

**ESPEC CORP.**  
**STANDARD TERMS AND CONDITIONS OF PURCHASE**

**1. Interpretation**

1.1 In these Conditions the following expressions shall have the following meanings:

- 1.1.1 "Conditions" means the standard terms and conditions of purchase set out in this document and (unless the context otherwise requires) includes any special terms and conditions specifically agreed in writing by Purchaser;
- 1.1.2 "Contract" means the agreement between Supplier and Purchaser for the sale and purchase of the Goods;
- 1.1.3 "Goods" means any and all items, articles, parts, equipment, programs, documentation or other material described on the P/O Cover Sheet ;
- 1.1.4 "P/O Cover Sheet" means the format designated by Purchaser titled "Espec Corp. Purchase Order Cover Sheet";
- 1.1.5 "P/O Number" means the identification number of the Purchase Order specified on the P/O Cover Sheet;
- 1.1.6 "Price" means the price of the Goods set out on the P/O Cover Sheet;
- 1.1.7 "Purchaser" means ESPEC CORP., a Japanese corporation;
- 1.1.8 "Purchase Order" means the P/O Cover Sheet and these Conditions which are attached thereto;
- 1.1.9 "Specification" means any specifications, technical descriptions and data, drawings, samples, notes, special instructions, engineering notices or requirements contained or referred to in or sent with the Purchase Order;
- 1.1.10 "Supplier" means the person, vendor, firm or company to whom the Purchase Order is addressed.

1.2 Any trade terms used in these Conditions or in the Contract shall be interpreted in accordance with the International Rules for the Interpretation of Trade Terms 1990 - (Incoterms 1990, Publication No.460).

1.3 The headings in these Conditions are for convenience only and shall not affect their interpretation.

**2. Basis of Purchase**

2.1 Offer To Purchase The Purchase Order :

2.1.1 constitutes an offer by Purchaser to purchase the Goods at the Price subject to these Conditions and the contents of the P/O Cover Sheet; and

2.1.2 is conditional upon receipt by Purchaser of Supplier's unconditional written acceptance thereof within 10 days of the date of the Purchase Order and absent such receipt shall lapse.

No amendment to the Purchase Order shall be binding on the Purchaser unless and until the Purchaser notifies Supplier in writing that it accepts such amendment and absent such notification Supplier and Purchaser shall be deemed to be dealing on the terms of the Purchase Order as delivered to Supplier.

2.2 Conditions Govern Except to the extent otherwise specifically agreed in writing by Purchaser, the purchase by Purchaser of the Good shall be governed by and subject to these Conditions to the exclusion of any other terms and conditions on which any estimate, quotation, proposal or acknowledgement has been given to the Purchaser or subject to which the Purchase Order is accepted or purported to be accepted by Supplier.

2.3 Variations Purchaser shall have the right to unilaterally amend, modify or change the P/O Cover Sheet or these Conditions in case of legislation or governmental regulation or action that might, in the reasonable opinion of Purchaser, materially affect the relationship between Purchaser and Supplier as set forth by the Contract, which amendments, modifications or changes shall be given immediate effect.

**3 Price**

3.1 Price Subject as stated in paragraph 3.2 below, the Price payable for the Goods shall be as stated on the P/O Cover Sheet and, unless otherwise so stated, shall:

3.1.1 be inclusive of all taxes, impositions, charges, expenses and costs incidental or related to the sale, packaging, loading, export and associated customs clearance, shipment and unloading of the Goods, whether now or hereafter existing and whether directly or indirectly imposed, charged or levied;

3.1.2 be inclusive of all charges, expenses and costs incidental or related to the delivery of the Goods (including any checking operations necessary for the purposes of such delivery);

3.1.3 be inclusive of any costs of installation if so required on the P/O Cover Sheet;

3.1.4 be inclusive of all Supplier's fees and expenses for performing its obligations under the Contract;

3.1.5 not be subject to increase (whether occurring by way of any variation in exchange rates, inflation or the market price of materials, utilities and/or labor or otherwise),

and accordingly, Supplier agrees to directly pay when due all such taxes, impositions, charges, expenses and costs to the extent possible, and to promptly reimburse Purchaser for any such taxes, impositions, charges, expenses and costs paid by Purchaser.

