

**ERIKS SDN BHD**  
**Terms & Conditions for the Supply of**  
**Goods and Services**

**Revision Number: September 2017**

The Customer's attention is particularly drawn to the provisions of clause 13 (***Limitation of Liability***).

**1. INTERPRETATION**

1.1 Definitions. In these Conditions, the following definitions apply:

**Business Day:** a day (other than a Saturday, Sunday or a public holiday) when banks in Kuala Lumpur are open for business.

**Commencement Date:** has the meaning set out in clause 2.2.

**Conditions:** these terms and conditions as amended from time to time in accordance with clause 17.8.

**Contract:** the contract between ERIKS and the Customer for the supply of Goods and/or Services in accordance with these Conditions.

**Customer:** the person or firm who purchases the Goods and/or Services from ERIKS.

**Deliverables:** the deliverables set out in the Order.

**Delivery Location:** has the meaning set out in clause 4.2.

**ERIKS:** ERIKS Sdn Bhd.

**ERIKS' Materials:** has the meaning set out in clause 8.1.7.

**Force Majeure Event:** has the meaning given to it in clause 17.1.1.

**Goods:** the goods (or any part of them) set out in the Order.

**Goods Specification:** any specification for the Goods, including any relevant plans or drawings, that is agreed in writing by the Customer and ERIKS.

**Intellectual Property Rights:** all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

**Order:** the Customer's order for the supply of Goods and/or Services, as set out in ERIKS' purchase order form enclosing these terms and conditions.

**Services:** the services, including the Deliverables, supplied by ERIKS to the Customer as set out in the Service Specification.

**Service Specification:** the description or specification for the Services provided in writing by ERIKS to the Customer.

- 1.2 In these Conditions, the following rules apply :
- 1.2.1 a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
  - 1.2.2 a reference to a party includes its personal representatives, successors or permitted assigns;
  - 1.2.3 a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
  - 1.2.4 any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
  - 1.2.5 a reference to **writing** or **written** includes faxes and e-mails.

## 2. **BASIS OF CONTRACT**

- 2.1 The Order constitutes an offer by the Customer to purchase Goods and/or Services in accordance with these Conditions.
- 2.2 The Order shall only be deemed to be accepted on the earlier of:
- 2.2.1 when ERIKS issues written acceptance of the Order; or
  - 2.2.2 ERIKS performs an act consistent with fulfilling the Order,
- at which point and on which date the Contract shall come into existence (**Commencement Date**).
- 2.3 The Contract constitutes the entire agreement between the parties relating to the purchase by Customer and sale by ERIKS of the Goods and Services unless specifically agreed otherwise in writing by ERIKS. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of ERIKS which is not set out in the Contract. These Conditions shall prevail over any other terms and conditions including any terms and conditions which the Customer may purport to apply under any quotation, purchase order, confirmation or order or any other document. Any terms and conditions set forth on any document or documents issued by the Customer either before or after issuance of any document by ERIKS setting forth or referring to these Conditions are hereby explicitly rejected and disregarded by ERIKS, and any such terms and conditions shall be wholly inapplicable to any purchase made by ERIKS and shall not be binding in any way on ERIKS.
- 2.4 ERIKS may from time to time provide advice and assistance to the Customer regarding the Goods and/or Services. This advice shall not form part of the contract and the Customer acknowledges that it will need to satisfy itself that the Goods and/or Services ordered are appropriate.
- 2.5 Any samples, drawings, descriptive matter or advertising issued by ERIKS and any descriptions of the Goods or illustrations or descriptions of the Services contained in ERIKS' catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Services and/or Goods described in them. They shall not form part of the Contract or have any contractual force.
- 2.6 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. The Customer further acknowledges that their acceptance

of Services and/or Goods delivered under this Contract shall be deemed acceptance by the Customer of these terms and conditions.

- 2.7 Any quotation given by ERIKS shall not constitute an offer, and is only valid for a period of 30 days from its date of issue.
- 2.8 The Customer shall ensure that the terms of the Order and any applicable specification are complete and accurate.
- 2.9 Any typographical, clerical or other error or omission in any sales literature, quotation, acceptance or offer, invoice or other documents or information issued by ERIKS shall be subject to correction without liability on the part of ERIKS.
- 2.10 ERIKS reserves the right to make changes to the Goods Specification and/or Services Specification which are required to conform with any applicable statutory requirements, or where the Goods or Services are to be supplied to the Customers Specification, which do not materially affect their quality or performance. ERIKS reserves the right to charge for any amendments.
- 2.11 No Order which has been accepted by ERIKS may be cancelled by the Customer except with the agreement in writing of ERIKS and on the terms that the Customer shall indemnify ERIKS in full against all loss (including without prejudice to the generality of the foregoing) loss of profit, costs (including the cost of labour, testing and materials used), damages, charges and expenses incurred by ERIKS as a result of cancellation.
- 2.12 All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.

