

## GENERAL TERMS AND CONDITIONS – SUPPLY OF GOODS & PROVISION OF SERVICES

### 1. PREAMBLE/DEFINITIONS/CONTRACTUAL DOCUMENTS

1.1 In these General Terms & Conditions:

**Days** means calendar day;

**Goods** means all the goods, products, materials, equipment, components, software, consumables, including any associated plans or documents, covered by the Order. The Goods may be intended to be incorporated in the Work, or used for the realisation of Work;

**GST Act** means A New Tax System (Goods and Services Tax) Act 1999 (Cth);

**Incoterms** means the standardized terms, laid down and published by the International Chamber of Commerce in Paris, which are used to define the rights and obligations of buyers and sellers participating in international and national exchanges. The General Terms and Conditions are governed by the Incoterms 2020;

**Order** means all contractual documents which govern the relations between Spiecapag and the Subcontractor concerning the provision of Goods and/or Services including, in order of priority:

- the Purchase Order and the contractual Special Terms and Conditions (if applicable);
- these General Terms and Conditions;
- the technical specification and appendices;
- the request for quotation and technical specification which was initially provided to the Subcontractor; and
- the Subcontractor's offer.

Should there be any inconsistencies, ambiguities or differences between the above listed documents, the order provided above, is the order of priority in which the documents apply. A document higher in priority takes precedence over a document lower in priority.

**Party or Parties** means individually Spiecapag or the Subcontractor and collectively Spiecapag and the Subcontractor;

**Purchase Order** means the document issued by Spiecapag (including any Special Terms and Conditions, the technical specification and the appendices which may be included therein) for the provision of Goods and/or Services;

**Representatives** means all directors, managers, employees or agents of Spiecapag; or the Subcontractor, duly authorised by Spiecapag or the Subcontractor;

**Services** means any work which the Subcontractor may be required to perform to comply with these obligations under the Order, which includes any design, engineer, procure, construct and commission of the Services in accordance with the requirements of this Order, including all work ancillary to that set out above necessary for the Services to be, in all respects, fit for the intended purpose and to achieve completion, including anything which is expressly required, incidental to, or which can be reasonably inferred from this Order even though not expressly stated;

**Site** means the place in which the Work is realised to which the Goods and/or Services, depending on their nature, either will be incorporated into the Work, or used to realise the Work;

**Spiecapag** means Spiecapag Australia Pty Ltd;

**Subcontractor** means the contractual partner of Spiecapag for the Order;

**Work** means the work provided under this Order.

1.2 These General Terms and Conditions shall prevail over all the Subcontractor's general terms and conditions, irrespective of whether the Subcontractor has issued those terms and conditions with the Subcontractor's Offer, which the Subcontractor expressly waives.

1.3 The provisions of this Order shall prevail over any other agreement that may have been previously made between the Parties relating to the Good and/or Services.

1.4 The invalidity, lapse, lack of binding force or unenforceability of the other stipulations of the

Order which shall remain in force, unless the Party that intends to avail itself of such invalidity, lapse, lack of binding force or unenforceability can provide evidence that this stipulation was the motivating and decisive cause of its desire to enter into the contract.

- 1.5 The Subcontractor expressly acknowledges that it has read these General Terms and Conditions, applicable between the Parties and forming part of the Order and the Subcontractor's reply to Spiecapag's consultation constitutes acceptance without reserve of these General terms & Conditions by the Subcontractor.
- 1.6 The amendments and derogations to these General Terms & Conditions apply provided that they have been the subject of a written agreement between the Parties.
- 1.7 Spiecapag is not liable for the execution by the Subcontractor of a verbal Order or of a modification made verbally to the Order.

## **2. FORMATION OF THE ORDER /ACKNOWLEDGEMENT OF RECEIPT / ACCEPTANCE OF THE ORDER BY THE SUBCONTRACTOR**

2.1 All Orders must be made in writing. In this regard, Spiecapag and the Subcontractor acknowledge and agree that the formation of the Order as well as its management, in particular the communications and written notices between Spiecapag and the Subcontractor, may be effectuated in or result from an electronic process.

To that end, the email addresses of Spiecapag and the Subcontractor appear in the Order.

Within a period of forty-eight (48) hours from the date of receipt of the Order, the Subcontractor must acknowledge receipt thereof to Spiecapag, by fax, email or letter.

Unless otherwise specifically indicated in the Purchase Order, the Subcontractor may not impose on Spiecapag any conditions precedent for the execution of the Order, such as a minimum volume or amount of Goods and/or Services.

The Subcontractor must comply with the quantities, units of measurement and packaging units requested

by Spiecapag in the Purchase Order. These quantities, units of measurement and packaging units may not in any event be modified by the Subcontractor. No additional price will be paid to the Subcontractor if it delivers Goods and/or Services in quantities or units of measurement or packaging units different from those appearing in the Purchase Order.

2.2 Furthermore, within a period of seven (7) Days from the date of receipt of the Order, the Subcontractor must inform Spiecapag in writing if it finds that the documents of the Order are incomplete, or contain errors, inconsistencies, anomalies or omissions. The Subcontractor must submit the corrections it deems necessary to Spiecapag for agreement, which must not give rise to a modification in the quality of the Goods and/or Services, a modification of the price of the Order, or a modification in the delivery times of the Goods and/or Services.

Spiecapag must inform the Subcontractor of its acceptance or refusal of the proposed corrections within a reasonable period. In case of acceptance of the proposed corrections, the Subcontractor must execute the Order within the time limits initially provided for in the Order.

In case of refusal of the proposed corrections, the Order will be deemed null and void, without notice or compensation to the Subcontractor, unless the Parties agree on these corrections and on new conditions of the Order, in which case an amendment signed by the Parties must be established.

If the Subcontractor breaches its duty to inform and/or to advise under this article, the Subcontractor shall bear all the associated costs and waives any claim against Spiecapag.

2.3 The signature of the Purchase Order by the Subcontractor, or the commencement of execution of the Order if it is accepted by Spiecapag, constitutes acceptance of the Order by the Subcontractor in its entirety. Acceptance of the Order does not imply any exclusivity in favour of the Subcontractor.

