

**AMHIDRAULIK SDN BHD**  
**General Terms and Conditions**

2019

**1. Applicability**

1.1. These Terms shall be deemed to be exclusive and complete and shall apply to the spare part sales or maintenance, repair, inspection and other service sales made by the Seller to the extent that they are not contrary to stipulations which are either included in the order confirmation of the Seller or otherwise expressly confirmed by the Seller in writing. In these Terms the following expressions shall have the following meanings:

- a) "Contract" shall mean the respective purchase order of the Buyer and respective order confirmation of the Seller or, if the Parties have entered into a contract for such purchase, such purchase contract. The Contract includes these Terms and any reference to the Contract is also a reference to these Terms;
- b) "Goods" shall mean all goods which are the subject of the Contract between the Seller and the Buyer, the limits of which are exhaustively specified in the Contract, and any agreed addition or variation thereto;
- c) "Guarantee Period" shall mean the period defined in Clause 13
- d) "AMH" shall mean AMHIDRAULIK SDN BHD or any other AMH company or any of its or their affiliated companies;
- e) "Party" shall mean the Buyer or the Seller;
- f) "Buyer" shall mean the person, firm or company to whom the Seller agrees to sell the Goods or Services;
- g) "Seller" shall mean AMH;
- h) "Services" shall mean all services, including but not limited to the provision of design services, which are the subject of the Contract between the Seller and the Buyer and any agreed addition or variation thereto;
- i) "Terms" shall mean these AMH After Sales Terms and Conditions. The singular, where appropriate, shall include the plural and vice versa.

1.2. All delivery terms used in the documents relating to the Contract shall be interpreted according to Incoterms 2000.

**2. Acceptance of Terms by Buyer**

2.1. The Buyer acknowledges and agrees by entering into a Contract with the Seller that:

- a) this is a business transaction into which both Parties are freely entering;
- b) there are exclusion and indemnity clauses in the Contract;
- c) the Buyer has the opportunity to insure against all risks in respect of or arising out of the sale of the Goods and/or the Services and therefore the Buyer acknowledges that it is not unreasonable for the Seller to exclude, or, where appropriate, limit its liability as hereinafter appears;
- d) the Goods and the Services have been priced on the basis that the various liabilities of the Seller have been effectively limited or excluded as provided hereinafter

**3. Contract Contents**

Our offers, deliveries and services are governed exclusively by these Terms and Conditions. Divergent terms and conditions of the buyer shall not form a part of the contract. Contradictory terms and conditions of buyer shall only become a component of the contract with the written approval of AMH. Termination of the contract must be in writing.

**4. General**

4.1. All quotations are given and all orders are accepted subject to these Terms, which supersede any other terms appearing in the Seller's catalogue or elsewhere, and shall override and exclude any other terms stipulated or incorporated or referred to by the Buyer, whether in the order or in any negotiations, and any course of dealing established between the Seller and the Buyer unless expressly approved in writing by the Seller. All subsequent orders made by the Buyer shall be deemed to be made subject to these Terms.

4.2. The Contract for the sale of the Goods or for the provision of the Services shall be deemed to have been concluded after the issuance of an order confirmation by the Seller or, in the case of an order communicated orally, a written confirmation of acceptance given by the Seller.

4.3. If, after formation of the Contract and before delivery, the Buyer requests in writing that the design, specification, engineering, manufacturing or component parts of the Goods should be amended or varied in any manner or that the Services to be provided should be amended or varied, the Seller shall make all reasonable efforts to comply with such request, provided that the Buyer pays to the Seller immediately upon the Seller's consent thereto the full cost of any such amendment and/or variation and provided that the Seller is not held liable for any delay caused in the delivery of the Goods and/or Services. Any such delay is to be added to the contractual date of delivery.