### 3. **GOODS**

- 3.1 The Goods are described in ERIKS' catalogue or the Goods Specification.
- 3.2 To the extent that the Goods are to be manufactured in accordance with a Goods Specification supplied by the Customer:
  - 3.2.1 the Customer shall indemnify ERIKS against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by ERIKS in connection with any claim made against ERIKS for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with ERIKS' use of the Goods Specification;
  - 3.2.2 the Customer shall satisfy itself that the Goods Specification fits its requirements.

This clause 3.2 shall survive termination of the Contract.

- 3.3 From time to time, ERIKS may require the Customer to make a financial contribution to the production of tooling necessary to manufacture the Goods to the Goods Specification. Such contribution shall be set out in the quotation and/or the Order.

### 4. **DELIVERY OF GOODS**

- 4.1 ERIKS shall ensure that:
  - 4.1.1 each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, all relevant Customer and ERIKS reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Order is being

delivered by instalments, the outstanding balance of Goods remaining to be delivered; and

4.1.2 if ERIKS requires the Customer to return any packaging material to ERIKS, that fact is clearly stated on the delivery note. The Customer shall make any such packaging materials available for collection at such times as ERIKS shall reasonably request. Returns of packaging materials shall be at ERIKS' expense.

4.2 ERIKS shall deliver the Goods to the location set out in the Order or such other location as the parties may agree (**Delivery Location**) at any time after ERIKS notifies the Customer that the Goods are ready.

4.3 Unless otherwise agreed, delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location.

4.4 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. ERIKS shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide ERIKS with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

4.5 If ERIKS fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. ERIKS shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event, the Customer's failure to provide ERIKS with adequate delivery instructions for the Goods or any relevant instruction related to the supply of the Goods.

4.6 If the Customer fails to accept or take delivery of the Goods within five Business Days of ERIKS notifying the Customer that the Goods are ready, then except where such failure or delay is caused by a Force Majeure Event or by ERIKS' failure to comply with its obligations under the Contract in respect of the Goods:

4.6.1 delivery of the Goods shall be deemed to have been completed at 9.00 am on the 6<sup>th</sup> Business Day following the day on which ERIKS notified the Customer that the Goods were ready; and

4.6.2 ERIKS shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).

4.7 If six Business Days after ERIKS notified the Customer that the Goods were ready for delivery the Customer has not accepted or taken delivery of them, ERIKS may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.

4.8 ERIKS may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

## 5. **QUALITY OF GOODS**

5.1 Where ERIKS is not the manufacturer of the Goods, ERIKS shall endeavour to transfer to the Customer the benefit of any warranty or guarantee given to ERIKS.

5.2 ERIKS warrants that on delivery the Goods shall:

5.2.1 conform in all material respects with their description and any applicable Goods Specification;

5.2.2 be free from material defects in design, material and workmanship.

5.3 Subject to clause 5.4, if:

5.3.1 the Customer gives notice in writing within a reasonable time of discovery and in any event within the earlier of 12 months of the date of delivery or 12 months of the Goods being put into use, that some or all of the Goods do not comply with the warranty set out in clause 5.2;

5.3.2 ERIKS is given a reasonable opportunity of examining such Goods; and

5.3.3 the Customer (if asked to do so by ERIKS) returns such Goods to ERIKS' place of business,

ERIKS shall, at its option, repair or replace the defective Goods, or refund or issue a credit note for the price of the defective Goods in full. ERIKS shall bear the cost of returning any Goods which fail to comply with the warranty set out in clause 5.2 from their original Delivery Locations only, to ERIKS' place of business.

5.4 ERIKS shall not be liable for the Goods' failure to comply with the warranty in clause 5.2 if:

5.4.1 the Customer makes any further use of such Goods after giving a notice in accordance with clause 5.3;

5.4.2 the defect arises because the Customer failed to follow ERIKS' oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;

5.4.3 the defect arises as a result of ERIKS following any drawing, design or Goods Specification supplied by the Customer;

5.4.4 the Customer alters or repairs such Goods without the written consent of ERIKS;

5.4.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions;

5.4.6 the Goods differ from their description or the Goods Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards;

5.4.7 the defect arises as a result of incomplete, inaccurate or defective information or instructions provided by the Customer;

5.4.8 the defect arises as a result of faulty, defective or poor installation of the Goods by a third party;

5.4.9 the Customer has not paid for the Goods and/or Services.

