



## TERMS AND CONDITIONS FOR PURCHASE ORDERS

### **SECTION A: DEFINITIONS**

**"AFFILIATE"** shall mean any subsidiary or holding company of any company or any other subsidiary of such holding company. For the purpose of this definition, the terms "subsidiary" and "holding company" shall have the meaning assigned to them under Section 1159 Companies Act 2006.

**"COMPANY"** shall mean the person, persons, firm or company named in the PURCHASE ORDER to purchase GOODS hereinafter defined and shall include the COMPANY's legal personal representatives, successors and assigns.

**"COMPANY GROUP"** shall mean the COMPANY, its CO-VENTURERS, its and their respective AFFILIATES and its and their respective officers and employees (including agency personnel), but shall not include any member of the CONTRACTOR GROUP.

**"CONSEQUENTIAL LOSS"** shall mean:

- a) consequential or indirect loss under English Law; and
- b) loss and/or deferral of production, loss of product, loss of use (where loss of use means, without limitation, loss of use or the cost of use of property, equipment, materials and services including without limitation those provided by contractors or subcontractors of every tier or by third parties), loss of revenue, loss of business, business interruption, profit or anticipated profit (if any), wasted overheads and loss of anticipated savings, loss of bargain, contract, expectation or opportunity, any increase in operating or other costs except as specifically provided for elsewhere in this PURCHASE ORDER, or any other similar direct or indirect loss in each case whether direct or indirect to the extent that these are not included in a), and whether or not foreseeable at the commencement of the PURCHASE ORDER.

**"CONTRACTOR"** shall mean the person, persons, firm or company named in the PURCHASE ORDER to supply GOODS hereinafter defined and shall include the CONTRACTOR's legal personal representatives, successors and assigns.

**"CONTRACTOR GROUP"** shall mean the CONTRACTOR, its subcontractors its and their AFFILIATES, its and their respective officers and employees (including agency personnel), but shall not include any member of the COMPANY GROUP.

**"CO-VENTURERS"** shall mean any co-venturers with the COMPANY from time to time having an interest in the WORK being performed and the successors in interest of such CO-VENTURERS or the assignees of any interest of such CO-VENTURERS.

**"DELIVERY"** shall occur when the GOODS are received by the COMPANY at the DELIVERY LOCATION specified in the PURCHASE ORDER.

**"DELIVERY DATE"** shall mean the date(s) upon which the GOODS shall be delivered as specified in the PURCHASE ORDER.

**"DELIVERY LOCATION"** shall mean the location stated in the PURCHASE ORDER where the GOODS are to be delivered.

**"DELIVERY TERMS"** shall mean the shipping terms which apply to the DELIVERY of the GOODS and which the CONTRACTOR has allowed for.

**"GOODS"** shall mean the goods to be provided in accordance with the PURCHASE ORDER.

**"PURCHASE ORDER"** shall mean the contract formed by the acceptance of the PURCHASE ORDER and shall incorporate these PURCHASE ORDER TERMS AND CONDITIONS and any SPECIAL TERMS AND CONDITIONS included in the PURCHASE ORDER.

**"SPECIAL TERMS AND CONDITIONS"** shall mean those terms and conditions included within the PURCHASE ORDER.

**"WORKSITE"** shall mean the locations and facilities used to prepare, design, manufacture, test and assemble the GOODS, including fabrication yards, testing facilities, offices, warehouses and storage and handling areas.

### **SECTION B: THE CONTRACTOR'S COMMITMENT TO THE COMPANY**

#### **B1. Terms**

The CONTRACTOR will sell the GOODS to the COMPANY on the terms set out in the PURCHASE ORDER.

#### **B2. Delivery**

The CONTRACTOR will deliver or make the GOODS available to the COMPANY at the DELIVERY LOCATION, on the DELIVERY DATE and as per the DELIVERY TERMS.

If the CONTRACTOR is unable to deliver the GOODS on the DELIVERY DATE, the CONTRACTOR shall notify the COMPANY immediately upon becoming aware of the same. In the event the COMPANY and CONTRACTOR shall endeavour to agree a revised and mutually acceptable DELIVERY DATE.

