



**GENERAL TERMS AND CONDITIONS
FOR PURCHASING**

GC-P-1200 Base Document

MITSUBISHI POWER AMERICAS, INC.

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1. Definitions:

- 1) "Background Intellectual Property" means all Intellectual Property other than Foreground Intellectual Property.
- 2) "Buyer" or "Mitsubishi Power" shall mean Mitsubishi Power Americas, Inc.
- 3) "Claim" shall have the meaning set forth in [Clause 26](#).
- 4) "Confidential Information" shall mean the specifications and any drawings, designs, technical and performance data, standards, dimensions, equipment test results, computer software or programs (including source codes and object codes), business practices, shop procedures, improvements, know-how, inventions, intellectual property, patent applications, reports, financial data, commercial information, business strategies, customer lists, or customer contact information and any other information (whether written, verbal or otherwise) furnished by the Buyer and/or by the Owner through the Buyer. If Buyer furnishes sample products, equipment, or other objects or material to Seller, the items so received shall be used and the information obtained from said items shall be treated as if they were Confidential Information disclosed in connection with the Order
- 5) "Contract" shall mean the purchasing agreement, including the applicable Order, to be entered into by and between the Buyer and the Seller in accordance with [Clause 2](#).
- 6) "Contractor" or "Seller" shall mean the person or company with whom the order is placed.
- 7) "COVID-19" means the novel coronavirus named by the World Health Organization as 'COVID-19' and declared by the World Health Organization to be a global pandemic on 11 March 2020.
- 8) "Foreground Intellectual Property" means all Intellectual Property and tangible work product first conceived, created, acquired, or reduced to practice in connection with the Order.
- 9) "Goods" shall mean any and all plant, equipment, machinery, materials and/or services to be furnished by the Seller.
- 10) "Intellectual Property" means all inventions, patents, software, copyrights, mask works, industrial property rights, trademarks, trade secrets, know-how, proprietary information and rights and information of a similar nature. Such information includes, without limitation, designs, processes, drawings, prints, specifications, reports, data, technical information, and instructions.
- 11) "Order" or "Purchase Order" shall mean the purchase order placed by the Buyer for the supply of the Goods.
- 12) "Owner" shall mean the person or company to which the Buyer may furnish the Goods furnished by the Seller.
- 13) "Party" shall mean Buyer or Seller.
- 14) "Parties" shall mean the Buyer and Seller.
- 15) "Representatives" shall have the meaning set forth in [Clause 25](#).
- 16) "Specifications" shall mean any technical description of the Goods, drawing of the Goods or packing instructions contained or referred to in the Order.
- 17) "Supervisor and Field Engineer" shall mean the person or persons to be provided by the Seller for rendering the supervisory or field engineering services.
- 18) "Work" shall mean all activities engaged in, by or on account of Seller, for the design, supply, manufacture, development and delivery of equipment, materials, technical documents and services, if any, in accordance with the Order.
- 19) "Work Product" shall mean all drawings, designs, specifications, reports, test results, specimens, data and other materials prepared by Seller in connection with this Contract.

2. Contract:

- 1) A Contract shall be entered into by and between the Buyer and the Seller when, following Seller's receipt of the Order, (a) the Seller acknowledges unconditional acceptance of the Order in writing within ten (10) business days, unless otherwise specified by the Buyer or (b) the Seller commences Work, or delivers in whole or in part, Goods required herein, whichever occurs first. Notwithstanding the foregoing, an Order shall be deemed to have been so assented and acknowledged by Seller unless Seller notifies Buyer to the contrary in writing ten (10) business days after receipt of the Order by Seller.
- 2) The documents listed below constitute the Contract between the Buyer and Seller and each of said documents shall be read and construed as an integral part of the Contract:
 - a) The Order, along with any applicable Appendix thereto, including but not limited to Owner Flowdowns;
 - b) These General Terms and Conditions;
 - c) Terms and Conditions set forth in the following Exhibits A-G , as applicable:
 - i) GC-P-1200 Exhibit A (Sup) - Terms and Conditions for Services;
 - ii) GC-P-1200 Exhibit B – Additional Terms and Conditions - Site Work;
 - iii) GC-P-1200 Exhibit C – Wage Rates & Reimbursable Expenses;
 - iv) GC-P-1200 Exhibit D – Quality Requirements for MPW-AMER Orlando Service Center Manufactured Components;
 - v) GC-P-1200 Exhibit E – Scope of Work;
 - d) The Specifications;
 - e) Exhibits or attachments to any of the foregoing documents; and
 - f) Any document incorporated by reference into any of the foregoing documents.
- 3) The Contract shall constitute the entire agreement between the Buyer and the Seller with respect to the subject matter thereof. The Parties shall not be bound by any statement, representation, promise, inducement, or understanding of any kind not set forth in the Contract. Any change, amendment, or modification of any of the provisions of the Contract or waiver of any of the provisions hereof shall only be effective if agreed to in writing and executed by the Parties.
- 4) Any acknowledgment form or other form of the Seller containing terms and conditions submitted by the Seller, including but not limited to the Seller quotation, shall not have the effect of modifying the terms and conditions hereof. The Buyer will consider the Seller's requests for changes only if such requests are in writing and are directed to specific clauses in this Contract. No change shall be binding upon the Buyer unless specifically accepted in writing.

3. Order of Precedence:

- 1) If any conflict, inconsistency or ambiguity is believed to exist among any of the documents comprising or relating to the Contract or among any of the requirements or provisions thereof, the conflict, inconsistency or ambiguity shall be resolved by applying the order of precedence by the order such documents are set forth in [Clause 2](#). 2) above, unless otherwise expressly agreed in the Order.
- 2) The Seller shall promptly notify the Buyer of any conflict, inconsistency or ambiguity in the Contract documents. Buyer shall determine in writing the proper resolution, and both Parties shall be bound by that

determination. Any work performed or decisions made by Seller without the Buyer's written determination, shall be at Seller's sole risk and expense, and the Buyer shall be free thereafter to resolve the issue differently from the approach taken by Seller. In such event, Seller shall not be entitled to receive, and Buyer shall have no obligation to grant any adjustment in the Contract price, schedule or other provision of the Contract, nor shall the Buyer have any liability toward Seller or others for any work performed without Buyer's determination.

4. Price and Payment:

- 1) Unless otherwise stated in the Order, all prices for the Goods are firm and are not subject to price escalation for any reason whatsoever. Any applicable present and future federal, state, provincial, county, municipal and other local sales, use, excise, property, gross receipts, gross income, value added, export, import or other similar taxes, duties, imposts, charges, fees and/or expenses levied are included in the price. A Proof of Delivery with delivery date is required from the Seller to the Buyer prior to payment being made. Payment will be made as per the net payment term identified in the Mitsubishi Power Purchase Order (i.e. Net 120, etc.), unless otherwise specified in the Purchase Order, after receipt of an acceptable invoice accompanied by documentation satisfactory to Buyer supporting the request for payment. Any such payment(s), including final payment, shall not relieve Seller of any obligations he may have and/or remedies Buyer may have under or in connection with this Contract. Final invoice for an Order must be submitted no later than forty five (45) days after delivery of the last component constituting Goods or completion of the Seller's Work under the Contract. Any invoice submitted more than such forty five (45) day period shall be subject to one and a half percent (1.5%) discount per month, unless specific exceptions have been agreed between the Parties.
- 2) As a condition precedent to Buyer's obligation to make any payment due under this Contract, Seller shall furnish with each request for payment, an interim waiver and release of liens, in a form that is reasonably acceptable to Buyer. As a condition precedent to Buyer's obligation to make final payment due under this Contract, Seller shall furnish, with its invoice for the final payment, a final lien waiver and release of liens in a form that is reasonably acceptable to Buyer.
- 3) To the fullest extent permitted by law, Seller, on behalf of itself and its subcontractors, waives and releases any and all liens, claims or rights of lien which it has or may have against the Buyer, the Owner, the jobsite or equipment, material or fixtures on the job site for which the Goods are furnished, on account of labor, services, materials, or equipment furnished pursuant to this Contract. In the event a lien is filed against the job site or equipment, material or fixtures on the job site by or on behalf of Seller or any of its subcontractors, Seller shall arrange for the immediate discharge or cancellation of such lien by payment, bonding or otherwise.
- 4) If Seller shall default in discharging any lien, which arises out of, in connection with or as a result of the Goods furnished under this Contract, within seven (7) days after receipt of notice, then either Buyer or Owner shall have the right, at its option, after written Notice to Seller, to satisfy or discharge the lien or to establish a bond and Seller shall, within five (5) days of Seller's receipt of a written request from Buyer, promptly reimburse Buyer for all amounts paid and all costs and expenses incurred by Buyer and/or claimed by Owner in satisfying or discharging claim and lien or in establishing a bond to secure the claim or lien.
- 5) a) Seller shall pay all present and future federal, state, provincial, county, municipal and other local sales, use, excise, property, gross receipts, gross income, value added, and other taxes, duties, imposts, fees, charges,