3.2. Discounts Supplier agrees that Purchaser shall receive the benefit of any reduction in the price of any Goods which shall be made or in effect at the time of the shipment or delivery or furnishing thereof to Purchaser and that in any such case the Price shall be reduced accordingly.

#### **4. Obligations of Supplier**

4.1 Familiarization With Conditions It is Supplier's responsibility to familiarize itself fully, at or before the time Supplier indicates its acceptance of the Purchase Order, with:

4.1.1 all the terms and conditions on which the Goods are to be supplied but including in particular the need to comply, as applicable, with the Specifications, any relevant engineering codes and standards, the date and place for delivery of the Goods and all licence and customs formalities for the export of the Goods and their transit;

4.1.2 all other requirements, such as local conditions, applicable laws and regulations, labor conditions, environmental aspects and similar matters.

In addition, if Supplier is to install the Goods then it is also Supplier's responsibility to familiarize itself fully, at or before the time Supplier indicates its acceptance of the Purchase Order, with the installation site (including, without limitation, the physical characteristics the site, availability of services, normal working hours, availability of labor and any local or otherwise applicable labor arrangements or practices which might affect the installation).

4.2 Further Obligations Unless otherwise specified on the P/O Cover Sheet, Supplier shall at its own cost:

4.2.1 provide and supply the Goods in conformity with the Contract, and perform all obligations set out on the P/O Cover Sheet or otherwise required by the terms and conditions of the Contract;

4.2.2 be responsible for doing and providing all things of whatsoever nature or description which though not specifically included in the P/O Cover Sheet could reasonably be inferred from, inter alia, the application of internationally accepted engineering, industrial and/or business practice;

4.2.3 at all times comply with all applicable laws, rules, ordinances, regulations and codes concerning the manufacture, sale, packaging, packing, shipment, export, delivery and, if applicable, installation of the Goods, whether governmental, prefectural, federal, state, local or otherwise;

4.2.4 obtain all necessary export licences and authorizations and comply with all formalities necessary for the export of the Goods;

4.2.5 contract either on usual terms for the carriage of the Goods to the agreed point at the named place of destination by a usual route and in a customary manner or as otherwise stated on the P/O Cover Sheet;

4.2.6 furnish adequate protective packing and packaging that conforms with the requirements of the relevant carrier and for these purposes "adequate" shall mean securely packed for export as light as possible and in the smallest cubical bulk consistent with safe carriage by ocean vessel, railroad or aircraft (as the case may be);

4.2.7 deliver the Goods either into the custody of the designated carrier for transportation CIP to the named place of destination set out in the P/O Cover Sheet or as otherwise stated on the P/O Cover Sheet and in any event Supplier shall notify Purchaser in good time that delivery has been effected;

4.2.8 provide Purchaser with every assistance in obtaining any documents issued in the country of despatch and/or of origin of the Goods and which Purchaser may require for the importation and/or transit of the Goods;

4.2.9 supply Purchaser in good time with any instructions or other information necessary to enable Purchaser to accept delivery of the Goods;

4.2.10 promptly after shipment and in any event prior to the due date for delivery of the Goods deliver to Purchaser at the address shown on the P/O Cover Sheet the express receipt or bill of lading or other usual transport documents evidencing the fact that shipment has been made together with all shipping notices and other documents required by Purchaser to take delivery of the Goods;

4.2.11 provide at the time of delivery of the Goods to Purchaser Supplier's recommended trade price list for all spare or ancillary parts for or to the Goods, such list to reflect the cost price to Supplier of the Goods and to be exclusive of all handling or similar charges, and Supplier shall supply on request by Purchaser any spare or ancillary parts included in such list at the prices reflected therein and otherwise on terms substantially similar to those set out in these Conditions. Such price list shall be valid for 12 months from the date of delivery of the Goods to Purchaser;

4.2.12 obtain and maintain proper cargo insurance covering the Goods, for the benefit of Purchaser and Supplier, which insurance shall:

(a) name Purchaser as a person entitled to claim directly from the insurer,

(b) provide coverage until the Goods are delivered to the place of destination designated in the P/O Cover Sheet in accordance with the Contract,

(c) cover the Goods for at least an amount equivalent to 110 per cent of the Price against all risks covered by an "all-risk" hazard insurance policy, including, without limitation, insurance against the risks of war, strikes, riots and civil commotions, loss of good by reason of insolvency or fraud and loss caused by delay in delivery,

(d) be carried by an insurance company or companies acceptable to Purchaser,

(e) provide that the policy may not be terminated, canceled or amended without 30 days prior written notice to Purchaser, and

(f) otherwise be in a form acceptable to Purchaser;

4.2.13 obtain and maintain appropriate liability insurance to cover Supplier against its liabilities to Purchaser under the Contract;

4.2.14 deliver a copy of Supplier's insurance policies (or certificates therefor) to Purchaser at the address shown on the P/O Cover Sheet at or before the time the express receipt or bill of lading or other documents are delivered in accordance with paragraph 4.2.10 above.

4.3 Disclosure of Experience Purchaser is authorized to check Supplier's past experience relating to the subject matter of the Contract

and to ask questions about Supplier's experience relating thereto and Supplier is obligated to answer such questions and promptly furnish such information as Purchaser may so request.

## **5. Payment Terms**

5.1 Invoicing Supplier shall be entitled to invoice Purchaser on or at any time after delivery of the Goods and each invoice shall quote the relevant P/O Number. Invoices shall be rendered in triplicate, or as otherwise specified on the P/O Cover Sheet, and shall state as separate items:

- 5.1.1 all taxes, impositions, charges, expenses and costs incidental or related to the sale, packaging, loading, export and associated customs clearance, shipment and unloading of the Goods;
- 5.1.2 all charges, expenses and costs incidental or related to the delivery of the Goods (and charges incidental thereto) stating the name of the carrier used; and
- 5.1.3 any costs of installation.

Invoices (which should have attached evidence of any item referred to in 5.1.1 or 5.1.2 above) and all other bills and notices should be delivered to Purchaser at the address shown on the P/O Cover Sheet.

5.2 Payment Terms/Currency Unless otherwise specified on the P/O Cover Sheet, and subject to paragraph 5.4 below, full payment of the Price shall be made in U.S. Dollars on the last day of the month following the month during which Purchaser accepts the Goods or receives an acceptable invoice, whichever is the later.

5.3 Banking Charge. All bank charges incurred outside Japan in respect of payment of the Price and/or the Contract (including any bank confirmation charges) shall be borne by Supplier and all bank charges incurred inside Japan (including any charges for opening a letter of credit) shall be borne by Purchaser.

## **5.4 Setoff / Withholding**

5.4.1 If Supplier defaults in or fails to properly perform any of its obligations under the Contract or and other proposal, agreement, venture or Contract involving Supplier and Purchaser, Purchaser may, without prejudice to any other remedies available to it:

- 5.4.1.1 setoff the amount due and payable to Supplier under the Contract against such default or failure;
- 5.4.1.2 withhold payment of the Price;
- 5.4.1.3 apply any performance bond or refund bond deposit delivered or paid by Supplier in favor of Purchaser toward satisfaction of Supplier's obligations and liabilities under the Contract or under any other proposal, agreement, venture or contract involving Supplier and Purchaser and Purchaser and Supplier shall do, execute and perform all necessary deeds, documents and acts as may be required to give effect to such setoff, withholding or application, if any.

5.4.2 Supplier waives any and all setoffs it may otherwise be entitled to apply against its obligations and liabilities to Purchaser under the Contract, and agrees that any setoff right or counterclaim of Supplier against Purchaser otherwise existing shall not act to impair or affect Supplier's obligations and liabilities to Purchaser under the Contract.

## **6. Shipping and Delivery**

6.1 Shipping And Delivery Instructions All shipments must be forwarded in the manner indicated on (and so that the Goods shall be delivered within the period stated on) the P/O Cover Sheet and unless otherwise specifically agreed in writing by Purchaser, Supplier shall:

- 6.1.1 ship the Goods complete and consolidate all daily shipments to one destination on one bill of lading;
- 6.1.2 mark the P/O Number on all shipping papers and subordinate documents and on each container and package;
- 6.1.3 enclose a packing list with each shipment (and when more than one package is shipped, identify the one containing the packing list) which packing list must bear the P/O Number, be itemized, show quantity of the shipment or its gross and net weight.