4.4. The Seller shall not be liable for any damage to:

- (i) property of the Buyer other than the Goods;
- (ii) property of third parties; or
- (iii) any personal injury

caused by the Goods or Services after they have been delivered or whilst they are in the possession of the Buyer. Nor shall the Seller be liable for any damage to products of which the Buyer's products form a part. If the Seller incurs liability towards any third party for such damage to property as described in this clause 4.4., the Buyer shall indemnify, defend and hold the Seller harmless. If a claim for damage as described in this clause 4.4. is lodged by

a third party against one of the parties, the latter party shall forthwith inform the other party thereof in writing. The Seller and the Buyer shall be mutually obliged to let themselves be summoned to the court or arbitral tribunal examining claims for damages lodged against one of them on the basis of damage allegedly caused by the Goods. The limitation of the Seller's liability stated in this clause 4.4. shall not apply where the Seller has been guilty of gross negligence.

4.5. Our offers are subject to change and are valid for a maximum of thirty days. Contracts are formed solely by means of our written confirmation of order or by completing the order, service or dispatching personnel.

4.6. Technical and structural divergences from descriptions and information provided in prospectuses, offers and written documents, as well as modifications to service, construction and material within the framework of technical progress remain reserved, without the customer being able to derive rights therefrom. Information about our products (technical data, dimensions, etc.) and services are only approximate and inexact; they are not guaranteed unless the guarantee is extended explicitly and in writing.

4.7. We retain property rights and copyrights in respect of patterns, drawings, cost estimates, etc., including those in electronic form. They may not be made available to third parties without authorisation and must be immediately returned if so requested.

4.8. Claims against us deriving from the contract may only be assigned with written authorisation. We are entitled to collaborate with third parties in the performance of our contractual duties and to allocate subcontracts.

## **5. Place of Performance and Delivery**

5.1. Should nothing different have been agreed, the place of performance is the place in which AMH is domiciled and/or the place at which work is to be performed by dispatched personnel. Should goods not be collected at the agreed-upon time, AMH may impose the usual warehousing fee.

5.2. All delivery dates are estimates only and the time of delivery shall not be of any essence to the Contract whatsoever. The Buyer shall take and accept the delivery of the Goods and/or the Services prior to the agreed delivery date if early delivery is reasonable considering the circumstances and it does not cause unreasonable extra costs to the Buyer.

5.3. Should the Seller postpone the delivery of the Goods at the Buyer's request or postpone or delay the delivery due to acts, omissions or breaches depending on the Buyer, the Buyer shall nevertheless make any and all payments conditional on delivery on the agreed due date.

5.4. The Buyer shall not have the right to reject or refuse the delivery or acceptance of the Goods or Services by reason of minor defects or deficiencies, provided that the Seller agrees to remedy such defects after the delivery of the Goods or Services in compliance with the Contract. If the Buyer does not accept delivery on the due delivery date it shall give notice in writing of its non-acceptance stating the reasons therefore within fourteen (14) days, failing which the delivery shall be deemed to have been accepted on the due delivery date and the Buyer shall make any and all payments, including but not limited to overdue interest, under the Contract conditional on delivery as if the Goods/Services had been duly accepted on the due delivery date.

5.5. If the Buyer does not accept delivery of the Goods it shall nevertheless make any and all payments conditional on delivery for the undisputed part of the delivery. If afterwards the non-acceptance of the delivery by the Buyer is found groundless and the delivery or any part thereof is accepted as first delivered, the due date for the payment under the Contract conditional on delivery shall be considered to have fallen due on the delivery date and the Buyer shall pay overdue interest according to the Contract on the amounts first withheld.

5.6. If the Buyer fails to accept delivery of the Goods on the due date it shall nevertheless arrange for the storage of the Goods at its own risk and cost. The Buyer shall also insure the Goods at its own cost and expense.

5.7. Should the Seller be prevented from delivering any part of the Goods and/or the Services by reason of Force Majeure, the Seller shall deliver and the Buyer shall take and pay for such part of the Goods and/or Services as the Seller shall be able to deliver or provide in accordance with the Contract.