contributions and assessments of whatever kind or nature (collectively “Taxes”) arising out of, in connection with, or as a result of this Contract or the Goods furnished hereunder. Notwithstanding anything to the contrary, if Buyer is required by applicable law to deduct or withhold any amount from payments due to Seller, such amounts shall be deducted or withheld from amounts payable to Seller.

- b) Seller shall pay or cause to be paid when due, all payroll taxes and contributions which are measured by remuneration paid to persons employed by Seller or its subcontractors in connection with the Work or which arise by virtue of their employment and which now or hereafter are imposed by any governmental authority.
- 6) The Buyer may set off any amount to which it may be entitled under this Contract or any Purchase Order in connection with the transactions contemplated by this Contract against amounts otherwise payable to the Seller’s under this Contract or any other purchase order, Buyer has with Seller. Neither the exercise of nor the failure to exercise such right of set off will constitute an election of remedies or limit the Buyer in any way in the enforcement of any other remedies that may be available to it under this Contract or in law.
- 7) In addition to the above Buyer shall have the right to impose back charges or withhold payment of any amount due Seller in the event of Seller’s failure to adhere to any requirements of this Contract.

5. Delivery:

- 1) Time of delivery shall be of the essence of the Contract and the Seller shall deliver the Goods in accordance with the requirements specified in the Contract.
- 2) The delivery terms specified in the Order shall be interpreted in accordance with INCOTERMS 2020 (International Rules for the Interpretation of Trade Terms) published by the International Chamber of Commerce in 201-91 and its supplements subject to the Contract.

6. Title and Risk:

- 1) Risk of loss of or damage to the Goods shall pass to the Buyer in accordance with the delivery INCOTERMS 2020 specified in the Order.
- 2) Upon the earlier of: (a) the date of delivery of the Goods, or part thereof, in accordance with the INCOTERMS 2020 delivery term specified in the Purchase Order for the delivery of the Goods, (b) the date the Goods, or part thereof, are shipped from the Seller or any of its subcontractors or suppliers to the Facility, (c) the date payment for the Goods, or part thereof, is made by Buyer (without regard to any withholdings), or (d) upon termination of the Contract (following payment by Buyer of any amounts required to be paid hereunder as a result of such termination), title to the Goods, or part thereof, shall transfer to Buyer and become the property of Buyer. Seller warrants that title to the Goods is free of any liens, claims, interests or rights of others. In the event of any defect in title, the Seller shall immediately, upon the request of Buyer, at Seller's sole cost and expense, remove any defect, claim or encumbrance on the title to the Goods.
- 3) Title to all Work Product, other than Goods, shall transfer to Buyer and become the property of Buyer upon the earlier of a) delivery to Buyer or b) the date of payment for the applicable Order, or part thereof, is made by Buyer (without regard to any withholdings). Seller shall have the right to retain a copy of the Work Product for its records.

7. Production Schedule:

- 1) The Seller shall, upon request of the Buyer, provide the Buyer with a production schedule showing the

manufacturing position of the Goods, and promptly provide confirmation to the Buyer of the time of shipment.

- 2) The Seller shall notify the Buyer in writing of any actual, anticipated or potential causes of delay in writing, promptly when the Seller knew or reasonably should have known such delay.
- 3) The Buyer may, for expediting purposes, send its own staff or other personnel, including those of Owner, or the representative or delegate of either of them, whom the Buyer has retained to any place where the Goods are manufactured, packed or transported as provided in [Clause 17](#) hereof. The Seller shall, at its sole cost and expense, perform corrective measures or improvements reasonably required by the Buyer's or Owner's expediting staff, and shall ensure timely delivery of the Goods.
- 4) Nothing in this [Clause 7](#) shall in any way relieve the Seller from its obligation of timely delivery of the Goods pursuant to [Clause 5](#) hereof.

8. Erroneous or Excess Delivery:

Unless otherwise instructed by the Buyer, the Seller shall withdraw, at its sole cost and expense, no later than the date designated by the Buyer, any and all the Goods delivered in error or in excess of the Order. In the event Seller fails to accomplish a timely withdrawal of such Goods, the Buyer may arrange by itself or through others to return such Goods to the Seller, and any costs or expenses incurred thereby plus a reasonable percentage of such costs and expenses, for administration, overhead and profit shall be for the Seller's account.

9. Packing:

- 1) The method of packing shall be in accordance with the Specifications. In the absence of specific instruction concerning the method packing in the Specifications, the Seller shall take all reasonable steps to prevent damage to or deterioration of the Goods in transit to their destination, in accordance with customary seaworthy export packing standards and anti-rust, oxidation standards.
- 2) The contract price shall include the cost of packing required in paragraph 1), above.

The following shall be required for all shipments:

Packing Slip(s), which shall include but not limited to the following;

- Mitsubishi Power Order number
- HTS Number-for suppliers outside the United States for import purposes
- Mitsubishi Power Part Number
- Quantity
- Mitsubishi Power PO Line Item Reference
- Any Order required quality documentation (Certificate of Conformity, signed source inspection forms, etc.)
- Certificate of Origin - option of having a form on file, on Seller's letterhead, with Buyer for the current calendar.

10. Delay in Delivery:

- 1) In the event that the delivery of the Goods is delayed beyond the delivery time specified in the Order, and such delay is not excusable pursuant to [Clause 22](#) hereof or as a direct result of Buyer-caused delay, the Buyer shall, in its sole and absolute discretion, have the right to:
 - a) require the Seller to deliver the Goods by air, at the Seller's sole cost and expense; and/or
 - b) recover liquidated damages from the Seller promptly, at the rate of one percent (1%) of the Contract price for each and every week or a pro-rated part thereof for each day of delay from the delivery due date provided in the Order, but not to exceed ten percent (10%) of the Order price in total.
- 2) In the event that the delay in delivery exceeds thirty (30) days, the Buyer shall have the right to terminate for default, in accordance with [Clause 19](#), the Contract or any part thereof without prejudice to all claims of the Buyer for any loss or damage caused by the Seller's default, and or any other rights or remedies Buyer may have arising out of or in connection with such delay, and the Seller agrees that:
 - a) The Buyer may return part or all of any shipment and may charge the Seller with any loss or damage sustained as a result of such failure in delivery; and
 - b) The Seller shall promptly refund to the Buyer all sums advanced to the Seller by the Buyer with interest at the prevailing prime rate.

11. Inspection and Test at Seller's Works:

- 1) Before shipping, the Seller shall carefully inspect and test the Goods for compliance with all applicable requirements of the Contract. The Seller shall, if requested by the Buyer, give the Buyer reasonable notice of such inspection or test and the Buyer (or Buyer's authorized agent) and/or the Owner (or Owner's authorized agent) shall be entitled to attend such inspection or test. Typical pre-notification is at least 4 weeks prior to intended date. In the event Seller needs to reschedule the date of such inspection and or test a minimum of two (2) working days prior notification must be provided by Seller to Buyer. Should proper notice not be given by Seller to Buyer then Seller will be liable for any expenses generated by Buyer and / or Owner for any changed/cancelled inspection costs including but not limited to travel plans. The Seller shall also submit to the Buyer, at the Buyer's request, all data, certifications and other records relating to the inspection or test.
- 2) In no event may Buyer's and/or Owner's attendance at such inspection or test be interpreted as in any way implying acceptance of such goods by the Buyer and shall not relieve the Seller from any liability, obligation or responsibility in connection with any defects or nonconformities discovered in the Goods at any time through the expiration of the warranty period stipulated in the [Clause 15](#).