By accepting the Order, the Subcontractor undertakes that it has received from Spiecapag all of the information necessary for the execution of the Order.

**2.4** If the acceptance of the Order by the Subcontractor contains any reservations, or if the corrections proposed by the Subcontractor under Article 2.2 give rise to a modification in the quality of the Goods and/or Services, the price or the delivery times of the Order, Spiecapag may consider the Order as non-approved by the Subcontractor and reserves the right to cancel the Order without notice or payment of any compensation to the Subcontractor.

### **3. MODIFICATION OF THE GOODS**

**3.1** At any time until acceptance of the Goods or completion of the Services by Spiecapag as defined in Article 8.1 of these General Terms & Conditions, Spiecapag reserves the right to request the Subcontractor to make changes in the Goods and/or Services initially defined, in particular in terms of quantities of Goods or the scope of Services, with the Subcontractor being required to comply with such request.

The Subcontractor must inform Spiecapag as soon as possible of any possible impacts of the modifications requested by Spiecapag.

Unless a written amendment signed by the Parties provides otherwise, the modifications in the Goods and/or Services requested by the Spiecapag will not result in any modification of the price and delivery periods initially provided in the Order.

**3.2** The Subcontractor may propose to Spiecapag any modifications which would, in its opinion, improve the Order or the provision of the Goods and/or Services, with Spiecapag remaining entirely free to decide whether or not to accept such proposal. The Subcontractor may not in any event unilaterally modify the Order or the

provision of Goods and/or Services, whether with respect to the quantity or the nature of the Goods and/or Services or any other aspect whatsoever, except when such modification has

been expressly accepted by Spiecapag and a written amendment has been signed in this respect by the Parties.

### **4. PRICES / INVOICING / PAYMENTS / ASSIGNMENT OF CLAIMS**

**4.1** Unless otherwise indicated in the Order, the prices stipulated in the Order are all-inclusive, firm and non-revisable. They are stated excluding GST. They include all costs incurred by the manufacture, packaging, loading, transport, performance and delivery of the Goods and/or Services to the agreed place of delivery and in order to reach completion, and all the costs necessary for the full execution of the Order.

Unless otherwise indicated in the Order, the Subcontractor shall bear all the costs, duties, contributions, levies, taxes and fees of any nature directly or indirectly related to the execution of the Order and which it is liable for.

**4.2** Each payment request must be the subject of an invoice established by the Subcontractor in Spiecapag's name and approved by Spiecapag.

Each invoice must show the date on which the payment is to be made, the discount terms in case of payment on a date earlier than the one appearing in the Order along with the information required by Spiecapag.

Each invoice will be sent to Spiecapag accompanied by the number of copies requested and supporting documents, to the address indicated in the Order. The Order number must be shown on all invoices relating thereto.

The invoices are established by the Subcontractor according to the schedule provided by the Order.

In the case of a single billing milestone, the corresponding invoice may not be sent before the acceptance of the Goods or full completion of the Services by Spiecapag as defined in Article 8.1 of these General Terms & Conditions.

Invoices will be established in the currency stipulated in the Order.

**4.3** Unless otherwise indicated in the Order, the payment of accepted invoices is made by Spiecapag by transfer to the Subcontractor's bank account indicated in the Order.

Unless otherwise indicated in the order, the term of payment is set at forty-five (45) Days from the end of the month of issue of the invoice in

compliance with the conditions of the Order, it being understood that said invoice must be sent to Spiecapag

by the Subcontractor within forty-eight (48) hours of its issuance.

If this period is not respected, the payment will be made forty-five (45) days from the end of the month of receipt of the invoice compliant with the conditions of the Order.

The period taken into account for the calculation of this interest is the period between the contractual due date and the date of actual payment.

The payment of an invoice by Spiecapag does not constitute acceptance of the Goods and/or Services and does not preclude any possible dispute by Spiecapag, in particular concerning the quality or the quantity of Goods and/or Services or relating to any cost anomaly.

Spiecapag reserves the right, without any prior notice, to withhold amounts on all or part of the amounts invoiced by the Subcontractor, in particular when:

- a) the Goods and/or Services do not comply with the terms and conditions of the Order;
- b) the Goods and/or Services delivered and/or rendered must be repaired or replaced by the Subcontractor for reasons attributable to the Subcontractor;
- c) the Subcontractor has only partially carried out its obligations under the Order;
- d) the Subcontractor owes Spiecapag late penalties under Article 5.2.2;
- e) the Goods and/or Services have been refused by Spiecapag;
- f) the Subcontractor has not handed over to Spiecapag the documents required in application of Article 5.1.3.;
- g) the Subcontractor does not respect its guarantee obligations stipulated in Article 9;
- h) a claim is made against Spiecapag by a third party concerning an obligation or responsibility incumbent on the Subcontractor under the provisions of the Order. Except in case of refusal of Goods and/or Services as indicated in e) above, the amounts withheld will be paid forty-five (45) days after the date on which the Subcontractor remedies the cause having given rise to the withholding.

#### 4.4

- a) In this clause:
  - (i) the terms 'GST' 'Input Tax Credit', 'Joint Venture Operator', 'Recipient', 'Recipient Created Tax Invoice', 'Representative Member', 'Supplier', 'Supply', 'Tax Invoice' and 'Taxable Supply' have the meanings given to them in the GST Act;
  - (ii) the terms 'Progressive or Periodic Supply' means a Taxable supply that satisfies the requirements of section 156-5 of the GST Act; and
  - (iii) the term 'Supplier' means the entity making the Supply.
- b) All capitalised terms in clause 4.4 have the same meaning as defined in the GST Act.
- c) Except under this clause 4.4, the consideration for a Supply made under or in connection with this Agreement does not include GST.
- d) The Parties agree that for a Taxable Supply made by the Supplier under this Agreement, the Recipient may issue a Recipient Created Tax Invoice.
- e) If the Recipient issues a Recipient Created Tax Invoice under clause 4.4(d), the Supplier and the Recipient confirm that:
  - (i) both Parties are registered for GST;
  - (ii) if either Party deregisters for GST, they will notify the other Party immediately;
  - (iii) the Recipient will issue a Recipient Created Tax Invoice in respect of the Supply made by the Supplier; and
  - (iv) the Supplier will not issue a Tax Invoice in respect of the Supply made by the Supplier.
- f) If the Recipient issues a Recipient Created Tax Invoice under clause 4.4(d), the Recipient agrees to comply with the applicable requirements imposed by the Australian Taxation Office for it to be able to issue a Recipient Created Tax Invoice for that Supply.
- g) If a Supply made under or in connection with this Agreement is a Taxable Supply, then at or before the time any part of the consideration for the Supply is payable:
  - (i) the Recipient must pay the Supplier an amount equal to the total GST for the Supply, in addition to and in the same manner as the

consideration otherwise payable under this Agreement for that Supply; and

(ii) if:

- (A) the Recipient issues a Recipient Created Tax Invoice under clause 4.4(d), the Recipient must give the Supplier a Recipient Created Tax Invoice; or
- (B) otherwise the Supplier must give the Recipient a Tax Invoice.

