

**General Conditions of Purchase of  
Services  
(GCPS)**

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## **1. Definitions**

AMENDMENTS shall mean any written change, modification, extension and/or deduction to an ORDER issued by PW.

CONFIDENTIAL INFORMATION shall mean, without the following list being exhaustive, all written or verbal information, data, technology, experimentation, know-how, trade secrets, formulas, processes, studies, reports, results, patent applications, designs, sketches, photographs, plans, drawings, samples, business and/or financial reports, instructions and other information elements acquired and/or developed by PW GROUP, directly or indirectly disclosed by PW GROUP to the SUPPLIER.

CUSTOMER shall mean PW's customer which, if applicable, shall be defined in the ORDER.

DAYS shall mean calendar days.

DEADLINES shall mean any delivery dates fixed in the ORDER.

DEVELOPMENTS shall mean any and all inventions, data, improvements, works, know-how or any other information or development whether patented or not, patentable or not, and/or all elements of the DOCUMENTATION conceived, modified, developed or discovered by the SUPPLIER in the course of the preparation (including tender stage) and/or performance of the ORDER and notably those relating to the SERVICES.

DOCUMENTATION shall mean all documentation and information, technical and commercial, that the SUPPLIER has to provide to PW under the ORDER and the LEGAL REQUIREMENTS, LAWS and relating to the SERVICES, which may include among other things, quality plan, planning and progress report, drawings, manufacturing drawings for spare parts, technical data sheets, calculations, prevention health & safety plan, product safety certificates and/or sheets, certificates of conformity, declaration of manufacturer, materials certificates, inspection and tests reports, operating, maintenance, training manuals, spare parts list.

FINAL ACCEPTANCE shall mean the final acceptance of the SERVICES and be signified by the issuance of a certificate by PW at the date of expiration of the warranty period confirming that all obligations of the SUPPLIER have been fully complied with under the terms and conditions of the ORDER.

GOODS shall mean any materials, items, products, patterns, models, moulds, accessories, components, installations, software, licences, rights and/or related services (such as design, engineering etc.) and DOCUMENTATION provided by the SUPPLIER.

INCOTERMS shall mean the latest applicable edition of the Incoterms issued by the International Chamber of Commerce.

INTELLECTUAL PROPERTY RIGHTS shall mean any and all patents, trademarks, utility models, design rights, author's rights or copyright (including any rights in computer software), database rights and any rights or forms of protection of a similar nature or having equivalent or similar effect.

INTRASTAT shall mean the Regulation 637/2004 of the European Parliament and of the Council 31st March 2004 on the statistics relating to the trading of goods between European Union member states.

LAWS shall mean all laws, decrees, rules and regulations applicable to an ORDER at the date of signature of the ORDER by PW or which application was reasonably foreseeable for the time of performance of the ORDER until the date of PROVISIONAL ACCEPTANCE.

LEGAL REQUIREMENTS shall mean all laws, decrees, rules, regulations and instructions applicable on SITE.

ORDER shall mean any contract and/or order including the AMENDMENTS thereof for the purchase of SERVICES and eventually GOODS including its appendices, attached and referenced documents, to be entered into between PW and the SUPPLIER.

PROVISIONAL ACCEPTANCE shall mean acceptance of the SERVICES by PW after SUPPLIER has proven by successful acceptance test(s) evidencing that all SERVICES fully comply with all of its obligations under the ORDER in terms of characteristics, quality and performance.

PW GROUP shall mean Paul Wurth S.A. and any legal entity in which Paul Wurth S.A. holds, directly or indirectly, at least 50% of the voting rights.

PW means a legal entity of the PW GROUP issuing an ORDER.

SERVICES shall mean SUPPLIER's provisions, obligations and duties to be performed by the SUPPLIER under the ORDER including all DEVELOPMENTS and GOODS related thereto. In case of the SERVICES or parts thereof shall be performed on SITE, the SERVICES including any goods and/or means and among other tools, equipment necessary and/or appropriate to perform and/or complete the SERVICES on SITE under the ORDER.

SITE shall mean the place or plant where the SERVICES shall be performed. The location of the SITE shall be defined in the ORDER.

SPCN shall mean PW's form sheet FOR089 / Rev 1 (SPCN – Supplier Project Change Notification).

SUBCONTRACTORS shall mean any third party involved by the SUPPLIER in order to provide or perform (completely or partly) the SERVICES under the ORDER.

SUPPLIER shall mean any company which enters or has entered into an ORDER with PW.