6.2 Time of Essence Time is of the essence in the Contract and Supplier shall ensure that the Goods are shipped and delivered at the time or times specified on the P/O Cover Sheet.

6.3 Late Delivery or Installation If delivery (or if required installation) of the Goods is not completed within the time or times specified on the P/O Cover Sheet, Purchaser reserves the right, without liability and without prejudice to Purchaser's right to claim damages or to enforce any other remedy provided by law, to:

- 6.3.1 terminate the Contract as to any Goods not yet delivered and/or installed and to purchase and/or install substitute items. In that event, Supplier shall be obliged to repay to Purchaser (a) any monies paid by Purchaser to Supplier in respect of the Goods so terminated and (b) any monies paid by Purchaser to a third party in obtaining and/or installing substitute items which is in excess of the amount that would have been payable to Supplier in respect of that portion of the Goods so substituted; or
- 6.3.2 return to Supplier, at the risk and expense of Supplier, any of the Goods already delivered and/or installed but which cannot be effectively and commercially used by reason of such non-delivery or installation and purchase and/or install substitute items. In that event Supplier shall be obliged to repay to Purchaser (a) any monies paid by Purchaser to Supplier in respect of the Goods so returned and (b) any monies paid by Purchaser to a third party in obtaining and/or installing substitute items which is in excess of the amount that would have been payable to Supplier in respect of that portion of the Goods so substituted; or
- 6.3.3 charge Supplier with liquidated damages in the amount of 0.3 % of that portion of the Price applicable to the aggregate of (a) the Goods not delivered or installed in time and (b) those Goods already delivered and/or installed but which cannot be effectively and commercially used by reason of the non-delivery or installation, for each day of delay from the delivery date stated on the P/O Cover Sheet until the actual date of delivery and/or installation.

## **7. Title and Risk**

7.1 Passing Of Title Title to and the property in Goods purchased by Purchaser under the Contract shall pass to Purchaser upon the earlier to occur of:

- 7.1.1 payment; and

7.1.2 delivery to Purchaser's factory at Fukuchiyama City, Hyogo Prefecture, Japan or to any other address stipulated on the P/O Cover Sheet, but without prejudice to any right of rejection available to Purchaser under the Contract or otherwise.

7.2 **Passing of Risk** Unless otherwise specified on the P/O Cover Sheet and subject as stated below, all risk of loss of, or damage to, the Goods shall be upon Supplier until such time as the Goods purchased by Purchaser under the Contract shall have been delivered to Purchaser's factory at Fukuchiyama City, Hyogo Prefecture, Japan or to any other named place of destination stipulated on the P/O Cover Sheet) and accepted by Purchaser.

If the Contract calls for additional services such as installation or the like to be performed after delivery, Supplier shall retain the risk of loss of, or damage to, the Goods until such additional services have been performed and the Goods then accepted by Purchaser.

7.3 **Inspection and Testing** Before dispatching the Goods, Supplier shall carefully inspect and test them for compliance with the Purchase Order and the Specification and shall, at the request of Purchaser, supply to Purchaser a certified copy of Supplier's inspection and test sheets. Any discrepancies, errors, inconsistencies or omissions observed by Supplier during its inspection under this paragraph shall be immediately reported to Purchaser and Supplier shall be obligated to remedy such matter forthwith.

In addition, Purchaser may inspect and test the Goods during their manufacture, processing and storage prior to shipment on giving Supplier reasonable advance notice of such inspection and test. In this event, Supplier shall at its own expense provide or procure the provision of all such production testing facilities and personnel as may reasonably be required by Purchaser to inspect and test the Goods to determine whether they meet the requirements of the Purchase Order and the Specification. If as a result of such inspection and test, Purchaser is of the opinion that the Goods do not comply with the Purchase Order and/or the Specification or are unlikely on completion of manufacture or processing to comply, Purchaser shall inform Supplier accordingly in writing and Supplier shall be obligated to remedy such matter forthwith.