5.8. The Goods may be delivered in one or more consignments unless otherwise expressly agreed in writing.

5.9. Should we not be responsible for the delay, such as in the case of a lack of energy, import difficulties, operational or transport disruptions, strikes, cases of undue hardship or delays on the part of our suppliers, the performance time is extended accordingly. Should we still not be able to provide performance after an appropriate extension period, both we and the customer are entitled to withdraw from the contract. Damages claims of the customer are excluded in this case. Costs arising because of delays vis-a-vis installation or service shall be borne by the customer.

5.10. Should we be responsible for the delay, the customer may withdraw from the contract in accordance with legal statutes. Should the customer suffer damage on account of the delay, the customer is entitled to demand a flat-rate compensation sum. This sum shall be 0.5 percent per full week of delay, however in total, not more than 5 percent of the value of the component of the performance that cannot be used on time or in accordance with the contract because of the delay.

## **6. PRICE AND PAYMENT TERMS**

6.1 Except as may be otherwise agreed in writing, all prices shall be "Ex works" supplying facilities of AMH ("EXW" / Incoterms 2000), excluding value added tax (or similar taxes, dues and duties) and packaging. With respect to services (assembly, erection, repairs and similar services), AMH shall charge its then current hourly rates and prices for the goods used in the provision of such services; the time spent for the purpose of travelling to and from the work site as well as the waiting time spent at the work site constitute working time. For overtime, night work and work on Sundays or public holidays, the then current AMH surcharges shall apply. Travel expenses as well as the out-of-pocket expenses then charged by AMH shall apply and be invoiced separately.

6.2 Payments to AMH shall be made without offset or deduction (and free from any charges, fees and similar) immediately on receipt of invoice.

6.3. The Seller may at its sole discretion require that the Buyer makes an advance payment or provides a bank guarantee prior to an acceptance by the Seller of an order from the Buyer.

6.4. Unless otherwise agreed,

- a) the Goods are sold subject to payment in cash payable within 30 days of notice by the Seller that they or any instalment thereof are ready for dispatch. The Seller shall be deemed to have made a sufficient tender of Goods if it has notified the Buyer that the Goods are ready for dispatch;
- b) all sums due in respect of Services shall be payable within 30 days of the date of the Seller's invoice.

6.5. If the Buyer delays in making any payment under the Contract, the Seller may discontinue any and all of its obligations required under the Contract or postpone the fulfillment of its obligations without any liability on the part of the Seller until such payment is made, unless the failure of the Buyer is due to a proven act or omission of the Seller.

6.6. Transport, packaging and warehousing costs for goods that AMH must pay to an upstream provider shall be borne by the partner to the contract upon presentation of relevant documentation in addition to the agreed price and the shipping costs pursuant to Clause IV. 1.

6.7. In the case of dispatched personnel, AMH calculates the hourly wages and additional costs applicable to said personnel. In addition, materials will be charged at the going price of the materials, and the provision of particular tools will be charged in accordance with contractual agreement.

6.8. Time spent travelling and waiting is considered working time. Travel and accommodation costs shall be borne by the partner to the contract. On-site travel costs (taxi, bus, etc.) are considered travel expenses. Transport and insurance costs for materials, tools, as well as other devices, are borne by the partner to the contract. In the case of flight bookings made by the partner to the contract, a return ticket shall be provided. Times shall be calculated per calendar day absent from the place where AMH is domiciled.

6.9. Invoices are payable within 30 days, net. Invoices are considered to be recognised if no written objection is made within five days of the invoice date.

6.10. If the applicable prices of our suppliers or other costs transferred to our products increase between the time of the formation of the contract and performance, we are entitled to increase the agreed prices accordingly.

6.11. In the case of a delay in payment, we are entitled to levy 10% interest above the base rate established by the Bank Negara Malaysia.

6.12. In the case of founded doubts regarding the ability of the partner of the contract to provide payment, which refer to a fundamental worsening of the asset profile of the partner to the contract, we are entitled to delay outstanding deliveries or services, until an appropriate security has been paid. Should payment obligations of the partner to the contract resulting from current or previous legal transactions remain unfulfilled or should no security be provided, AMH may withdraw from the contract after setting an appropriate grace period. In this case, AMH may require as compensation for damages 30% of the value of the orders not executed.

