



**BABCOCK & WILCOX VØLUND**

**GENERAL TERMS & CONDITIONS  
OF  
SUBCONTRACT/PURCHASE**

**APRIL 2020**

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## 1. THE WORKS

### Scope of Work

Supplier shall deliver the agreed scope of supply in accordance with the Contract and best professional business standards and practice.

The scope of supply includes all direct and indirect supplies and services necessary for the performance of the Works.

If Supplier wishes to use, or sees that there is an upside for BWV in the use of, materials, building methods, etc., other than those described or assumed in the Contract, this shall be presented to BWV in the form of a Variation Order Request.

Supplier guarantees that all parts of the Works, shall:

- a) be new,
- b) be in accordance with all the requirements stated in the Contract,
- c) be free of defects in design, performance and materials,
- d) be suitable for the intended purpose,
- e) provide good and continuous operation under all conditions of operation as required and specified in the Contract or as can reasonably be deduced from the Contract.

The Total Contract Price shall include minor changes and therefore such minor changes shall not be regarded as a Variation and shall not generate extra costs for BWV. Supplier is familiar with the conditions on the site, and has allowed for this in the Contract Price and Schedule.

### Spare Parts and Supplier Guarantees

Spare parts shall be made available by Supplier. A list of recommended spare parts shall be forwarded by Supplier to BWV upon delivery of the spare parts that are included in the Works. All spare parts included in the Works shall be listed or referenced in the Contract.

Supplier guarantees the supply of spare parts for 15 (fifteen) years from the date of take-over (as defined in the Contract). Furthermore, Supplier guarantees to provide service and assistance of his supply for up to 15 (fifteen) years from the date of take-over.

In case Supplier ceases production of spare parts for any of the goods delivered, or if Supplier is about to cease production within an unreasonably short time, Supplier shall notify BWV and advise any alternatives to maintain the operability of the goods supplied.

### Take-Over

Take-Over shall not take place until the below items have been fulfilled (non-exhaustive list):

- a) The commissioning and the trial run of the total plant have been completed successfully;
- b) The Works has been completed up to the point of reliable and safe operation under the conditions specified in the Contract;
- c) The training of the operating personnel has been completed;
- d) The full documentation of the Works has been completely handed over to BWV;
- e) The Parties have agreed and signed the list of reservations (if any).

BWV's Take-Over shall take place at the same time as the Project Owner/the Client issues a certificate of take-over for the total plant to BWV.

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## Variations

In these conditions the term "Variation" means any change to the Works/contract as instructed by BWV by means of a Variation Order. All of Supplier's obligations under the Contract also apply to Variations, unless otherwise agreed.

A Variation Order shall be expressly identified as such and be submitted on a prescribed form. The original version of the Variation Order shall at least contain a description of what the variation work consists of. The effects on time and price and weight, if any, which are not set out in the original version, shall be stated in the final version of the Variation Order.

BWV has the right to order such Variations as in BWV's opinion are desirable. Variations may include an increase or decrease in the quantity, or a change in character, quality, kind or execution of the Works or any part thereof, as well as changes to the Schedule. Any changes implemented as a Variation shall be part of the Works.

Unless otherwise agreed between the parties, the effect on the Contract Price of Variations shall be determined in accordance with the agreed prices and/or rates in the Contract.

The effects of a Variation on the Schedule shall be agreed upon on the basis of the net effect of the individual variation.

If the effects of a Variation Order are not agreed between the Parties then BWV shall determine and set out the effects to the Contract Price and Schedule in the final version of the Variation Order.

When BWV issues a Variation Order, Supplier shall without undue delay submit an estimate to BWV. BWV may require the submission of such estimate prior to issuing a Variation Order. The estimate shall contain:

- a) a description of the Variation in question, and
- b) a detailed schedule for the execution of the Variation showing the required resources and significant milestones, and
- c) the effect on the Contract Price with an explanation of how it is calculated, and
- d) the effect on the Schedule as far as it is possible in the specific case.

Supplier may request a Variation by issuing a Variation Order Request. A Variation Order Request shall be expressly identified as such and be presented on a prescribed form. It shall contain a specified description of the work the request concerns and a reference to the instruction, if any, upon which Supplier considers the request to be based.

BWV's Representative may, by written instruction or by minutes of meetings signed by or confirmed in writing by him, require the performance of a specific piece of work. If the work so required in the opinion of Supplier is not part of his obligations under the Contract, then Supplier shall submit a Variation Order Request to BWV and as soon as possible thereafter prepare an estimate as described above. If Supplier has not presented a Variation Order Request within 15 days after receiving such instruction he loses the right to claim that the work in question is a Variation and the right to an adjustment of the Contract Price and/or Schedule. The work covered by the instruction shall then be deemed to be part of the Works.

Upon receipt of a Variation Order Request BWV shall within 15 days issue a Variation Order.

A Variation caused by circumstances for which Supplier is responsible shall not entail any variations to the Contract Price or the Schedule in favour of Supplier.

Any dispute concerning Variations shall be settled by arbitration administered by The Danish Institute of Arbitration in accordance with the rules of simplified arbitration procedure adopted by The Danish Institute of Arbitration and in force at the time when such proceedings are commenced.

## 2. SUPPLIER'S PERSONNEL

Supplier undertakes to ensure that any persons employed or engaged by Supplier and its sub-suppliers to perform the Works fulfil the requirements of any applicable law, collective agreements, and other regulations whatsoever (regarding wage levels, accommodation conditions, social conditions and relevant

working site conditions, including any necessary registration requirements for foreign service providers, incl. but not limited to any regulations for usage of construction equipment).

In addition, Supplier undertakes to ensure that the persons employed by Supplier and any of its sub-suppliers to perform the Works have valid work and residence permits and fulfil any and all requirements for working on the construction site. BWV reserves the right to instruct Supplier to dismiss employees and/or sub-suppliers summarily if they do not have valid work or residence permits as required.

Supplier shall promptly upon request, and to the satisfaction of BWV, demonstrate compliance with the requirements in this section 2. Supplier's Personnel, and other requirements related to Supplier's personnel in the Contract, including allowing BWV or a third party nominated by BWV full access to all relevant areas, documents, systems, employees etc in order to perform a complete audit. Any breach by Supplier of these obligations shall be deemed a material breach of the Contract and will entitle BWV to terminate the Contract (termination for default) with immediate effect if Supplier has not remedied the breach within 5 (five) days after being requested to do so by BWV.