The CONTRACTOR shall be liable to and shall pay the COMPANY liquidated damages at the rate of one per cent (1%) of the total amount of the PURCHASE ORDER (including any increase in such amount arising as part of any variation) for each calendar day of delay

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from the DELIVERY DATE up to a maximum of ten percent (10%) of the final amount of the PURCHASE ORDER.

However, in the event that the COMPANY and CONTRACTOR cannot agree upon a revised and mutually acceptable DELIVERY DATE, or if the COMPANY exceeds the maximum amount of liquidated damages, the COMPANY shall have the right to terminate the PURCHASE ORDER and recover from the CONTRACTOR a sum equivalent to all loss and damage and additional expenditure of any nature suffered or incurred by the COMPANY as a result of the delay of the CONTRACTOR to deliver the GOODS.

### B3. Inclusive Price

The price which the COMPANY has agreed to pay for the GOODS is set out in the PURCHASE ORDER and is exclusive of UK VAT only but includes all other taxes, duties and/or other charges as applicable.

### B4. Access and Testing

The CONTRACTOR will allow the COMPANY, as well as any other interested party, access to the premises of the CONTRACTOR or the premises of any other person or party who is involved with the CONTRACTOR in the provision of the GOODS, to audit, inspect, witness, or determine the progress in the execution of the PURCHASE ORDER. The CONTRACTOR shall allow such access to enable the COMPANY to test the GOODS during, but not limited to, all stages of design, manufacture, assembly and testing. Any audit, inspection, witnessing, or testing or any failure to do so by the COMPANY shall in no way relieve the CONTRACTOR of any of its obligations or liabilities as specified in the PURCHASE ORDER.

The GOODS to be supplied as set out in the PURCHASE ORDER shall be subject to factory acceptance testing as may be required by the COMPANY or any other such tests as may be specified by the COMPANY from time to time. The CONTRACTOR shall provide any and all certification to ensure the GOODS will comply with said testing procedures and are within the tolerance of acceptability as specified by the COMPANY in the PURCHASE ORDER.

### B5. Specifications

The CONTRACTOR shall ensure that the GOODS at all times meet the COMPANY's specification which is set out in the PURCHASE ORDER. In the absence of any specification the GOODS shall be, in all respects fit for purpose, complying with the appropriate BSS or international standards. The quality, quantity, description or specification of the GOODS may be altered provided such alterations are authorised by the COMPANY and are agreed in writing.

### B6. Guarantee and Defects Correction

The CONTRACTOR represents and warrants that it shall supply all of the GOODS stated in the PURCHASE ORDER in accordance with the provisions of the PURCHASE ORDER, and that the GOODS will be free from any and all defects on DELIVERY to the COMPANY and for a period of 12 months after the GOODS are first put into operational use, or 24 months from DELIVERY, whichever shall first occur.

The CONTRACTOR will immediately, without question or compromise and subject to the operational requirements of the COMPANY, carry out all works necessary to repair, replace or rectify any of the GOODS (or any replacement) which are defective at its sole cost and expense. Any repaired, replaced or rectified GOODS shall be provided by the CONTRACTOR with a further 12 month warranty from the date of repair or replacement. The CONTRACTOR's obligation shall apply only when the GOODS are correctly used by the COMPANY.

Title and risk in the GOODS, or any part thereof, which do not comply with the requirements of the PURCHASE ORDER and which are rejected by the COMPANY shall re-vest in the CONTRACTOR on return to the CONTRACTOR.

The CONTRACTOR's own warranty and guarantee period shall apply should it be greater than that stated in this clause B6.

### B7. Packing and Shipping

The CONTRACTOR shall ensure that the GOODS are properly packed, secured and labelled in accordance with accepted industry practice and if stated, to meet the COMPANY's requirement as specified in the PURCHASE ORDER.

Unless otherwise stated elsewhere in the PURCHASE ORDER, all costs of shipping the GOODS to be supplied under the PURCHASE ORDER at the time and to the place as specified in the PURCHASE ORDER, or at other such times and place as directed by the COMPANY (given reasonable notice to the CONTRACTOR in that regard), shall be the responsibility of the CONTRACTOR and shall be included within the PURCHASE ORDER.