5.5 Except as provided in this clause 5, ERIKS shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.2.

5.6 The terms of these Conditions shall apply to any repaired or replacement Goods supplied by ERIKS under clause 5.3.

## 6. **TITLE AND RISK**

6.1 The risk in the Goods shall pass to the Customer on completion of delivery.

- 6.2 Title to the Goods shall not pass to the Customer until ERIKS has received payment in full (in cash or cleared funds) for:
- 6.2.1 the Goods; and
  - 6.2.2 any other goods that ERIKS has supplied to the Customer.
- 6.3 Until title to the Goods has passed to the Customer, the Customer shall:
- 6.3.1 hold the Goods on a fiduciary basis as ERIKS' bailee;
  - 6.3.2 store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as ERIKS' property;
  - 6.3.3 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
  - 6.3.4 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on ERIKS' behalf from the date of delivery;
  - 6.3.5 notify ERIKS immediately if it becomes subject to any of the events listed in clause 14.1.2 to clause 14.1.12; and
  - 6.3.6 give ERIKS such information relating to the Goods as ERIKS may require from time to time,

but the Customer may resell or use the Goods in the ordinary course of its business.

- 6.4 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 14.1.2 to clause 14.1.12, or ERIKS reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy ERIKS may have, ERIKS may at any time require the Customer to deliver up the Goods and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

## **7. SUPPLY OF SERVICES**

- 7.1 ERIKS shall provide the Services to the Customer in accordance with the Service Specification in all material respects.
- 7.2 ERIKS shall use all reasonable endeavours to meet any performance dates for the Services specified in the Order and/or the quotation, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 7.3 ERIKS shall have the right to make any changes to the Services, the Service Specifications or both the Services and the Service Specifications (as the case may be) which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and ERIKS shall notify the Customer in any such event.
- 7.4 ERIKS warrants to the Customer that the Services will be provided using reasonable care and skill.

## **8. CUSTOMER'S OBLIGATIONS**

- 8.1 The Customer shall:
- 8.1.1 ensure that the terms of the Order and the Goods Specification and/or Service Specification are complete and accurate;

- 8.1.2 co-operate with ERIKS in all matters relating to the Services;
  - 8.1.3 provide ERIKS, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by ERIKS to provide the Services;
  - 8.1.4 provide ERIKS with such information and materials as ERIKS may reasonably require to supply the Services, and ensure that such information is accurate in all material respects;
  - 8.1.5 prepare the Customer's premises for the supply of the Services;
  - 8.1.6 obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
  - 8.1.7 keep and maintain all materials, equipment, documents and other property of ERIKS (**ERIKS Materials**) at the Customer's premises in safe custody at its own risk, maintain ERIKS Materials in good condition until returned to ERIKS, and not dispose of or use ERIKS Materials other than in accordance with ERIKS' written instructions or authorisation;
  - 8.1.8 not make any alteration to its premises, including the use of any of the same, between the date of the quotation and the date of delivery of the Services;
  - 8.1.9 provide ERIKS with use of the Customer's power and lighting supply and other utilities free of charge;
  - 8.1.10 provide ERIKS with all health and safety information and procedures from time to time in force at the Customer's premises; and
  - 8.1.11 comply with all applicable laws, statutes and regulations relating to anti-bribery and anti-corruption.
- 8.2 If ERIKS' performance of any of its obligations in respect of the Services is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):
- 8.2.1 ERIKS shall without limiting or affecting any other rights or remedies that may be available to it, have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays ERIKS' performance of any of its obligations;
  - 8.2.2 ERIKS shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from ERIKS' failure or delay to perform any of its obligations as set out in this clause 8.2; and
  - 8.2.3 the Customer shall reimburse ERIKS on written demand for any costs or losses sustained or incurred by ERIKS arising directly or indirectly from the Customer Default.

## 9. **LICENCES, CONSENTS AND COMPLIANCE**

- 9.1 The Customer will be responsible for all consents, approvals, import, export, or other licences, permissions or authorities required by any legislation or regulations whether in Singapore or elsewhere and for any failure to obtain the same unless the Contract specifically provides otherwise.