Supplier shall ensure that only sufficiently qualified personnel are employed for the Works and shall, at BWV's request, hand over detailed information and documentation on the personnel's qualifications.

Supplier shall ensure that personnel employed by him who persist in misconduct or are incompetent or negligent, be replaced.

BWV may, acting reasonably, request changes to Supplier's project organisation and also refuse to allow previously approved personnel to carry out any part of the Works.

Unless the parties agree otherwise in writing, Supplier's Representative shall be Supplier's project manager. The project manager shall be approved by BWV.

If Supplier's representative is not present at Site and installation/erection work is included in the Works, and unless the parties agree otherwise in writing, Supplier shall appoint a Site manager to whom shall be delegated necessary authority to act on behalf of Supplier and take responsibility for Supplier's activities on Site. The erection manager shall be present on Site until installation/erection work is completed, and shall be substituted in periods by a substitute with equal qualifications when he cannot be present.

If Supplier's representative is not present at Site and testing and/or commissioning is included in the Works, and unless the parties agree otherwise in writing, Supplier shall appoint a test and commissioning manager to whom shall be delegated necessary authority to act on behalf of Supplier in all matters related to testing and/or commissioning. The test and commissioning manager shall be present on site until final take-over, and during periods where he cannot be present, he shall be replaced by a substitute with equal qualifications.

### **3. THE PARTIES' REPRESENTATIVES**

Each Party shall appoint a representative that has the authority to act on behalf of the Party in all matters relating to the execution of the Contract, and may appoint this person's deputy. Either Party may, with notification to the other Party, appoint a new representative or deputy. The representatives may delegate any powers, functions and authority to any competent person, and may at any time revoke the delegation. Any delegation or revocation of authority shall be submitted to the other Party in writing.

All communication between the Parties shall follow the requirements set out in the Contract.

### **4. DELIVERY AND STORAGE**

#### **Terms of Delivery**

Unless otherwise stated in the Contract all parts of the Supply must be delivered in accordance with the following term of delivery:

Delivered Duty Paid (DDP), Incoterms 2020,  
at destination according to the Contract.

However, it is the duty of Supplier to unload the goods at the delivery destination.

### **Delivery Protocol and Completion Certificate**

Delivery of the Contract Object occurs when the Parties jointly, upon Supplier's request, conclude a Delivery Protocol when the Delivery Date has been reached, the Contract Object has been completed, has passed the tests specified in the Contract, and is ready for delivery.

BWV shall issue the Completion Certificate on its own initiative when the Works - with the exception of guarantee work – has been completed in accordance with the Contract. The Completion Certificate shall be issued at the date of conclusion of the Delivery Protocol, if the conditions for issuing Completion Certificate have been fulfilled.

### **Storage**

If BWV cannot receive any part or parts of the Works at the time agreed, the relevant parts of the Works shall be stored on Supplier's account for a period of up to 12 (twelve) weeks. For a longer period BWV can be charged for Supplier's documented storage costs incurred beyond 12 (twelve) weeks.

## **5. LABELLING, PACKING AND TRANSPORTATION**

All labelling, packing and transportation costs are included in the Contract Price.

### **Labelling**

Supplier shall label all components of the Supply in accordance with BWV's instructions. All packages shall be properly labelled so as they can be quickly and surely identified, and the weight shall be stated on the packaging.

Labelling shall be according to applicable transportation/shipping ISO standards.

### **Packing**

Before shipment, Supplier shall fill in a complete packing list.

All packing must be adjusted to the method of transportation so as to ensure that the goods arrive in sound condition and will not be damaged during outdoor storage. Supplier shall ensure that the packing is adjusted to temperature, weather conditions and environment at the place of delivery and/or storage. If installation/construction on Site is part of the Works, Supplier shall unpack all deliveries on Site and remove packing.

### **Transportation**

Supplier shall perform or procure to be performed all transport required for the completion of the Works unless otherwise specifically stated in the Contract.

Supplier shall pay all taxes (including VAT), duties and fees associated with the transport and importation of the Works.

## **6. TIME SCHEDULE, DELAY AND LIQUIDATED DAMAGES**

### **General**

The Works shall be performed and completed in accordance with the Contract Schedule. All documentation and all other parts of the Works shall be delivered as specified in the Contract within the times specified in the Contract.

Supplier shall plan and sequence the performance of the Works and expedite delivery of all materials, equipment or services in order to maintain the Time Schedule.

Supplier shall submit to BWV, for review, a complete plan of materials, manpower and activities, in such form and detail as BWV may reasonably require, either stated in the Contract or required by BWV's representative, which shows the start date, completion date and the manpower/work load, on a weekly basis, to meet the Schedule.

If, at any time, Supplier believes or suspects that the actual progress of the work is not in accordance with the submitted plan, Supplier shall inform BWV immediately, and produce and submit a revised plan showing the modifications necessary to ensure completion of the work within the Schedule within 72 hours.

### **Delay and Liquidated Damages**

Supplier shall be responsible for completing the Works in accordance with the Contract Schedule, and shall inform BWV immediately in writing if any circumstances arise, which indicate that the Works may be delayed in whole or in part.

If Supplier is delayed in achieving any Milestone designated, as a Liquidated Damages Milestone Supplier shall pay Liquidated Damages to BWV.

The total sum of Liquidated Damages relating to delays pursuant to this Contract shall not exceed 15% of the Total Contract Value.

If Supplier becomes liable to pay liquidated damages, BWV shall be entitled to set these off in his payments to Supplier. The obligation to pay the Liquidated Damages continues until the work is delivered in accordance with the contractual requirements. Payment of the Liquidated Damages does not release Supplier from his contractual obligations.

A delay in delivery resulting in the total sum of Liquidated Damages reaching the maximum amount shall always constitute a material breach of contract and shall entitle BWV to terminate the Contract and to claim damages under the general rules of law.

If during delivery such delay should occur that the completion of the Works must be expected to be considerably held up, Supplier shall be obliged, among other steps, for his own account, to increase the number of employees and the hours of work. Supplier shall obtain the necessary permits, e.g. permission for staying at the construction site outside normal working hours. Failure to meet this requirement will give BWV the right to engage a third party to assist in the recovery and maintenance of the time schedule. All costs related to such acceleration of work or engagement of a third party shall be paid by Supplier.

Supplier may request a time extension by use of a Variation Order Request if one of the following conditions affects the Works:

- a) Deliveries from BWV are not delivered according to the Contract Schedule, or
- b) Amendment to laws and regulations, which were not potentially foreseeable at the time of entering into the Contract or
- c) Force Majeure

### **Performance**

Supplier shall pay Liquidated Damages for lack of performance, if any, in accordance with the Contract.

