



## TERMS AND CONDITIONS FOR SUPPLY OF SERVICES

### 1. GENERAL TERMS

#### 1.1 Contract Terms

The purchase order referencing or attaching these terms and conditions (the "Order"), together with these terms and conditions (together with the Order, the "Contract"), shall become a binding contract upon receipt by Turbomach of acceptance by the person or entity named as Supplier in the Order ("Supplier"), or upon commencement of performance by Supplier of the requested scope of supply, whichever occurs first. The services ordered are referred to herein as the "Services." Any acceptance by Supplier is limited to the acceptance of the express terms contained in the Contract only. Any proposal for additional or different terms or any attempt by Supplier to vary in any respect any of the terms of the Contract in Supplier's acceptance or in its quotation or by attachment of Supplier's terms and conditions, over stamping or by any other means is hereby objected to and rejected but shall not operate as a rejection of the Contract but shall be deemed a proposal for a material alteration of the Contract, and the Contract shall be deemed accepted by Supplier without such additional or different terms. Such additional and different terms shall become a part of the Contract only if specifically accepted in writing and signed by an authorized representative of Turbomach.

#### 1.2 Drawings, Models, Tools

All drawings, other written documents, models and tools made available by Turbomach for the performance of the Contract shall remain the property of Turbomach, and shall be returned at Supplier's expense upon completion of the Services. Turbomach does not guarantee the accuracy of any tooling or other quality or suitability of any such item furnished. The aforementioned drawings and other documents, as well as drawings and documents prepared by Supplier based on information/data provided by Turbomach shall neither be re-used for other purposes nor duplicated or made accessible to any third party. All materials provided to Turbomach by Supplier in performance of the Services may be used by Turbomach, its assigns, successors, affiliates and subcontractors.

#### 1.3 Responsibility for Technical Data

Turbomach's approval of drawings, calculations and other documents shall not release Supplier from its sole responsibility for the quality of the Services and work product to be supplied. This shall also apply to any

proposal, recommendations or any other active participation made by Turbomach.

#### 1.4 Inspections by Turbomach

Turbomach shall, after prior notification, be entitled to have access to the facilities of Supplier and/or of its subcontractors at any time, in order to check or expedite the status of the Services and review the employment of properly qualified staff, the application and results of Supplier's quality control procedures, and the correct performance of the Services to be carried out. These inspections shall be carried out without any legal implications on acceptance of the ordered Services.

#### 1.5 Proprietary Rights; Nondisclosure

(a) Proprietary Information. In its preparation for or performance of this Order, Supplier may receive or come into possession of Turbomach's proprietary information, including but not limited to designs, specifications, instructions, forecasts, trade secrets, data or "know how" pertaining to the Turbomach's products or Supplier's performance of the Order (collectively "Proprietary Information"). Additionally, Supplier may develop, solely or jointly with Turbomach, written, graphic and/or machine readable designs, specifications, data or any other information pertaining to the Services or Supplier's performance of the Order, which is deemed commissioned at Turbomach's request or direction. Such information shall be considered Proprietary Information, and ownership and all intellectual property rights to such information shall vest in, and is hereby irrevocably transferred and assigned to, Turbomach. "Intellectual property rights" as used in this Article means all possible worldwide trademarks, service marks, trade names, trade dress, logos, copyrights, rights of authorship, inventions, mask work rights, moral rights, patents, rights of inventorship, all applications, registrations and renewals in connection with any of the above, database rights, know-how, trade secrets, rights of publicity, privacy and/or defamation, rights under unfair competition and unfair trade practices laws, and all other intellectual and industrial property rights related thereto. Proprietary Information shall not include information that (a) is already known by Supplier prior to the disclosure by Turbomach; (b) is or becomes available to the general public through no act or fault of Supplier; or (c) is rightfully disclosed to Supplier by a third party not under a similar obligation to maintain the information in confidence. If Supplier wishes to rely on the exceptions contained in clauses (a), (b) or (c) above, then Supplier must demonstrate to Supplier the facts underlying why the exception applies within thirty (30) days of receipt or development of the Proprietary Information.

(b) Confidentiality. Supplier agrees to maintain the confidentiality of all Proprietary Information, and specifically agrees (a) to take all actions reasonably necessary under the circumstances to maintain the confidentiality of the Proprietary Information; (b) to use Proprietary Information only in Supplier's preparation for or performance of the Contract; (c) to limit access to Proprietary Information to only those employees within Supplier's company who have a need to know, and inform these employees of the provisions of this clause;

(d) to conspicuously mark all documents and electronic files containing Proprietary Information as confidential and the property of Turbomach; (e) not to copy documents or electronic files that include Proprietary Information, or allow them to be copied, except as required for Supplier's efficient performance of the Contract; (f) not to use Proprietary Information for the benefit of any person or entity other than Turbomach; and (g) not to transmit or disclose Proprietary Information to others without the prior written consent of Turbomach.

