any discrepancy within the Drawings or between the Drawings and Deliverable(s) Specifications;
 - (c) the opening up for inspection of any parts of the Deliverable(s) covered up; and
 - (d) the making good of any defects of the Deliverable(s).

3. ADDITIONAL WARRANTIES

- 3.1 The Contractor warrants and undertakes that the Deliverable(s) shall be and remain, free of defects, fit for the purpose of, and suitable in all respects for, safe, efficient, reliable and continuous use under actual operational conditions at the Company Terminals throughout the Working Life of the Deliverable subject to fair wear and

- tear (fair wear and tear excluding without limitation any fatigue failure) and acceptable routine maintenance as referred to in the Deliverable(s) Specifications.
- 3.2 The Contractor warrants and undertakes that the Deliverable(s) shall be and remain free of all structural defects for a duration of the Working Life.

4. ADDITIONAL CONTRACTOR'S OBLIGATIONS

- 4.1 The Contractor shall inform the Company of any additional parts and features of the Deliverable(s) which are not described in the Deliverable(s) Specifications, demonstrate to the Company how such parts and features operate and provide to the Company any other information the Company may require in respect of the same.
- 4.2 All the relevant calculations, design, engineering preparation works and cleaning up works for commissioning of the Deliverable(s) (including third party certification or checking costs) shall be the responsibility of the Contractor.
- 4.3 The Contractor shall ensure that all materials, outfitting and workmanship shall be in accordance with that described in the Deliverable(s) Specifications. The Contractor shall arrange for and carry out any test of any materials, outfitting, or trade test of welders which the Company may in writing require and the cost thereof shall be borne by the Contractor. For the avoidance of doubt, the Contractor's responsibilities relating to the installation and supply of any parts of the Deliverable(s) shall include but not be limited to logistic requirements and any costs relating to documentation, handling charges, Taxes, customs and port clearances, testing, transportation and delivery of the Deliverable(s)' parts to locations (internationally or otherwise) necessary to complete the Deliverable(s) and to provide the Deliverable(s) in accordance with the Deliverable(s) Specifications.
- 4.4 The Contractor shall ensure that all parts liable to damage are sufficiently and properly protected with suitable protective materials.
- 4.5 The Contractor shall not without the written consent of the Company allow any portion of the construction of the Deliverable(s) to be undertaken otherwise than in their own establishment but any such consent from the Company shall not relieve the Contractor of their liability under the Contract to carry out and complete the whole of this Contract and the Contractor shall remain solely liable to the Company under the Contract for the due and faithful performance of the Contract.
- 4.6 The Contractor in carrying out the Deliverable(s) shall in addition to meeting the Deliverable(s) Specifications, also:
- (a) effectively minimise operating and maintenance costs of the Deliverable(s);
 - (b) minimise the extent and frequency of maintenance required for the Deliverable(s) so that an optimum lifetime cost is achieved; and
 - (c) minimise the disruptive effects of maintenance on operations so that maintenance requirements are kept within the acceptable routine maintenance.

5. APPROVAL OF DRAWINGS AND TEST REPORTS

6. INSPECTION

- 6.1 Notwithstanding any inspection, acceptance of or approval of Drawings, Test Reports or otherwise given by the Company, if the Company or the Company representative finds any part of the Deliverable(s) or the construction, material (whether fixed or not) or workmanship thereof to be not serviceable, not in proper working condition, unsuitable or unacceptable due to any defect in the design, inferior quality, deficient in quantity, non-compliance with the provisions of the Contract, or the negligence or default of the Contractor or otherwise whether during construction or prior or after installation (each a “**Non-Conformity**”), the Company may inform the Contractor in writing of such Non-Conformity and the Contractor shall, at its own expense, remedy the Non-Conformity within the time frame required by the Company to the satisfaction of the Company. In the event that the Non-Conformity remedied is still not acceptable to the Company, the Deliverable(s) so affected may at the absolute discretion of the Company be made good by the Company in such manner as the Company may think fit, in which case the costs thereby incurred shall be deducted from the Contract Price remaining to be paid to the Contractor or any money belonging to the Contractor in the hands of the Company or in the absence of such sum of money or if such sum of money be insufficient, the costs incurred or the balance outstanding shall be a debt due to the Company by the Contractor which may be recovered by the Company by action at law.
- 6.2 Any failure of the Company to discover any Non-Conformity shall not place on the Company or the Company Parties any responsibility in respect of the Deliverable(s) or other obligations of the Contractor under the Contract.
- 6.3 Any inspection by the Company of the Deliverable(s) at any time shall not be taken as a substitute for nor derogate from the Contractor’s responsibilities as to any relevant quality control of such Deliverable(s) under and for the purposes of the Contract.
- 6.4 The Company shall have the right to attend such tests at all stages of the Contract.
- 6.5 If the Contractor executes any defective work or supplies any materials outittings whether fixed or not, inferior in quality or performance or deficient in quantity to those specified notwithstanding that the Company may previously have approved such work or materials outittings, the Company may give the Contractor in writing, setting forth the defects or deficiency, and the Contractor shall at their own expense, without undue delay, alter or remove or reconstruct the work or supply the materials outittings in conformity with the Contract. No extension of the Date of Commissioning shall be allowed under these circumstances.