WORKSHOP TEST shall mean evaluation and testing of the SERVICES at SUPPLIER's and/or SUBCONTRACTOR's workshop and/or premises prior to place at PW's disposal. Such WORKSHOP TEST(S) generally include(s) testing and inspection of the quality, dimensions, materials, coating and documentation, completeness of the SERVICES and any other testing and/or inspection provided for by the ORDER.

## **2. Scope of application**

2.1 These General Conditions of Purchase of SERVICES shall apply to all inquiries issued by PW and quotations submitted by SUPPLIER and to all ORDERS and are in each case integral part thereof.

2.2 The SUPPLIER's quotations are free of charge for PW. PW neither bears costs nor pays any reimbursement for any visits including SITE visits, feasibility studies, investigations, planning or other preliminary work in connection with quotations, unless otherwise provided by separate agreement.

2.3 PW expects to receive the SUPPLIER's unconditional order confirmation, fourteen (14) DAYS after the date of PW's written ORDER. Failing to do so, PW is entitled to withdraw from the ORDER without payment of any compensation to the SUPPLIER.

2.4 No terms and conditions contained in SUPPLIER's order confirmation contradicting the terms and conditions of the ORDER, these General Conditions of Purchase and/or in prior quotations issued by the SUPPLIER shall be binding on PW, even if they have not been expressly rejected by PW, regardless of how or where asserted.

2.5 The acceptance of any SERVICES, or payment for such, does not imply any agreement of PW to the SUPPLIER's terms and conditions.

2.6 The particular provisions stipulated in the ORDER entered into by and between PW and the SUPPLIER and which could contradict these General Conditions of Purchase shall prevail over the corresponding provisions of these General Conditions of Purchase.

2.7 No ORDER or modification thereof, addition or complement thereto and any documents incorporated therein by reference shall be binding for PW unless issued in writing, respectively confirmed in writing by PW.

### **3. SUPPLIER's obligation of result**

3.1 The SUPPLIER shall possess the degree of skill, care, diligence and necessary manpower in performing the SERVICES which may be expected from a professional supplier, experienced in performing of SERVICES of a similar nature, size, scope, complexity and value like those of the ORDER.

3.2 The SUPPLIER undertakes to scrupulously adhere to the terms and specifications of the ORDER and/or AMENDMENTS thereto.

3.3 The SUPPLIER has an obligation of result in relation with the SERVICES provided under the ORDER. Notwithstanding with SUPPLIER's obligation of result as stated here before, the SERVICES to be provided by the SUPPLIER shall be fit and suitable for their intended purpose and fully compliant with the ORDER.

3.4 During the performance of the ORDER and with respect to the duly, properly and timely performance of the SERVICES, the SUPPLIER expressly undertakes to:

- (i) fully comply with the ORDER and;
- (ii) fully comply with the LAWS and with the LEGAL REQUIREMENTS provided PW has notified the SUPPLIER of the SITE;
- (iii) fully comply with all CUSTOMER's SITE regulations
- (iv) provide the SERVICES professionally and in compliance with the state of the art known at the date of signature of the ORDER or as specified in the ORDER; SUPPLIER also has an implicit obligation to disclose to PW any evolution in the state of the art related to the SERVICES occurring between the date of signature date of the ORDER and the PROVISIONAL ACCEPTANCE of the SERVICES, so that PW may, if it so chooses, implement that improvement by an appropriate AMENDMENT.

### **4. Order Amendments**

Any modification of the ORDER has to be expressly documented in an AMENDMENT to the ORDER. Such AMENDMENT shall be subject to the same conditions as the ORDER and shall form integral part of said ORDER.

#### **4.1 Modifications requested by PW**

4.1.1. At any time prior to PROVISIONAL ACCEPTANCE, PW is entitled to modify, change, extend and/or reduce the scope and/or any provisions of the ORDER.

4.1.2 Should the SERVICES be deficient after delivery for reasons not attributable to the SUPPLIER, the SUPPLIER shall, upon receipt of PW AMENDMENT, timely provide for replacement at reasonable conditions and costs to be agreed between PW and the SUPPLIER.

4.1.3 Upon receipt of the request by PW for modification, change, extension or reduction, the SUPPLIER shall examine without undue delay such request. The SUPPLIER may not unreasonably refuse such modification, change, extension and/or reduction of the scope of the ORDER without sufficient examination and justification.