- h) For clarity, the GST payable under clause 4.4(g) is correspondingly increased or decreased by any subsequent adjustment to the amount of GST for the Supply for which the Supplier is liable, however caused.
- i) If either party has the right under this Agreement to be reimbursed or indemnified by another party for a cost incurred in connection with this Agreement, that reimbursement or indemnity excludes any GST component of that cost for which an Input Tax Credit may be claimed by the party being reimbursed or indemnified, or by its Representative Member, Joint Venture Operator or other similar person entitled to the Input Tax Credit (if any).
- j) Where a Tax Invoice is given by the Supplier, the Supplier warrants that the Supply to which the Tax Invoice relates is a Taxable Supply and that it will remit the GST (as stated on the Tax Invoice) to the Australian Tax Office.
- k) Where a Supply is made under or in connection with the Agreement is a Progressive or Periodic Supply, clause 4.4(g) applies to each component of the Progressive or Periodic Supply as if it were a separate supply.

**4.5** If the Subcontractor assigns, in particular by means of a "Daily" or factoring form, one or several receivables it holds towards Spiecapag, the Subcontractor must inform Spiecapag in writing at the earliest opportunity.

## **5. SELLER'S OBLIGATIONS**

### **5.1 Execution of the Order**

**5.1.1** The Subcontractor is solely responsible and liable to Spiecapag for the proper execution of the Order within the delivery limits provided by the Order. The Subcontractor is deemed to know the purpose and

intended use of the Goods and/or Services which are the subject matter of the Order and guarantees Spiecapag the suitability and conformity of the Goods and/or Services to this purpose and to this intended use.

The Subcontractor must respect the clear intention of the documents of the Order and/or which are subsequently provided by Spiecapag, taken as a whole.

The Subcontractor is responsible for checking and certifying the compliance of Goods and/or Services with the specifications of the Order, as well as with the quality criteria and applicable standards, throughout the entire duration of the execution of the Order until the acceptance of the Goods and/or Services by Spiecapag in the conditions of Article 8.1. The Subcontractor assumes full responsibility for the compliance of Goods and/or Services with the specifications of the Order and with standard practices.

If the Goods and/or Services do not comply exactly with the Order or show a defect, the Subcontractor shall be entirely liable and shall bear the risks associated with and all costs arising out of or related to existence of the defect, including the rehabilitation or repair of the Goods and/or Services and delays caused by the same under a Head Contract, without prejudice to any other penalty which may apply under the Order or the applicable laws and regulations.

For the proper execution of the Order, including the compliance of Goods and/or Services with the provisions of the Order and respect of the scheduled delivery times, the Subcontractor is bound by a performance obligation towards Spiecapag which it can only be exempted from in case of force majeure as defined in Article 11 of these General Terms and Conditions.

The Subcontractor is solely liable to Spiecapag and/or third parties for any damage or loss which may result from the execution of the Order.

### **5.1.2 Regulations – Corporate Social Responsibility**

**5.1.2.1** The Subcontractor must execute the Order and deliver the Goods and/or provide the Services to Spiecapag in accordance with standard practices and in compliance with the laws, decrees and regulations in force in the country(ies) of origin, realisation and destination of the Goods and/or Services.

The Subcontractor declares that it is perfectly familiar with all the customs regulations which apply for any export or import of the Goods in the countries in which they will be used.

The Subcontractor undertakes to provide Spiecapag with all the information and all the documents necessary for the performance of customs formalities, in particular (but not limited to) the operating licence, the certificate of origin and the customs nomenclature of the Goods.

In the event of breach, violation or non-compliance by the Subcontractor with the customs regulations in force or if the Subcontractor provides Spiecapag with information or documents which are incomplete or incorrect, whether they are from the Subcontractor or from its suppliers, service providers or subcontractors, the Subcontractor shall compensate Spiecapag for any fines and other convictions Spiecapag may be subject to, and shall compensate Spiecapag for any damage, loss or costs it may suffer as a result.

**5.1.2.2** The Subcontractor guarantees, without limitation, that all the Goods and/or Services comply with the applicable laws and regulations in force with respect to quality, the environment, health, hygiene, safety and "safety at work", as well as with all relevant national and international regulations or local decree, laws, rules or regulations concerning the environment relating to chemicals and hazardous materials.

Furthermore, for any shipment of Goods under the Order, the Subcontractor must comply with all applicable regulations in terms of the International Transport of Hazardous Products. On each shipment, the Subcontractor must provide Spiecapag with the "Safety" Identification Sheets for these Goods.

**5.1.2.3** The Subcontractor acknowledges that it is familiar with and complies with the rules and principal issues of the ISO 26000 international standard (in particular the environmental, legal, ethical and transparency aspects, and Human Rights). In this regard, the Subcontractor undertakes, within the framework of the execution of the Order:

**(a)** not to have, directly or indirectly, as a partner, associate or shareholder, and not to employ or use the services of civil servants or other representatives of Governments and international public organisations, or

members of the Commission of European Communities, the European Parliament, the Court of Justice, the State Audit Office, the public service or political parties, within the framework of the execution of the Order.