9.2 The Order will constitute a warranty and representation by the Customer that it has obtained every necessary consent, approval, licence, permit or authority that may be required in connection with the Goods and that the Customer is entirely responsible for any subsequent supply or onward transmission of the Goods.

9.3 The Customer (a) represents and warrants that it is not subject to any trade sanctions imposed by the US, EU and/or UN, and (b) shall comply with (and not engage any activity, practice or conduct which would constitute an offence under) all applicable laws, statutes, regulations, and codes, including those relating to (i) trade restrictions and/or export controls (including trade sanctions imposed by the US, EU and/or UN) in respect of the Goods sold to it by ERIKS, and (ii) anti-bribery and anti-corruption, and provide evidence of compliance with the foregoing as ERIKS may reasonably request from time to time.

## 10. **CHARGES AND PAYMENT**

10.1 The price for Goods shall be the price set out in the quotation and Order or, if no price is quoted, the price set out in ERIKS published price list as at the date of delivery. The price of the Goods is exclusive of all costs and charges of packaging, insurance, transport of the Goods.

10.2 Unless otherwise specified in the quotation or the Order, the charges for Services shall be on a time and materials basis the charges shall be calculated in accordance with ERIKS' standard daily fee rates, as set out in the Order.

10.3 In respect of Goods, ERIKS shall invoice the Customer on or at any time after completion of delivery. In respect of Services, ERIKS shall invoice the Customer on completion of performance of the Services.

10.4 ERIKS reserves the right to invoice the Customer for the Goods and/or Services or for part of the Goods and/or Services in advance where specified in the quotation and/or the Order.

10.5 The Customer shall pay each invoice submitted by ERIKS:

10.5.1 within 30 days of the end of the month in which the invoice was dated; and

10.5.2 in full and in cleared funds to a bank account nominated in writing by ERIKS, and

time for payment shall be of the essence of the Contract.

10.6 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of goods and services tax chargeable from time to time (**GST**). Where any taxable supply for GST purposes is made under the Contract by ERIKS to the Customer, the Customer shall, on receipt of a valid GST invoice from ERIKS, pay to ERIKS such additional amounts in respect of GST as are chargeable on the supply of the Services or Goods at the same time as payment is due for the supply of the Services or Goods.

10.7 Without limiting any other right or remedy of ERIKS, if the Customer fails to make any payment due to ERIKS under the Contract by the due date for payment (**Due Date**), ERIKS shall have the right to charge interest on the overdue amount at the rate of 5 per cent per annum above the then current Malayan Banking Berhad's base rate accruing on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment, and compounding quarterly.

10.8 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against ERIKS in order to justify withholding payment of any such amount in whole or in part. ERIKS may, without



limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by ERIKS to the Customer.

## 11. **INTELLECTUAL PROPERTY RIGHTS**

11.1 All Intellectual Property Rights in or arising out of or in connection with the Goods and/or Services shall be owned by ERIKS.

11.2 The Customer acknowledges that, in respect of any third party Intellectual Property Rights in the Goods and/or Services, the Customer's use of any such Intellectual Property Rights is conditional on ERIKS obtaining a written licence from the relevant licensor on such terms as will entitle ERIKS to license such rights to the Customer.

11.3 All ERIKS' Materials are the exclusive property of ERIKS.

## 12. **CONFIDENTIALITY**

A party (**Receiving Party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party (**Disclosing Party**), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. This clause 12 shall survive termination of the Contract.

## 13. **LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE**

13.1 Nothing in these Conditions shall limit or exclude ERIKS' liability for:

13.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors; or

13.1.2 fraud or fraudulent misrepresentation;

13.2 Subject to clause 13.1:

13.2.1 ERIKS shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any

- loss of profits, sales, business or revenue
- loss or corruption of data, information or software
- loss of business opportunity
- loss of anticipated savings
- loss of goodwill; or
- indirect or consequential loss

13.2.2 ERIKS' total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the price of the Goods and/or Services.

13.3 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute including by the Consumer Protection Act 1999, Contracts Act 1950, and Sale of Goods Act 1957 or common law are, to the fullest extent permitted by law, excluded from the Contract.