The production of all necessary shipping documentation to enable export from the point(s) of origin, transit and import to place as specified on the PURCHASE ORDER, or such other place as directed by the COMPANY (given reasonable notice to the CONTRACTOR in that regard) shall be the responsibility of the CONTRACTOR and shall be included within the PURCHASE ORDER.

The GOODS shall be delivered in one consignment during normal working hours. If for any reason the CONTRACTOR cannot comply with this requirement, he shall inform the COMPANY prior to shipping.

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### B8. Documentation

The CONTRACTOR will provide the COMPANY by the due date(s), all drawings, certificates or other documentation in the specified format and quantities as detailed in the PURCHASE ORDER or as otherwise requested and required by the COMPANY in accordance with the PURCHASE ORDER.

The CONTRACTOR shall ensure that all maintenance documentation and manuals as required, or deemed necessary by the COMPANY, to allow proper and reasonable assembly, disassembly and maintenance of the GOODS shall be provided at the time of DELIVERY.

When required the CONTRACTOR is to produce sketches, drawings, calculations, tests, certification, documents, reports, inspections, recommendations and the like, and shall submit to the COMPANY all such technical information as may be reasonably requested by the COMPANY.

### B9. Hazardous Materials

The CONTRACTOR shall ensure that the GOODS comply with the requirements of all applicable law and, to the extent that they contain toxic, corrosive or hazardous materials, the CONTRACTOR shall ensure that a notice to that effect accompanies any consignment, together with appropriate care and handling instructions.

GOODS supplied under the PURCHASE ORDER, which are contaminated at the time of DELIVERY, shall be regenerated or disposed of by the CONTRACTOR. The title and risk of the contaminated GOODS will transfer to the CONTRACTOR, at the time contamination is identified and notified to the CONTRACTOR who will bear all expenses for the aforementioned processes.

### B10. Title, Risk and Ownership

Title in the GOODS will pass from the CONTRACTOR to the COMPANY upon DELIVERY.

The COMPANY shall have the right of use, and shall be granted a non-exclusive, royalty free, irrevocable and worldwide license as necessary for the purposes of operating or using the GOODS supplied in accordance with this PURCHASE ORDER, whether directly or indirectly, of any patent, copyright, proprietary right or confidential know how, trademark or process provided by the CONTRACTOR.

Any and all intellectual property rights in the GOODS shall remain with the PARTY providing such patent, copyright, proprietary right or confidential know how, trademark or process.

### B11. Intellectual Property Indemnity

The CONTRACTOR shall save, defend, indemnify and hold harmless the COMPANY GROUP from and against any and all claims, losses, damages, costs (including legal costs), expenses, and liabilities of every kind and nature for, or arising out of, any alleged or actual infringement of any patent or proprietary or protected right, arising out of or in connection with the performance or non-performance of the obligations of the CONTRACTOR under the PURCHASE ORDER.

Notwithstanding the above, the CONTRACTOR shall use its best endeavours to identify any infringement or possible infringement in the job specification of any patent or proprietary or protected right, and should the CONTRACTOR become aware of such infringement or possible infringement then the CONTRACTOR shall inform the COMPANY immediately in writing.

### B12. Customs Procedures

Where applicable, the CONTRACTOR shall apply to the relevant Customs and Excise Department in the respective country of origin and country of import for processing any required documentation to enable the export and import of GOODS supplied in accordance with this PURCHASE ORDER, and make payment of such duties, levies, fees or other payments due to enable DELIVERY of the GOODS to the location as specified on the PURCHASE ORDER.

### B13. Supplier Code of Conduct

The CONTRACTOR shall comply with the latest version of the Acteon Supplier Code of Conduct, a copy of which is available on <https://acteon.com/wp-content/uploads/2022/06/Supplier-Code-of-Conduct-Marine-Foundation-02.00-EN.pdf>.

## **SECTION C: THE COMPANY'S COMMITMENT TO THE CONTRACTOR**

### C1. Terms

The COMPANY will purchase the GOODS from the CONTRACTOR on the terms set out in the PURCHASE ORDER.

### C2. Acceptance

Acceptance shall be from the time that a duly authorised employee or representative of the COMPANY accepts the GOODS in writing, delivered or collected, and where such GOODS are not defective or damaged in any way and comply with the PURCHASE ORDER. In the event that a defect in, or damage to the GOODS, or any breach of the PURCHASE ORDER is identified by the COMPANY, it shall be deemed not to have accepted the GOODS until such time as such defect, damage or breach is remedied by the CONTRACTOR.