**(b)** to comply with and to ensure compliance by all its employees and Representatives with all the anti-corruptions laws and regulations in force, both at a national and international level, such as the Foreign Corrupt Practices Act (USA) and the Bribery Act (UK), Section 249B of the Crimes Act 1900 (Australia), as well as the anti-corruption conventions, such as the OECD convention which entered into force on February 15, 1999, the European criminal convention on corruption adopted on May 26, 1997 and the European civil convention on this same subject adopted on February 26, 1999.

**(c)** to comply with:

(i) the VINCI Code of Ethics and Conduct : <https://www.vinci.com/vinci.nsf/en/item/code-of-ethics.htm>

(ii) the VINCI Anti-Corruption Code of Conduct : <https://www.vinci.com/vinci.nsf/en/item/anti-corruption-code-of-conduct.htm>

(iii) the VINCI Guide on Human Rights : [https://www.vinci.com/vinci.nsf/en/sustainable-development/pages/human\\_rights.htm](https://www.vinci.com/vinci.nsf/en/sustainable-development/pages/human_rights.htm)

The Subcontractor guarantees compliance with the provisions of this article by its suppliers, service providers or Sub-Subcontractors.

The Subcontractor shall hold Spiecapag harmless from any consequences of non-compliance with the commitments it makes under this article.

Non-compliance with these undertakings by the Subcontractor will constitute grounds for the immediate termination of the Order in application of Article 12.2 of these General Terms and Conditions.

**5.1.2.4** The Subcontractor undertakes, on Spiecapag's written request, to communicate to it all the elements allowing to identify the origin place and date of manufacture of the Goods as well as, where appropriate, the serial or batch numbers.

Spiecapag undertakes only to use the information communicated by the Subcontractor for the purposes

of proceeding, if necessary, with the withdrawal or correction of the Goods concerned.

**5.1.3** The Subcontractor must, as of its acceptance of the Order and in accordance with the conditions of Article 2 of these General Terms and Conditions, and before the delivery of the Goods, establish and hand over to Spiecapag all the documents relating to the Goods allowing to assess, according to the opinion of Spiecapag, the quality and proper maintenance of the Goods, in particular the technical documents including plans, diagrams, calculation notes,

certificates of compliance, safety data sheets, as well as those enabling the proper use of the Goods, such as operating instructions, maintenance, use, operation or instruction notices.

In the event where the Goods are modified by the Subcontractor after their delivery, the plans or documents must be updated by the Subcontractor and communicated to Spiecapag as soon as possible.

The non-communication of these plans and documents in a timely manner in the conditions set forth in the Order will give rise either to the

withholding of the payments provided in Article 4.3 of these General Terms and Conditions until all these documents are handed over to Spiecapag, or the refusal of the Goods and/or Services by Spiecapag.

The Subcontractor also undertakes to send Spiecapag all the legal or technical information applicable to the Order and to the provision of the Goods and/or Services.

**5.1.4** Prior to the start of execution of the Order, the Subcontractor must submit to Spiecapag for its prior written approval the list of principal suppliers and/or services providers and/or subcontractors whose services it intends to use. The Subcontractor may not in any event subcontract the entire Order. Spiecapag reserves the right to refuse its approval without being required to explain the reasons for its refusal.

The Subcontractor shall remain solely liable to Spiecapag for the execution of the Order, even in case of approval by Spiecapag of its

suppliers, services providers or subcontractors.

The use of subcontracting without prior written acceptance of the sub-subcontractor and its terms of

payment by Spiecapag exposes the seller to the termination of the order as defined in Article 12, and a claim for damages and/or, associated costs and losses. The same applies if the Subcontractor has knowingly provided incorrect information in support of its request for agreement.

The subcontracts and related specifications must be communicated to Spiecapag on its request, for information purposes only.

**5.1.5** The price of the Order includes the transfer to the benefit of Spiecapag of the material and intellectual property of all the elements, in particular plans, studies and documents prepared by the Subcontractor and/or its suppliers and/or services providers and/or subcontractors within the framework of the Order, without the need for any reference to this subject in the Order.

Accordingly, by the sole fact of acceptance of the Order, the Subcontractor transfers to Spiecapag all the rights of exploitation, reproduction,

representation, modification, marketing and use of these elements, for all countries, in all languages and on all media, for the entire duration of the intellectual property.

This transfer of ownership is carried out as and when these elements are realised during the execution of the Order.

The Subcontractor guarantees Spiecapag against all claims from third parties concerning industrial or intellectual property rights on the Goods and/or Services, and shall compensate it for any resulting consequences, in particular financial.

In the event where the Goods and/or Services include software, the Subcontractor guarantees Spiecapag that it holds all the intellectual property rights necessary for the execution of the Order.

In the event of an alleged prohibition to use the Goods and/or Services, the Subcontractor must, at its cost and at the choice of Spiecapag, either replace the Goods and/or Services, or modify them to eliminate the alleged infringement.

These solutions must be implemented within a time frame compatible with the needs of use of the Goods and/or Services by Spiecapag.

Otherwise, the Subcontractor undertakes to reimburse the price of the Goods to Spiecapag.

The above provisions shall not affect the right of Spiecapag to claim any damages from the Subcontractor.

**5.1.6** Until the complete delivery of the Goods or until completion of the performance of the Services, the Subcontractor shall provide Spiecapag or its Representatives with all information (including reports) which Spiecapag deems necessary on the progress of the execution of the Order by the Subcontractor and/or its suppliers, services providers or Subcontractors.

**5.1.7** The Subcontractor must provide, at its cost, to the concerned staff of Spiecapag, according to Spiecapag's specifications, sufficient training allowing the use and maintenance of Goods and/or Services in accordance with their intended purpose.

## **5.2 Delivery of Goods / Completion of Services**

**5.2.1** The acceptance of the Order by the Subcontractor implies an informed, formal and irrevocable undertaking by the Subcontractor on the contractual delivery periods for Goods and the handing over of the documents required by the Order. Compliance with delivery periods is an essential condition of the Order.

The Subcontractor must inform Spiecapag, as soon as possible and in writing, of any incident likely to delay the execution of the Order, without this notification having in itself the effect of releasing it from its responsibilities.

Without prejudice to the provisions of Article 5.2.2, in case of a delay in delivery or completion of more than forty-eight (48) hours as compared to the delivery date and/or completion date provided in the Order, Spiecapag reserves the right to apply the provisions of Article 7.