12. Inspection at the Destination:

- 1) When the Goods have arrived at the destination, the Buyer shall inspect the visual condition of the Goods within a reasonable time.
- 2) If, as a result of the inspection under paragraph (1), above, the Buyer finds that the Goods do not comply with the Contract, the Buyer may by notice in writing to the Seller, reject such goods and may require the Seller to repair or replace the rejected goods with goods which comply with the Contract. In event Seller fails to repair or replace the same in the time indicated by Buyer may do the same as provided in [Clause 15](#). 4) below.
- 3) Any such inspection is only of the general arrangement and visual condition of the Goods at the time of arrival, and therefore the Buyer's final decision as to whether or not the Goods are acceptable shall be subject to placement of the Goods in service. Buyer reserves the right to reject any Goods determined to be defective

or non-compliant with the requirements of the Contract.

13. Changes:

- 1) The Seller shall not make any change in the Specifications, quantities, methods of shipment, schedule or places of delivery without prior written consent of the Buyer.
- 2) The Buyer may at any time direct, in writing, changes in the Seller's scope of work, including, but not limited to changes in the specifications, quantities, methods of shipment, schedule or place of delivery of the Goods.
- 3) In such event, an equitable adjustment in the price of the Contract and in the time of delivery shall be made, provided that either Party shall submit to the other Party any claim for such adjustment in writing, followed by written confirmation within ten (10) days after issuance by the Buyer of such changes.
- 4) In the event that the Parties are unable to agree upon a lump sum price for the change, Buyer may in its sole discretion, direct the Seller to proceed with the changed Work on a cost-plus fixed fee basis. Buyer or its designated representative shall have reasonably sufficient audit rights with respect to the documentation and information pertaining to such change and Seller shall furnish to Buyer, and/or its designated representatives, such records as may be required to enable Buyer to verify and evaluate direct and indirect costs, expenses, invoices, payments, or claims based on Seller's or its subcontractors' actual costs incurred, or number of man-hours, or man-days claimed in the performance of the Work,
- 5) For a period of seven (7) years after the expiration of the Warranty Period defined in [Clause 12](#), Seller shall, at its expense, keep and maintain such records and accounts in connection with the performance of this Contract, including any change orders, in accordance with generally accepted accounting principles in the United States of America.

14. Documents and Intellectual Property:

- 1) Documents such as drawings for approval, drawings for installation, drawings showing the finished condition of the Goods, instruction books and operation manuals, etc. shall be supplied by the Seller to the Buyer in accordance with the submittal schedule and in conformity with any requirements stated in the Contract.
- 2) Each Party retains its existing rights in Background Intellectual Property.
- 3) Buyer shall own all Foreground Intellectual Property. Seller shall disclose to Buyer all Foreground Intellectual Property. If not expressly required to be delivered in the Order, Seller shall deliver to Buyer all Foreground Intellectual Property upon written request from Buyer. Seller hereby irrevocably assigns to Buyer all right, title and interest to all Foreground Intellectual Property. Seller agrees to do all things reasonably necessary to enable Buyer to secure and perfect Buyer's Foreground Intellectual Property rights, including, without limitation, executing specific assignments of title in Foreground Intellectual Property by Seller to Buyer and cooperating with Buyer at Buyer's expense to defend and enforce Buyer's rights in any such Foreground Intellectual Property. All Foreground Intellectual Property assigned to Buyer pursuant to the Order shall be considered Buyer's Confidential Information (as defined in [Clause 25](#)). Seller agrees that, for any works of authorship created by Seller or any employees or any others used by Seller in the course of the Order, those works that come under one of the categories of "Works Made for Hire" in 17 U.S.C. §101 shall be considered "Works Made for Hire". For any works of authorship that do not come under such categories,

Seller, warranting that it has the right to do so, hereby assigns all right, title, and interest to any copyright in such works to Buyer and will execute, or cause to be executed at Buyer's expense, any documents required to establish Buyer's ownership of such copyright.

- 4) Seller represents and warrants that Seller has sufficient rights in all Goods, services, and Intellectual Property and other items that Seller uses or transfers to Buyer in connection with the Order to allow Seller to lawfully comply with the Order.
- 5) Seller hereby grants to Buyer and Buyer's Affiliates a worldwide, non-exclusive, perpetual, fully-paid, irrevocable, transferable license to Background Intellectual Property (i) to use, sell, offer for sale, import, export, copy, adapt, embed, modify, make derivative works, make and have made the Goods and services, and (ii) to enable Buyer to practice the Foreground Intellectual Property.
- 6) Seller hereby irrevocably waives all moral rights to the extent permissible by law, all rights of privacy and publicity, and the like, in all Goods provided to Buyer and in all activities in connection with the Order.
- 7) Seller represents and warrants that Seller shall not provide, in the performance of the Order, any software, (including, without limitation, free software, open source software, freeware, general public license-governed software, or the like), in any form that is subject to any obligations or conditions that could reasonably or arguably could provide a legal right to any third party to access such software and/or source code, or that could otherwise impose any limitation or condition on Buyer's use, reproduction, modification, distribution or conveyance of such software.
- 8) Except as expressly authorized herein, nothing in the Order shall be construed as Buyer granting Seller a license in or any right to use any of Buyer's Intellectual Property.

15. Warranties:

- 1) The Seller warrants that the Goods shall be in strict conformity with the requirements of the Contract, that they shall be new, merchantable, free from defects in design, material and workmanship, and fit and safe for the purpose intended. These warranties shall be in addition to all other warranties, expressed, implied or statutory. Payment for, inspection of, or receipt of the Goods shall not constitute a waiver of any breach of warranty.
- 2) The Seller warrants that the Goods shall operate in accordance with the Seller's representations and in accordance with all the requirements of the Contract for a period 18 months after receipt of goods or twelve (12) months from the date when the Goods are placed in commercial operation, whichever is later.
- 3) Any defect, weakness, deficiency, failure, breakdown or deterioration beyond normal wear and tear for the intended purpose or service or other nonconformity with Seller's warranties that appears or is discovered shall be corrected by in-place repair or in-place replacement by the Seller at the Seller's sole cost and expense within the time designated by the Buyer. The warranties set forth in [Clause 15.1](#) shall also apply as to any such repairs or replacements for a period of twelve (12) months from the date the repair or replacement is completed in accordance with the terms of the Contract
- 4) When the Seller cannot repair or replace within the time designated by the Buyer, the Buyer or the Owner, or any person designated by either of them, may undertake to repair or replace at the Seller's sole cost and expense. Alternatively, the Buyer may, at its option and in its sole and absolute discretion, elect to accept the

defective or nonconforming Goods, whereupon the price of the Contract shall be equitably reduced.

16. Spare and Replacement Parts/Buyer Equipment:

The Seller shall make available to the Buyer at least for a period of ten (10) years following shipment of the Goods, repair or replacement parts for the Goods at a charge not to exceed the lowest price charged by the Seller to any third party for such repair or replacement parts.

In the event Seller maintains any Buyer equipment, including, without limitation, tooling equipment, Seller shall not move, modify, store, or otherwise discard such equipment without the prior written consent of the Buyer.

17. The Buyer's Representative:

The Buyer may, with a written notice to the Seller, send its own staff or other personnel whom the Buyer has retained to monitor the Seller's performance of the Contract or to provide the Seller with expediting or quality assurance advice. The Seller shall provide these personnel with reasonable and free access to the plants of the Seller and its subcontractors and to any other places where the Goods, in whole or in part, are manufactured, packed or transported.