Purchaser shall be entitled either prior to shipment or after delivery to reject any Goods which are not in accordance with the Contract and in relation thereto Purchaser shall not be deemed to have accepted any Goods until Purchaser has had a reasonable time to inspect them following delivery. In the event of such rejection, Purchaser reserves the right, without liability and without prejudice to Purchaser's right to claim damages or to enforce any other remedy provided by law to:

7.3.1 terminate the Contract and require repayment of any part of the Price which has been paid; or

7.3.2 require Supplier to replace the rejected Goods within a specified time with replacements which conform in all respects with the Contract.

## **8. Warranties**

8.1 Supplier expressly warrants to Purchaser that the Goods:

8.1.1 will be free from defects in design, materials or workmanship;

8.1.2 will be in conformity as to quantity, quality, standard of performance and description with the particulars stated in the Purchase Order and the Specification;

8.1.3 will be equal in all respects to any samples provided or given by either party;

8.1.4 will be fit and safe both for the purposes for which they are normally required and for those Purposes, if any, as indicated on the P/O Cover Sheet or as otherwise made known by Purchaser;

8.1.5 will be free and clear of all liens and encumbrances;

8.1.6 do not, and the use thereof will not, infringe any patent, trademark, copyright or other protected or proprietary information or know-how of any other person;

8.1.7 comply in all respects with all statutory and other legal requirements which may be in force at the time when the same are supplied.

These warranties shall survive inspection, acceptance and payment and be in addition to and not to the exclusion of other warranties, express or implied.

8.2 If, within a period of twelve months after delivery, Purchaser becomes aware of any defect in any of the Goods which it believes arise from faulty design, materials or workmanship or by reason of any other breach of the warranties contained in paragraph 8.1 above, then Purchaser shall have the right, without prejudice to its rights to claim damages or to enforce any other remedy provided by law, to require Supplier to replace or repair the Goods concerned so as to remedy the defects without cost to Purchaser.

**9. Indemnity** Supplier shall fully indemnify and hold harmless Purchaser, its subsidiaries and affiliated companies, their respective customers, and their officers, directors, agents and employees, from and against any and all claims, demands, costs, actions, charges, expenses, losses, damages, fines, and liabilities (including without limitation, court costs and reasonable attorneys fees and disbursements) which result from:

9.1 All proceedings or claims arising out of or in connection with the Goods, or the installation, use or sale thereof, for or on account of:

9.1.1 any bodily injury, death or damage to person or property, or any claim thereof, wherever and whenever arising;

9.1.2 any actual or alleged infringement of any patent, trademark, copyright or other protected or proprietary interest, now or hereafter existing, except to the extent that the actual or alleged infringement arises solely from Supplier's adherence to that part of the Specification designated solely by Purchaser,

9.2 The failure by Supplier to comply with any applicable laws, rules and other codes, rules and regulations;

9.3 The breach by Supplier of any provision of, or obligation contained in, the Contract.

## **10. Use of Information**

**10.1 Proprietary Information** The Specification and all designs, specifications, drawings, sketches, models, samples, blueprints, artwork negatives, proofs, engravings, patterns, dies, molds, gauges, appliances, computer programs and all engineering, technical or business information or data, invention, system, discovery, know-how or similar item, written, oral or otherwise, owned, made, prepared, discovered, procured or controlled by Purchaser, and all documents and things which describe, reflect or embody any such information furnished to or acquired by Supplier under or in contemplation of the Contract or Purchase Order together with all copyright, design right or other intellectual property right therein (hereinafter collectively called "Information") shall be and remain even after the termination of the Contract the exclusive property of Purchaser.

**10.2 Confidentiality** Unless disclosure is in response to a valid order of a court or other official government body (provided however that Supplier shall first have given written notice of the order to Purchaser and shall have made a reasonable effort to obtain a protective order requiring that the Information so disclosed be used only for the purpose for which the order was issued) or unless Supplier obtains the express prior written consent of Purchaser, Supplier shall not at any time, even after the expiration or termination of the Contract :

- 10.2.1 use;
- 10.2.2 disclose to any person, firm or company;
- 10.2.3 authorize or knowingly permit the use of;

any Information or any product of such Information, save for Information that (i) can be clearly demonstrated to have been known to Supplier prior to the date Of the Purchase Order, (ii) is or becomes publicly available through no fault of any person, (iii) can be clearly demonstrated to have been rightfully received by Supplier completely independently of the Contract from a third party without any obligation of confidence.