**5.2.2** Non-compliance with the delivery and/or completion periods indicated in the Order will give rise to the application, by right and without prior notice, of late penalties of an amount defined in the Details (otherwise, they are fixed at 0.5% of the price of the Order per late Day).

The Subcontractor acknowledges that any damages payable under Article 5.2.2 are a genuine pre-estimate of the loss which Spiecapag may suffer in the event of

a delay to delivery or completion and are not to be construed as a penalty.

The above damages do not constitute discharge.

Their application does not exclude the right for Spiecapag to immediately terminate the Order by right, in application of the provisions of Article 12.2 of these General Terms and Conditions, and/or to claim any damages from the Subcontractor.

### **5.2.3 Terms of Delivery**

**5.2.3.1** Each supply of Goods purchased "unpackaged" will include a label or marking showing the references and indications specified in the Order.

**5.2.3.2** Unless otherwise stipulated in the Order, the Subcontractor is responsible, in accordance with the standards in force and professional practices, for the packaging, which must be suitable for the Goods transported as well as the means of transport used, the conditions of transport, delivery, storage on the Site and handling of the Goods indicated in the Order, while endeavouring to limit the cost of treatment of packaging waste.

In all cases, the packaging must allow to avoid all damage likely to affect Goods during their transport, storage or handling.

**5.2.3.3** Unless otherwise stipulated in the Order, all deliveries of Goods are made FCA Incoterm© 2020 to the Agreed Place.

The place of delivery of Goods ("Agreed Place") shall be specified by Spiecapag either in the Purchase Order, or at a later date.

The Subcontractor must strictly comply with all the instructions concerning the place of delivery given to it by Spiecapag.

The Subcontractor shall hand over to Spiecapag on each delivery of Goods a Delivery Slip in two copies, which will show:

- The Order number;
- The description of the Goods;
- The quantity, dimensions or weight delivered.

The signature of the Delivery Slip, with or without reservations, only records the arrival of the Goods at the agreed place and may not in any event be considered as discharging the liability of the

Subcontractor under the Order nor as constituting acceptance of the Goods.

Spiecapag may notify reservations to the Subcontractor by email or by fax confirmed by registered letter with acknowledgement of receipt following the delivery, in particular in case of a defect, damage, loss or non-conformity of the Goods discovered at the time of unpacking or during subsequent checks, and reserves the right to refuse the Goods accordingly.

Any shipment of Goods under the Order may only take place after the prior and written agreement of Spiecapag.

Spiecapag reserves the right to request the Subcontractor to suspend the shipment of Goods.

In this case, any storage and insurance costs during the first ninety (90) days shall be borne by the Subcontractor. Beyond this period, these costs shall be borne by Spiecapag, with the risks related to the Goods continuing to be borne by the Subcontractor.

**5.2.3.4** If it has been agreed between the Parties that the transport of the Goods is not incumbent on the Subcontractor, the latter must, before the design and manufacture of the Goods, ask Spiecapag for the rules and conditions of transport to the point of destination agreed in the Order.

The Subcontractor must indicate to Spiecapag the Goods which require exceptional transport or which exceed the loads according to the methods of transport selected.

If necessary, the Subcontractor must modify its Goods to take account of the conditions of transport to the point of destination agreed in the Order.

**5.2.3.5** The customs formalities relating to the export and/or import of Goods will be carried out by the Party who is responsible according to the rules of the Incoterm applicable to the Order.

In the event where the Subcontractor is responsible for the completion of customs formalities under the applicable Incoterm and expressly requests Spiecapag in writing to perform such formalities (excluding payment of all customs taxes and duties), Spiecapag may perform these formalities on the condition that the Subcontractor remains solely liable with regards to the customs administration, in particular in case of the

insufficiency or irregularity of the documents it has communicated to Spiecapag, and must guarantee and compensate Spiecapag for any resulting costs, fines, claim or delay.

**5.2.3.6** Goods identified as “Dangerous” in the Australian Code for Transport of Dangerous Goods by Road and Rail or by the relevant State or Territory Authorities, must be labelled, manifested and accompanied by an Emergency Procedure Guide according to the relevant State regulations covering transport of dangerous goods.

### **5.3 Assembly / Assistance with Assembly**

If services for assembling the Goods by the Subcontractor on the Site or any other place of use of the Goods are provided in the Order, they will be carried out under the full responsibility of the Subcontractor, which must have all the means necessary for their proper performance.

In this case, the Subcontractor shall have custody of the Goods during their assembly and must take all measures, at its cost, to protect them against any damage or destruction of any nature.

If necessary, the Subcontractor must work in conjunction with Spiecapag and any other person intervening on the Site.

If assembly services by the Subcontractor are not provided in the Order, the Subcontractor must nevertheless provide the necessary technical assistance for the assembly of the Goods on the Site or in any other place of use of the Goods.

## **6. PERFORMANCE OF SERVICES**

**6.1** The acceptance of the Order by the Subcontractor implies an informed, informal and irrevocable undertaking by the Subcontractor on the contractual completion of the Services required under the Order.

Without prejudice to the provisions of Article 5.2.2, in case of a delay in completion of more than forty-eight (48) hours as compared to the completion date provided in the Order, Spiecapag reserves the right to apply the provisions of Article 7.

## **7. BREACH BY THE SELLER**

In case of breach by the Subcontractor in the performance of its obligations under the Order, Spiecapag reserves the right, in addition to its right to

withhold amounts on invoices in application of Article 4.3 and in accordance with 5.2.2:

- to request the Subcontractor to render the Goods and/or Services compliant and/or replace them, at its cost and risk, within forty-eight (48) hours of receipt of the formal notice addressed by Spiecapag.
- Otherwise, Spiecapag reserves the right to perform itself or to have performed by a third party the work to render the Goods and/or Services compliant and/or their replacement. The Subcontractor may not rely on the repair or intervention by Spiecapag or by a third party to modify the scope of its liabilities;
- to refuse the Goods and request their collection at the Subcontractor's cost and risk, within a period of eight (8) days from the date of receipt of the notification made by Spiecapag. After this period, Spiecapag may have the Goods collected for return to the Subcontractor by any means at its disposal, at the Subcontractor's cost and risk, including ancillary costs (such as assembly, disassembly, immobilisation of staff);
- in case of a delay in delivery, to grant an extension to the Subcontractor. The late penalties provided in Article 5.2.2 will remain applicable by right from the date of delivery of the Goods and/or completion of the Services initially provided in the Order;
- to request the Subcontractor, at its risk and cost, to deliver the Goods or perform the Services as they stand subject to a discount on the Price of said Goods and/or Services, and/or an extension of the guarantees, at Spiecapag's choice.
- in case of a delay in delivery or completion, perform or have performed by a third party the collection and transport of the Goods to their final destination, or perform the Services to completion, both by the most rapid means, with the collection and transport, or performance, being carried out at the Subcontractor's exclusive cost and risk;
- to apply its rights of suspension and/or termination stipulated in Article 12.