4.1.4 In case such modification, change, extension and/or reduction would result in a change in SUPPLIER's cost or the DEADLINES, the SUPPLIER shall accordingly advise PW within five (5) DAYS in a written form by using PW's form sheet FOR089 (SPCN – Supplier Project Change Notification) the last version of which can be downloaded from the PW Website [www.paulwurth.com](http://www.paulwurth.com). Upon receipt of SUPPLIER's SPCN, the parties shall negotiate an equitable adjustment to the ORDER price and/or DEADLINES, which adjustment(s) shall be promptly incorporated into the ORDER in writing by PW.

#### **4.2 Modifications requested by SUPPLIER**

4.2.1 If after receipt of the ORDER by the SUPPLIER or during implementation of the ORDER, circumstances arise for which PW may be solely responsible and which may impact upon the performance of the ORDER by the SUPPLIER and which are not part of the ORDER and which may result in additional costs or impact on the DEADLINES, the SUPPLIER shall inform PW immediately by using PW's form sheet FOR089 (SPCN – Supplier Project Change Notification) the last version of which can be downloaded from the PW website [www.paulwurth.com](http://www.paulwurth.com).

#### **4.3. Consequences in relation with the submission of the SPCN**

4.3.1 PW and the SUPPLIER shall analyze and discuss the requests submitted by the SUPPLIER by the SPCN within a reasonable period of time. Upon agreement by both parties, PW shall either remedy such circumstances or issue an AMENDMENT of the ORDER, equitably adjusting the ORDER price and/or the DEADLINES.

4.3.2 Any request by the SUPPLIER for additional costs which shall not be filed timely or in accordance with the procedure as mentioned here above (SPCN), shall not be recognized by PW and shall not be subject to compensation or adjustment of the DEADLINES.

### **5. SUPPLIER's obligation of information**

5.1 The SUPPLIER recognizes being a specialist regarding the SERVICES purchased from it by PW under the ORDER. As a specialist, the SUPPLIER has a duty of candor and advice, information and proposal at every stage of the negotiation and performance of the ORDER. This duty of information and advice shall at least take into account the latest state of the art technology and improvement known before and during the implementation of the ORDER and/or reasonably foreseeable at that time. Moreover, the SUPPLIER has the obligation to inform PW after completion of the SERVICES of all and any faults, deficiencies and defects discovered in its SERVICES and/or all and any damages potentially caused by such fault, deficiency, defect, and expressly any defect(s) that would result in undue danger to personnel.

5.2 The SUPPLIER further acknowledge having examined thoroughly the adequacy of all documents forming part of the ORDER to the needs expressed by PW to the SUPPLIER at every stage of the negotiation and performance of the ORDER.

5.3 The SUPPLIER acknowledges being fully aware of the SITE conditions reasonably apparent and all risk and constraints related thereto as well as the industrial, social and human environment in which the SERVICES will be performed and SUPPLIER undertakes to keep itself informed about these aspects during the whole performance of the ORDER.

5.4 The SUPPLIER shall inform PW of any circumstance and/or requirement related to the SERVICES which may impair the performance of the ORDER.

5.5 SUPPLIER shall be deemed to have checked the correctness, adequacy and completeness of all documents submitted by PW and/or referenced in the ORDER and necessary for the performance of all of his obligations under the ORDER. The SUPPLIER shall inform PW immediately of every noted inaccuracy, mistake, error or omission relating to the content of the documentation delivered by PW and shall propose suitable corrections in relation therewith. In case the SUPPLIER omits to inform PW about any noted inaccuracy, mistake, error or omission relating to the content of the

documentation delivered by PW, the SUPPLIER shall be solely responsible for any consequences related thereto.

5.5 In case the SUPPLIER is not in possession of all documents referenced in the ORDER, the SUPPLIER shall request the missing documents from PW without undue delay. PW shall provide the documents in its possession in a timely manner to the SUPPLIER. In case the SUPPLIER fails to request such documents, respectively fails to request such documents in time from PW, the SUPPLIER shall be solely responsible for any consequences related thereto.

## **6. Prices**

6.1 Unless otherwise agreed, all prices are fixed and not revisable.

6.2 The price(s) include(s) the performance of the SERVICES as well as

- (I) all goods, means, services, costs for SUPPLIER's employees, SUBCONTRACTOR's, and among others the tools, devices, accessories and equipment necessary or appropriate for the implementation of the ORDER,
- (II) all costs in relation with providing the SERVICES
- (III) the SUPPLIER's insurance costs,
- (IV) the provision of all DOCUMENTATION
- (V) all training costs if so required
- (VI) the costs of licenses and/or transfer of any rights
- (VII) all costs related to the compliance with LEGAL REQUIREMENTS, CUSTOMER's and/or PW's safety instructions.
- (VIII) all other matters linked to the performance of the SERVICES in compliance with the ORDER.