(c) Ownership. Turbomach retains all right, title and interest to all Proprietary Information and to all modifications and derivative works thereof and to all intellectual property rights related thereto. Supplier, on behalf of itself and any of its employees who perform any work under the Contract, if any, hereby irrevocably waives any right to assert any moral rights it might have had in the Proprietary Information. Supplier further acknowledges that such Proprietary Information includes valuable trade secrets of Turbomach, that inventions reflected in Proprietary Information may be protected under pending or issued patents owned by Turbomach or its affiliates, and that particular expressions of such Proprietary Information may be protected under copyrights owned by Turbomach or its affiliates. Supplier's receipt of Proprietary Information in connection with its performance of the Order shall not be deemed an assignment or license of Turbomach's rights in such information, inventions and works of authorship. Any Supplier use of Proprietary Information shall inure to Turbomach's exclusive benefit.

(d) Unauthorized Disclosure. Supplier shall notify Turbomach immediately upon discovery of any unauthorized use or disclosure of Proprietary Information, and shall fully cooperate with Turbomach to help regain possession of Proprietary Information and prevent any future unauthorized use or disclosure of Proprietary Information.

(e) Return of Proprietary Information. Upon termination of the Contract, or at any earlier time as Turbomach may request, Supplier shall return all documents and electronic files containing Proprietary Information to Turbomach, and shall retain no notes on, or copies or abstracts of, Proprietary Information.

#### 1.6 Changes in Scope of Services

Turbomach shall have the right at any time to reasonably add to or delete from the scope of Services specified in the Order, change the method of shipment or packing, place of inspection, delivery or acceptance, or order the temporary suspension of work, by notice of written change order to Supplier. If such changes affect price or performance of Services, Supplier shall notify Turbomach immediately and negotiate an equitable adjustment to the Order price, but Supplier may not stop performance of the Order. Upon Supplier's receipt of a written change order, Supplier shall proceed without delay to implement the change. Supplier shall make no changes to the scope of

the Services or Turbomach's specifications without prior advance written authorization from Turbomach.

#### 1.7 Insurance

(a) Turbomach shall have no obligation to insure or be responsible for any loss or damage to property of any kind owned or leased by Supplier (including any subcontractor), its employees, servants or agents.

(b) Supplier and its subcontractors, if any, at their sole costs, shall maintain insurance coverage as described below throughout the entire term of the Contract with insurance companies acceptable to Turbomach. The limits set forth below are minimum limits and shall not be construed to limit Supplier's liability. All costs and deductible amounts shall be for the sole account of Supplier or its subcontractors. All policies required by Turbomach pursuant to this Order (or otherwise) shall name Turbomach as an additional insured (per ISO Endorsement #CG2026 or its equivalent) and waive subrogation rights in favor of Turbomach, except policies providing statutory Worker's Compensation and Professional Liability coverage. All policies shall also be designated as primary coverage to any similar coverage carried by Turbomach.

(c) Supplier shall not commence work or provide supplies or Services under this Contract until all insurance as required hereunder has been obtained, and certified copies of such insurance policies or certificates of insurance have been submitted to and accepted by Turbomach.

(d) All policies shall contain provisions that provide at least thirty (30) days written notice by certified mail, with return receipt, to Turbomach prior to any cancellation, suspension, non-renewal, or reduction in coverage or limits. Supplier shall deliver Certificates of Insurance in a form satisfactory to Turbomach evidencing the existence of the required insurance coverage.

(e) Any policy of insurance as respects work to be performed under the Contract and submitted by Supplier must be acceptable to Turbomach. Insurers must have a minimum rating of "A VII" (A7) as evaluated by the most current A.M. Best Rating Guide.

If the insurer has a rating of less than A VII, Supplier must receive specific written approval from Turbomach's Purchasing Representative prior to proceeding.

(f) The required coverage shall be:

(i) Worker's Compensation and Employers' Liability Insurance providing benefits as required by applicable law; with a minimum limit of CHF1,000,000 or equivalent per occurrence or limits set by applicable law, which ever is greater;

(ii) Commercial General Liability Insurance (Occurrence Coverage) including products, completed operations, contractual liability coverage of indemnitees contained in the Contract (if applicable) and Supplier's contingent

liability for subcontractors with a minimum combined single limit of liability of CHF1,000,000 or equivalent per occurrence for bodily injury or death and property damage;

(iii) Business Automobile Liability Insurance (Occurrence Coverage) for owned, non-owned, and hired automotive equipment with a minimum combined single limit of liability of CHF1,000,000 or equivalent for each occurrence for bodily injury and property damage.

(iv) Umbrella/Excess Liability Insurance (Occurrence Coverage) may be required in excess of items (i) through (iii) above, depending upon the type of work performed or Service provided.

(v) If the scope of work under the Contract includes design or engineering or other professional Services, Turbomach shall have the option of requiring an Errors or Omissions Liability policy with appropriate coverage as designated by Turbomach.