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Such acceptance shall be within a reasonable time of DELIVERY or collection but shall be without prejudice to the CONTRACTOR's liability for any defect in, or damage to the GOODS, or any breach of the PURCHASE ORDER which is not identified by such duly authorised employee or representative of the COMPANY at the time of acceptance.

For the avoidance of doubt, the issuance by the COMPANY of a written receipt at the time of DELIVERY or collection of the GOODS shall not constitute any form of acceptance of the GOODS by the COMPANY. Nor shall such issuance diminish in any way the CONTRACTOR's liability and/or obligations under the PURCHASE ORDER, and shall only be evidence of receipt of the GOODS, provided that in the case of packaged GOODS the receipt shall be evidence of the package only.

### C3. Use

The CONTRACTOR will not be liable for any loss or damage resulting from the incorrect use of the GOODS by the COMPANY.

### C4. Risk

The COMPANY will be responsible for the risk of loss or damage to the GOODS with effect from DELIVERY.

### C5. Price Payment

Except where the CONTRACTOR has failed to perform its obligations under the PURCHASE ORDER or where the CONTRACTOR's invoice contains a material error, the COMPANY will pay for the GOODS delivered and accepted by the COMPANY against the CONTRACTOR's invoice in the amounts specified in the PURCHASE ORDER within 45 days (unless stated otherwise on the PURCHASE ORDER) of receipt of the CONTRACTOR's invoice, the receipt not being earlier than the DELIVERY DATE and provided that said invoice is accompanied by such substantive documentation as may be reasonably required by the COMPANY to establish that payment is due.

All prices are in £Sterling, fixed for the duration of the PURCHASE ORDER and include for DELIVERY to the DELIVERY LOCATION specified in the PURCHASE ORDER.

### C6. Patent / Design Rights

All designs, drawings and other technical information relating to the GOODS, including any software, and the intellectual property rights contained therein, provided by the COMPANY to the CONTRACTOR shall be, and remain, the COMPANY's exclusive property.

### C7. Termination for Convenience

The COMPANY may at any time give written notice to the CONTRACTOR to terminate the PURCHASE ORDER for convenience forthwith. In such an event the COMPANY shall pay, and the CONTRACTOR shall accept in settlement of all claims under the PURCHASE ORDER, such sums as shall reasonably compensate it

for all work performed under the PURCHASE ORDER prior to its termination, and for all demonstrable costs relating to work reasonably performed by the CONTRACTOR in giving effect to such termination.

### C8. Termination

The COMPANY may terminate the PURCHASE ORDER, or any part thereof, by providing written notice to the CONTRACTOR in the event that:

- a) the CONTRACTOR is in breach of a term of the PURCHASE ORDER; or
- b) the CONTRACTOR goes into liquidation other than for the purpose of a bona fide reconstruction; or
- c) the CONTRACTOR becomes insolvent or makes an arrangement with creditors; or
- d) the CONTRACTOR has any form of distress or diligence executed or execution levied against his goods; or
- e) the CONTRACTOR becomes bankrupt, commits any act of bankruptcy or if a receiver or administrator is appointed in respect of any of the CONTRACTOR's assets; or
- f) any PERSON of the CONTRACTOR GROUP becomes a RESTRICTED PARTY. For the purposes of this Clause C8, a "RESTRICTED PARTY" shall mean:
  - i. any PERSON targeted by national, regional, or multilateral export, trade or economic sanctions under Applicable Laws;
  - ii. any PERSON designated on the United Nations Financial Sanctions Lists, European Union (EU) or EU Member State Consolidated Lists, UK Sanctions or Consolidated List, US Department of the Treasury Office of Foreign Assets Control Specially Designated Nationals list, US State Department Non-proliferation Sanctions Lists, or US Department of Commerce Denied Persons List or Entity List, in force from time to time;
  - iii. any Affiliates of such PERSONS; or
  - iv. any PERSON acting on behalf of a PERSON referred to in the foregoing.

"PERSON" shall mean a natural person or a legal entity, including any partnership, limited partnership, limited liability company, corporation, firm, trust, body corporate, government, governmental body or agency, or unincorporated venture.