## **7. BWV'S DELIVERY**

All free issued materials owned and delivered by BWV or his sub-suppliers shall be registered on packing lists which must be signed by Supplier and returned to BWV for acknowledgement of receipt of the materials within 7 (seven) days of the receipt. Upon receipt, Supplier shall establish a stock holding list in English stating the material type, quantity, etc. as described on the packing lists and also the location of the materials, i.e. if they are located in the warehouse or have been issued to production. This list must be kept up to date at all times and submitted to BWV upon request. Material to be handled according to clause 16.

## **8. COORDINATION AND COOPERATION**

Supplier shall appoint a project manager to undertake the coordination of the Works in consultation with BWV and Client and in accordance with any specific site arrangements.

Supplier shall coordinate his delivery, including technical issues and time schedule, with BWV. The coordination of the day-to-day work on site shall be carried out in cooperation with BWV's Representative or as delegated. On site, Supplier has a duty to cooperate and coordinate his activities with BWV, Client and other suppliers/contractors and shall adapt to these in such a way as not to delay or hinder in any way the progress of the other parties' work.

BWV reserves the right, without any compensation for Supplier, to change/relocate the work to other work areas on site. BWV will endeavour to minimize the changing and relocation of work areas.

## **9. MEETINGS**

Supplier shall participate in all relevant meetings regarding the Project, construction, coordination and safety as well as all other meetings, requested by BWV, Client and/or the Project Owner during the project execution and commissioning period. All costs connected with the participation in these meetings are included in the total contract price.

## **10. QUALITY ASSURANCE AND AUDITS**

Supplier shall have an implemented and sufficiently documented quality management system in accordance with the latest edition of ISO 9001 or equivalent third party certification or another valid and implemented system acceptable to BWV. Supplier must maintain the third party certification for the quality management system and must immediately inform BWV in writing if the certificate is not renewed. BWV may demand documentation from Supplier of the latest approved renewal of the certificate.

After giving 3 (three) working days' prior notice, BWV, Client and/or Project Owner is entitled to perform, or have performed by a nominated third party, such audits and verifications as in BWV's, Client's and/or Project Owner's opinion are required of the quality, work routines, procedures, Health, Safety and Environmental issues, and any other aspect of the Works and/or the Contract, of Supplier and his sub-suppliers, in order to ensure that the Works are being carried out in accordance with the Contract. Supplier must ensure that within normal working hours, BWV, Client and/or Project Owner or their representatives have access to relevant areas, documents, systems, employees etc. in order to perform the desired control and verification of Supplier's and his sub-suppliers' observation of their obligations pursuant to the Contract. Supplier and/or sub-suppliers shall cover their own costs.

Audits and/or verifications do not relieve Supplier from his obligation to ensure that the Works are delivered in accordance with the Contract and are fit for purpose. Should any deviations from the Contract be identified, Supplier shall, at his own expense, make the necessary adjustments and arrange for new audits and/or verifications until the Works are in accordance with the Contract.

## **11. PLANNING & INSPECTIONS**

Supplier shall follow the planning and inspection instructions provided by BWV.



Before delivery to BWV, Supplier must perform a final control relevant to the Works in order to confirm that the Works fulfils the specified requirements (including control of dimensions, surface treatment, finish, technical properties, etc.) This must be documented to BWV by means of final control forms. BWV may demand that a certain type of final control form be used.

BWV, Client and/or Project Owner, and their representatives, shall be entitled to inspect and test the Supply or any part thereof during manufacture and after completion. Such inspection and testing may be carried out at the place of manufacture or on-site. Supplier shall notify BWV at least 14 (fourteen) days before the planned inspection or test, so that BWV can plan attendance. If so instructed, Supplier shall uncover or open any part of the Supply and reinstall such uncovered or opened parts following the inspection. If the technical requirements for any test are not specified in the Contract, the test will be carried out in accordance with applicable industry practice.

Inspections and/or tests do not relieve Supplier from his obligation to ensure that the Works are delivered in accordance with the Contract and are fit for purpose. Should any deviations from the Contract be identified, Supplier shall, at his own expense, make the necessary adjustments and arrange for new inspections and/or until the Works are in accordance with the Contract.

## **12. REVIEW OF DRAWINGS, PROCESSES ETC.**

Review and/or approval of design, drawings, samples, test results, procedures, processes or schedules by BWV shall not in any way limit or diminish Supplier's obligations under the Contract nor Supplier's duty to perform the Works in strict accordance with the requirements of the Contract.

Supplier shall review all documents received from BWV without undue delay, and if any conflict or inconsistency appears in drawings, specifications or any other document provided by BWV, Supplier shall promptly notify BWV of such inconsistency in writing, and if Supplier fails to do so, Supplier shall proceed at his own risk, there being no recourse against BWV.

## **13. PATENT RIGHTS AND OTHER INTELLECTUAL PROPERTY RIGHTS**

Supplier represents and warrants that any method of work performed or materials or equipment furnished by it hereunder will not infringe upon any patent, issued or pending, covering any such method or material or equipment and claimed by the patentee or owner of the patent or patent application as an infringement.

In addition, Supplier represents and warrants that any work performed or materials or equipment furnished by it hereunder will not infringe upon any other intellectual property rights than patent rights, e.g. utility models, copyright, registered and unregistered design rights, know how and any other rights of a similar nature in any country or jurisdiction, whether registered or unregistered, together with all registrations, applications to register and rights to apply for any of the aforementioned rights.

Supplier shall indemnify and hold BWV harmless from any and all claims for infringement of any patent, copyright, trademark or other intellectual property rights by reason of the design, manufacture, purchase, use or sale of the equipment or materials furnished hereunder or the work performed hereunder and shall indemnify BWV for all judgments, liability, damages, costs and expenses (including attorneys' fees) which BWV may incur or have rendered against it by reason of any alleged infringement.

The Supplier grants (or, if such a grant cannot legally take place until a later date, agrees to grant) to BWV with effect from the date of this Contract or in the case of any of the Intellectual Property not yet in existence with effect from the creation of such Intellectual Property, an irrevocable, royalty free, non-exclusive licence (such licence to remain in full force and effect notwithstanding the completion of the Supplier's obligations or the termination of this Contract) to use the Intellectual Property and to reproduce all Documents for any purpose whatsoever connected with the Facility including, but without limitation, the execution, completion, maintenance, letting, advertisement, modification, extension, reinstatement and repair of the Facility. Such licence shall carry the right to grant sub-licences and shall be transferable to third parties.