This list is not exhaustive.

Spiecapag may exercise the aforementioned rights without prejudice to any damages to compensate the damage, loss or costs suffered due to the breach of the Subcontractor.

## **8. ACCEPTANCE OF GOODS AND/OR SERVICES – TRANSFER OF OWNERSHIP – TRANSFER OF RISK**

**8.1** The Acceptance of Goods and/or Services will take place in writing after verification by Spiecapag of the total compliance of the Goods and/or Services with all the conditions and requirements of the Order and, where appropriate, after receipt by the Order of the documentation provided in the Order.

The Subcontractor also hands over on this occasion all the information and documents relating to the safety and use of the Goods and/or Services.

The verification of the Goods and/or Services will be carried out in a reasonable period following their delivery to the agreed place.

The delivery and/or payment of Goods and/or Services by Spiecapag does not constitute acceptance. In case of refusal of all or part of the Goods and/or Services, the refused Goods and/or Services will be made available to the Subcontractor, at its cost and risk, at the place determined by Spiecapag.

In case of refusal, and unless Spiecapag decides otherwise in writing, the refused Goods and/or Services, at the choice of Spiecapag, will be rapidly repaired or replaced without the Subcontractor being able to raise any objection relating, in particular, to its production and/or delivery schedule. The Subcontractor will be liable for any associated costs or losses incurred.

**8.2** The transfer of ownership of the Goods and/or Services takes place on acceptance of the Order by the Subcontractor as defined in Article 2 of these General Terms and Conditions.

No retention of title clause may be enforced against Spiecapag by the Subcontractor, which guarantees the same consent from its chain of suppliers.

In this respect, the Subcontractor undertakes to individualise in the name of Spiecapag the Goods deliverable in execution of the Order as and

when they are manufactured or acquired, so that they may never be confused with the Subcontractor's own stocks or with the other deliverable supplies of other buyers.

The transfer of ownership in no way limits the liability of the Subcontractor concerning the Goods and/or Services.

The transfer of ownership of risks of the Goods and/or Services will take place in all cases on the day of acceptance of the Goods by Spiecapag as defined in Article 8.1 of these General Terms and Conditions.

## **9. WARRANTY PERIOD – SCOPE OF WARRANTY – ADDITIONAL GUARANTEES**

### **9.1 Warranty Period**

The Subcontractor guarantees all the Goods and/or Services under the Order, for an initial period of twenty four (24) months, unless a different duration is indicated in the Order.

The warranty shall start to run on the date on which Spiecapag obtains the provisional acceptance of the Work in the case of Goods intended to be incorporated into said Work or, in the case of Services, on the date up which Spiecapag completes its services as defined in its contract with its customer.

In all other cases, the warranty shall start to run from the date of acceptance of the Goods and/or Services by Spiecapag in the conditions of Article 8.1 of these General Terms and Conditions.

If, during the warranty period, it is necessary to modify, repair or replace Goods and/or Services in application of this article, said Goods and/or Services will be subject to a new warranty period of twenty-four (24) months from the date of acceptance by Spiecapag of the modifications, repairs or replacements.

### **9.2 Scope of the warranty**

The Subcontractor's warranty covers, in particular, all malfunctions of the Goods, all

defects of conformity to the specifications, design, manufacturing, machining, lubrication, material defects, all contaminations and abnormal wear of any kind in both the Goods and/or Services.

Until the expiry of the warranty period including any extensions as provided in Article 9.1 of these General Terms and Conditions, the Subcontractor must freely

repair or replace all defective parts of the Goods and/or Services and where requested by Spiecapag visit the Site or any other place in which the Goods and/or Services are located or performed to provide its technical assistance in order to freely perform all corrections, developments and adjustments necessary so that the Goods and/or Services continue to meet the conditions of the Order. All costs, in particular transport and labour costs, resulting from the implementation of the warranty, shall be borne in full by the Subcontractor. All Goods recognised as defective by Spiecapag may be returned to the Subcontractor at its cost.

The Subcontractor shall replace them free of charge and make them available to Spiecapag, with all due diligence, on the site or any other place of use indicated to it by Spiecapag, with all costs of any nature whatsoever incurred by Spiecapag as a result of the defect being borne by the Subcontractor. Any damaged element must be replaced by a new element, unless with Spiecapag's agreement. If necessary, the replacement of parts may give rise to the supply of a complete new set of parts.

The Subcontractor bears all the costs corresponding to the application of the warranty and in particular all the fees and costs of disassembly, repair, replacement, assembly, tests, transport between the repair workshops and the Site or any other place of use of the Goods and/or Services, the costs of returning defective Goods, as well as any costs necessary for the sourcing of new supplies, if necessary.

Corrections must be carried out on days and at times which do not disturb operations, if necessary on non-working days or nights and without any price supplement being claimed from Spiecapag.

### **9.3 Legal Guarantees**

In addition to the contractual warranty described above, Spiecapag shall benefit from all the mandatory or suppletive legal guarantees which apply, as well as the warranties of its sub-subcontractors and/or suppliers.

### **9.4 Guarantee of provision of spare parts, wear parts, consumables**

The Subcontractor guarantees the supply of all spare parts, wear parts and consumable materials necessary

for the proper functioning of the Goods for a minimum period of ten (10) years from the date of acceptance of the Goods by Spiecapag, unless otherwise provided by the Order. If the Subcontractor is unable to provide a wear part or replacement part or a consumable material at any time during the supply period indicated in this article, for whatever reason, the Subcontractor must, at the choice of Spiecapag, either replace the Goods with new supplies of the same nature, of the same quality and with the same characteristics, or pay Spiecapag a sum equivalent to the full replacement cost of the Goods.