#### 1.8 Performance Guarantee

Turbomach shall have the right at any time to require Supplier to furnish a performance guarantee covering the full performance of the Services and the payment of all obligations arising under the Contract from Supplier to Turbomach. Such guarantees shall be issued by a First Class bank, shall be payable upon first demand of Turbomach, and shall be confirmed and presentable to a bank designated by Turbomach in Switzerland.

## 2. HANDLING / IDENTIFICATION OF HAZARDOUS MATERIALS

Supplier warrants that it is fully aware of any risk which may arise in connection with shipment, packaging, storage, application, disposal, etc of any hazardous materials in the performance of the Services. Prior to accepting the Order, Supplier shall determine whether the Services require the transport, handling or disposal of materials classified as hazardous (e.g. paints, adhesives, chemicals, or inflammables, oxidizing, explosive, combustible, poisonous, radioactive, corrosive materials, or potentially self-igniting materials). If requested, Supplier shall inform Turbomach immediately by giving relevant details including requisite binding declarations correctly filled in and duly signed regarding such materials. The most recent applicable national and international regulations as well as any divergent or supplementary regulations of the country of destination, provided that Supplier is notified of the country, shall be observed by Supplier in the performance of the Services. Supplier shall be liable for all damages arising as a result of incorrect information/data in the binding declarations or from failure to comply with existing regulations when handling hazardous materials (packaging, shipping, storage, etc.) during the performance of the Services, and shall indemnify and defend Turbomach therefrom.

## 3. EXPORT LICENCE

Supplier shall immediately inform Turbomach whether any work product arising from performance of the

Services are subject to any Export Authorizations and Licenses. Supplier shall be responsible for compliance and obtaining such Authorizations and Licenses. Supplier shall also be responsible to provide accurate harmonized tariff codes, export control classification numbers, certificates of origin and other information and documentation regarding any goods or other deliverables to be supplied with the Service as required by Turbomach or for international transport purposes.

## 4. TIME OF PERFORMANCE

Time is of the essence in the performance of the Services. From time to time, and upon request of Turbomach, Supplier shall prepare and submit for Turbomach's approval an estimated progress schedule for the Services. This schedule shall indicate the dates for the starting and completion of specific aspects of the Services, consistent with Turbomach's specifications, and shall be revised as necessitated by the conditions under which the Services are performed, always subject to the approval of Turbomach. Should Supplier become aware that the agreed completion dates cannot be met, Supplier shall notify Turbomach of this in writing immediately. Early delivery/performance or early part delivery/ performance shall require the written consent of Turbomach.

## 5. LIQUIDATED DAMAGES

### 5.1 Liquidated Damages for Delay in Completion of Services

Unless otherwise agreed, for every commenced or part week exceeding the contractual delivery schedule for performance of conforming Services, Turbomach shall be entitled to claim liquidated damages amounting to two (2) percent of the Order price up to a maximum of twenty (20) percent of the Order price in addition to the performance of the Services. This shall not exclude any claims for actual damages in respect of delay irrespective of the legal basis of such claims. Turbomach shall retain its rights until final settlement/payment, even if Turbomach has not expressly reserved its rights at the time of acceptance.

5.2 Further Rights Accruing in Event of Delays without prejudice to any other rights either after expiry of a final reasonable remedy period as Turbomach shall determine or where, as a result of the delay, the delivery is of no value anymore, Turbomach may at its discretion and without setting any further remedy period, terminate partly or in total the Contract by notice to Supplier and/or arrange for performance of non-furnished deliveries/services by any third party at the expense of Supplier. Should documents be required for this purpose which Supplier has in its possession then Supplier shall hand over these documents to Turbomach without delay and upon demand. Should intellectual property rights prevent a third party from supplying replacement Services, Supplier shall be obliged to obtain a corresponding release from, or license to use, these rights without delay. Claims for contractual liquidated damages accruing prior to cancellation of Contract or award thereof to a third party

supplier shall be due and payable in any case.

## **6. PRICE**

The agreed contract price(s) set forth in the Order shall be fixed and firm prices. No escalations, reductions, or modifications in price may be made except as expressly provided for in the terms of the Contract. Unless otherwise agreed in writing, the price includes all applicable sales and use taxes, VAT, excises, duties, and like levies; and the cost of all permits and licenses required for the lawful performance of the Services. Disputes about the amounts to be paid to Supplier shall not entitle Supplier to cease performance of the Services whether entirely, partially or temporarily.