7. DATE OF COMMISSIONING

The Deliverable(s) shall be delivered and successfully commissioned by the dates set out in Schedule 6 or such revised dates arising from such delay as provided in clause 8 of this Schedule 3. The Contractor shall not, without the written consent of the Company, deliver earlier than the dates set out in Schedule 6 or earlier than the revised date as aforesaid, if any.

8. DELIVERY/POSTPONEMENT REQUESTED BY THE COMPANY

- 8.1 The Deliverable(s) shall be delivered to ESCO Lad Krabang (“**Place of Delivery**”).

- 8.2 The loading of the Deliverable(s), the transport of the Deliverable(s), the unloading and handling of the Deliverable(s) from the carrier to the Place of Delivery shall be properly carried out by the Contractor and at the risk and expenses (including freight, port and custom charges) of the Contractor.
- 8.3 The Contractor shall not be entitled to deliver the Deliverable(s) earlier than the Milestones date without the prior written approval of the Company.

9. LIQUIDATED DAMAGES

- 9.1 The date stipulated in the Contract for the successful commissioning of the Deliverable(s) or the revised date due to postponement by the Company, shall be strictly adhered to, failing which the Contractor shall be liable to pay liquidated damages of a sum equivalent to 0.1% of the Contract Price for such Deliverable(s) for each day or part thereof up to the date on which the Deliverable(s) is commissioned, provided that the total amount of liquidated damages that may be imposed for late commissioning of any of the Deliverable(s) shall not exceed 10% of the Contract Price for such Deliverable(s).
- 9.2 The amount of liquidated damages calculated for each unit of Deliverable will be withheld by the Company until the completion of the Contract, that is the commissioning of the last unit of Deliverable if more than one (1) unit is purchased. The Company shall consider whether and if so how much liquidated damages shall be imposed only after the successful commissioning of the last Deliverable if more than one (1) unit of Deliverable(s) shall be comprised in the Contract.
- 9.3 If the Contract is terminated as a result of the Contractor's failure to commission all or some of the Deliverable(s), the Contractor shall pay to the Company: (a) liquidated damages calculated according to the number of days between the Date of Commissioning and the date of termination of the Contract instead of the date of actual commissioning without applying any limits set out in this Schedule 3; and (b) the loss suffered as a result of the Contractor's breach of Contract.

10. CERTIFICATE OF FITNESS AND ACCEPTANCE CERTIFICATE

- 10.1 Each Deliverable shall be inspected and tested by the Contractor's engineers to ensure full conformity with the Deliverable(s) Specifications.
- 10.2 The Contractor shall be solely responsible for the inspection and testing, including the provision of testing facilities, arrangements and costs.
- 10.3 The Contractor shall issue to the Company a certificate of fitness ("**Certificate of Fitness**"), accompanied by inspection checklists to certify that the Deliverable(s) have met all the requirements and is fit for operation, upon the completion of testing and inspection to the satisfaction of the Company.
- 10.4 Upon receipt of the Certificate of Fitness, the Company, together with the Contractor, shall carry out the performance and acceptance tests. The Contractor shall allow two (2) complete working days for the performance and acceptance test² for each Deliverable.

² Drafting Note: Please list out the tests and the minimum thresholds to be achieved in such tests in the Deliverable(s) Specifications.