#### **14. TRANSFER AND RETENTION OF TITLE**

All goods and materials supplied by BWV remain at any time the property of BWV who shall be entitled at any time to claim the materials from Supplier or any of his sub-suppliers.

All goods and materials delivered by Supplier shall become the property of BWV upon delivery to agreed delivery address or upon payment by BWV in accordance with the Contract, whichever occurs first. Further reference is made to clause 16 below.

In case of bankruptcy, suspension of payments or any kind of transfer of ownership, etc., on the part of Supplier or his sub-suppliers, BWV may choose to either continue the Contract or to terminate the Contract and subsequently reclaim the materials.

Upon the execution of the Contract, Supplier shall be deemed to grant to BWV a non-revocable, non-exclusive license for an indefinite term and without territorial restriction, to use the data supplied under this Contract, without additional payment, for the purpose of the implementation, operation, maintenance, servicing, altering, adjusting and repair of the installation, for all purposes associated with constructing, completing and commissioning the installation and for the purpose of making any improvement, enlargement, or redevelopment of the installation, including necessary changes in the data.

#### **15. TRANSFER OF RISK**

Supplier shall carry out the Works at its own risk until the Works are fully completed and accepted by BWV (including risk of loss during shipment and delivery). In the event of any accident, destruction or injury to the Works or existing facilities including any materials, equipment and apparatus provided for the Works, Supplier shall, before such completion and acceptance, repair or replace forthwith the Works, and any related materials, equipment and apparatus so damaged, destroyed, injured or lost, at its own expense and to the satisfaction of BWV.

The risk of accidental loss or damage to the Works shall be transferred to BWV at the same time as it is transferred from BWV to Client.

When materials, equipment or apparatus are furnished by other suppliers for installation or erection by Supplier, Supplier shall receive, unload, store and handle such supplies at the site and become responsible therefore as though such items were being furnished by Supplier under the Contract.

#### **16. BWV'S PROPERTY**

Unless otherwise agreed in writing, all tools, equipment or materials of any type furnished free issue to Supplier by BWV or specifically paid for by BWV, and any replacement thereof, or any materials affixed or attached thereto, shall remain the property of BWV. Such property, and wherever practical - each individual item thereof, shall be plainly marked or otherwise adequately identified by Supplier as property of BWV and shall be safely stored separate and apart from Supplier's property.

Supplier shall not substitute any property for BWV's property and shall not use such property except in the performance of the Works. Such property, while in Supplier's custody or control, shall be held at Supplier's risk, shall be kept insured by Supplier at Supplier's expense in an amount equal to the replacement cost with loss payable to BWV and shall be subject to return at BWV's written request in which event Supplier shall prepare such property for shipment and shall redeliver to BWV in the same condition as originally received by Supplier, reasonable wear and tear excepted.

Upon completion of the Works or at an earlier date as may be fixed, Supplier shall submit in a form acceptable to BWV, an inventory of all BWV-supplied materials covering all material not consumed or

residual to the order. Disposition instructions shall be supplied by BWV as expeditiously as possible after completion of the Contract.

If materials are compensated on a reimbursable basis Supplier shall also submit an inventory of all materials BWV have paid for under the Contract, both consumed and not consumed. BWV shall instruct Supplier on how to proceed with the disposition of residual materials.

## **17. DEFECTS AND PRODUCT LIABILITY**

If during the execution of the work and before start of the defects liability period it can be foreseen with certainty that the Works or parts of the Works will be defective or contrary to the terms of contract, BWV shall be entitled to set a suitable date for remedy. If remedy has not taken place before that date, it can be executed by BWV (at the hourly wages and prices of BWV in force at the time in question) or by a third party for the account and risk of Supplier. Where it is anticipated that a time of delivery cannot be kept in spite of this, BWV may terminate the Contract and claim damages for the breach of contract.

### **Defects Liability**

The defects liability period shall be at least 2 (two) years calculated from the date of the take-over by Client / Project Owner.

Supplier agrees, at BWV's discretion, to correct or replace, promptly and without expense to BWV, any supplies, materials, manpower and services not conforming to the performance requirements, when notified by BWV thereof.

For any part repaired or replaced during the defects liability period, a renewed liability period shall start.

For corrosion on steel constructions and surface treatment the defects liability period shall be 5 (five) years.

If other liability periods are stated in the Contract the longest liability period shall apply.

All components, in which defects occur within the defects liability period, and which are not specifically pointed out as being wear parts, shall be covered by the defects liability.

For any defects occurring during this defects liability period, BWV shall be entitled to demand that Supplier shall remedy any defect within a reasonable period set by BWV.

Supplier shall indemnify BWV for all expenses incurred by BWV due to the non-fulfilment of the obligations in this section. This will apply before and throughout the defects liability period.

Notice of any defects must be given by BWV within the defects liability period. If Supplier has acted grossly negligent or with wilful misconduct or if Supplier prior to expiry of the defects liability period became aware of or should have become aware of defects, BWV may issue such defects notice also after expiry of the defects liability period.

If defects are discovered and rectified during the defects liability period, Supplier shall make corresponding revisions of the relevant documentation.

If, after having been notified of any defect, Supplier omits to immediately repair or replace the supplies, materials, manpower or services, BWV may, without further warning, repair or replace such supplies, materials, manpower or services, and Supplier agrees to indemnify BWV for all costs suffered in this connection.

No inspection, test or approval of any kind, including BWV's design review, shall relieve Supplier of any obligations under this clause to deliver supplies, materials, manpower or services that are in compliance with all the requirements of the Contract as regards performance, construction, reliability, etc.

Supplies, materials, manpower and services which have once been rejected, shall not later be presented for approval, unless the previous rejections and repairs thereof are identified. Such repaired and replaced

supplies, materials, manpower and services shall subsequently be subject to the requirements of this clause to the same extent as the original supplies, materials, manpower and services.

Supplier's liability hereunder shall apply for BWV, BWV's successors, assignees, customers, and users of the ordered supplies, materials, manpower and services, and the legal remedies stated herein are cumulative and non-exclusive.

If, during the defects liability period, any remedy shall be urgently necessary for the safety/serviceability of the Supply, BWV shall have the right, on Supplier's account, to perform such remedy, or employ and pay other persons to perform such remedy, as BWV may consider necessary.

If a remedy is covered by the defects liability stated in the Contract, all expenses incurred during the performance of such remedy shall be recovered from Supplier, provided, however, that BWV has notified Supplier thereof in writing. BWV shall keep sufficient and reasonable evidence of the remedy.