#### **9.5 Transfer of guarantees to the customer**

All the guarantees provided in this article are transferable to Spiecapag's customer without the Subcontractor's prior agreement.

### **10. LIABILITIES – INSURANCE**

**10.1** The Subcontractor performs the execution of the Order under its sole and exclusive responsibility. It is liable vis-à-vis Spiecapag, as well as vis-à-vis all third parties, for all damage, of any nature, caused during the execution of the Order, by it, and/or by the persons or property under its authority or in its custody and/or by its suppliers, service providers and sub-subcontractors. The Subcontractor is liable for all damage, regardless of the origin or nature thereof, which may occur to the Goods and/or Services, until the transfer of risk stipulated in Article 8.2 of these General Terms and Conditions. The Subcontractor shall be held liable for all the consequences, direct or indirect, of the losses or damage suffered by Spiecapag due to the non-execution or poor execution of the Order.

**10.2** The Subcontractor must have taken out at its cost, with reputable companies, and maintain throughout the execution of the Order including any extensions and until the end of the contractual warranty period, all insurance policies guaranteeing its civil liability and cover, among others, the financial consequences of physical injury, material and non-material damage caused to third parties, to Spiecapag's customer and to Spiecapag (civil liability during operations and after delivery) as well as its professional civil liability within the framework of the execution of the Order, all insurance policies covering damage caused to its

personnel when the Subcontractor is located in a country where there is no statutory system of social security coverage, an "ALL RISKS AD VALOREM" transport insurance policy when a transport service is incumbent on it along with all insurance policies required by the law and applicable regulations.

The Subcontractor guarantees that it shall obtain the same insurances from its suppliers and/or service providers and/or sub-subcontractors.

The Subcontractor undertakes to have included in the insurance policy(ies) it takes out, a waiver of all recourse against Spiecapag and its insurers. The Subcontractor guarantees that it shall obtain the same waivers from its suppliers and/or service providers and/or sub-subcontractors.

The Subcontractor undertakes to provide at any time to Spiecapag, on its request, insurance certificates less than one month old, certifying that the insurance policies required under this article are in force.

If the Subcontractor does not communicate them, Spiecapag reserves the right to terminate the Order in accordance with Article 12.2.

The Subcontractor shall bear all damage or losses falling under its responsibility which are not covered by the above insurance policies.

If Spiecapag allows the Subcontractor to benefit from the insurance policies it has taken out, the Subcontractor shall bear the deductibles associated with any damage which may be compensated by said policies and for which it is responsible.

### **11. FORCE MAJEURE**

Considered as force majeure events are events which are unforeseeable, irresistible and outside of the control of the Parties, the occurrence of which renders the execution of the Order impossible.

However, the following situations will not be considered as force majeure events: the impossibility to obtain raw materials or the increase in the price of raw materials and labour; technical manufacturing incidents; delays by the Subcontractor's sub-subcontractors and/or suppliers, fire or explosion immobilising the Subcontractor's premises, those of its sub-subcontractors and/or suppliers, strike, natural

disasters that have not been the subject of a ministerial decree. This list is not exhaustive.

In case of the occurrence of a force majeure event, the Subcontractor must inform Spiecapag by registered letter with acknowledgement of receipt within a period of forty-eight (48) hours, justifying the facts and the impact on the execution of the Order.

The Subcontractor must take all necessary measures to minimise the effects of the force majeure event on the execution of the Order and to protect the Goods and/or Services. If Spiecapag acknowledges the existence of a force majeure event, it shall notify the Subcontractor.

Spiecapag may exempt the Subcontractor from its liability for breach or delay in the execution of the Order if it is established that the breach or delay is due exclusively to a force majeure event and that despite its best efforts, the Subcontractor was unable to avoid the effects on the execution of the Order.

If a force majeure event persists, Spiecapag may source from another seller the Goods and/or the provision of Services which are the subject matter of this Order, without any compensation being paid to the Subcontractor, it being understood that the Order may be modified accordingly.

The Subcontractor shall then be paid for the part of the Order already completed.

The absence of notification to Spiecapag of the occurrence of a force majeure event within the given time limit constitutes acceptance by the Subcontractor of all the consequences, in particular financial, resulting from the force majeure event.

The price of the Order may not be modified following a force majeure event but an additional delivery period may be granted by Spiecapag to the Subcontractor. No event, even force majeure, which occurs after the contractual periods and which aggravate an already unjustified delay, will be taken into consideration.

## **12. SUSPENSION – TERMINATION BY SPIECAPAG**

### **12.1 Suspension**

At any time, Spiecapag may request the Subcontractor to suspend the execution of all or part of the Order and the Subcontractor must comply, until Spiecapag notifies it in writing that the execution of the Order can resume.

Spiecapag shall pay the Subcontractor for the executed part of the Order.

The period provided in the Order will be extended by the duration of the suspension, except when it results from a breach of its obligations by the Subcontractor.

### **12.2 Immediate termination for breach by the Subcontractor**

In case of the breach by the Subcontractor of any one of its obligations under the Order, Spiecapag shall be entitled to terminate the Order, wholly or partially and by right, without any legal formality and without notice on simple notification to the Subcontractor sent by registered letter with acknowledgement of receipt, without any compensation being due to the Subcontractor.

In this case, all payments already made and which concern the non-delivered Goods and/or Services will be immediately reimbursed to Spiecapag by the Subcontractor.

### **12.3 Termination for convenience by Spiecapag**

Spiecapag may at any time, before or after the start of execution of the Order, terminate the Order wholly or partially, by right and without having to provide reasons, by written notice of ten (10) DAYS sent by registered letter with acknowledgement of receipt to the Subcontractor. In this case, Spiecapag shall pay the Subcontractor (after deduction of the sums already paid) the price of the part of the Goods and/or Services actually delivered on the date of the termination, subject to their compliance with the Order, along with the costs borne by the Subcontractor directly and reasonably related to the termination, on the presentation of supporting documents.