In the event of termination under this clause C8 COMPANY shall have the right to obtain completion of the PURCHASE ORDER by any other contractors at CONTRACTOR's sole cost.

## **SECTION D: THE COMPANY'S AND CONTRACTOR'S RECIPROCAL COMMITMENTS**

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### D1. Indemnities

**D1.1** The CONTRACTOR shall be responsible for and shall save, indemnify, defend and hold harmless the COMPANY GROUP from and against any and all claims, losses, damages, costs (including legal costs) expenses and liabilities in respect of:

- a) loss of or damage to property of the CONTRACTOR GROUP (whether owned, hired, leased or otherwise obtained by the CONTRACTOR GROUP) arising from, relating to or in connection with the performance or non-performance of the PURCHASE ORDER; and/or
- b) personal injury including death or disease to any person employed by the CONTRACTOR GROUP arising from, related to or in connection with the performance or non-performance of the PURCHASE ORDER; and/or
- c) personal injury including death or disease, or loss of or damage to the property of any THIRD PARTY to the extent that any such injury, loss or damage is caused by the negligence or breach of duty (whether statutory or otherwise) of the CONTRACTOR GROUP arising from, related to or in connection with the performance or non-performance of the PURCHASE ORDER. For the purposes of this clause "THIRD PARTY" shall mean any party which is not part of the COMPANY GROUP or CONTRACTOR GROUP.

**D1.2** The COMPANY shall be responsible for and shall save, indemnify, defend and hold harmless the CONTRACTOR GROUP from and against any and all claims, losses, damages costs (including legal costs) expenses and liabilities in respect of:

- a) loss of or damage to property of the COMPANY GROUP located at the WORKSITE, arising from, relating to or in connection with the performance or non-performance of the PURCHASE ORDER, excluding the GOODS prior to DELIVERY; and/or
- b) personal injury including death or disease to any person employed by the COMPANY GROUP arising from, or related to or in connection with the performance or non-performance of the PURCHASE ORDER; and/or
- c) personal injury including death or disease or loss of or damage to the property of any THIRD PARTY to the extent that any such injury, loss or damage is caused by the negligence or breach of duty (whether statutory or otherwise) of the COMPANY GROUP arising from, related to or in connection with the performance or non-performance of the PURCHASE ORDER.

**D1.3** All exclusions and indemnities given under this Clause (save for those under Clauses D1.1(c) and

D1.2(c)) shall apply irrespective of cause and notwithstanding the negligence or breach of duty (whether statutory or otherwise) of the indemnified party or any other entity or party and shall apply irrespective of any claim in tort, under contract or otherwise at law.

### D2. Consequential Loss

Except to the extent of any agreed liquidated damages or any termination fees provided for in the PURCHASE ORDER, the COMPANY shall save, indemnify, defend and hold harmless the CONTRACTOR GROUP from the COMPANY GROUP's own CONSEQUENTIAL LOSS and the CONTRACTOR shall save, indemnify, defend and hold harmless the COMPANY GROUP from the CONTRACTOR's GROUP's own CONSEQUENTIAL LOSS.

### D3. Insurance

The COMPANY and CONTRACTOR shall maintain levels of insurance sufficient to cover their respective liabilities and obligations under the PURCHASE ORDER and at law which shall include:

- a) The CONTRACTOR shall be responsible for insuring the GOODS at all times against any loss or damage, except as provided for at (c) below.
- b) The CONTRACTOR shall arrange such insurances as may be reasonably required and ensure that they are in full force and effect throughout the period for provision of the GOODS as described herein. All such insurances shall be placed with reputable and substantial insurers.
- c) The COMPANY shall be responsible for insuring the GOODS once DELIVERY has been effected.

### D4. Confidentiality

The COMPANY and CONTRACTOR shall keep the PURCHASE ORDER and any information which either PARTY ascertains about the other in strict confidence, and will not disclose the same to any third party without the prior written consent of the other PARTY.

### D5. Variations

With reasonable prior notice, the COMPANY and CONTRACTOR shall discuss variations to the PURCHASE ORDER and the terms of any resulting changes to any of the details shown in the PURCHASE ORDER. Any applicable variations shall only be considered valid if accepted by the COMPANY in writing.