**10.3 Maintenance of Information** Supplier shall:

- 10.3.1 make and take all reasonable efforts and precautions to prevent any of its employees or personnel, or any other persons whatsoever, from obtaining, making any unauthorized use of, or effecting any disclosure of Information;
- 10.3.2 maintain all Information in good order and condition;

10.3.3 to the extent that it is tangible, insure it against all risks whilst in its custody;

10.3.4 replace or restore to its original usable condition, at no cost to Purchaser, any tangible Information which is destroyed or otherwise becomes unusable due to any act or omission of Supplier;

10.3.5 on delivery of the Goods, or on any earlier request of Purchaser, return all Information to Purchaser in good order and condition together with all copies thereof and in the event of production of any articles incorporating the Information, destroy all such articles unless Purchaser shall deliver to Supplier, written authorization for a different disposition.

**10.4 Publicity** Supplier shall not, without first obtaining Purchaser's consent in writing, use any Identification of Purchaser or any of its subsidiary or associated companies in its advertising or promotional efforts or otherwise disclose the fact that Supplier has furnished or agreed to furnish Goods to Purchaser under the Contract.

The term "Identification" for the purpose of this paragraph includes any name, trade name, trademark, servicemark, logo, insignia, symbol or any simulation thereof.

**11. Force Majeure** Neither Supplier nor Purchaser shall be liable to the other or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of its obligations in relation to the Goods, if the delay or failure was unforeseeable and/or unavoidable and beyond that party's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond either party's reasonable control:

- 11.1 act of God, explosion, flood, tempest, fire or accident;
- 11.2 war or threat of war, sabotage, insurrection, civil disturbance or requisition;

11.3 acts, restrictions, regulations, by-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;

11.4 import or export regulations or embargoes;

11.5 strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of either Supplier or Purchaser or of a third party).

In the event that either Supplier or Purchaser becomes aware that the performance of its obligations in relation to the Goods will be so affected, then it shall be required to notify the other. Such notification to include all details of the relevant matter, how the notifying party considers its performance will be affected by that matter and an estimate as to the lead of time that party considers the matter in question will continue to affect the performance of its obligations in relation to the Goods.

**12. Termination** Purchaser shall be entitled in addition to its rights of termination under paragraph 6.3 and 7.3 above to terminate the Contract without liability by giving written notice to Supplier at any time if:

12.1 Supplier makes any voluntary arrangement with its creditors or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purpose of amalgamation or reconstruction); or

12.2 an encumbrancer takes possession, or a receiver is appointed, to any of the property or assets of the Supplier; or Supplier ceases, or threatens to cease, to carry on business ; or

12.3 Purchaser reasonably apprehends that any of the events mentioned above or any event analogous to the foregoing is about to occur.

### **13. Miscellaneous**

13.1 Remedies Cumulative Purchaser's rights and remedies provided in these Conditions or in the Contract are cumulative and, except as otherwise provided or limited therein, are in addition to any other or further rights and remedies available to Purchaser at law or in equity and the inclusion of any particular right or remedy in favor of Purchaser shall not affect or impair the availability to Purchaser of any other right or remedy.

13.2 Severability If any term or provision of these Conditions or the Contract is held invalid, illegal or otherwise unenforceable by an agency of competent jurisdiction, the Contract shall be interpreted and enforced as if any such invalid, illegal or otherwise unenforceable provision were not contained therein, while the remaining provisions of the Contract shall nevertheless remain valid, unaffected and shall continue in full force and effect and are intended to be fully enforceable as if the unenforceable, illegal or invalid term or provision were never included in the Contract.