6.13. Rights of the customer to decrease the amount to be paid or to refuse to provide the payment are excluded, except in cases where the payment has been made without contest or with the force of law.

## **7. TRANSFER OF RISK**

7.1 Except as may be otherwise agreed in writing, the risk of loss to the goods in transit shall be transferred to BUYER "Ex Works" supplying facilities of AMH ("EXW" – Incoterms 2000). If AMH has undertaken through written agreement to this effect to ship the goods to BUYER, the risk of loss to the goods in transit shall be transferred to BUYER upon their delivery to the first carrier.

7.2 Risk is transferred to the customer once the product has left our shipping warehouse or once we have displayed readiness to ship in respect of the delivery. This also applies if we assume other services, such as in particular shipping costs. Provided acceptance is necessary, risk is transferred at the time of acceptance.

## **8. Packing**

Unless the Parties agree otherwise in writing, the Goods shall be packed, as the Seller may deem proper for protection against normal handling. Extra charges shall be charged to the Buyer for preservation, waterproofing and similar added protection of the Goods, if such protection has been ordered by the Buyer.

## **9. Cancellation**

The Buyer may not cancel the Contract without the prior written consent of the Seller, which if given shall be deemed to be on the express condition that the Buyer shall be liable to the Seller for all loss, damage, claims or actions arising out of such cancellation unless otherwise agreed in writing.

## **10. Retention of Proprietary Rights**

10.1. The product supplied by us remains the property of AMH (goods subject to retention of title) until all claims deriving from the business relationship have been fulfilled by the partner to the contract.

10.2. The partner to the contract must insure the item being delivered against any and all damages, including machinery failure and theft, at its own cost for the duration of the period of retention of title, and further must produce relevant documentation thereof if so requested by AMH. The partner to the contract hereby assigns any and all claims against the insurance to us.

10.3. Should the partner to the contract become in default of a due payment completely or to a considerable proportion by more than ten days, and should an appropriately established payment period have expired without payment having been made, we may demand of the partner to the contract the return of the goods subject to retention of title, even if we have not previously declared our withdrawal from the contract. The same applies if an insolvency claim has been entered against the assets of the partner to the contract and has not been rescinded within ten days. Should the partner to the contract not return the goods, or should the goods subject to retention of title be threatened by loss or decay, we are entitled to assume possession of the good subject to retention of title. For this purpose, we may enter the premises at which the goods subject to retention of title are being held. Reclamation costs shall be borne by the partner to the contract. We may dispose of goods subject to retention of title that have been reclaimed as we see fit and to our best advantage. Should the sum attained exceed the sum we have claimed, the rest belongs to the partner to the contract.

10.4. Within the context of normal business activities, the partner to the contract is authorised to sell, process, modify and combine the good subject to retention of title. This is in respect of AMH. The parties to the contract agree that AMH becomes the owner of the newly formed goods. In the case of sale, the partner to the contract assigns all claims against the purchaser deriving from the sale to AMH as a security.

10.5. The partner to the contract is responsible for ensuring that neither the effectiveness nor executability of the retention of title are impaired, should the goods be sold outside of Malaysia. Should the retention of title not be legally valid or be inexecutable pursuant to the law of the state within the territory of which the goods have been sold, the security that is most similar to the retention of title shall be considered to have been agreed upon. To the extent that activity is required on the part of the partner to the contract, the partner to the contract is obligated to immediately perform this action.

10.6. Copyright usage and exploitation rights granted for long-term periods may be freely revoked until payment of the licensing fee has been made in full and may not be further transferred by the partner to the contract. This also applies even if the corresponding licensing terms specify that the license has been irrevocably granted.

## **11. General Obligations for Dispatching Personnel**

11.1. AMH dispatches service and installation personnel following individual contractual agreement. All information regarding foreseeable service or installation times are merely non-binding estimates.

11.2. Employees of AMH treat as confidential all information received within the framework of activities performed for the partner to the contract.