On receipt of the notification, the Subcontractor must immediately cease the execution of the Order and take all measures to minimise the aforementioned amounts.

### **12.4 Termination in case of Force Majeure**

In case of a force majeure event which lasts for a period of eight (8) Days (consecutive or in total during the period of execution of the Order), or in case of termination of the main contract between Spiecapag and its customer, this will be assimilated to a force majeure event, and Spiecapag may terminate this

Order by right, wholly or partially, by registered letter with acknowledgement of receipt.

Spiecapag shall reimburse the Subcontractor on presentation of documents evidencing the direct expenses incurred, minus the amounts already paid, without any other compensation for the Subcontractor.

### **12.5 Termination in case of modification of the legal situation of the Subcontractor**

The Subcontractor undertakes to declare to Spiecapag any change which may occur in the composition of its capital, such as a change in majority, merger or absorption, as well as any judgement for the opening of a collective procedure which the company may be subject to, such as judicial reorganisation or liquidation.

Unless prohibited by a law or public order regulation, Spiecapag shall have the option to terminate the Order without notice after receipt of said declaration by the Subcontractor, or as soon as Spiecapag is informed of the change in the legal situation of the Subcontractor or the initiation of a collective procedure against the Subcontractor.

### **13. CONFIDENTIALITY**

The Subcontractor shall refrain from communicating to any persons, without the prior and written agreement of Spiecapag, all or part of the documents, data and information relating to the activity of Spiecapag or to the Order or to its execution, and to which the Subcontractor has had access. The Subcontractor undertakes to ensure compliance with this obligation of confidentiality by its personnel, its suppliers, its service providers and by its subcontractors.

This obligation of confidentiality will remain in force for a period of five (5) years from the completion or early termination of the Order.

### **14. COMMUNICATION AND PUBLICITY**

Any film, photograph, article, notice or advertising document relating to or linked to the Order must be submitted for the prior written approval of Spiecapag before any disclosure and/or publication.

The SELLER is not entitled to use or refer to the company names or trademarks of the group of Spiecapag or of its customer, for any purpose whatsoever, without Spiecapag's prior, express and written authorization.

### **15. PERSONAL PROPERTY SECURITY ACT (PPSA)**

(a) In this clause 15, 'Security Interest', 'Attach', 'Process', 'Perfected', 'Grantor', 'Secured Party' have the meanings given to them in the PPSA.

(b) The Parties acknowledge and agree that Spiecapag may have a Security Interest in the Goods.

(c) The Subcontractor will do all things reasonably requested by Spiecapag to ensure that Spiecapag's Security Interest is Attached, Perfected and enforceable against a third party.

(d) The Parties agree to contract out of the following provisions of the PPSA:

- (i) section 95, to the extent that it requires the Secured Party to give a notice to the Grantor;
- (ii) section 96;
- (iii) section 121(4);
- (iv) section 125;
- (v) section 130, to the extent that it requires the Secured Party to give a notice to the Grantor;
- (vi) section 132(3)(d);
- (vii) section 132(4);
- (viii) section 135;
- (ix) section 142; and
- (x) section 143.

(e) Both Parties must take all lawful steps to avoid and minimize any disclosure of these General Terms and Conditions for the Supply of Goods & Provision of Services under the PPSA. Any PPSA registration must not claim or assert a general security interest or other security interest over

the assets of the other Party other than the particular Goods paid or partly paid for or supplied. Neither party may use the expression 'ALL PAAP EXCEPT' or similar registration descriptions for any security interest claimed in respect of the Goods.

### **16. ASSIGNMENT OF THE ORDER**

**16.1** Spiecapag reserves the right to assign all or part of the Order to a third party, including the customer, without the need for the prior agreement of the Subcontractor.

**16.2** The Subcontractor shall refrain from assigning the Order to third parties, even partially, without the prior and written agreement of Spiecapag.

In all cases of assignment of the Order to third parties, all Spiecapag's rights under this Order, including the right to claim damages, will be enforceable towards them.

In any event, Spiecapag's approval of the assignment contemplated shall not release the Subcontractor from its obligations under the Order.

The Subcontractor shall remain, unless otherwise expressly provided, jointly and severally liable vis-à-vis Spiecapag for the proper and full execution of the Order. Any assignment of the Order by the Subcontractor in breach of this article will be null and void.

#### **17. CORRESPONDENCE**

Any notification made within the framework of the Order must be sent in writing (hand delivered, email, fax or registered letter with

acknowledgement of receipt), with the date of notification being the date of its receipt by the recipient Party.

#### **18. APPLICABLE LAW**

With respect in particular to its validity, its interpretation and its execution, the Order is subject only to laws of the state of New South Wales, to the exclusion of the rules of conflict of laws which could lead to the application of a law other than the laws of the state of New South Wales. The application of the United National convention on contracts for the international sale of goods (or Vienna Convention) of April 11, 1980 is excluded.

#### **19. DISPUTE RESOLUTION**

Any dispute which may arise in relation to the interpretation and/or the termination of the Order

must, firstly and to the extent possible, be settled by means of amicable negotiations between the Parties.

In the absence of an amicable agreement between the Parties within a period of thirty (30) Days from the date of the first notification of the

dispute, at the written request of a Party, it will be brought before the Court of New South Wales, to which the Parties attribute exclusive

jurisdiction, notwithstanding when there are several defendants or the introduction of third parties, including for emergency or conservatory measures, in summary proceedings or on application.

Spiecapag reserves the right, however, to bring the dispute before the court in the place of the Subcontractor's registered office, and in this case possibly waive the application of its own legislation.

#### **20. SECURITY OF PAYMENTS LEGISLATION**

Any payment claims served under security of payment legislation, applicable to the State or Territory in which the Goods are to be delivered, must be hand delivered or sent by registered post to Spiecapag at Level 12, 145 Eagle Street, Brisbane QLD 4000.

#### **21. MISCELLANEOUS**

The headings contained in these General Terms and Conditions are entirely indicative and their wording may not have any effect on the interpretation of the provisions to which they relate.

The fact that Spiecapag does not require the strict application of any one of the clauses of these GTCPG may not in any event be interpreted as a waiver to require its application at a later date.