6.2 We expressly point out that you/your personnel are exclusively responsible for the fulfilment and handling of tax and other fiscal obligations that result from the deployment of your personnel in the country of assignment.

6.3 We understand that before commencing your activities in the country of assignment you have procured the relevant information on the ensuing tax obligations for your company and your employees and that you shall duly fulfil said obligations.

6.4 All taxes, fees and fiscal charges arising in the country of assignment and which you or your personnel are bound to pay, especially taxes on earnings, sales, wages, and social insurance contributions, shall exclusively be borne by you and are not included in the contract price/settlement rate.

6.5 In case PW has to pay taxes, duties, fees, customs duties, withholding taxes imposed by the competent authority in connection with and in the execution of the respective Purchase Order, those amounts will be deducted of the Supplier Purchase Order price.

## **7. Invoicing**

7.1. All invoices have to be sent by email to [invoice.paulwurth.pwlu@sms-group.com](mailto:invoice.paulwurth.pwlu@sms-group.com) on PDF format, one (1) invoice per email and shall include the following information:

- (I) our Purchase Order Number (reference consisting of 10 figures)
- (II) position(s) corresponding to our Purchase order
- (III) your business name and address details
- (IV) name and address of our company
- (V) your VAT registration number
- (VI) our VAT registration number
- (VII) your company number
- (VIII) date of your invoice

- (IX) a unique invoice number that will relate to this invoice only
- (X) description and quantities of the SERVICES that have been provided
- (XI) date(s) of delivery of SERVICES
- (XII) total amount of VAT charged or stipulation indicating that reverse charge is applicable
- (XIII) price reductions, if applicable

7.2. Invoices relating to the performance of SERVICES shall be accompanied by evidencing documents and, if so required, duly approved by PW representatives.

7.3. Each instalment shall require for its payment a separate invoice.

7.4. PW shall only accept invoices issued in the currency set forth in the ORDER.

7.5. The absence of any express rejection of an invoice shall not constitute acceptance of the invoice(s) and/or the SERVICES.

7.6. In case of invoices related to a PROVISIONAL ACCEPTANCE of the SERVICES, the SUPPLIER by presenting the invoices related to the PROVISIONAL ACCEPTANCE declares and acknowledges that any and all claims, whether potential or not, in connection with the ORDER have been put forward. Accordingly, the SUPPLIER shall not be entitled to further raise any claims having their cause prior to the date of the PROVISIONAL ACCEPTANCE and/or that the SUPPLIER was aware of that date.

7.7. In case the ORDER does not provide for a PROVISIONAL ACCEPTANCE, the SUPPLIER by presenting the invoice related to the completion of the SERVICES, declares and acknowledges that any and all claims, whether potential or not, in connection with the ORDER have been put forward. Accordingly, the SUPPLIER shall not be entitled to further raise any claims having their cause prior to the date of final completion of the SERVICES and/or that the SUPPLIER was aware of that date.

7.8. Should the above-mentioned provisions not be respected, invoices will be returned promptly to the SUPPLIER, without entitling it to claim interest for deferred payment.

## **8. Payment Terms and Conditions**

8.1 Payment will only be made against submission of a duly issued invoice presented by the SUPPLIER.

8.2 Unless otherwise agreed, payment will be made within 60 days of the end of the month.

8.3 Unless otherwise agreed, PW shall only accept bank transfer payments.

8.4 Where it has been agreed to pay by instalments, the SUPPLIER shall invoice each instalment separately.

8.5 No payment shall be due by PW before the respective event mentioned in the ORDER has been fulfilled. No final payment shall be due by PW before PW's quantitative, qualitative and performance related acceptance of the SERVICES.

8.6 Any delay affecting the achievement of an event exclusively attributable to the SUPPLIER shall automatically result in the postponement of the payment of the instalment related to the said event.

8.7 In case of non-compliance of the SERVICES with the provisions of the ORDER, no payment shall be due by PW as long as the SUPPLIER has not fully remedied to the said non-compliance.

8.8 The payment of the last and final invoice by PW shall not release the SUPPLIER from any of its guarantees, liabilities and/or obligations under the ORDER.