13.4 This clause 13 shall survive termination of the Contract.

#### 14. **TERMINATION**

14.1 Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:

14.1.1 the other party commits a material breach of its obligations under this Contract and (if such breach is remediable) fails to remedy that breach within 30 days after receipt of notice in writing of the breach;

14.1.2 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, or (being a partnership) has any partner to whom any of the foregoing apply;

14.1.3 the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

14.1.4 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the other party with one or more other companies or the solvent reconstruction of that other party;

14.1.5 the other party (being an individual) is the subject of a bankruptcy petition or order;

14.1.6 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;

14.1.7 an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company);

14.1.8 a floating charge holder over the assets of the other party (being a company) has become entitled to appoint or has appointed an administrative receiver;

14.1.9 a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;

14.1.10 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 14.1.2 to clause 14.1.9 (inclusive);

14.1.11 the other party suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business; or

14.1.12 the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

14.2 Without limiting its other rights or remedies, ERIKS may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment.

14.3 Without limiting its other rights or remedies, ERIKS shall have the right to suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and ERIKS if:

14.3.1 the Customer fails to pay any amount due under this Contract on the due date for payment; or

14.3.2 the Customer becomes subject to any of the events listed in clause 14.1.2 to clause 14.1.12, or ERIKS reasonably believes that the Customer is about to become subject to any of them.

## 15. **CONSEQUENCES OF TERMINATION**

15.1 On termination of the Contract for any reason:

15.1.1 the Customer shall immediately pay to ERIKS all of ERIKS' outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has yet been submitted, ERIKS shall submit an invoice, which shall be payable by the Customer immediately on receipt;

15.1.2 the Customer shall return all of ERIKS Materials and any Deliverables which have not been fully paid for. If the Customer fails to do so, then ERIKS may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;

15.1.3 the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and

15.1.4 clauses which expressly or by implication have effect after termination shall continue in full force and effect.

## 16. **DATA PRIVACY**

16.1.1 In furtherance of its performance and obligations under the Contract, the Customer may disclose information that constitutes personal data as defined by the Personal Data Protection Act 2010 ("**PDPA**") to ERIKS. The Customer undertakes and warrants that it will obtain all necessary consents for ERIKS to collect, use and disclose such personal data for the purposes contemplated in the purchase order.

16.1.2 When dealing with personal data received from ERIKS, the Customer shall only use and/or disclose personal data (i) in accordance with the purposes for which ERIKS disclosed the personal data; (ii) in accordance with the instructions of ERIKS; and (iii) in such manner that ensures ERIKS' compliance with the PDPA. The Customer shall also comply with the PDPA, its regulations and guidelines and any reasonable request of ERIKS with respect to the protection of personal data received from ERIKS. In the event of any known unauthorized, unlawful, and/or unintended use, access, disclosure, alteration, loss, or destruction of personal data received from ERIKS, the Customer shall immediately notify ERIKS and cooperate with ERIKS' requests to investigate and remediate such incidents and provide appropriate response and redress.

## 17. GENERAL

### 17.1 Force majeure:

17.1.1 For the purposes of this Contract, **Force Majeure Event** means an event beyond the reasonable control of ERIKS including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the party or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.

17.1.2 ERIKS shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.

17.1.3 If the Force Majeure Event prevents ERIKS from providing any of the Services and/or Goods for more than 26 weeks, ERIKS shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.

### 17.2 Assignment and subcontracting:

17.2.1 ERIKS may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party.

17.2.2 The Customer shall not, without the prior written consent of ERIKS, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

### 17.3 Notices:

17.3.1 Any notice or other communication required to be given to a party under or in connection with this Contract shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business, or sent by fax to the other party's main fax number.

17.3.2 Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at such addressor, if sent by prepaid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or if sent by fax, on the next Business Day after transmission.

17.3.3 This clause 17.3 shall not apply to the service of any proceedings or other documents in any legal action. For the purposes of this clause, "writing" shall not include e-mails and for the avoidance of doubt notice given under this Contract shall not be validly served if sent by e-mail.

### 17.4 Waiver and cumulative remedies:

17.4.1 A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

17.4.2 Unless specifically provided otherwise, rights arising under the Contract are cumulative and to not exclude rights provided by law.

17.5 Severance:

17.5.1 If a court or any other competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.

17.5.2 If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

17.6 No partnership: Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

17.7 Third parties: A person who is not a party to the Contract shall not have any rights under or in connection with it.

17.8 Variation: Except as set out in these Conditions, any variation, including the introduction of any additional terms and conditions, to the Contract shall only be binding when agreed in writing and signed by ERIKS.

17.9 Governing law and jurisdiction: This Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, laws of Malaysia, and the parties irrevocably submit to the exclusive jurisdiction of the courts of Malaysia.