### **Product Liability**

Supplier shall be liable to product liability in accordance with the rules, regulations and legal practice in Denmark and in the country where the Site is located.

### **Limitation of Liability**

If any Party breaches its obligations, the other Party is entitled to claim damages in accordance with applicable law.

Neither Party is liable for any indirect loss and/or consequential damages suffered by the other Party unless such loss and/or damages are caused by gross negligence or wilful misconduct from the other Party.

Any loss suffered by BWV as a result of replacement purchases and any loss of anticipated savings will be deemed direct damages. Lost profits and revenues will be deemed indirect loss.

## **18. SUSPENSION AND TERMINATION**

### **Suspension of the Works**

BWV may at any time instruct Supplier to suspend the progress of part or all of the Works. During such suspension, Supplier shall protect, store and secure such part of the Works against any deterioration, loss or damage.

Supplier shall not be entitled to be paid any additional cost or to be granted any extension of time if the suspension is necessary by reason of default on the part of Supplier or for the proper execution or the safety of the Works or plant.

### **Termination for Default**

If Supplier ceases to conduct its operations in the normal course of business (including inability to meet obligations as they mature); or fails to make progress so as to endanger performance of the purchase order/the Contract; or a receiver for Supplier is appointed; or an assignment for the benefit of Supplier's creditors is made; or if Supplier is in violation of any of the conditions or provisions of the Contract; BWV may terminate this Contract either in whole or in part, without liability to Supplier, and may take over the Works and prosecute the same to completion by contract or otherwise. BWV may take possession of and utilize in completing the Works such materials, appliances and plant of Supplier as may be on the site of work and necessary for the completion of the Works. The expense of so completing such work, together with a reasonable charge for administering any subcontract or subcontracts for such completion, will be charged to Supplier, and such expense will be deducted by BWV out of such monies as may be due or may at any time thereafter become due to Supplier. In case such expense exceeds the sum which would have otherwise been payable under the Contract, Supplier and its sureties shall be liable for and shall upon notice from BWV promptly pay to BWV such excess.

If, after notice of termination of the Contract under the provisions of this clause, it is determined, for any reason, that Supplier was not in default under the provisions of this clause or that the default was excusable under the provisions of the Contract, the rights and obligations of the Parties shall be the same as if the notice of termination had been issued pursuant to the termination for BWV's convenience provision.

The following shall constitute events of default for the purposes of this clause:

- a) Filing a voluntary petition in judicial composition ("concordat judiciaire") by Supplier or the consent to an involuntary petition in judicial composition by Supplier.
- b) If Supplier is deemed by law unable to pay his debts as they fall due; or enters into voluntary or involuntary bankruptcy, liquidation or dissolution or becomes insolvent; or makes an arrangement with, or assignment in favour of his creditors; or agrees to carry out the Contract under a committee of inspection of his creditors; or if a receiver, administrator, trustee or liquidator is appointed over any substantial part of his assets; or if, under any law or regulation relating to reorganization, arrangement or readjustment of debts (other than judicial composition), proceedings are commenced against Supplier or resolutions passed in connection with dissolution or liquidation or if any steps are taken to enforce any security interest over a substantial part of the assets of Supplier; or if any act is done or event occurs with respect to Supplier or his assets which, under any applicable law, has a substantially similar effect to any of the foregoing acts or events; or has an execution levied on his goods.
- c) Failure to fulfil any performance guarantees or in the event of a serious breach of Supplier's contractual obligations.
- d) The continuous failure in due time, after receiving notice, by Supplier to perform, keep or fulfil any of the covenants, undertakings, obligations or conditions set forth in the Contract, and if Supplier does not progress the Works or part(s) of the Works as required under the time schedule.
- e) Failure to comply with contractual obligations concerning security and safety provision despite of a written warning by BWV.
- f) Failure to comply with the obligations regarding the bank guarantees.
- g) If Supplier abandons the Works or otherwise plainly demonstrates the intention not to continue performance of his obligations under the Contract.
- h) If Supplier subcontracts the whole of the Works or assigns the Contract without the required consent of BWV.
- i) If it is clear from the circumstances that Supplier will be liable for maximum liquidated damages for either delay or performance or both.

In any events of default under paragraph (a), and (c) – (g) above, BWV may terminate the Contract or parts thereof after giving 10 (ten) days' notice to Supplier and for the Works not yet executed at such date except if the cause of the termination has been cured in the meantime.

In any events of default under clauses b), h) or i) above, BWV may terminate the Contract or parts thereof immediately.

If BWV terminates the Contract under this clause, BWV may take possession of the Works already executed until the date of termination and BWV may complete the Works or may employ any other contractor to complete the Works without thereby releasing Supplier from any of his obligations or liabilities under the Contract. BWV may use for such completion as much of Supplier's equipment, temporary works and materials as he may think proper. Supplier shall be remunerated for such use.

If BWV terminates the Contract under this clause, BWV may withhold further payment in respect of the Contract until the cost of design, execution, completion and remedying of any defects, damages for delay in completion (if any) and all other expenses reasonably and properly incurred by BWV to complete the

Works have been finally determined. BWV shall recover from Supplier any losses and damages incurred by BWV and any extra cost of completing the Works.

If BWV terminates the Contract under this clause, BWV shall have at the time of such termination the benefit of any agreement for the supply of any goods or materials or services and/or for the execution of any work for the purposes of the Contract, which Supplier may have entered into.

BWV expressly retains all its rights and remedies provided by law or at equity in the case of such default, and no action on the part of BWV shall constitute a waiver of any right or remedy. In the case of material and/or equipment to be furnished by BWV to Supplier, BWV shall not be liable by reason of any failure to deliver or delay in delivery due to any unforeseeable causes beyond BWV's reasonable control and without fault or negligence of BWV.

If, by reason of any accident, or failure, or other event occurring to, in, or in connection with the Works, or any part thereof, during the execution of the Works any remedial or other work is urgently necessary for the safety of the Works and Supplier is unable or unwilling within the time necessary having regard to circumstances to do such work, BWV shall be entitled to carry out such work. If the work or repair so done by BWV is work which Supplier was liable to perform at Supplier's cost under the Contract, then the cost thereof shall be deducted by BWV from any monies due or to become due to Supplier provided that BWV shall, as soon after the occurrence of any such emergency as may be reasonably practicable, notify Supplier thereof.