- 10.5 In respect of each Deliverable, the Company may at his discretion, issue an acceptance certificate ("**Acceptance Certificate**") to the Contractor where the following conditions are fulfilled by the Contractor to the satisfaction of the Company:
- (a) all defects noted during the performance and acceptance tests have been rectified to the satisfaction of the Company;
 - (b) the Deliverable(s) meets the Deliverable(s) Specifications;
 - (c) the Deliverable is fully safe and functionally fit for operations; and
 - (d) the Contractor has submitted all Test Reports, Drawings, documents and manuals and keys in accordance with the Deliverable(s) Specifications.
- 10.6 For the avoidance of doubt, the Company shall not be deemed to have accepted any of the Deliverable(s) until an Acceptance Certificate has been issued for the Deliverable(s). The effect of the Acceptance Certificate shall be that acceptance of the Deliverable(s) upon commissioning is final and binding so far as conformity of the Deliverable(s) to the Contract is concerned but shall remain subject to any correction of defects and deficiencies that have been postponed and subject to warranty of quality as hereinafter provided.
- 10.7 With the issuance of the Acceptance Certificate, the commissioning of such Deliverable will be deemed to have been completed.

11. SPARES

- 11.1 The Contractor will provide a list of components for each Deliverable, per item including the Contractor's internal reference, original equipment manufacturer reference, delivery time, price, exact amount of the respective part installed per Deliverable and recommended amount to be taken in stock as spare part.
- 11.2 The Contractor shall quote for the supply of the spare parts with the Deliverable(s).
- 11.3 The Contractor shall maintain in the Country the necessary spare parts required for the Deliverable(s) during the Defects Liability Period in respect of that Deliverable(s) and if any of the parts are used to replace defective parts, the Contractor shall replenish such parts immediately.
- 11.4 Where the Company shall order for the provision of the spare parts, the Contractor shall deliver to the Company the required spare parts on the date agreed between the Parties.
- 11.5 The spare parts shall carry a warranty of twelve (12) months from the date the spare part is delivered to the Company.
- 11.6 The Contractor shall guarantee availability of all spares throughout the Working Life of the Deliverable(s) and the Contractor shall, as far as possible, require overseas manufacturers, of the main machinery and major components fitted to the Deliverable(s), to appoint agents to handle all of the Company's requirements for spare parts and it shall be the Contractor's responsibility to ensure that legally binding covenants from all manufacturers of main machinery and major components to themselves have been obtained for purposes of the Contractor complying with the provisions of the Contract.
- 11.7 Major component suppliers shall cater a system to manage inventory spares for the Company during and after the Defects Liability Period. The location where the spares are kept is to be made known to all parties.

12. ADDITIONAL PAYMENT TERMS

- 12.1 The Company's obligation to make payment in respect of a Deliverable shall arise only after issuance of an Acceptance Certificate and provided that a performance bond in accordance with clause 13 of this Schedule 3 is provided in respect of the Deliverable.
- 12.2 Payment for the spare parts will be made within forty five (45) days upon receipt of all the spare parts, the Contractor's invoice and on submission of the performance bond described in clause 13.3 of this Schedule 3.

13. SECURITIES

- 13.1 The Contractor shall obtain a performance bond for each unit of Deliverable equivalent to 5 per cent (5%) of such Deliverable's Contract Price in the form marked "Specimen I" in Schedule 7 to be provided to the Company within thirty (30) days from the date of the Contract against defective design, workmanship and materials and all the Contractor's liabilities under the Contract and for the due performance of all of its obligations under the Contract and faithful compliance with the terms and conditions and stipulations under the Contract.
- 13.2 The performance bond shall be effective from the date of the Contract and shall continue to be in force for the duration of the Contract including any extension of the Term of the Contract and the Defects Liability Period *plus* a further period of six (6) months, the expiry of which shall be referred to as the expiry of the performance bond and claims by the Company may be made at any time not later than three (3) months from the said expiry.
- 13.3 The performance bonds shall be issued in the Country by a reputable bank or insurance company registered to undertake banking or insurance services in the Country, which bank or insurance company shall be acceptable to the Company.
- 13.4 If the sum deducted by the Company from the performance bond is found by the Company to be greater than the amount of Losses actually sustained by the Company, the Company shall pay the balance without the addition of interest to the Contractor, the bank or insurer as the case may be.
- 13.5 If the performance bonds are not received by the Company within the given timelines, the Company may hold back all payments until the receipt of the performance bonds and refund bonds by the Company.
- 13.6 The Contractor shall make enquiries as to whether any stamping of the bonds is required by the relevant authorities and if so required, all such bonds shall be stamped at the Contractor's expense before submission of the same to the Company.