8.9 The payment of any invoice related to the ORDER shall not constitute acceptance of the SERVICES ordered or delivered, furthermore any payment made by PW shall not imply that PW waives any of its rights under the terms of the ORDER and under applicable LAWS.

## **9. Bank Guarantees / Security Bonds**

9.1 If specified in the ORDER that the SUPPLIER shall present securities for the performance of one or several of its obligations, such securities shall, unless otherwise specifically agreed, exclusively be provided in form of bank guarantees/security bonds.

9.2 Such bank guarantees/security bonds shall be issued strictly in accordance with the PW form sheet "Letter of Guarantee FOR CP006" the last version of which can be downloaded under [www.paulwurth.com](http://www.paulwurth.com). PW shall be entitled to reject any bank guarantee/security bonds submitted by the SUPPLIER which does not comply with PW's form sheet. Such rejection will entitle PW to postpone the payment of the related invoice.

9.3 Unless otherwise agreed, the bank guarantee/security bond shall be issued by a first rated bank, accepted by PW and domiciled or having at least a subsidiary or a branch in the country in which PW has its legal address.

9.4 PW must be able to enforce the unconditional bank guarantee directly under waiver of any restrictions whatsoever upon PW's first written request.

9.5 All costs related to the bank guarantees shall be borne by the SUPPLIER

9.6 If a bank guarantee/security bond is required to cover a payment, such bank guarantee/security bond is to be forwarded together with the corresponding invoice.

## **10. Off-Set, Assignment**

10.1 The SUPPLIER expressly accepts that PW GROUP has the right to off-set any claims against the SUPPLIER after formal notice.

10.2 Without prior written consent of the other party, neither PW nor the SUPPLIER is entitled to assign either in whole or in part any of its rights or its obligations under the ORDER.

## **11. Safety, health, environment, social responsibility**

### **11.1 General**

11.1.1 PW is strongly committed to safety, health, social responsibility and environment preservation as one as its core values.

11.1.2 Moreover the principles stated in the United Nations Global Compact Treaty being of paramount importance for PW, the SUPPLIER is invited to take all necessary steps in order to support the United Nations Global Compact Treaty (<http://www.unglobalcompact.org>) and to act in accordance with the principles of the Declaration on Social Justice for a Fair Globalization issued by the International Labour Organization (ILO), 10<sup>th</sup> June 2008.

11.1.3 The SUPPLIER shall provide PW with SERVICES which wholly meet the safety, health, social and environmental rules according to the LEGAL REQUIREMENTS, the CUSTOMER regulations, PW regulations, LAWS. Furthermore, during the implementation of the ORDER on SITE, the SUPPLIER shall comply and have its SUBCONTRACTOR(s) fully comply with all LEGAL REQUIREMENTS, the CUSTOMER regulations, PW regulations and LAWS.

11.1.4 The SUPPLIER shall inform PW of any circumstance and/or requirement concerning safety, health and environment related to the SERVICES which may impair the performance of the ORDER. The SUPPLIER shall seek information from PW with regard to all the CUSTOMER regulations, PW

regulations and conditions related to safety, health, environment, social dialogue. Upon SUPPLIER's request all documents in connection thereto shall be communicated by PW to the SUPPLIER without undue delay.

11.1.5 The SUPPLIER is obliged to inform PW about all specific health, safety, environmental preservation, hygiene and characteristics of the SERVICES provided by him. The SUPPLIER shall inform PW of all particularities that, for reasons of health, safety, environmental preservation, hygiene require special precautions or safety measures. The SUPPLIER shall remain fully responsible to take such special precautions and safety measures.

11.1.6 The SUPPLIER shall be fully liable for any action, omission or negligence committed by him with respect to safety, health, social responsibility and the environment preservation.

## **11.2. Safety**

### **11.2.1 Safety at work**

11.2.1.1 Safety at work, in particular safety of PW's personnel, PW CUSTOMER's personnel, SUPPLIER's, its SUBCONTRACTOR's and/or any third party, is a mandatory priority for PW, and as a fundamental value no priority may override safety.

11.2.1.2 The SUPPLIER shall, in particular comply with and adhere to the instructions contained in the "General Safety Instructions for PAUL WURTH sites" which have been brought to his attention and the last version of which can be downloaded from PW website [www.paulwurth.com](http://www.paulwurth.com). These instructions shall apply in absence or as a complement to the health and safety instructions of the CUSTOMER. In case of conflict between the health and safety instructions of the CUSTOMER and PW's, the strictest instructions or parts thereof shall apply.