18. Suspension:

The Buyer may at any time, by written order, suspend all or part of the work to be performed under this Contract. The Seller shall suspend performance of the scope of work specified in the Buyer's notice as of the effective date specified therein. Buyer may at any time withdraw the suspension of all or part of the suspended Work by written, electronic or telegraphic notice to Seller, specifying the effective date and scope of work to be resumed. Following receipt of such notice, Seller shall promptly and with all diligence resume performance of the scope of Work for which the suspension is withdrawn on the effective date of withdrawal specified in the Buyer's written notice of withdrawal. Provided that Seller's performance is not suspended for reasons which are attributable to the Seller, an equitable adjustment shall be made (i) in the delivery schedule if the suspension directly causes a delay in the delivery of the Goods, and/or (ii) if the suspension directly causes an increase in the Seller's direct cost of performance then an equitable adjustment shall be mutually agreed upon in the price, provided the Seller asserts a claim for adjustment within twenty (20) days after the end of the period of suspension, and provided the suspended work is not terminated in accordance with [Clause 19](#) hereof.

19. Termination for Default:

The Buyer may terminate this Contract in whole or in part without any liability of the Buyer to the Seller upon written notice if the Seller refuses or fails to comply, or fails to make progress as to endanger compliance, with any provisions of this Contract, including the Seller's warranties, or endangers timely completion or if the Seller becomes insolvent or makes a general assignment for the benefit of creditors or if a petition under the bankruptcy act is filed by or against the Seller or if Seller fails to comply with any other term of the Contract (hereafter individually or collectively a "breach"). If the Seller's financial condition is found to be, becomes, or remains unsatisfactory to the Buyer during the term of the Contract, the Buyer may terminate this Contract on 10 (ten) days written notice and also may terminate all other orders covering purchases by the Buyer of the Seller's goods whether or not the Seller may otherwise be in default under such other orders, and no rights shall accrue to the Seller against the Buyer on account of such termination. The Seller agrees to indemnify and hold the Buyer harmless from any loss, penalty or damages arising out of, in connection with or resulting from the Seller's failure to make progress or the Seller's refusal or failure to comply with any provision in this Contract. In the event the Buyer terminates this Contract in whole or in part as provided in this clause, the Buyer may procure, upon such terms and in such manner as the Buyer deems appropriate,

Goods similar to those so terminated, and in addition to any other right or remedy which Buyer may have under this Contract or at law, the Seller shall be liable to the Buyer for any excess cost for such similar Goods.

The Seller shall continue the performance of this Contract to the extent not terminated under the provisions of this clause. The rights and remedies of the Buyer provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

20. Termination at Buyer's Option

- 1) Notwithstanding anything in this Contract to the contrary, including without limitation, [Clause 22](#), Force Majeure, the Buyer shall have the right to terminate the Contract in whole or in part at any time by giving written notice to the Seller. Upon receipt of any such notice, the Seller shall, unless the notice requires otherwise:
 - a) Immediately discontinue work on the date and to the extent specified in the notice;
 - b) Place no further orders for materials other than as may be necessarily required for completion of such portion of the work that is not terminated;
 - c) Promptly make every reasonable effort to either obtain cancellation of any existing orders on terms satisfactory to the Buyer or promptly assign to Buyer, upon receipt of Buyer's written request, any orders identified by Buyer in writing; and
 - d) Assist the Buyer, upon request, in the maintenance, protection, and disposition of any Goods acquired by the Buyer hereunder.
- 2) If claimed in writing within thirty (30) days after the notice of termination and proved to the satisfaction of the Buyer, the Buyer will pay to the Seller an equitable adjustment of the price of the Contract which consists of:
 - a) All amounts due and not previously paid to the Seller for the Goods completed in accordance herewith and delivered prior to such notice;
 - b) A reasonable amount for any goods and materials then in production, which are in strict conformity with the requirements of the Contract, provided that no such adjustment be made in favor of the Seller with respect to any goods which are the Seller's standard stock; and such goods and materials will be delivered to Buyer if requested by Buyer; and
 - c) Reasonable Costs paid to settle canceled orders.
- 3) Payment under this clause constitutes the Buyer's sole and exclusive liability to the Seller and Seller's sole and exclusive remedy in the event that the Contract shall be terminated as provided in this clause. The Seller's acceptance of such payment constitutes an acknowledgment that the Buyer has fully satisfied and discharged all obligations under this Contract. The provisions of the clause do not apply to any termination by the Buyer for the default of the Seller or for any other cause allowed by law or under this Contract.

21. Right to Adequate Assurance of Performance:

- 1) When reasonable grounds for insecurity arise with respect to the Seller's performance, the Buyer may in writing, demand adequate assurance of due performance and such supporting evidence as Buyer may require, or if supporting evidence is not specified by Buyer, then such evidence as is adequate under the circumstances of the particular case. Until Buyer receives such assurance and supporting evidence, Buyer may suspend its performance and/or Seller's. In such event, Seller shall not be entitled to any adjustment in the price or schedule.

- 2) Acceptance of any improper delivery does not prejudice the Buyer's right to demand adequate assurance of future performance or any other remedy which Buyer may have under the Contract or at law.
- 3) Following receipt of such demand, if the Seller fails to provide the adequate assurance within the time specified in the Buyer's demand for such assurance of due performance, the Buyer may cancel the Contract, in which event the Seller shall be liable to Buyer for any loss or expense arising out of or in connection with such cancellation.

22. Force Majeure:

- 1) "Force Majeure" means unavoidable causes beyond the control and without fault or negligence of the Seller and/or the Buyer, including but not restricted to acts of God, war (declared or undeclared), acts of any governmental authorities, riot, revolution, civil commotion, fires, or epidemic (excluding COVID-19), but shall not include unforeseen difficulties in manufacture, strikes, boycotts, difficulty in obtaining supplies, shortage of labor, or non-performance by the Seller's subcontractors or any impacts of COVID-19 on Contractor's provision of Goods that Contractor is actually aware of on the Effective Date, or a reasonable competent contractor acting in accordance with prudent industry standards would have been aware of on the receipt of the Order, having considered and extrapolated all reasonable impacts that will, or are reasonably likely to, impact businesses that provide the Goods.
- 2) Should Force Majeure prevent the total or partial performance required under the Contract, the Party claiming Force Majeure shall advise the other Party within thirty-six (36) hours of the beginning and end of such Force Majeure by means of official correspondence on the informing party's company letter head.
- 3) In the event a condition of Force Majeure is declared and substantiated, an equitable adjustment shall be made in the schedule. For delays and/or non-performance of the obligations due to Force Majeure, neither Party shall be entitled to penalty, interest, damage or any other compensation arising from Force Majeure for such period of Force Majeure. Until Buyer grants schedule relief for Force Majeure claims, the contract guaranteed delivery dates are still in effect.
- 4) Seller shall substantiate Force Majeure claims with the following:
 - a) Critical Path Method (CPM) analysis of baseline schedule (pre-Force Majeure Event) and their as-built schedule detailing how critical path was impacted by the Force Majeure Event.
 - b) Sufficient evidence the delay was caused by such Force Majeure Event. Examples of sufficient evidence include but are not limited to; verifiable shut down dates for manufacturing facilities, payroll records supporting reduced workforce and absenteeism, manufacturing records supporting claimed losses of production capacity and governmental orders that affected manufacturing. Buyer continues to reserve its right to seek Liquidated Damages in accordance with Contract if schedule relief is not granted.
- 5) In the event that the delay and/or non-performance of the obligations exceeds sixty (60) days due to Force Majeure, the Buyer, without any obligation to pay any termination charges, shall be entitled to terminate the contract by so notifying the Seller in writing.

23. Waiver:

The failure of the Buyer to enforce any provisions of the Contract shall in no way be construed as a waiver of such

provisions nor in any way affect the right of the Buyer thereafter to enforce any such provisions. No waiver by the Buyer of any default of the Seller hereunder shall constitute a waiver of any subsequent default, whether or not the subsequent default is of a similar or different nature.