## **7. PAYMENTS**

Payments shall be effected at the end of the month following the complete and correct performance of the Contract from date of receipt of Supplier's signed invoice net 90 days end of month provided that Supplier's invoice is signed with all required supporting documentation and in conformity with Turbomach's invoicing requirements set forth in the Order. In the case of progress payments are authorized by Turbomach, progress payment invoices shall be submitted no more frequently than once per calendar month. Invoices for any progress payments hereunder must be accompanied by a written certification by Supplier of the percentage of the total scope of Services completed by Supplier for which the progress payment is claimed. Such certification is subject to verification by Turbomach by inspection of the work performed. Charges for approved change orders shall be shown as separate items on Supplier's invoices. If payments are made to take advantage of the cash discount, these shall be made subject to Supplier's fulfilling the Contract properly. In any event, Supplier shall itemize all Services performed and work product provided in a detailed final account. Delays in receiving invoices, and errors or omissions requiring corrections shall be considered just cause for withholding payment without loss of cash discount privilege. Any payments from Supplier to Turbomach shall be made to the address of Turbomach indicated in the Order. Turbomach shall have the right to set off any amount due and payable hereunder against any claims or disputed amounts under any other agreements or contracts existing between the parties hereto.

## **8. ASSIGNMENT**

Supplier shall not assign its rights or delegate its duties under the Contract without the express prior written consent of Turbomach, and any assignment or delegation without such consent shall be void and of no legal force or effect. With written notice to Supplier, Turbomach may assign its rights and obligations under the Contract to any affiliate of Turbomach, provided that Turbomach shall remain ultimately liable for payment of the Order price subject to Supplier's full performance of the Order.

## **9. WARRANTY**

### **9.1 Scope of Warranty**

Supplier warrants that it is professionally qualified to perform the Services, free of all defects in workmanship,

and that Supplier possesses and shall demonstrate all reasonable skills, judgment and expertise in the performance of the Services to the satisfaction of Turbomach. Supplier warrants that the Services performed hereunder shall be of professional quality and in accordance with all requirements of Turbomach. Supplier also warrants that the Services shall be performed in conformity with the latest state of the art technology and know how as well as to all applicable laws, regulations, standards and codes issued by the authorities and professional associations in Supplier's country and the country of performance, and do not infringe any third party's intellectual property rights. Supplier further warrants that any designs, specifications, drawings or other work product supplied under the Contract shall be free of defect in workmanship, materials and design. Turbomach's inspection or approval of Supplier's designs, specifications, drawings or other work product shall not be deemed to relieve Supplier from any obligations hereunder. The warranties in this Article shall extend to Turbomach and to its customer(s). Supplier's warranties shall extend for that period of time set forth in the Order, but not less than twenty-four (24) months from the date the Services are completed and accepted by Turbomach ("Warranty Period").

### **9.2 Extended Warranty**

The warranty shall be extended by the duration of any interruption of Turbomach's operations caused by defective Services and work product not in compliance with the warranty stated above, and by the time taken to remediate defective Services.

### **9.3 Time Limit for Lodging Warranty Claims**

Supplier shall waive the right to reject warranty claims lodged after the Warranty Period where such claims are preserved by applicable law governing engineering and architectural services in the country where the Services are performed or, if applicable, the country of Turbomach's customer for which the Services were ordered. Turbomach shall otherwise lodge warranty claims within the Warranty Period.

### **9.4 Warranty Claim**

A warranty claim shall constitute a demand binding upon Supplier and made by Turbomach to promptly rectify defects in the Services by the curing of any defects and deficiencies in the Services. Should rectification of defects or the performance of conforming Services ultimately prove impossible, unreasonable or ineffective, Turbomach may exercise the right to terminate the Contract or to reduce the Order price or alternatively claim damages for breach of the Contract. In the event Supplier fails to promptly cure the defects and deficiencies in Services, Turbomach shall have the right and authority to proceed to have such Services performed and rectified at Supplier's expense and Supplier shall reimburse Turbomach the cost thereof upon demand. All costs associated with the warranty obligations, in particular in connection with removal, inspection and reinstallation of affected goods, equipment, erection work, travel, freight, packing, insurance, custom duties and

other official levies, examinations and technical inspections, shall be borne by Supplier. Turbomach's failure to inspect or reject Services after performance shall not relieve Supplier of any warranties or obligations provided hereunder.

#### 9.5 Limitation of Warranty Claim

Any warranty claim of Turbomach shall expire at the end of the Warranty Period, except as preserved in Art. 9.3 above and for latent or hidden defects in accordance with Swiss law.

### 10. LIABILITY

#### 10.1 Product Liability

In the event of claims being lodged against Turbomach for breach of applicable safety regulations or on the basis of domestic or foreign product liability laws due to a defect in the Services or a cause attributable to the Services performed or work product supplied by Supplier, Turbomach shall be entitled to claim compensation from Supplier for the damages incurred. To the extent that defects in the Services are attributable to goods or services supplied by subcontractors of Supplier, such defect shall be deemed to be defects in Supplier's Services, and Supplier shall be liable for the performance of its subcontractors.