14. DEFECTS LIABILITY PERIOD

- 14.1 Without derogation from the Contractor's obligation under clause 3 of this Schedule 3:

- (a) the Contractor shall guarantee that each of the Deliverable(s) will be in good operational order to the satisfaction of the Company for the Defects Liability Period;
 - (b) defects which may be observed or discovered or which may develop during the Defects Liability Period shall be made good by the Contractor at its own expense. The Contractor shall not exceed a period of thirty-six (36) hours from the time the Company informs the Contractor of such defects to make good, unless reasons acceptable to the Company are given; and
 - (c) if the Contractor fails to repair any Deliverable(s) within the said thirty-six (36) hours, the Contractor shall be liable to pay liquidated damages of a sum equivalent to 0.1% of the Contract Price for such Deliverable(s) for each day or part thereof that the Deliverable(s) is not available for such Deliverable(s)]. Nothing in this clause shall limit the Company's rights and remedies in the event the Deliverable(s) are not remediable, are required to be replaced, or the Contractor fails to complete the repair or rectification of the Deliverable(s).
- 14.2 For repairs which in the opinion of the Company cannot be completed within the said thirty-six (36) hours, the Contractor and the Company shall mutually agree as to the time required for the repairs prior to the commencement of repairs and the liquidated damages aforesaid shall be imposed in the event that the Contractor fails to repair the defective Deliverable(s) by the time mutually agreed upon as herein provided.
- 14.3 Any continuous Deliverable(s) downtime due to repairs during the Defects Liability Period exceeding thirty-six (36) hours or the period mutually agreed upon as in the preceding sub-clause shall be deemed to have shortened the Defects Liability Period of the Deliverable(s) and the length of the Defects Liability Period for that Deliverable(s) shall be extended by the number of days exceeding the said thirty-six (36) hours that the Deliverable(s) cannot be used.
- 14.4 Prompt rectification of breakdown is crucial to the operational performance of the Company. In the event that the Contractor is notified by the Company of a breakdown of any of the Deliverable(s), the Contractor shall respond on Site within 10 working hours during normal working days and during office hours from 8 a.m. to 6 p.m., and within twenty-four (24) hours outside office hours and on Saturdays, Sundays or Public Holidays. The Contractor shall make all the necessary arrangements to effect the repairs in the shortest possible time.
- 14.5 The Contractor shall maintain adequate manpower and spares to ensure that the time limits for rectification and repair are complied with, and delays due to unavailability of spares shall not be acceptable.
- 14.6 If the Contractor fails to respond immediately or fails to complete repairs of any Deliverable(s) within thirty-six (36) hours as abovementioned, or within the time mutually agreed upon as aforesaid, the Company shall, without prejudice to its rights to claim liquidated damages as aforesaid, and without affecting the Contractor's liability for the Defects Liability Period, be entitled to either carry out repairs on its own or by engaging any other contractor, and shall claim from the Contractor the costs of such repairs. Where any repairs are carried out by the Company, the cost including the Company's overhead charges shall be equivalent to the rate that the Company charges external parties for similar repairs. Where others are engaged to

carry out the repairs, such costs thereby incurred shall be claimed from the Contractor as well as the Company's own cost at the rate in force from time to time. Where the repairs of any Deliverable(s) can, in the opinion of the Company, be rectified within four (4) man-hours, the Company is entitled to carry out such repairs itself or by engaging any other contractor without first waiting for the passage of the said thirty-six (36) hours or notifying the Contractor of the occurrence of the defect, and shall claim from the Contractor the costs of such repairs. Where the repairs are minor in that they can, in the opinion of the Company, be completed within one (1) hour, the Company shall not claim from the Contractor the cost of such minor repairs.