24. Indemnity:

The Seller hereby agrees to defend, indemnify and hold harmless the Buyer and/or the Owner from and against any and all claims, demands, causes of action, liability, liens, Taxes, penalties, interest, fines, losses, damages, costs and/or expenses of whatsoever kind or nature (including but not limited to reasonable attorney's fees) arising out of, in connection with or resulting from this Contract or the Goods; provided however that Seller does not assume responsibility for the sole negligence of Buyer.

25. Confidential Information:

- 1) Unless Seller has received the Buyer's express written consent to the contrary, Seller shall (i) use the Confidential Information solely for the purposes of the Order, and not for any other purpose (including, without limitation, designing, manufacturing, selling, servicing or repairing equipment for entities other than Buyer; or providing services to entities other than Buyer); (ii) safeguard the Confidential Information to prevent its disclosure to or use by third parties; (iii) not disclose the Confidential Information to any third party; and (iv) not reverse engineer, disassemble, or decompile the Confidential Information.
- 2) Notwithstanding the foregoing, Seller may disclose the Confidential Information to only officers, directors, employees, contract workers, consultants, agents, affiliates or subcontractors ("Representatives") of Seller who have a need to know such Confidential Information for the purposes of the Order and who have executed a written agreement with Seller obligating such entity or person to treat such information in a manner consistent with the terms of this [Clause 25](#) and which may be enforced by either Seller or Buyer. The Seller shall be liable for a breach of such agreement by any such entity or person to whom the Seller has disclosed Buyer's Confidential Information.
- 3) Seller shall keep on file the current agreements binding such Representatives and conduct self-evaluations on an annual basis to demonstrate Seller's compliance with proper handling of Buyer's Confidential Information and intellectual property control processes required by Buyer. For any subcontractors, the agreements shall include requirements that: (i) the Confidential Information is immediately returned to Seller and Buyer or destroyed immediately after completion of the requested work; and (ii) the Seller may conduct audits to check subcontractors to confirm compliance.
 - a) Buyer may conduct Confidential Information protection audits annually. Seller shall conduct self-audits and Buyer may also request additional audits from the Seller. Buyer may confirm that the agreements signed with Seller and/or subcontractors are available and properly filed for retrieval when requested by the Buyer. Buyer may evaluate the self-certification by Seller on maintaining and protecting Buyer's Confidential Information and the processes that provide control of the Seller's subcontractors. Seller must demonstrate that they have a procedure deemed satisfactory to the Buyer for receiving/delivering/controlling Buyer's Confidential Information within Seller's company and applicable subcontractors. These items must be clearly outlined and administered effectively.
 - b) The methods for confirmation may include, but are not limited to: checking documents and noting procedures for receiving/delivering/controlling Buyer's Confidential Information to each subcontractor. Assessment criteria include evaluation of procedures to confirm that they are clear and concise, and are being carried out as indicated. Confirmation must be made as to whether Seller and/or subcontractor(s) is properly handling Buyer's Confidential Information, and as such are complying with the agreements

mentioned above.

- 4) In the case of highly sensitive Confidential Information identified by Buyer, Buyer reserves the right to require Seller to: (i) provide its plans to control and prevent an unauthorized disclosure of such highly sensitive Confidential Information, and such plan and/or implementation of such plan shall be subject to audit by Buyer; and (ii) identify specific individuals intended to access said information that is clearly identified as such by Buyer. Seller shall notify Buyer of any reassignment, termination or loss of such employees, to include sub suppliers within 5 working days of the employee's movement.
- 5) The obligations of confidentiality and restricted use set forth herein shall remain in full force and effect even after the Seller's completion of the Contract or the earlier termination or cancellation of the Contract.
- 6) The requirements of paragraph (1) of this clause shall not apply to any information that the Seller demonstrates, promptly after their receipt from the Buyer and to the Buyer's satisfaction, (a) are in the public domain, through no violation of this [Clause 25](#) by Seller or (b) are already in the lawful possession of the Seller at the time of the disclosure by Buyer and were not acquired under a pledge of secrecy or (c) are independently developed by Seller without any access or reference to any Confidential Information. For purposes of the foregoing exceptions, disclosures made to Seller which are specific shall not be deemed to be within the foregoing exceptions merely because they are embraced by general disclosures which may fall within said exceptions. In addition, any combination of features shall not be deemed to be within any of the foregoing exceptions merely because the individual features fall within an exception, unless the particular combination of individual features itself and its principle of operation fall within the exception.
- 7) If Confidential Information is required to be disclosed pursuant to judicial process, Seller shall promptly provide notice of such process to Buyer and, upon request, shall fully cooperate with Buyer in seeking a protective order or otherwise contesting such a disclosure. Disclosure of such requested Confidential Information shall not be deemed a breach of the Order provided that the obligations of this [Clause 25](#) are satisfied by Seller.
- 9) Seller agrees to notify Buyer in writing and to obtain Buyer's written consent, not to be unreasonably withheld, prior to manufacturing any parts for another entity that have the same form, fit and function as any parts Seller manufactures for Buyer using Confidential Information. Seller's notification shall describe the parts to be manufactured for the other entity, identify the corresponding parts Seller manufactures for Buyer and provide Buyer with sufficient information to demonstrate that Seller will manufacture such parts without reference to or use of Confidential Information. If Seller manufactures or sells any such parts without obtaining Buyer's written consent, Buyer shall be entitled to injunctive relief and such other remedies as a court may order.
- 10) If a specific NDA has been signed between Seller and Buyer, and any conflict, inconsistency or ambiguity is believed to exist between the NDA and this [Clause 25](#), the provision to provide greater protection of Buyer's Confidential Information or Intellectual Property shall control.

26. Intellectual Property Indemnification:

- 1) Seller shall indemnify, defend, and save and hold harmless Buyer, its Affiliates, subsidiaries, agents, directors, officers, and employees, and each subsequent purchaser or user, from any losses, costs, damages, and liabilities, including, without limitation, any attorney's fees, court costs and fines, arising from any potential or actual claim, suit, injunction, action, proceeding, or investigation alleging infringement or violation of any Intellectual Property

rights or license, related to the manufacture, use or sale of any Goods or services delivered or performed in connection with the Order (“Claim”).

- 2) Seller shall not be liable for any Claim based on Seller’s compliance with any Specification created by Buyer, unless: (i) Seller could have complied with Buyer’s Specification using a solution that was non-infringing; (ii) the Specification was derived from, or provided by, Seller; or (iii) Seller knew or should have known of a Claim or potential Claim and did not promptly notify Buyer in writing.
- 3) Seller shall, upon written notice from Buyer of a Claim, promptly assume and diligently conduct the entire defense of a Claim at its own expense. Insofar as Buyer’s interests are affected, Buyer shall have the right, at its own expense and without releasing any obligation of Seller, to participate and intervene in a Claim. Buyer shall have the right to reasonably reject counsel selected by Seller. Seller shall not enter into any settlement without Buyer’s prior written consent, which shall not be unreasonably withheld.
- 4) Buyer may supersede Seller in the defense of any Claim, and assume and conduct the defense at Buyer’s sole discretion. In such an event, Seller shall be released from any obligation to pay for attorneys’ fees and court costs, but not settlement or damages, and any such release is expressly conditioned on Seller’s complete cooperation with Buyer in Buyer’s defense of such Claim at Buyer’s expense. Buyer shall not enter into any settlement without Seller’s prior written consent, which shall not be unreasonably withheld.
- 5) If the manufacture, use or sale of the Goods is enjoined by a court, if delivery is precluded by a government entity, or if Seller refuses to supply Goods to avoid a potential third party claim, Seller shall avoid any disruption to Buyer and shall (i) secure for Buyer the right to use or sell such Goods; (ii) modify or replace such Goods with equivalent non-infringing Goods; or (iii) provide such other solution acceptable to Buyer. Seller shall reimburse Buyer for Buyer’s costs incurred in obtaining all internal, external and Buyer’s Customer approvals, qualifications, certifications, and the like, necessary for making, using and selling alternate non-infringing Goods. Seller shall refund to Buyer the purchase price of any such Goods that Buyer is prohibited from using or selling.