#### 10.2 Indemnification

Supplier is liable for all damages arising in connection with the Services performed by Supplier, and any resulting breach of applicable law. Supplier shall indemnify, defend and hold harmless Turbomach, its agents, affiliates, officers and directors from and against all claims of third parties with respect to such a breach. Supplier shall also indemnify, defend and hold harmless Turbomach its agents, affiliates, officers and directors from and against any damages (including reasonable attorneys fees) caused in whole or in part by the acts or omissions of Supplier, any of its members, employees, agents, or other persons directly or indirectly employed by or associated with Supplier, or resulting from defects in the Services, Supplier's failure to comply with applicable laws and regulations, Supplier's misconduct at a Turbomach or customer job site, or any misappropriation of a third party's intellectual property rights, including without limitation copyright and patent infringement. Supplier warrants that none of the Services or work product infringes any patent, trademark, copyright, or other right and Supplier agrees, at its sole cost and expense, to indemnify, defend and hold harmless Turbomach, its agents, affiliates, officers and directors and Turbomach's customers from all costs, including attorneys' fees, expenses or damages arising out of any such infringement, except Services performed solely in accordance with instructions specified by Turbomach.

### 11. PLACE OF DELIVERY/ PERFORMANCE

The place of performance of the Services shall be the place indicated in the Order.

**12. DISPUTES/APPLICABLE LAW.** Buyer and Seller shall use their best efforts to resolve any dispute or claim

that may arise under the Order/or Agreement in an amicable manner. In the event either party believes the other party is in breach of or is noncompliant with any of the provisions of the Order/or Agreement, such party shall promptly notify the other in writing of such claim and the receiving party shall take reasonable measures to remedy such breach or noncompliance within thirty (30) days after receipt of notice. If the dispute is not resolved within such time, then the party initiating the claim shall demand a meeting of the parties, which meeting shall be held promptly in Buyer's Premises, Pakistan, unless the parties otherwise agree. Persons attending such meeting shall have decision-making authority regarding the dispute to attempt, in good faith, to negotiate a resolution of the dispute. The parties agree to participate in such negotiations and, if agreeable, mediation related thereto, for a period of thirty (30) days. If the parties are not successful in resolving the dispute through the negotiations, or mediation, if used, then the dispute shall be submitted to binding arbitration in accordance with the Rules of Arbitration of the International Chamber of Commerce, and judgment upon the arbitral award may be entered in any court having jurisdiction. The request for arbitration shall be made within a reasonable time after the dispute or claim arises, and in no event after it would be barred by any applicable statute limitations. Three (3) arbitrators shall be appointed in accordance with said Rules: one arbitrator selected by each party with the third arbitrator selected by the two appointed arbitrators. The cost of such arbitration shall be borne as determined by the arbitrators. Unless otherwise mutually agreed, arbitration hearings shall be conducted in the English language and held in London, United Kingdom. Should any provision of the Order be declared invalid, such declaration shall not invalidate or void the remaining provisions of the Order/or Agreement. The Order/or Agreement, having a reasonable relationship to the Islamic Republic of Pakistan shall be governed by the laws of the Islamic Republic of Pakistan, without regard to conflict of law..

### 13. MISCELLANEOUS CONDITIONS

#### 13.1 Intellectual Property Rights

Any infringement actions brought against Turbomach or its customers with respect to the Services shall be defended by Supplier. Supplier shall notify Turbomach immediately of any infringement actions taken and keep Turbomach informed in detail of progress and resolution. Supplier shall involve Turbomach in the determination of the final resolution and Turbomach shall be entitled to give Supplier binding instruction relating to the conduct of related legal proceedings or negotiations at any time. Any cost associated with such legal proceedings or negotiations shall be borne by Supplier.

#### 13.2 Subcontracting

Supplier shall not subcontract any of its obligations under the Contract without Turbomach's prior written consent. Supplier shall at the request of Turbomach refrain from exercising rights of retention towards Supplier's subcontractors. Turbomach shall be entitled to make direct payments to any subcontractors of Supplier. Insofar

as such payments refer to claims of subcontractors deemed justified by Turbomach, such payments shall be deemed to be payments to Supplier and in lieu of those owed to Supplier. In any event, third parties, in particular subcontractors engaged by Supplier to discharge Supplier's contractual obligations or otherwise involved by Supplier in connection with its supply of Services shall not relieve Supplier's ultimate responsibility to fully perform the Contract

### 13.3 Partial Invalidity

Should individual provisions of this Contract prove to be invalid, this shall not affect the validity of the remaining contractual provisions or portions thereof. The parties to the contract shall undertake to replace the invalid provisions immediately in a supplementary agreement, with the understanding that it should be as close as possible to the economic results of the provisions held invalid.

### 13.4 Impermissible Publicity

The use of documents and information relating to the Contract for references or publicity purposes of Supplier shall not be permitted without prior written consent of Turbomach and opportunity of Turbomach to review and comment upon the proposed reference and publicity materials.

### 13.5 Compliance with Laws

Supplier agrees that by acceptance of the Order it has complied with and will comply with all applicable federal, state or local laws, regulations or orders, and all reporting requirements of said orders, rules and regulations, the terms of which are herein incorporated by reference to the same extend and effect as if set out herein in full.