- 14.7 For components which are subject to wear and tear and which have a life span shorter than the current norm for similar components on similar equipment presently owned by the Company, the Contractor shall replace the said components with new components of better quality or with new components which have a life span equivalent to that of similar components on similar equipment presently owned by the Company without any charge to the Company. If the shorter life span of a component is due to the design or other fault of the Deliverable(s), the Contractor shall carry out redesign and modification on all the Deliverable(s) to ensure the specified or a longer life span of the component.
- 14.8 Any defects due to materials, workmanship or constructional faults which may be observed or discovered or which may develop during the Defect Liability Period shall be made good by the Contractor at its own expense.
- 14.9 In the event of any major defect or component failures occurring at any time, the Contractor shall conduct a thorough investigation jointly with the Company to ascertain the reasons for the failure, and shall replace any part of the Deliverable(s) as necessary or as required by the Company for the efficient operation of the same. The Contractor shall submit an investigation report to the Company.
- 14.10 The Contractor shall be liable for any major defects in design or construction or material even after the Defect Liability Period.

15. RISK, INSURANCE AND PROPERTY

- 15.1 Risk

The property, risks of damage, destruction, deterioration or loss in respect of any unit of the Deliverable(s) shall pass to the Company only upon issuance of the Acceptance Certificate for the Deliverable(s) in question. For the avoidance of doubt, before the issuance of the Acceptance Certificate, property in the Deliverable(s) and materials intended for it shall be with the Contractor. In the event of any termination of the Contract, the Company shall have the discretion to call upon the refund bond and claim for interest at Bank of Thailand's prime rate on the progress payment made so far from the date of payment until the date of repayment.
- 15.2 Contractor Insurances
 - (a) The Contractor shall obtain, maintain and comply with the following insurances and all other insurances or coverages which are compulsory or required by law ("**Contractor Insurances**") at its own costs for the entire duration of the Contract:

- i. Comprehensive general liability insurance including completed operations cover, and the Company should be named as “additional insured” with a cross liability clause;
 - ii. Work injury compensation and employer liability insurance with a waiver of subrogation against the Company;
 - iii. Professional indemnity/errors and omission insurance;
 - iv. Marine cargo insurance including inland transit (door to door) on all risk cover based on 110% new replacement value (as may be applicable);
 - v. Erection all risks insurance where the Company should be named as insured and principal under the policy (as may be applicable); and
- (b) The required endorsements for the above-mentioned insurances are described in Schedule 8.
- (c) All insurance policies taken under the Contract must be issued in the Country by an insurance company registered to carry or do insurance business in the Country as insurer which is acceptable to the Company.
- (d) The Contractor shall be responsible for all excesses and deductibles in the event a Claim is made under any Contractor Insurances. For the avoidance of doubt, the Contractor agrees that where its insurance coverage is not sufficient to cover all or any loss or damage suffered by any of the Company Parties for any risk which is covered under any such Contractor Insurances, the Contractor shall be liable for such loss or damage in excess of the insurance coverage.
- (e) The Contractor shall not (and shall procure the Contractor Parties not to) do or omit to do anything which may cause any Contractor Insurances to be void, cancelled or invalid. The Contractor shall ensure that it will immediately notify the Company of any events that may give rise to any claims under any Contractor Insurances.

16. PERSONAL DATA PROTECTION/ PRIVACY LAWS

- 16.1 The Contractor represents, undertakes and warrants to the Company that:
- (a) for any Personal Data of individuals that the Contractor will be or may be disclosing or discloses to the Company, that the Contractor would have prior to disclosing such Personal Data to the Company obtained consent from the individuals whose Personal Data are being disclosed, to:
 - (i) permit the Contractor to disclose the individuals’ Personal Data to the Company for the purposes of the Contract;
 - (ii) permit the Company (whether in the Country or overseas) to collect, use, disclose and/or process the individuals’ Personal Data for the aforementioned purposes;
 - (b) at the request of the Company, the Contractor will use such form(s) or document(s) provided by the Company in obtaining such consents from the individuals in question (for the avoidance of doubt, the Company is under no obligation to the Contractor to create any such form(s) or document(s));
 - (c) the Contractor shall notify the individuals whose Personal Data is disclosed to the Company of the relevant purposes for such disclosure;
 - (d) any Personal Data of individuals that the Contractor will be or is disclosing to the Company are accurate. Further, the Contractor shall give the Company