### **Termination for Convenience**

BWV may, at any time, without prejudice to its other rights and remedies, terminate the Contract in whole or in part, for convenience, giving Supplier at least 30 (thirty) days' written notice. Supplier explicitly agrees and accepts that no claims can be made against BWV – whether for direct or indirect loss – as a result of any termination pursuant to this clause.

If BWV so instructs Supplier shall stop work immediately and only perform such work as instructed by BWV.

### **Effect of Termination for Convenience**

If the Contract is terminated Supplier is entitled to be paid for work performed up to the date when notice of termination is received, and for any necessary costs in the termination period as defined under the cause for termination. Supplier shall use his best endeavours to minimise such costs, including but not limited to transferring personnel and equipment to other projects,

Supplier's sole and exclusive rights in the event of termination shall be those set forth in this clause, and Supplier shall be entitled to no additional compensation and shall have no additional or other rights of any kind, type or nature arising out of or under the Contract by virtue of such termination.

## **19. INSURANCE**

Supplier shall procure such insurance as required in the Contract.

Supplier shall defend and indemnify BWV against all damages, liabilities, claims, losses and expenses (including attorneys' fees) arising out of, or resulting in any way from, any defect in the goods or services purchased under the Contract or from any act or omission of Supplier, its agents, employees or sub-suppliers.

Supplier shall maintain such public liability insurance (including products liability, completed operations, contractors' liability and protective liability), automobile liability insurance (including non-owned automobile liability) and workers compensation and employers' liability insurance as will adequately protect BWV against such damages, liabilities, claims, losses and expenses (including attorneys' fees). Supplier agrees to submit certificates of insurance evidencing its insurance coverage as stipulated in the Contract or when requested by BWV.

Supplier shall obtain and maintain insurance against the risks and in the amounts specified in the Contract. Supplier shall furnish a certificate from his insurance company stating that the specified insurance requirements are met and such insurance shall not be cancelled or changed until after BWV shall have



received at least 30 (thirty) days prior written notice of such change or cancellation. If Supplier cancels, any insurance BWV shall have the right to purchase insurance and deduct the actual premiums from any amount payable to Supplier.

The certificates of insurance shall stipulate: (a) that BWV be and is a named additional insured under such insurance, (b) that BWV receive thirty (30) days prior written notice of any change or cancellation in the aforementioned coverage, (c) that any deductibles under such policies shall be paid by Supplier, and (d) that the policies of Supplier are primary for all purposes to any policy of BWV and BWV's policy shall be regarded as excess and non-contributory to any such policies of Supplier. Supplier agrees to, and hereby does, waive subrogation against BWV under all such insurance, and the policies of insurance which Supplier must furnish pursuant to this clause shall contain an endorsement whereby the carrier waives any and all rights of subrogation against BWV and an endorsement specifically quoting the penultimate provision of this clause.

Compliance with this clause does not relieve Supplier from liability under any indemnity provisions of the Contract.

Supplier will take and provide all precautions, safeguards and protections that may be required by law or that may be necessary or proper against the occurrence of the happening of any accidents, injuries or damage to any person or property, including the equipment or material to be furnished hereunder or in the performance of the work under the Contract or any operations, deliveries or inspection incident thereto. Supplier shall defend and indemnify and save BWV harmless from all loss, liability, claims, costs and expenses (including attorneys' fees) arising out of or in connection with any such accidents, injuries (including death resulting therefrom) or damages that may happen or occur through or because of any acts or omissions of Supplier or of Supplier's agents, employees or sub-suppliers. Further, Supplier shall defend, indemnify and save BWV harmless from all loss, liability, fines, costs and expenses (including attorneys' fees) incurred for or by reason of the violation by Supplier or Supplier's agents, employees or sub-suppliers of any applicable municipal ordinance, state law or national law. This indemnification provision shall be enforceable to the extent permitted by law.

Supplier agrees to insert the substance of the foregoing paragraph, and this paragraph, in all purchase orders and subcontracts related to this Contract.

## **20. FORCE MAJEURE**

In this clause, "Force Majeure" means an exceptional event or circumstance:

- a) which is beyond a Party's control;
- b) which such Party could not reasonably have provided against before entering into the Contract and its appendices;
- c) which, having arisen, such Party could not reasonably have avoided or overcome; and
- d) which is not substantially attributable to the other Party.

Force Majeure may include exceptional events or circumstances of the kind listed below, so long as conditions (a) to (d) above are satisfied:

- i) war, hostilities (whether war be declared or not), invasion, act of foreign enemies;
- ii) rebellion, terrorism, revolution, insurrection, military or usurped power, or civil war;
- iii) riot, commotion, disorder, strike or lockout by persons other than Supplier's personnel and other employees of Supplier and subcontractors;
- iv) munitions of war, explosive materials, ionizing radiation or contamination by radio-activity, except as may be attributable to Supplier's use of such munitions, explosives, radiation or radio-activity; and
- v) natural catastrophes such as earthquake, hurricane, typhoon or volcanic activity or consequences thereof.

In case of a Force Majeure event, the Parties may suspend the obligations of the Contract.

The non-performing party must ensure that notice of the impediment and of its effect on its ability to perform is

received by the other party within 3 (three) days after the non-performing party knew or ought to have known of these circumstances. The other party is entitled to damages for any loss resulting from the non-receipt of such notice. Notice of delay due to force majeure must be accompanied by a written documentation for the relevant circumstance.

In the event Supplier's performance of the Works is delayed or interfered with by events of Force Majeure, Supplier may request an extension of time and shall not be liable during such event of Force Majeure for failure to meet its obligations under the Contract, but shall not be entitled to any increase in the Total Contract Price or to any damages or additional compensation of any kind, unless the expenses made by Supplier are expressly requested by BWV whilst the case of Force Majeure or are measures of conservation of the Works such as protective construction or any other measures taken to protect the Works generally but only if Supplier make a notice to BWV before.

If any direct loss or damage happens to the Works, or any part thereof during the period for which Supplier is responsible for the care thereof, from any cause defined in this clause, Supplier shall, if requested by BWV and only in that case, rectify the loss or damage and he shall be entitled to a corresponding addition to the Contract Price.

A Party shall give notice to the other Party when it ceases to be affected by the Force Majeure and any suspended work and obligations shall be resumed.

Each party shall at all times use all reasonable endeavours to minimize any delay in the performance of the Contract as a result of Force Majeure.

In case of a Force Majeure event extending for more than 180 days, BWV may terminate the Contract, according to the related provisions of the Contract.