### 13.6 Disclosure of Conflicts; Business Conduct

Supplier agrees to promptly disclose in writing to Turbomach the names of all clients who retain Supplier within one year before and after the date of the Order, whose business activities or interests may in any way directly compete or conflict with those of Turbomach, its parent, Caterpillar Inc., or its sister affiliate, Solar Turbines Incorporated. Supplier also agrees that it shall conduct its business in compliance with all applicable laws pertaining to antibribery and corruption, and, among other things, agrees that no remuneration received by Supplier from Turbomach shall be given, directly or indirectly, to any director, officer, employee, agent or customer of Turbomach or any of its affiliated companies or subcontractors.

### 13.7 Complete Agreement

The Contract and the attachments thereto represent the entire agreement between the parties with respect to the purchase of the Services. All prior agreements, representations, statements, negotiations and undertakings whether oral or in writing pertaining to the Services are superseded by this Contract. No course of prior dealings between the Turbomach and Supplier and no usage of the trade shall be relevant to determine the meaning of the Contract even though the accepting or

acquiescing party has knowledge of the performance and opportunity for objection.

### 13.8 Independent Contractor

Nothing in the Contract shall be deemed to constitute Supplier or any of Supplier's employees or agents to be the agent, representative or employee of Turbomach or its customer(s). Supplier shall be and remain at all times an independent contractor and shall have responsibility for and control over the details and means for performing its work, provided that Supplier is in compliance with the terms of the Contract. Anything in the Contract that may appear to give Turbomach the right to direct Supplier as to the details of the performance of Supplier's work or to exercise a measure of control over Supplier shall only mean that Supplier shall follow the desires of Turbomach in the results of the services or goods rendered. Supplier agrees to indemnify and defend Turbomach against any demand, action, cost or expense, including without limitation social costs due to any government entity, resulting from or in any way arising out of the activities, wherever performed, of Supplier's employees and claims arising from or related to them. Supplier expressly waives, for itself, its heirs, dependents, employees, officers, directors, legal representatives, successors, and assigns any and all claims to any benefit of for participation in or under any Turbomach employee benefit plan.

13.9 Third Party Arrangements; Communication with Customers arrangements and agreements between Supplier and any customer of Turbomach or other third parties, shall not be binding on Turbomach without its prior written consent. Supplier agrees not to contact customers of Turbomach without first consulting with the project manager assigned by Turbomach.

## 14. FORCE MAJEURE

Force Majeure shall be deemed to mean exclusively a calamity caused by external factors such as but not limited to natural disasters, war or civil unrest that directly affect the ability of a party to perform their obligations under the Contract and that are outside the control or reasonable expectation of the party whose performance is affected. Nonperformance by subcontractors shall not be regarded as a force majeure. If as a result of force majeure Supplier is permanently incapable of fulfilling his obligations, Turbomach shall be bound to pay only for that part of the Contract which has been satisfactorily performed. If as a result of force majeure Supplier is delayed in its performance of its obligations under this Contract for a period longer than thirty (30) days, whether consecutively or taken together, Turbomach shall have the right to terminate the Contract.

## 15. TERMINATION

### 15.1 Termination for Convenience

Turbomach may, at its sole option, terminate the Order in whole or in part, for its convenience, by written notice to Supplier. Upon such termination Supplier shall immediately stop work under the Order, or the terminated portion thereof, and shall place no further orders or incur no further cost chargeable to Turbomach as to the

terminated portions thereof except, however, as to necessary action and costs to protect property in Supplier's possession in which Turbomach has or may acquire an interest. Unless otherwise specified in the Order, and to the extent not previously paid, Supplier shall be entitled to the following payments, without duplication, in full settlement of all Supplier claims: (i) the order price for Services completed and accepted by Turbomach; (ii) the actual costs incurred by Supplier which are properly allocable or apportionable under generally accepted accounting practices to the terminated portion of the Order; (iii) reasonable expenses, if any, of Supplier in making settlement under Supplier's suborders and subcontracts, if any, but not including damages or loss of profit claims in either case; and (iv) such allowance for profit on work performed as may be reasonable under the circumstances but no more than 10%; less any amounts obtained as the result of mitigation efforts as described below. Payments under this Article shall in no event exceed the applicable pro rata price of the portion of the Order terminated less payments already made thereon. Supplier shall transfer title to and deliver on Turbomach's instructions any property, materials and Goods the costs of which are reimbursed hereunder. Supplier will use its best efforts to mitigate such termination charges as directed or authorized by Turbomach.