11.3. The partner to the contract is required to observe labour protection laws and the Working Hours Act, including the provision of first aid measures and facilities pursuant to accident protection laws at the location to which the personnel are dispatched (full operational protection). The partner to the contract shall provide personal protective

gear. In the case of insufficient observation of obligations, the dispatched employee may refuse to perform the work. In this case, the partner to the contract is liable for the agreed payment.

11.4. The hours worked shall be documented weekly on forms designed for this purpose. The partner to the contract is obligated to check the validity of these and to sign them. Subsequent modifications shall be refused by AMH.

11.5. The partner to the contract shall make available to the dispatched personnel all necessary workers, tools, operational resources (including energy and consumables) as well as other necessary devices, provided nothing to the contrary has been agreed in writing. Workers provided by the partner to the contract shall be subject to instruction by the employees dispatched by AMH. Any and all liability of AMH for supplied workers shall be excluded.

11.6 If AMH has agreed to provide services as part of its obligations, the BUYER shall assist AMH in the performance of such services by providing (at its sole expense and at such time and place as AMH may request) such number and types of auxiliary personnel, equipment and any other type of goods or support (e.g. winches, rails, electricity, etc.) as may be necessary to perform the services. The above undertaking of BUYER applies irrespective of whether or not the erection and assembly of Goods have been included in the contract price or a lump sum has been agreed in compensation for the respective contract. Any onsite infrastructure necessary for the provision of services (e.g. foundations, energy supply etc.) shall be completed prior to the arrival of the AMH personnel at the work site. Furthermore, it shall be the BUYER's sole responsibility to effect and maintain such adequate security measures on the work site as may be necessary to properly protect personnel and equipment. AMH assumes no liability whatsoever with respect to the acts or omissions of any auxiliary personnel assigned to it for the purpose of the performance of its services or for any damages to or damages caused by the equipment and any other goods put at AMH disposal by the BUYER.

11.7. The installation and service personnel shall be provided suitable rooms for working and for other activities, which can be locked and which can be heated, including sanitary and washing areas.

11.8. The partner to the contract is obligated to acceptance after the service or installation work has been completed as soon as said partner is notified of the completion of such work. Acceptance may not be refused on account of incidental defects, provided AMH assumes the obligation of correcting the defects. Acceptance shall be deemed to have been given one week after the notification of completion if AMH not responsible for the delay in completion. After acceptance, liability is excluded for defects in respect of all defects ascertainable according to the type provided the partner to the contract has reserved the right to assert a particular defect.

11.9. Should the tools, equipment, etc. of the dispatched personnel be damaged, destroyed or be removed from the installation site due to no fault of the dispatched personnel, the partner to the contract is obligated to compensate for damages, provided no normal wear and tear damages are at issue.

11.10. AMH is entitled to assign subcontractors to complete its performance obligations.

## **12. Hot work**

12.1. The labour force provided by the Seller shall comply with the Seller's safety rules and all other applicable safety rules whilst on board the Buyer's vessels and sites where the Services are to be performed, and hot work shall be carried out in compliance with such safety rules.

12.2. The Buyer's designated representative for the Contract or the master or other responsible person on board the vessel or site shall set up and implement and be responsible for all necessary safety means and measures and the Seller's labour force shall be under the supervision of such person while they are on board the vessel or on the site.

12.3. All work carried out by the Seller's labour force is executed under the supervision and responsibility of the Buyer and its representatives. All tanks and similar spaces shall be fully cleaned from gas and the necessary gas free certificate shall be obtained by the Buyer before any welding or other hot work is carried out by the Seller in such tanks or adjacent areas.

12.4. If the Seller has accepted to carry out hot work on board a ship or if the Crew is subsequently ordered to carry out hot work on board a ship, the owner of the ship or its representatives, officers or agents are solely responsible for proper notification to the hull insurer for the increased risks entailed in the carrying out of the hot work.