## **21. BUSINESS PRACTICES**

(a) Supplier acknowledges, and agrees to comply with, BWV's commitment that all business activities be conducted ethically, with integrity, and in full compliance with both the letter and the spirit of the laws and regulations applicable to those activities. This commitment applies, but is not limited, to the award of contracts/subcontracts on an impartial/competitive basis, personal business conduct, internal control systems, the giving/receiving of gifts, and correct documentation and registration of financial accounts. No employee of BWV is authorized to ask Supplier to operate on BWV's behalf in an illegal manner or in contrast with BWV's business-conduct policies. Should Supplier ever receive, directly or indirectly from any of BWV's representative, a request that Supplier believes is contrary to the provisions of this clause, Supplier shall immediately notify BWV's commercial manager.

(b) Without limiting the generality of the foregoing or the effect of any other provision of the Contract:

1. Supplier represents and warrants that it complies with all laws relating to anti-bribery and corruption applicable to the Supplier and is familiar with the Organization for Economic Cooperation and Development Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, as amended ("OECD Convention"). Supplier further represents that, in particular, it is familiar with the prohibitions of the OECD Convention against paying or giving anything of value, either directly or indirectly, to foreign officials for the purpose of securing any improper advantage for a company, including assisting a company in obtaining or retaining business.

2. Supplier shall not make any offer, payment, promise to pay, gift, or promise to give monies or anything of value; nor authorize any such offer, payment, promise to pay, gift, or promise to give by anyone acting for or on behalf of Supplier or BWV; to any government official, any political party or official thereof, any candidate for political office, any official of a public international organization, or any other person that is contrary to the provisions of the OECD Convention, as amended.

(c) Supplier will conduct his business in accordance with BWV's Code of Business Conduct for third party intermediaries, and the basic principles of the United Nations Global Compact regarding for instance human rights, child labour, environment, and anti-corruption.



The use of child labour by Supplier, or any of his sub-suppliers, in any way for fulfilling Supplier's requirements according to the Contract, is not accepted. Supplier shall monitor whether child labour is used by any of Supplier's sub-suppliers, and if it is detected that child labour is used, Supplier shall notify BWV without delay and make sure that the use of child labour is terminated and replaced with adult labour immediately.

(d) Supplier acknowledges that the representations and warranties provided in this clause are material to BWV's award of the Contract to Supplier. Any action by Supplier which would or might constitute a violation of the OECD Convention, as amended, or a request for such action from or by a representative of Supplier, or the use of child labour, shall result in immediate termination of the Contract without further liability or obligation of BWV.

## **22. COMPLIANCE WITH REGULATIONS**

Supplier shall comply with all national, state, or local laws, rules and regulations applicable to performance of the Contract and to the fabrication and deliver of the materials, equipment and services called for under the Contract. Further, all construction or erection work, alterations, or installation of materials or equipment (and appliances connected therewith) shall comply with all applicable building and fire rules, codes and regulations, laws, ordinances and other statutory or regulatory provisions pertaining to such type of work.

The codes, rules and regulations, laws and ordinances referred to in this clause are to be considered a part of the Contract requirements; and Supplier shall defend, indemnify and hold BWV harmless from and against any and all liability, fines, penalties, expenses (including attorneys' fees) claim or proceeding resulting from Supplier's failure to comply with said requirements. Supplier shall give all notices and secure and pay for all required permits, licenses and assessments.

Unless prior written approval of BWV is obtained, which approval shall be at the sole discretion of BWV, Supplier shall not acquire, for use in the performance of this order, any goods, materials, supplies or services originating from sources within, or that were located in or transported from or through Countries with a current USA embargo or embargos under similar Laws in any other jurisdiction or country or being excluded according to BWV's Code of Business Conduct

Supplier shall comply with all applicable privacy and data protection Laws ("Data Protection Legislation"). If requested by BWV in order to comply with applicable Data Protection Legislation, Supplier shall enter into a data processing agreement in a form approved by BWV that meets the requirements of the applicable Data Protection Legislation. Without limiting the generality of the foregoing, if Supplier will be processing any personal data that is subject to the General Data Protection Regulation ((EU) 2016/679) ("GDPR") in connection with the Work, then Supplier shall enter into a data processing agreement in a form approved by BWV that meets the requirements of the GDPR.

In BWV's Privacy Policy to be found on BWV's website information is available about how BWV is gathering, filing deleting etc. personal data and the rights of each individual in relation to such personal data. By the Supplier's signing of the Contract he confirms to be informed to a fully satisfactory extent about BW's treatment of personal data during the term of this Contract.

Supplier shall promptly upon request and to the satisfaction of BWV demonstrate compliance with above requirements, including but not limited to allowing BWV or a third party nominated by BWV full access to all relevant areas, documents, systems, employees etc in order to perform a full audit. Any breach by Supplier of its obligations under this provision shall be deemed a material breach of the Contract and will entitle BWV to terminate the Contract (Termination for default) with immediate effect if Supplier has not remedied the breach within five (5) days after being requested to do so by BWV.

## **23. HEALTH, SAFETY AND ENVIRONMENT**

Supplier must actively assist, contribute and participate in the coordination of all health, safety and environment issues at site.

BWV and his suppliers will perform responsible environmental management, including health, safety and environment issues, as an integrated part of all phases of a project, fulfilling the authority regulations and the Client requirements in the constant pursuit of improvements. Suppliers are acquainted with and will observe all rules, regulations and requirements in force issued by the authorities, BWV, Client, Project Owner and other relevant parties and/or authorities.

Supplier shall ensure that any sub-supplier shall be obligated to follow these provisions.

## **24. TAXES**

Supplier shall apply and comply with all relevant and mandatory tax rules included in the statutory requirements of the country in which the work/delivery takes place. Supplier shall make himself acquainted with all rules applicable to sub-suppliers.

Except to the extent otherwise indicated in the Contract, Supplier shall pay any and all taxes, duties, imposts, or other charges of whatever relevant nature imposed by any governmental body in connection with the Contract and the materials, equipment or services called for thereunder. This shall include but is not limited to all sales, use, excise or property taxes and payroll taxes or contributions, whether national, state, or local, and Supplier accepts exclusive liability for their payment for all employees of Supplier engaged in the performance of the Works. Supplier shall defend, indemnify and hold BWV harmless from and against any and all liability, fines, penalties, expenses (including attorneys' fees) claim or proceeding resulting from Supplier's failure to pay or in connection with payment of such taxes, duties, imposts, contributions or other charges.