27. Compliance:

- 1) The Seller warrants that all the Goods hereunder shall be in strict compliance, at the time of delivery and in the case of services, at the time of performance, with all applicable laws, codes, statutes, rules and regulations, ordinances, orders, permits and approvals to which Goods are subject. The Seller shall execute and deliver to the Buyer any documents as may be required to effect or to evidence such compliance. Seller shall ensure that its subcontractors and vendors comply with this [Clause 27](#).
- 2) In the event that the Goods are, or are likely to be, subject to any restriction arising from such applicable laws or regulations, the Seller shall so notify the Buyer and shall take any and all necessary actions to ensure that the Goods supplied strictly conform to all laws and regulations.
- 3) Seller agrees to indemnify, defend and hold Buyer and/or Owner harmless from and against any and all claims, demands, causes of action, liability, losses, damages, fines, penalties, interest, costs and/or expenses of whatsoever kind or nature (including reasonable attorney’s fees) arising out of, in connection with or as a result of any failure of Seller to comply with all laws, codes, statutes, rules and regulations, ordinances, orders, permits and approvals applicable to the Goods furnished by Seller.
- 4) FCPA & Anti-Bribery Compliance & Code of Conduct:

- a) In performing its obligations under this Contract, Seller shall comply with all applicable anti-corruption, anti-money laundering, anti-terrorism and economic sanction and anti-boycott laws, including the U.S. Foreign Corrupt Practices Act (15 U.S.C. §§ 78dd 1, et seq.).
- b) As used herein, a “Prohibited Payment” means any offer, gift, payment, promise to pay or authorization of the payment of any money or anything of value, directly or indirectly, to a government official, or other non-government third party, including for the use or benefit of any other person, to the extent that one knows or has reasonable grounds for believing that all or a portion of the money or thing of value that was given or is to be given to such other person will be paid, offered, promised, given or authorized to be paid by such other person, directly or indirectly, to a government official, or other non-government third party, for the purpose of (a) influencing any act or decision of the government official or other non-government third party, in his official capacity, (b) inducing such government official, or other non-government third party, to do or omit to do any act in violation of his lawful duty, (c) securing any improper advantage or (d) inducing such government official or other non-government third party to use his influence with a non-U.S. government or instrumentality other third party thereof to affect or influence any act or decision of such government or instrumentality or third party, in order to assist in obtaining or retaining business or in directing business to either Party. As used herein, a “Prohibited Transaction” means receiving, transferring, transporting, retaining, using, structuring, diverting or hiding the proceeds of any criminal activity whatsoever, including but not limited to (a) drug trafficking, (b) fraud and bribery of a government official, (c) engaging or becoming involved in, financing or supporting (financially or otherwise), sponsoring, facilitating or giving aid to any terrorist person, activity or organization and (d) participating in any transaction or otherwise conducting business with a Designated Person.
- c) The Seller represents and warrants that it has not, and that it has no evidence of any kind that any of its owners, controlling shareholders, directors, officers, employees or any other person working on its behalf (including any of its subsidiaries, affiliates, subcontractors, consultants, representatives or agents) has, either directly or indirectly:
 - i) made a Prohibited Payment with respect to the Goods, work or remedial Goods or work, and/or with or using any payment received hereunder; or
 - ii) engaged in a Prohibited Transaction with respect to the Goods, work or remedial Goods or work.
- d) The Seller shall not, and shall take all reasonable steps to ensure that none of its owners, controlling shareholders, officers, employees and other persons working for it in relation to the Goods, the Work or remedial Goods or Work (including any of its subsidiaries, affiliates, subcontractors, consultants, representatives or agents), directly or indirectly, make, promise or authorize the making, of a Prohibited Payment or engage in a Prohibited Transaction with respect to the Goods, the work, or remedial Goods or work or share or promise to share its fees or any other funds it receives from Buyer or in respect of the Goods or work or remedial Goods or work with any government official.
- e) The Seller shall promptly report to Buyer any Prohibited Payment or Prohibited Transaction of which it obtains knowledge, or has reasonable grounds to believe occurred, in respect of the Goods, work or

remedial Goods or work. In the event that Seller, or its representative, makes any payment(s) in violation of the express covenant provided herein, Seller shall, upon demand by Buyer, refund to Buyer an amount equal to the aggregate of all payments made under the Contract.

- f) The Seller agrees that if Buyer has any reasonable grounds to believe that a Prohibited Transaction has taken place or a Prohibited Payment has been made, promised or authorized, directly or indirectly, to a government official in connection with the Goods, work, or remedial Goods or work, it shall cooperate in good faith with Buyer in determining whether such a violation occurred by taking necessary measures, which could include engaging an independent third party to investigate the matter and to provide a written report of its findings to the Parties.
 - g) The Seller acknowledges receipt of a copy of the Buyer's Code of Conduct and understands the standards to which Buyer expects all its contractors to comply with when performing services for or on behalf of Buyer. Buyer's Code of Conduct can be found at the following link: <http://www.mhi.com/company/aboutmhi/policy/conduct.html>
 - h) In order to mitigate potential exposure to risk, Seller shall perform due diligence on any subcontractors, consultants, agents or representatives it employs in the performance of the work or remedial work or to provide services to the Owner's facility, in accordance with the Seller's own policies on business partner due diligence and/or supplier and vendor accreditation.
 - i) If Buyer reimburses Seller for any lodging, meals, travel or other expenses (other than as part of the contract price), Seller shall be reimbursed by Buyer only for reasonable expenses for its employees or for such expenses incurred on behalf of third parties when supported by actual, accurate and reasonably detailed third-party invoices. Where government officials are involved, the request for reimbursement shall be accompanied by a written statement of the details of the expenses and an explanation of the purpose of the expenses, the reason that the participation of such officials was necessary, and the names of those in attendance and their employment or business affiliation.
 - j) For the purpose of detecting potential violations of applicable law, the Seller shall perform periodic internal or independent audits, in accordance with its usual business practices, of its financial books, accounts and records.
- 5) Modern Slavery. The term modern slavery covers a set of legal concepts, including forced labor, debt bondage, and human trafficking. It is an umbrella term to refer to situations of exploitation that an individual cannot refuse or leave because of threats, violence, coercion, deception, or abuse of power.

1. Seller undertakes, warrants, and represents that:

a. neither it nor any of its officers, employees, agents, or subcontractors has:

- 1. committed an offense under any modern slavery or child labor law and/or regulation to which it was subject because of any applicable jurisdiction (including

local, domestic or international laws regarding labor, health, safety and the environment) and including, but not limited to the Modern Slavery Act 2018 (Cth) (Australia) and the Modern Slavery Act 2015 (United Kingdom), California Transparency in Supply Chains Act 2010 (United States) including compliance with any reporting requirements; or

2. been notified that it is subject to an investigation relating to or prosecution of an alleged violation of any modern slavery law and/or regulation; or

3. become aware of any circumstances within its supply chain that could give rise to an investigation relating to an alleged violation of any modern slavery law and/or regulation.

b. it shall comply with any relevant modern slavery law and/or regulation it is subject to because of any applicable jurisdiction and shall immediately implement (if it has not already done so) and comply with the requirements of any modern slavery law and/or regulation to which it is subject;

c. it shall notify the other Party immediately in writing if it becomes aware or has reason to believe that it, or any of its officers, employees, agents or subcontractors have breached or potentially breached any of its obligations under the above.

2. If so requested by Buyer, Seller shall certify in writing the foregoing.

- 6) The Seller represents and warrants that it does not source products from companies which would cause Mitsubishi Power to have exposure to countries subject to comprehensive sanctions. Upon request, Seller shall promptly submit an affirmation or validation, in a form reasonably acceptable to Buyer (which may be in the form of an email from an authorized representative from the company, such as a Compliance officer), asserting the following, or similar language as requested by Buyer:

“(NAME OF SELLER) hereby validates that we do not source products or conduct business in a manner that would somehow cause Mitsubishi Power Americas, Inc. to have exposure to countries subject to comprehensive sanctions. (NAME OF SELLER) also confirms we are in compliance with U.S. export control laws, as it pertains to the work they perform for Mitsubishi Power Americas.”