## **13. Claims in Respect of Defects (Guarantee)**

13.1. Our liability extends to providing our products and services free of defects to the degree possible in accordance with the state or technology. Our liability is excluded:

- a) if our products are not warehoused, installed, started-up or used properly by the customer or third parties, particularly if the party to the contract interferes in the installation or changes the installation;
- b) in the case of natural wear and tear;

- c) in cases of improper maintenance (contamination, etc), improper use or treatment, use for inappropriate purposes or intentional damage;
- d) if unsuitable operational resources are used;
- e) in the case of damages caused by repairs or other work performed by third parties that was not expressly approved by us;
- f) in the case of an increase in damages by starting-up before repairs were completed and/or further operation despite damage that was already apparent.

13.2. Immediately upon the delivery of goods and/or the completion of services, BUYER shall thoroughly inspect the goods or services. Any damage, defect or other noncompliance with order that BUYER notices as a result of such inspection shall be immediately, but in no event later than within 48 (forty-eight) hours after delivery of the goods and/or completion of services, be notified to AMH. Any damages, defects or other noncompliance with order, that BUYER could not reasonably have detected in the course of such thorough inspection and that become apparent thereafter, shall be notified to AMH immediately upon their detection, but in no event later than within 48 (forty-eight) hours after such detection. In its notification, BUYER shall specify the damage, defect or other non-compliance with order detected, the number and date of the respective delivery documents and/or invoice and the circumstances under which such damage, defect or other noncompliance with order became apparent. Should BUYER fail to comply with any of the above requirements, then the respective goods or services shall be deemed accepted. BUYER shall compensate AMH for the costs incurred as a result of or in relation to any non-justified claim and/or any claim that does not comply with the above requirements.

13.3. AMH warrants the goods and services to be free from defects in material and workmanship at the time of shipment or (to the extent services are concerned) the completion of their performance. Without limiting the provisions of Section 13.2 above, the warranty period for goods shall either 6 (six) months after delivery or of 500 services hours, whichever occurs first. The burden of proof with respect to any defects that BUYER may claim as being covered by this warranty shall rest upon BUYER.

13.4. AMH's obligation and Buyer's sole remedy under the warranty extended in the provisions of Section 5.4 above is limited to either the repair or replacement, at AMH's option and expense, of any good or service (or part thereof) found to be defective by AMH (for the purpose of the Sections 5.5 and

13.5 hereinafter collectively referred to as "Remedies". If AMH repeatedly fails in its performance of the Remedies and BUYER so requests, AMH undertakes at its option to either grant BUYER a reasonable price reduction or, provided the nonremedied defect is of such nature and substance, that BUYER is materially impaired in the use of the good or service, to grant BUYER the right to cancel the respective contract. The Remedies shall be the only remedies available to BUYER. Title to the goods or parts thereof replaced by AMH in the course of the performance of the Remedies shall pass to AMH. The costs of corrective actions performed by BUYER or third parties mandated by BUYER shall not be reimbursed by AMH.

13.6 The performance of the Remedies shall in no event extend the original warranty period.

13.7 The above warranty shall not apply to any:

13.7.1 Used goods;

13.7.2 Normal wear and tear of goods (including parts thereof);

13.7.3 Damages caused to the goods (including parts thereof) as a result of or in relation to improper operation, abuse or misuse;

13.7.5 Damages to or destruction of the goods as a result of or in relation to acts of third parties or acts of God;

13.7.6 Damages resulting out of or in relation to the operation of the goods prior to the completion of their repair as well as operation of the goods despite the occurrence of a defect;

13.7.7 Damages resulting out of or in relation to improper repair of the goods (including parts thereof) by parties other than AMH; which are usually tolerated in trade or by common standards;

13.8. In order to give AMH the possibility to correct defects or to replace defective parts, the BUYER shall grant AMH a remedy period of not less than 14 (fourteen) calendar days from the receipt of a corresponding written request from BUYER which shall be send to AMH by means of a registered letter; such remedy period shall be reasonably extended in case the operating conditions of AMH so require. Should AMH elect to perform the necessary corrective actions at the facilities of BUYER, then the latter shall grant AMH reasonable and safe access to the respective goods (or parts thereof).

13.9. Should the goods to be corrected be located in a place other than the place of performance, then AMH shall bear the cost of the corrective action only to such extent as would have been caused if the corrective actions would have been performed at the place of performance.