#### 15.2. Termination for Default

(a) Each of the following shall constitute a default under the Contract and Turbomach reserves the right to terminate, at no cost to Turbomach, all or any part of the Order if (i) Supplier fails to make progress as to endanger performance of the Contract and does not cure such failure within a period of 10 business days (or such longer period as Turbomach may in writing authorize) after receipt of notice from Turbomach specifying such failure, or (ii) Supplier does not perform the Services as provided in the Contract, or (iii) if Supplier breaches any of the terms of the Contract, or (iv) in the event of the happening of any of the following: insolvency of Supplier; filing of a voluntary or involuntary petition in bankruptcy which is not vacated within 30 days from date of filing; the appointment of a receiver or trustee for Supplier; the execution of an assignment for the benefit of creditors or the execution of a composition with creditors or any agreement of like import.

(b) If the Order is terminated for default in whole or in part, Turbomach may acquire, under the terms, delivery schedules and in the manner Turbomach considers appropriate, Services similar to those terminated and in accordance with the time schedule in the Order, and Supplier shall be liable to Turbomach for any excess costs for those Goods and Services. However, Supplier shall continue to perform any portion of the Order not terminated.

(c) If the Order is terminated for default, Turbomach may require Supplier to transfer title and deliver to Turbomach, as directed by Turbomach, any

(i) completed goods that would be delivered with the

Services; and (ii) partially completed goods and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information and contract rights (collectively referred to as "manufacturing materials" in this clause) that Supplier has specifically produced or acquired for the terminated portion of the Order. Upon direction of Turbomach, Supplier shall also protect and preserve property in its possession in which Turbomach or its customer(s) has an interest. Turbomach shall pay the Order price for completed Services that are accepted by Turbomach. Supplier and Turbomach shall agree on the amount of payment for Supplier's manufacturing materials delivered and accepted, which under no circumstance shall exceed Supplier's direct cost for such manufacturing materials. Turbomach may withhold from these amounts any contractual liquidated damages and any sum Turbomach determines to be necessary to protect Turbomach against loss because of outstanding liens or claims of former lien holders or from excess costs Turbomach may incur in completing the Services or obtaining substitute Services from others and claims Turbomach may have against Supplier.

(d) If, after termination for default, it is finally determined that Supplier was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been made pursuant to the Termination for Convenience provision above.

(e) To the extent permitted by, and subject to the mandatory requirements of applicable law, each and every right, power and remedy herein specifically given to Turbomach or otherwise in the Contract shall be cumulative and shall be in addition to every other right, power and remedy herein specifically given or now or hereafter existing at law, in equity or by statute, and each and every right, power and remedy whether specifically herein given or otherwise existing may be exercised from time to time and as often and in such order as may be deemed expedient by Turbomach, and its exercise or failure to exercise any power or remedy shall not be construed to be a waiver of its right to exercise at any time thereafter any right, power or remedy.

#### 15.3 Right to Audit

If an audit is required by a Turbomach customer or should the Order or any portion thereof be anything other than a "firm fixed price" order, or should Turbomach require an audit to confirm any payment upon a termination for convenience or for default, then Turbomach may inspect, copy and shall have access to, at all reasonable times during the performance of the Contract and for five (5) years thereafter, all of Supplier's and its subcontractors, books, records, receipts, vouchers, correspondence, instructions and the like pertaining to the Contract and Services provided, for the purpose of verifying that the charges presented and the Services supplied by Supplier are in accordance with the Order and for any other reasonable purpose. To verify Order price data, upon Turbomach's request, Supplier shall furnish to Turbomach cost breakdowns, invoices, and related support material. Any inspection or audit shall be paid for by Turbomach.

If the inspection or audit shows that Supplier has charged Turbomach an amount in excess of the amount provided in the Order by three percent (3%) or more for any given period, then Supplier shall pay to Turbomach within fifteen (15) calendar days after receipt of the inspection or audit report, the amount equal to the overcharge, plus interest thereon at the rate of seven percent (7%) per annum from the original date of Turbomach's first payment of the overcharges to the date of Supplier's repayment, and Supplier shall also pay the actual cost of such inspection or audit, including without limitation Turbomach's reasonable attorney's fees, reasonable accountant's fees and other reasonable costs.

*The following provisions shall apply when the scope of supply includes Services to be provided or performed for or at specific job site(s) designated by Turbomach:*

## **16. SCOPE OF SUPPLIER'S SUPPLIES AND SERVICES**

### **16.1 Scope and Performance for the Supply of Services.**

Supplier shall supply Services at the designated job site. Even where Turbomach has not specified details of the Services to be supplied, Supplier shall ensure that components and equipment placed in the charge of Supplier shall be installed, fitted, commissioned, tested, operated, and maintained, as applicable, in such a manner as to permit the proper operation of such equipment or construction of the project, as applicable.

### **16.2 Scope of Work**

If Supplier is required to perform construction, erection, installation, testing or other work for Turbomach, Supplier shall provide the complete services required to satisfy all of Turbomach's specifications.

### **16.3 Obligation to Obtain Information**

It shall be the responsibility of Supplier to obtain at its expense the requisite information concerning the job-site, and the affect thereof on the performance of the Services, in particular the meteorological, subsurface and environmental conditions where the Services shall be performed, as well as infrastructures in which the Services may be completed.