- notice in writing as soon as reasonably practicable should it be aware that any such Personal Data has been updated and/or changed after such disclosure;
- (e) it shall at the request of the Company, assist the Company to comply with any applicable data protection laws. In this regard and without limiting the generality of the foregoing, this includes but is not limited to the Contractor executing such further documents as the Company may require and/or the Contractor making arrangements for additional form(s) and consent(s) to be completed and signed by individuals whose Personal Data are provided by the Contractor to the Company; and
 - (f) for any Personal Data of individuals that the Contractor will be or may be disclosing or discloses to the Company, that the Contractor is validly acting on behalf of such individuals and that the Contractor has the authority of such individuals to provide their Personal Data to the Company and for the Company to collect, use, disclose and process such Personal Data for the aforementioned purposes.
- 16.2 Without prejudice to the foregoing sub-provisions, the Contractor shall ensure that it complies with all applicable data protection laws, and that the Contractor not do anything and not omit to do anything that will cause the Company to be in breach of any provision or requirement of any applicable data protection laws, whether now or in the future. The Contractor shall at the request of the Company, promptly do such things or execute such documents, as determined by the Company, in order to facilitate the Company's compliance with any applicable data protection laws.
- 16.3 The Company may from time to time issue policies, compliance manual(s), guidelines and/or checklists (including but not limited to those dealing with governing usage of Company information technology systems, or copyright compliance) which the Contractor agree shall be binding and which the Contractor shall comply with. the Company reserves the exclusive right and sole discretion to change the terms in any such policies, compliance manual(s), guidelines and/or checklists at any time or from time to time hereafter and the Contractor agrees that such amended policies, compliance manual(s), guidelines and/or checklists shall equally apply and bind the Contractor.

17. SUPERINTENDING OFFICER

- 17.1 The Company may appoint office(s) ("**Superintending Officer**") to liase with and provide instructions to the Contractor Parties under this Contract.
- 17.2 The Company will notify the Contractor, and the Contractor will notify the Contractor Parties, of the appointment and removal of the Superintending Officer.
- 17.3 Where appointed, the Contractor and the Contractor Parties are to take all instructions from the Superintending Officer only and no other party.
- 17.4 In the event of conflicts between instructions given by the Superintending Officer and any other employee, agent, servant or officer of the Company, the instructions of the Superintending Officer shall prevail.

18. TRAINING

- 18.1 Operational and technical trainings shall be provided by the Contractor's competent commissioning and/or resident engineers to the Company Parties at the Company Premises.
- 18.2 The trainings shall be detailed and must cover the working principles of all Deliverable(s) and the practical aspects of troubleshooting.
- 18.3 After the commissioning of the Deliverable(s), the Contractor shall train the Company Parties on the actual operation of the Deliverable(s) so as to exploit the functional capacity designed.
- 18.4 If so required, training of the Company Parties shall also be conducted at night to determine the visibility of night operation.
- 18.5 The Contractor shall submit detailed training programmes on the Deliverable's technical training for the maintenance staff to undertake all types of maintenance and troubleshooting jobs on the machine. The duration of the training shall be sufficient for the maintenance staff to learn the required knowledge. The training programme submitted by the Contractor is subject to the approval of the Company and should it be determined by the Contractor or the Company that further training up-to a reasonable period is required, the Contractor shall undertake additional training at no cost to the Company.
- 18.6 The Company shall provide the classrooms and audio-visual facilities for the technical trainings.
- 18.7 The Contractor shall produce all lecture materials, inputs and training in English at no extra cost to the Company. A soft copy of the material (either in MS Word, PowerPoint or search friendly PDF version) shall be submitted to the Company before commencement of the first training.
- 18.8 The venue of all trainings, including Overhaul practical sessions shall be held in the Country.

19. ADDITIONAL TERMINATION GROUNDS

- 19.1 Without prejudice clause 10 of Schedule 2, the Company may terminate the Contract (including all current orders for Deliverable(s) under the Contract) or any part of the Deliverable(s) by written notice with immediate effect where:
 - (a) after the imposition of maximum liquidated damages under clause 9 and/or clause 14 (as the case may be) of this Schedule 3, the Company is reasonably of the view that the Contractor may not be able to discharge its obligations timely under the Contract; or
 - (b) the Company is reasonably of the view that the Deliverable(s) already commissioned and in use by the Company are of unsatisfactory performance standards and the following factors may be used by the Company to determine unsatisfactory performance standards for the purpose of this sub-clause:
 - (i) where there shall be repeated defects in the fleet components in respect of the engine, transmission, axles or chassis frame which renders any of the Deliverable(s) unusable.