13.10. Should the goods (including any parts thereof) actually infringe copyrights, trademarks or patents granted in the country of domicile of AMH, and should, furthermore, such infringement prevent BUYER from using the goods (including any part thereof) or substantially impair its possibilities to use the goods (including any part thereof), then AMH shall, in its discretion and at its expense, either procure for BUYER the right to use the goods

(including any parts thereof) free of any liability to third parties that may result from the given infringement or replace the good or part found to be infringing, within a reasonable period of time, by a noninfringing good (or part). The foregoing states the entire liability of AMH with respect to infringement of copyrights, trademarks or patents by goods or parts thereof. In no event shall AMH be liable for any infringement based upon the manufacture, use or sale of the goods or any parts thereof that result from or in relation to the combination of such goods or parts with apparatus or things not furnished under the order.

13.11. AMH extends no representations or guarantee whatsoever with respect to the goods (including any parts thereof) or services, unless such representations and guarantees have been specifically accepted by AMH in writing. Should such representations and guarantees have been extended by AMH in accordance herewith and should AMH breach any such representation or guarantee, then the provisions of this Article 5 (in particular the provisions of Sections 5.3 to 5.12) shall apply accordingly.

13.12. In no event shall AMH be liable to the BUYER for any misuse, abuse or any other improper use of the goods (including any parts thereof) or for any modification of the goods (including parts thereof) that has not received AMH's explicit prior written approval. BUYER shall defend, fully indemnify and hold AMH, its affiliates, distributors or agents, and their respective officers, directors and employees, harmless from all and any damage, costs (including attorney's fees) and liabilities that the latter may incur as a result of or in relation to such misuse, abuse or any other improper use of the goods (including any parts thereof) or such non-authorized modification of the goods (including any parts thereof).

13.12. Any remedies or rights of BUYER (whether under contract or at law) other than those specified herein above are herewith excluded. In particular, but without limitation, AMH shall in no event be liable for BUYER's loss of profits, goodwill, use of the goods, time, inconvenience or other consequential or incidental damages.

13.13. Replaced parts shall become the Seller's property. Unless otherwise agreed, the Buyer shall bear the cost and risk of transport of defective parts and of repaired parts or parts supplied as replacement for such defective parts between the place where the Goods or the products provided with the Services are situated and the Seller's closest office.

13.14. Where, in pursuance of this Section 15., repairs are required to be performed on site, any reasonable travelling, lodging or living expenses of the Seller's employees, travelling time, waiting time beyond the Seller's control or work on property outside the scope of the Seller's delivery and all costs associated therewith for searching for or remedying defects shall be borne by the Buyer. Services to be performed under the guarantee shall be based on a normal working week and shall be for the account of the Seller. A normal working week comprises of forty (40) hours spread over five (5) working days and not exceeding eight (8) hours per day. Service performed outside the normal working week shall be charged to the Buyer as overtime. Any waiting time for which the Seller is not responsible shall be charged to the Buyer as normal working time.

13.15. The guarantee does not include consequential or indirect costs including, but not limited to costs for any lifting facilities, electricity, scaffolding, assisting work, unskilled labour, towing, docking, diving, demounting, mounting and other similar matters, which costs shall be borne by the Buyer.

13.16. If the Seller refuses to fulfil its obligations under this Section 15. or fails to proceed with due diligence after being required so to do, the Buyer may: a) either proceed to do the necessary work at the Seller's risk and expense, provided that it does so in a reasonable manner; or b) demand compensation for damage incurred to the Buyer by such refusal or failure by the Seller, which is reasonable under the circumstances. In either case a) and b) the Seller's liability shall not exceed 15% of the purchase price payable under the Contract.

#### **14. Liability**

14.1. Our liability, regardless of the legal basis upon which it rests, remains limited to intentionality and gross negligence.

14.2. Any and all limitations on action provided for in these Terms and Conditions do not apply:

- a) in the case of intentionality or gross negligence on our part or parties contracted by us;
- b) in case of personal damage,
- c) in the case of damages that have resulted from the lack of a quality or characteristics that we have guaranteed;
- d) in the case of claims deriving from the Product Liability Act.