- 7) Restricted Party Screening and Sanction.

- a. The Seller will proactively perform restricted party screening against all parties to a transaction, including its subcontractors and vendors, and promptly notify Buyer if any parties appear to match any persons/entities on a restricted party list, including those of the U.S., Spain, Brazil, and other applicable jurisdictions. No work to further or process business related to a restricted party screening potential match will be conducted without explicit written authorization from Buyer. Restricted party lists to be screened against include, but are not limited to, the Treasury Department’s list of Specially Designated Nationals; the Commerce Department’s Denied Persons, and Entity list; the State

Department Debarred Parties List; and other similar lists maintained by the U.S., Brazil, or other jurisdictions that may apply to the transaction.

- b. The Seller will proactively seek to identify and comply with sanctions implements by the U.S., Brazil, or any other applicable jurisdictions.
 - c. Seller will proactively seek comply with all list-based, end-user, and end use controls, such as the EAR, ITAR.
- 8) Specify inquiries and Restricted Party screening may be required on any employees /individuals that will be working onsite on behalf of Buyer and/or Seller. Such screening shall be in accordance with the requirements in this [Clause 27](#). Upon request, Seller shall submit an affirmation as follows:
- “(Name of supplier) will perform Restricted party screenings on any employees/individuals that will be working onsite on behalf of MPWA, to be in compliance with this [Clause 27](#)).”
- 9) Failure by Seller or its subcontractors or vendors to comply with this [Clause 27](#), in whole or in part, shall entitle Buyer, in its sole and absolute discretion, to terminate this Contract and any and all Orders, for Seller’s material default, without notice and without penalty, in addition to any other remedies available under this Contract, at law or in equity. No waiver of liability found in this Contract shall apply to this clause unless this clause is specifically named in such waiver.

28. Arbitration:

- 1) The Parties shall exercise their best efforts to resolve any and all disputes, controversies or differences between the Buyer and the Seller arising out of, in connection with, or as a result of the Contract, or the breach thereof, by negotiation.
- 2) All disputes, controversies or differences between the Buyer and the Seller arising out of, in connection with or as a result of the Contract, or the breach thereof, that are not settled by negotiation shall be settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The arbitration shall be conducted by three (3) independent and impartial arbitrators, none of whom shall be current or previous officers, directors or employees of either Party or their respective affiliates. The Party who submits the dispute to arbitration shall select and identify the first arbitrator in its notice of arbitration. The other Party shall identify the second arbitrator in a notice to be given not more than 45 days after it receives the notice of arbitration. The first two such arbitrators shall both be persons who are knowledgeable about the subject matter of the dispute and shall have at least five (5) years’ experience in the electric power industry. Within 30 days of the second arbitrator's selection, the two arbitrators shall select a third arbitrator, who shall serve as chairperson of the arbitrators' panel. If the two selected arbitrators cannot agree on a third arbitrator within 30 days of the second arbitrator's selection, the third arbitrator shall be appointed by the Court of Arbitration of the AAA as provided in the AAA Rules. In that regard, the Parties hereby waive the right to nominate the third arbitrator and hereby accept the appointments by the Court of Arbitration, as it deems best.
- 3) Neither Party shall challenge the choice of a potential arbitrator solely because the arbitrator is of the same nationality as one of the Parties subject to the arbitration. The award rendered by the arbitrator(s) shall be final and binding upon both Parties, and judgment upon the award may be entered in any court having jurisdiction thereof. The seat of the arbitration shall be in Orlando, Florida.

29. Governing Law:

Unless otherwise agreed, the Contract shall be governed by and construed in accordance with the laws of the state of Florida, without regard to principles of conflicts of laws. IN ACCORDANCE WITH ARTICLE 6 OF THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS (“UN CONVENTION”), THE PARTIES AGREE THAT THE UN CONVENTION SHALL NOT APPLY TO THIS CONTRACT.

30. Assignment:

The Contract or any part of it shall not be assigned or transferred to any third party without prior written approval by the Buyer. Any such approval shall not relieve the Seller of any of its obligations under the Contract. Any purported assignment without such prior written consent shall be void.

31. Language:

The language to be used in all documents comprising or relating to the Contract and in all other communications relating to the Contract shall be English, unless otherwise required by the Buyer.

32. Publicity:

The Seller shall not issue any news release nor issue or permit any publicity or advertisement or sales promotions, or otherwise use Buyer’s or Owner’s trade name, logo, trademark, trade device, service mark or symbol owned by Buyer, its affiliates or its parent company or the Owner or otherwise concerning the Contract and/or the project, including the fact that Seller has an agreement or purchase order to perform services for Buyer, without the Buyer’s prior written approval. Seller shall not use the name or any confidential information of Buyer in dealing with any other customers, projects, or other third parties.

33. Export Compliance with United States and Other Applicable Export Controls:

- 1) The Parties recognize that Mitsubishi Power may be subject to the export regulations of the United States of America regarding export and re-export of certain commodities, software, and technology from the United States. Seller agrees that it will not export or re-export, either directly or indirectly, any information or data received from Buyer in connection with the performance under this Purchase Order to any country in contravention of said export regulations, or which, if done by Buyer, would violate the laws of the United States of America. Similarly, Mitsubishi Power Americas Inc. or other parties subject to this agreement, may be subject to export laws of other countries or jurisdictions and the Seller agrees that it will comply with these export control laws to the extent they do not conflict with U.S. law.
- 2) Seller represents that it is not (and that its subcontractors are not) a Restricted Party, which for the purposes of this Purchase Order shall be deemed to include any person or entity that is: named on the U.S. Treasury’s list of Specially Designated Nationals and those covered by the 50% ownership rules; the U.S. Commerce Department’s Denied Persons, or Entity List; the U.S. State Department Debarred Parties List; the General Services Administration Excluded Parties List, or other similar lists maintained by these or other departments within the United States or other applicable countries or jurisdictions. Further, the Seller represents that it is not (and its subcontractors are not) subject to U.S. sanctions to include but not limited to being a national of, located in, or organized under the laws of Cuba, DNR, LNR or Crimea Regions of Ukraine, Iran, North Korea, or Syria or sanctions maintained by other applicable countries or jurisdictions. Additionally, the Seller represents that it is not (and its subcontractors are not) (a) a national of, located in, or organized under the laws of Cuba, Crimea Region of Ukraine, Iran, North Korea or Syria; (b) named on the Treasury Department list of Specially Designated Nationals; the Commerce Department Denied

Persons, Entity; the State Department Debarred Parties List; or the General Services Administration Excluded Parties List System; (c) subject to nonproliferation sanctions under the laws of the United States; (d) designated as an institution of primary money laundering concern; (e) engaged in activities involving nuclear weapons materials, missile or rocket technologies, or the proliferation of chemical or biological weapons; (f) part of or affiliated with any non-U.S. military or paramilitary organization; or (g) owned or controlled by any non-U.S. government. Seller promptly shall notify Buyer upon becoming a Restricted Party or failing to comply with any requirement of this subparagraph, which shall constitute grounds for termination of this Purchase Order without further notice or opportunity to cure.

3) Sections A through E apply to all commodities, software and technology purchased from Seller.