13.3 Modifications Save in respect of any amendment, modification or change made by Purchaser pursuant to paragraph 2.3 above, no waiver, release, variation, modification, alteration, extension of, addition or amendment to the P/O Cover Sheet, these Conditions or the Contract shall be effective unless specifically agreed in writing by Purchaser.

#### **13.4 Notices**

13.4.1 Subject as stated in paragraph 13.4.2 below, all notices, requests, demands or other communications under or required by the Contract must be in writing and delivered to or upon Purchaser or Supplier by certified or registered mail, return receipt requested, postage prepaid, or by an overnight courier service or by telex or facsimile, addressed to the receiving party at the address set forth on the P/O Cover Sheet or such other address as may be designated by a notice given in accordance with this paragraph.

13.4.2 Where Purchaser and Supplier have agreed to communicate electronically, all notices, requests, demands, documents or other communications under or required by the Contract may be replaced by an equivalent electronic data interchange (EDI) message.

13.4.3 All such communications shall be deemed to have been duly given or made (a) at the time of delivery, if delivered by hand, (b) on dispatch, if given or made by telex or facsimile (with confirmed answerback) or (c) five (5) days after being mailed, if sent by airmail.

13.5 No Waiver No course of dealing or failure of either party to strictly enforce any provision of these Conditions or the Contract shall affect or be construed as a waiver of such provision nor shall any partial exercise thereof preclude or affect any further exercise thereof or the exercise of any other provision and no waiver of any provision of these Conditions or the Contract shall be effective unless specifically agreed to in writing by the party against whom enforcement of the waiver is sought.

13.6 Assignment Supplier may not assign, transfer or delegate or sub-Contract any of its obligations or duties under or right or interest in the Contract unless first agreed in writing by Purchaser. Any assignment or delegation in violation of the foregoing will be voidable at Purchaser's option and will, in any event, be deemed to have been made for Purchaser's benefit without in any way releasing or affecting Supplier's liability under the Contract.

Any and all rights, benefits and privileges enjoyed by Purchaser under the Contract including, without limitation, the benefit of any and all warranties, may, at Purchaser's option, inure to the benefit of any party to whom the Goods, or any part thereof, shall be delivered or furnished or transferred.

### **14. Governing Law and Arbitration**

14.1 Governing Law The formation, validity, construction, interpretation and performance of these Conditions and the Contract, as well as all transactions, purchases, sales or other agreements in connection therewith shall, in all respects be governed by, construed and interpreted in accordance with the laws of Japan.

14.2 Governing Language The English version of these Conditions, the P/O Cover Sheet and the Contract shall prevail and take precedence over all others.

14.3 Arbitration Any claim or dispute, controversy or difference which may arise between Purchaser and Supplier under or arising out of these Conditions, the P/O Cover Sheet or the Contract or the transactions contemplated thereby shall be submitted to and decided by arbitration in accordance with (i) the rules and procedures of the Japan Commercial Arbitration Association then in effect, if Supplier is a person or entity of Japanese nationality, or (ii) the rules and procedures of the International Chamber of Commerce ("ICC") then in effect, if Supplier is not a person or entity of Japanese nationality.

In furtherance of the foregoing, and notwithstanding that the applicable arbitration rules may provide otherwise, it is agreed that the following rules shall apply to the arbitration process: (i) unless otherwise agreed, the arbitration will be conducted by a single arbitrator, (ii) the arbitrator shall render its decision within 30 days after the conclusion of the arbitration hearing, (iii) discovery and evidentiary procedures shall be governed by the applicable provisions of the then effective laws and rules of Civil Procedure in Japan (iv) any arbitration proceeding shall be held in Osaka, Japan, and shall be conducted in the English language, and (v) all arbitration awards are to be payable in Japanese Yen and shall accrue interest from the date of the award at the per annum rate that is 1.5% (one and a half per cent) in excess of the prime or base (whichever is higher) rate of interest publicly announced as such from time to time by the Bank of Japan, fully floating.

The arbitration award thus rendered shall be final and binding upon the parties, be in the nature of a judgment and be the exclusive remedy for the claim or dispute in question. Enforcement of such award shall be pursuant to the United Nations convention on the Recognition and Enforcement of Arbitral Awards or any other available enforcement mechanism (including treaties).