14.3. In the case of dispatched personnel, the amount of damages to be asserted is limited to 10% of the agreed payment.

## **15. Termination**

15.1. The Buyer shall be in breach of Contract and the Contract may be terminated by the Seller on the occurrence or existence of any of the following:

- a) Any breach of any provision of the Contract by the Buyer if the Buyer fails to remedy such breach within fourteen (14) days after the receipt of written notice thereof from the Seller;
- b) There shall be a material adverse change in the financial situation of the Buyer, its parent company or the group it belongs to, which in the good faith judgement of the Seller may grossly affect the results the Seller could legitimately expect from the performance of the Contract; such changes including but not limited to inability to pay, suspension of payments, appointment of a receiver, manager or trustee to its assets, liquidation, winding up, moratorium, loss of legal capacity or any other similar event affecting the Buyer, or the Buyer becomes insolvent or compound, a petition in bankruptcy is filed by or against it or the Buyer makes any arrangement or composition with its creditors or ceases doing business;
- c) The Buyer's ability to carry out its obligations hereunder is prevented or substantially interfered with by any regulation, law, decree or any act of state or other action of government.

15.2. The consensual ending of a contract (cancellation or other termination) requires the written approval of AMH

15.3. Should the partner to the contract end an ongoing contract by means of termination or withdrawal, AMH may demand compensation for damages of 30% of the value of the order. The partner to the contract can present documentation attesting to a lower damages amount.

## **16. Force Majeure**

16.1. A Party shall not be considered to be in breach in the performance of its obligations under the Contract to the extent that it proves that such performance has been prevented by Force Majeure. Force Majeure is an occurrence beyond the control of the Party affected, provided that such Party could not reasonably have foreseen such occurrence at the time of entering into the Contract or could not reasonably have avoided or overcome its consequences. Such events include but are not limited to industrial disputes, fire, war, extensive military mobilization, insurrection, requisition, seizure, embargo, restrictions in the use of power, severe weather conditions, and defects or delays in deliveries by the Seller's subcontractors (including the Seller's carrier) caused by any such circumstance referred to in this clause. Force Majeure does not include occurrences or disruptions that make the performance under the Contract merely commercially impracticable.

16.2. The Party claiming Force Majeure shall without delay give notice to the other Party of the commencement and cessation of any such occurrence. During the period of such occurrence both the Parties shall exercise their best efforts with a view to resuming their performance and obligations hereunder when Force Majeure ceases to exist.

16.3. Should the obligations which cannot be performed by a Party by reason of Force Majeure constitute a material obligation under the Contract as a whole and should the non-performance continue for a period exceeding ninety (90) days, then the other Party shall have the right to terminate the Contract and any other contract entered into in relation hereto forthwith

## **17. Place of Performance, Law Applicable and Venue**

17.1. The law of the Republic of Malaysia applies. International law, particularly the UN Convention on Contracts for the International Sale of Goods, is excluded. The exclusive language of the contract and of the court is English.

17.2. The sole legal venue is Malaysia. We, however, remain entitled to choose to initiate an action in the jurisdiction in which the customer is domiciled.

## **18. Provisions severable**

18.1. In case any provision or any part of a provision of the Contract is held invalid or unenforceable, the validity of the remaining provisions of the Contract shall not be affected thereby and each remaining provision or part thereof will be valid and enforceable to the full extent permitted by law.

18.2. In case any provision or any part of a provision of the Contract is held to be illegal, the Parties shall do everything possible and cooperate in all ways open to them to obtain substantially the same effect of such a provision or part of provision or as similar thereto as may be possible with the illegal provision eliminated, including the amendment or alteration of the Contract.

## **19. Assignment**

The Parties hereto shall not without the prior written consent of the other Party assign any of their rights or obligations arising out of the Contract to a third party.

## **20. Amendments**

Any amendments, alterations or additions to the Contract must be made in writing as addendum to the Contract and signed by the duly authorised representatives of the Parties.