- a) Commodities, software, and technology provided under this Purchase Order shall be reviewed for compliance with United States, and other applicable jurisdictions or countries, export controls. Therefore, within thirty (30) days after this Purchase Order is awarded, and in any event prior to shipment, Seller shall provide Buyer with a listing of the applicable Harmonized Tariff Schedule Code (HTS#) and Export Control Classification Number (ECCN) for each (i) systems, equipment and components, (ii) test, inspection and production equipment, (iii) materials, (iv) software, and/or (v) technology in the form of either technical data or technical assistance provided under this Purchase Order.
- b) Seller shall provide the ECCN, including EAR99, from the current Commerce Control List (Supplement No. 1 to part 774 of the Export Administration Regulations (Title 15 of the Code of Federal Regulations, parts 730-774)) under the export control jurisdiction of the Bureau of Industry and Security, U.S. Department of Commerce.
- c) Seller shall ensure that all of its sub-suppliers and vendors comply with these provisions and shall be responsible for obtaining or providing the HTS#'s and ECCNs for all such commodities, software and technology from its sub-suppliers and vendors.
- d) If this Purchase Order is revised to incorporate new commodities, software, or technology, the seller shall advise the HTS# and ECCN information for the added items within five (5) working days after the date this Purchase Order is revised.
- e) If Seller is unfamiliar with the United States regulations for determining ECCNs, Seller shall contact the U.S. Department of Commerce's Bureau of Industry and Security to obtain assistance with the classification of all commodities, software, and technology to be provided under this Purchase Order. *See:*
<https://www.bis.doc.gov/index.php/licensing/commerce-control-list-classification/export-control-classification-number-eccn> for ECCN questions and answers.

Section F applies to all commodities, software and technology purchased from Seller that are shipped by Seller to destinations from the United States and/or are re-exported.

- f) Seller is responsible for obtaining any required U.S. export licenses for all commodities, software, and technology to be supplied under this Purchase Order if the Seller is the Exporter. If Seller needs assistance in determining whether a license is required, Seller shall contact the Bureau of Industry and Security. *See:*

<https://www.bis.doc.gov/index.php/licensing/reexports-and-offshore-transactions> for guidance on re-exports and other offshore transactions involving U.S. origin items.

34. Insurance:

- 1) During the term of this Contract, Seller and any subcontractors and vendors shall, at a minimum, maintain or cause to be maintained, at its sole cost, the following insurance coverages from insurers licensed to conduct business in the U.S. with an A.M. Best Insurance Reports rating of “A-” or better and a financial size category of “X” or higher.

a) Workers' Compensation

Worker's Compensation - (including coverage for Occupational Disease). The coverage limits shall be no less than:

	<u>Minimum Limits</u>
Workers' Compensation	Statutory Benefits
Employer's Liability	\$1,000,000 each accident bodily injury by accident
	\$1,000,000 each employee bodily injury by disease
	\$1,000,000 policy limit bodily injury by disease

b) Commercial General Liability

Commercial General Liability covering all liability arising out of the goods and/or services furnished by Seller, and shall include Broad Form Contractual Liability, Products and Completed Operations Liability, XCU (explosion, collapse and underground hazards), and Broad Form Property Damage Liability coverage, including, but not limited to resulting and/or downstream damage caused to equipment and property. Coverage for Products and Completed Operations Hazards shall extend for a minimum of two years beyond completion of all warranty work. The coverage limits shall be no less than:

	<u>Minimum Limits</u>
Bodily Injury	\$1,000,000 per occurrence
Property Damage	\$1,000,000 per occurrence
Annual Aggregate	\$5,000,000

c) Business Automobile Liability

Comprehensive Automobile Liability (including coverage for Owned, Hired and Non-owned Automobiles) covering all vehicles used by Seller in connection with the performance of this Contract, with limits not less than \$1,000,000 per occurrence combined single limit for bodily injury and property damage.

d) Umbrella/Excess Liability Insurance

Seller shall maintain umbrella/excess insurance covering claims in excess of the underlying

Employer's Liability, Commercial General Liability and Business Automobile Liability insurance maintained by Seller. The coverage shall be written on a follow form basis, or the coverage shall be written on terms at least as broad as the underlying policies and shall have limits not less than \$10,000,000 per occurrence and \$10,000,000 aggregate.

e) Professional Liability Insurance

If required by buyer, Seller shall provide Professional Liability Insurance with a minimum limit of \$2,000,000 per occurrence and aggregate, with deductible not to exceed \$250,000. Notwithstanding anything to the contrary, Seller shall, at a minimum, maintain the professional liability insurance from the Effective Date through the date that is three (3) years after the date on which Final Completion is achieved.

- 2) Within five (5) days after the execution of the Purchase Order, Seller shall deliver Certificate(s) of Insurance to Buyer evidencing the coverage's required hereunder. Said Certificate(s) shall contain endorsements providing that the insurance shall not be canceled or changed for any reasons whatsoever, without the insurer first giving Buyer thirty (30) days prior written notice. All the insurance coverage's required herein, with the exception of Worker's Compensation Insurance and Professional Liability Insurance shall be endorsed to include Buyer and Owner as additional insured. Additionally, all such policies shall waive all rights of subrogation with respect to the Buyer and the Owner and include a cross-liability and severability of interest clause. All policies required by this Order shall include provisions that such insurance is primary insurance with respect to the obligations of Seller to Buyer and Owner and that any other insurance maintained by Buyer or Owner is excess and not contributory insurance with the insurance required hereunder.

35. Seller's Conflicts

Seller shall devote its best efforts to advance the interest of Buyer in the performance of this Contract, and shall not knowingly or negligently do anything that will compromise, be injurious or detrimental to Buyer's reputation or standing in the industry or with Buyer's customers, including, without limitation:

- a) Attempt to, or otherwise induce any of Buyer's present or prospective customers or other suppliers to withdraw, reduce or divert any of their present or prospective business from Buyer;
- b) Directly or indirectly persuade or attempt to persuade any employee of Buyer to terminate his or her service with Buyer.

36. Independent Contractor

Nothing in this Contract shall be deemed to constitute Seller, nor any of Seller's subcontractors, nor their respective employees or agents to be the agent, representative or employee of Buyer. Seller shall at all times be an independent Seller and shall have sole responsibility for and control over the details and means for performing the Goods. Seller covenants and agrees that in the performance of the Work, neither Seller nor its subcontractors shall perform any act or make any representation to any person to the effect that Seller, or any of its agents, representatives or

subcontractors, or any of their respective employees, agents or representatives is an employee, agent, or representative of Buyer or of its customer.

37. Subcontracting

- 1) Seller shall not subcontract performance of any portion of the Work under this Contract without first notifying Buyer of the intended subcontracting (and proposed subcontractors) and obtaining Buyer's written notice that it does not object to the Seller's subcontract with the proposed subcontractor.
- 2) Seller guarantees that the scope of the Work by its subcontractors shall be in strict conformity with the terms of this Contract.
- 3) Notwithstanding the subcontracting of any portion of the Work by Seller, Seller shall remain primarily and fully responsible for the complete, proper and safe performance of the Work in strict conformity with the requirements of this Contract. Seller shall be liable for any and all acts and omissions of its subcontractor(s) and their respective employees. Nothing contained in this Contract may be construed as imposing any obligation or liability on the part of the Buyer toward the Seller's subcontractors or suppliers.

38. Buyer Furnished Property

If in connection with the performance of this Order, any material, goods or property are furnished to Seller by Buyer, Seller shall assume the risk of, and be responsible for any loss, destruction of or damage to such property while in Seller's possession or care, custody and control. By way of example: If Seller's work involves processing such property by machining, finishing or other modification thereto, and such processing results in a nonconformance, damage, or defect, Seller shall be responsible to, at Buyer's option, a) replace such property to Buyer's satisfaction or b) correct (rework) said defect or nonconformance in accordance with applicable standards and specifications. Seller shall replace such property if such replacement is required as part of any required rework. Replacement parts shall only be purchased from Buyer-approved suppliers.

39. Survival

Notwithstanding the completion of the Seller's scope of work, or the earlier termination of this Contract, the Parties shall continue to be bound by the provisions of this Contract which by their terms or by their nature shall survive such completion or termination, including but not limited to the provisions of Clause 14, Documents and Intellectual Property; Clause 15, Warranties; Clause 16, Spare and Replacement Parts/Buyer Equipment; Clause 24, Indemnity; Clause 25, Confidential Information; Clause 26, Intellectual Property Indemnification; Clause 27, Compliance; Clause 28, Arbitration; Clause 29, Governing Law; Clause 32, Publicity; Clause 33, Export Compliance with United States Export Controls; Clause 35, and Seller Conflicts .