It is also the duty of Supplier to provide and submit to BWV proof of any required registration of Supplier with the tax authorities in the country of delivery and/or site construction in order for BWV not to have to withhold tax at source for any work or services carried out in the country of delivery/site construction, i.e. depending on national rules BWV might have to deduct Supplier invoice payments for tax withholding purpose if such pre-registration is not confirmed in place.

## **25. WAIVER**

The failure of BWV to insist, in any one or more instances, upon the performance of any of the terms, covenants or conditions of the Contract, or to exercise any right hereunder, shall not be construed as a waiver or relinquishment of the future performance of any such terms, covenant or condition, or the future exercise of such right, and the obligations of Supplier with respect to such future performance shall continue in full force and effect.

## **26. CONFIDENTIALITY**

In connection with the cooperation between Supplier and BWV, Supplier will receive information that may provide him with detailed knowledge of BWV's affairs with regard to technical, financial, organizational and production related matters, know-how, trade/business terms, internal procedures as well as other matters (hereinafter called the "Information").

Supplier shall undertake the following obligations:

1. Any Information concerning BWV received by Supplier, or brought to the knowledge of Supplier – regardless of whether this Information is received directly or indirectly, in writing, including by electronic media, or orally, during visits or in any other way – shall be treated with strict confidence.
2. Any Information received by Supplier shall be used solely in connection with Supplier's cooperation with BWV regarding the Contract.
3. Supplier shall not use, copy, or in any other way reproduce, hand over or otherwise disclose any Information received or part of such Information, or any Material to a third party without the prior

written consent of BWV. Supplier shall not be entitled to use the assistance of a third party to perform any part of the Supply or otherwise discuss the Contract or the Supply with a third party unless this has in advance been agreed in writing by BWV, and only in as so far as the third party has signed a confidentiality declaration with the exact same obligations as set forth in this clause.

4. The obligations set forth above shall not be construed to prohibit:
  - a) The use or disclosure of any information about BWV previously known to Supplier.
  - b) The use or disclosure of any Information which is or becomes publicly known through no wrongful act of Supplier.
  - c) The use or disclosure of any Information which is received from a third party which is under no confidentiality obligation to the party which provided the confidential Information.
5. Any Material, including all documents, computerized information, data media, drawings, diagrams, product samples etc. handed over to Supplier by BWV or prepared by Supplier on the basis of Information received from BWV, shall be the property of BWV. BWV may at any time request the return of any such Material, including copies, transcripts etc. thereof, and the hand-over may, if necessary, be by means of direct enforcement proceedings without security.
6. At the termination of the cooperation Supplier shall be under an obligation to return to BWV - without keeping any copies, transcripts etc. thereof - any Information and Material belonging to BWV. Supplier shall not exercise any general lien on any Material belonging to BWV, regardless of the circumstances.
7. It shall be the responsibility of Supplier that the employees of Supplier or approved third parties, e.g. Supplier's advisers, who gain access to the Information and the material are informed of and comply with the obligations incurred by Supplier under this confidentiality declaration. Supplier shall keep a list of these employees and approved third parties and such list shall be accessible to BWV.
8. These confidentiality obligations of Supplier shall apply both during and after the termination of the business relations between Supplier and BWV.
9. In case of violation of one or more of the above obligations by Supplier during the cooperation period, Supplier shall indemnify and hold BWV harmless from all judgments, liability, damages, costs and expenses (including attorneys' fees) which BWV may incur or have rendered against them by reason of Supplier's infringement or non-fulfilment.
10. In case of violation of one or more of the above obligations by Supplier or one or more of his employees, the documented loss suffered by BWV due to the violation shall be settled by arbitration. Arbitration shall not terminate Suppliers obligations under these confidentiality provisions.
11. If one or more of the above clauses are violated during the period of collaboration, such violation shall be regarded as material breach of the business relations between the Parties and shall – in addition to compensation and agreed Liquidated Damages – entitle BWV to terminate the relations.

## **27. ASSIGNMENT/SUBCONTRACTING**

Supplier shall not sell, assign, transfer, sublet or subcontract the Works, the Contract or any part thereof or interest therein, rights or obligations, or any proceeds therefrom, without the prior written consent of BWV; and any such sale, assignment, transfer, subletting or subcontracting without such consent of BWV shall be null and void.

The sub-suppliers, whom Supplier wishes to use for the performance of the Supply or parts thereof, shall be subject to the prior written consent of BWV.

Supplier is liable for the acts and defaults of any sub-supplier, as if they were the acts or defaults of Supplier.

## **28. AMENDMENT AND VALIDITY OF CONTRACT**

Any detail of the Contract may be amended according to mutual written agreement without influencing the validity of the rest of the Contract, unless this is a specific detail of the amendment.

Should one or more of the conditions of the Contract be or become invalid because of urgent present or future rules of law or other public regulations, both Parties will be obliged to start negotiations to substitute the invalid conditions by valid conditions so that the conditions of the Parties at the time of the signing of the Contract are considered to the widest possible extent. This, however, shall not affect any valid conditions of the Contract.

## **29. LAW AND JURISDICTION**

Danish law shall apply for the Contract.

The Parties shall try to solve any dispute through negotiations.

Disputes arising in connection with or as a result of the Contract, and which are not resolved by mutual agreement, shall be finally settled, with the force of res judicata, by arbitration in accordance with the Rules of Arbitration in Denmark made out by the Danish Institute of Arbitration. The arbitration shall consist of three arbitrators. The arbitration shall take place in Copenhagen, Denmark. During the arbitration, only the English language shall be used, unless the Parties agree otherwise.

If an action is brought against BWV by a national court of law because of conditions attributable to the Contract and/or Works, BWV may demand that Supplier join in such action and Supplier shall accept such involvement and such national law and jurisdiction.

If an action is brought against BWV claiming damages for personal injury or loss or damage to property caused by defective goods or services supplied by Supplier, BWV shall notify Supplier in writing. If BWV so decides, Supplier must take over the action and pay all costs in connection with the action. Supplier undertakes to indemnify, defend and hold harmless BWV for all costs in connection with the action, including legal costs and attorneys' fees.

If a dispute arises involving a matter, the objective of which needs to be clarified (e.g. whether there exists a defect not) within a period of time, where Supplier cannot meet BWV's requirements in respect of inspecting or repairing the matter in question, or taking part in the appointment of a neutral third party to examine the matter, BWV is entitled to appoint, at his own discretion, a neutral competent third party to examine the matter in question. BWV shall not appoint a third party with whom BWV is having any kind of business relationship, either as a client or as a supplier.

*End of General Terms and Conditions*