### D6. Force Majeure

Neither the COMPANY nor the CONTRACTOR shall be responsible for any failure to fulfil any term or condition of the PURCHASE ORDER, if and to the extent that fulfilment has been prevented by a force majeure occurrence, as hereunder defined, which occurred after the date of execution of this PURCHASE ORDER, has been notified in accordance with this clause, which is

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beyond the control and without the fault or negligence of the PARTY affected and which, by the exercise of reasonable diligence, the said PARTY is unable to provide against.

For the purposes of this PURCHASE ORDER only the following occurrences shall constitute force majeure:

- a) riot, war, invasion, act of foreign enemies, hostilities (whether war be declared or not), acts or threats of terrorism, civil war, rebellion, revolution, insurrection, military or usurped power;
- b) ionising radiations or contamination by radio-activity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel or radio-active, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof;
- c) pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds;
- d) acts of God and natural catastrophes such as earthquake, flood, fire, explosion and/or other natural physical disaster, but excluding weather condition as such regardless of severity;
- e) strikes at a national or regional level or industrial disputes at a national or regional level, or strikes or industrial disputes by labour not employed by the affected PARTY and its sub-contractors or its suppliers and which affect a substantial or essential portion of GOODS;
- f) epidemic;
- g) maritime or aviation disasters; and
- h) changes to any general or local Statute, Ordinance, Decree, or other Law, or any regulation or bye-law of any local or other duly constituted authority or the introduction of any such Statute, Ordinance, Decree, Law, regulation or bye-law.

It shall be the CONTRACTOR's strict obligation to issue written notification to the COMPANY within 48 hours of such a force majeure event occurring. Failure to notify the COMPANY within 48 hours of such an event occurring will result in the CONTRACTOR being liable for any delay and any and all loss or damage or additional expenditure of any nature incurred by the COMPANY for the period of the delay from the time of the event occurring to the receipt of notification.

### D7. Transfer of PURCHASE ORDER

The CONTRACTOR shall not subcontract or assign any part of its respective rights or obligations under this PURCHASE ORDER to any other person, without first obtaining the COMPANY's prior written consent, which shall not unreasonably be withheld.

### D8. Dispute Resolution

If at any time any question, dispute or difference shall arise between the parties in relation to this PURCHASE ORDER or the GOODS, the parties shall seek to amicably settle between themselves. If the parties fail to achieve this within 30 days of either PARTY first notifying the other in writing, then either PARTY may give the other written notice of the existence of such question, dispute or difference, and the same shall be referred to arbitration under the rules of the London Court of International Arbitration. The result of the arbitration shall be final and binding on the parties to this PURCHASE ORDER and may be enforced in any court of competent jurisdiction. Such arbitration shall take place in London, England and the proceedings shall be conducted in English. Payment of expenses and costs may be awarded at the discretion of the arbitrator.

### D9. Proper Law and Language

The PURCHASE ORDER shall in all respects be governed, construed, interpreted and take effect in accordance with the laws of England and Wales excluding those conflict of law rules and choice of law principles which would deem otherwise, and subject to the provisions of Clause D8, shall be subject to the exclusive jurisdiction of the courts of England and Wales.

The language of the PURCHASE ORDER shall be the English Language.

### D10. Other Terms

Any terms or conditions, whether arising out of the CONTRACTOR's quotation, correspondence or otherwise which either expressly or by implication are contrary to or at variance with the conditions of the PURCHASE ORDER shall be deemed null and void unless specifically agreed otherwise by the COMPANY in writing.

Words such as "including" and the like are not used to indicate restrictive lists and shall be deemed to be completed by the expression "but not limited to".

This PURCHASE ORDER (together with the documents referred to in these PURCHASE ORDER TERMS AND CONDITIONS) constitutes the entire understanding and agreement between the parties with respect to its subject matter and constitutes and supersedes all prior discussions, agreements, representations or understandings of the parties, whether oral or written.

No variation of this PURCHASE ORDER shall be effective unless it is made in writing and signed by each of the parties to this agreement or on their behalf by duly authorised representatives. For the purposes of this clause, the expression "variation" includes any supplement, deletion or replacement howsoever effected.

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