## **17. WORK ON THE JOB SITE**

### **17.1 Responsibility**

The presence of Turbomach's supervisory personnel on the job site shall not release Supplier from responsibility for the timely and full performance of the Services. Supplier shall delegate an experienced and qualified erection/construction supervisor to the job site and, provide him with required authority to act. Turbomach shall be notified accordingly in advance prior to any representative of Supplier being replaced.

### **17.2 Coordination of Services**

Supplier shall coordinate the performance of Services with all subcontractors of Turbomach and other parties working on the job site to the extent that this is necessary with regard to the overall construction work and as required by Turbomach's project manager or site supervisor. Other subcontractors of Turbomach shall be

permitted to use Supplier's scaffolding, equipment, etc., if any, in return for appropriate compensation. Work schedules for any work to be carried out simultaneously by different subcontractors of Turbomach shall be coordinated as to ensure the smooth performance of Turbomach's contract with its customer and the applicable project schedule. Supplier shall not be entitled to assert claims on the grounds of impediments to performance of the Services caused by other parties at the job site other than Turbomach.

### **17.3 Safety Measures**

Supplier shall timely inform itself about all applicable safety regulations and rules at the job site and shall appoint a person responsible for safety matters who shall be assigned for the duration of the work at the job site. When performing the Services, Supplier shall observe the relevant safety regulations and rules, in particular the safety regulations of Turbomach and its customer applicable to job site.

**17.4 Protection of Environment, Protection against Fire and Explosion** Supplier shall timely inform itself about all safety and protection facilities and apparatus available at the job site and to utilize these facilities and apparatus as required.

### **17.5 Preparatory Work**

Prior to the commencement of the Services at the job site, Supplier shall fully inspect the job site, in particular foundations, ground and subsurface conditions, connections, possible impediments, etc. and shall promptly notify Turbomach in writing of any objection. Supplier shall not be entitled to assert claims on the grounds of unknown job site conditions following commencement of the Contract.

### **17.6 Supplier's Personnel**

Supplier shall submit to Turbomach's assigned project manager and site supervisor a list indicating the names of all persons Supplier intends to employ at the job site. The list shall always be kept up-to-date. Upon request, Supplier must furnish proof that such persons have the social security and insurance coverages required by applicable law at the job site and in Supplier's country. Supplier and its personnel shall comply with all statutory and official regulations, in particular those relating to the employment of foreign and local labor at the job site. Supplier shall be liable to Turbomach for such non-compliance and shall indemnify and defend Turbomach for and against any claims by third parties, including claims or fines imposed by governmental authorities. Supplier's personnel and the personnel of any third parties engaged by Supplier may be refused access to the job site if there is cause for such refusal.

### **17.7 Conduct at the Job Site**

Supplier and its personnel shall comply with all relevant instructions and directives of Turbomach. In particular, Supplier shall ensure that its employees as well as the employees of third parties engaged by Supplier shall observe the directives of Turbomach and its customer



relating to maintenance of order, health, safety and environment at the job site and shall submit themselves to the usual checks on the job site. All equipment brought to the job site by Supplier and/or any third party engaged by Supplier, must be clearly marked with their respective name or company logo beforehand and shall have been certified, tested and maintained in accordance with the standards and laws applicable at the site. Turbomach and its customer shall be entitled to inspect such items. Prior to bringing or removing equipment or other items from the job site, Turbomach's site supervisor shall be handed over a list which he/she shall initial and keep a copy. Prior approval of Turbomach and its customer is required for the erection of signs at the job site.

#### **18. ACCEPTANCE**

Services shall be subject to an acceptance procedure covering both quality and effectiveness. The date for the acceptance shall be set following receipt of a written application from Supplier. The result of the acceptance shall be set out in an acceptance report issued by Turbomach. The acceptance shall not be performed or completed in any other way, in particular not through examinations, so-called technical inspections, issuing of other certificates or documents, use of items in question, verbal declarations, silence or payments from Turbomach. Supplier shall pay the material cost of the acceptance. Turbomach and Supplier shall each bear their own personnel cost incurred in connection with the acceptance. Supplier shall bear alone all costs of any failed acceptance procedure.

#### **19. WARRANTY MODIFICATION**

The warranty stated above shall apply but the Warranty Period shall be not less than twenty-four (24) months starting from the acceptance of the services and equipment provided by Turbomach to its customer as indicated in a provisional acceptance certificate issued to Turbomach. If any of the Goods are the subject of a punch list item between Turbomach and its customer, Turbomach shall promptly inform Supplier, and Supplier shall immediately rectify the punch list item. For rectified Services the full Warranty Period shall start again from date of rectification and acceptance. The maximum Warranty Period, however, shall end thirty-six (36) months after acceptance as provided in the Article above.

[End of Terms and Conditions]