11.2.1.3. The SUPPLIER shall provide its staff with all necessary personnel protection equipment as well as any safety equipment necessary with respect to the LEGAL REQUIREMENTS, CUSTOMER's and PW instructions to perform the SERVICES under the ORDER. The SUPPLIER shall be responsible that its staff permanently uses such protective and safety equipment correctly.

11.2.1.4 The SUPPLIER shall only to SUBCONTRACTOR's which will fully comply with LEGAL REQUIREMENTS, the CUSTOMER and PW instructions as well as the LAWS.

11.2.1.5 The SUPPLIER shall before and throughout the performance of the ORDER inform its staff and SUBCONTRACTOR's staff about all applicable LEGAL REQUIREMENTS, the CUSTOMER and PW instructions, LAWS as well as all risks and constraints relating to the SERVICES.

11.2.1.6 The SUPPLIER further undertakes to (i) duly and immediately inform PW representatives on SITE of any accident, personal injury, accidental contamination and/or pollution occurred on or nearby the SITE (ii) duly and immediately inform PW of the presence of any hazardous product noted or discovered during the implementation of the ORDER, especially in relation to the SERVICES, and (iii) take all appropriate measures and actions to mitigate the consequences arising or which may arise there from.

### **11.2.2. Prevention, health and safety plan**

11.2.2.1. The SERVICES may only start after (i) presentation of a prevention, health and safety plan issued by the SUPPLIER in accordance with the LEGAL REQUIREMENTS and/or CUSTOMER and/or PW instructions and (ii) SUPPLIER's participation at safety kick-off meeting on SITE.

11.2.2.2 After presentation of the prevention, health and safety plan by the SUPPLIER to PW, PW shall verify and expressively approve this plan. If the plan is not in accordance with LEGAL REQUIREMENTS and/or CUSTOMER instructions and/or PW instructions, PW shall being entitled to request corrections and/or modifications and the SUPPLIER shall be obliged to implement such

requests for corrections and/or modifications in the prevention, health and safety plan without undue delay to ensure compliance.

11.2.2.3 PW shall grant the SUPPLIER access to the SITE start its SERVICES under the ORDER upon its request provided that

(i) the SUPPLIER has previously obtained from PW and/or its CUSTOMER all required authorizations related to its SERVICES (in particular in relation to safety matters) according to the LEGAL REQUIREMENTS and/or CUSTOMER and/or PW instructions and that

(ii) the SUPPLIER's personnel (including its SUBCONTRACTOR's personnel) intervening on SITE has priorly attended the safety kick-off meeting to be organized on SITE by PW and/or its CUSTOMER.

11.2.2.4 The SUPPLIER shall be responsible for the safety, the supervision and coordination of safety in relation with its SERVICES and that of its SUBCONTRACTOR's.

### **11.2.3 Safety indicators**

11.2.3.1 Upon PW's request, the SUPPLIER shall release to PW at a defined frequency a report stating accident gravity and accident frequency indicators or any other security indicators.

11.2.3.2 The SUPPLIER shall fully comply with the indicators agreed between PW and the SUPPLIER throughout the duration of the ORDER.

11.2.3.3 In case the SUPPLIER does not achieve the agreed indicators, the SUPPLIER shall immediately submit to PW an action plan explaining in detail the reasons for non-achievement of such indicators. The action plan shall provide corrective measures to remedy the default. The SUPPLIER shall implement aforesaid action plan after PW's approval in order to achieve the agreed indicators. All the costs arising from the deployment and implementation of such action plan shall be borne by the SUPPLIER.

11.2.3.4 If after the implementation of the action plan the indicators remain under the agreed level and after giving written notice to the SUPPLIER, the SUPPLIER shall not remedy the default within a reasonable period of time and achieve the agreed indicator level, PW shall be entitled to terminate the ORDER in accordance with article 26.

### **11.3. Staff**

11.3.1. The SUPPLIER shall employ skilled staff and shall provide any means necessary or appropriate to perform the SERVICES in accordance with the ORDER.

11.3.2 The SUPPLIER shall exclusively employ qualified staff for the performance of the SERVICES. The personnel's qualification depends among others upon their educational background, their past experience, the ability to cope with local conditions as well as their physical and mental condition.

11.3.3 The performance of the SERVICES by the SUPPLIER shall take place under the hierarchic and administrative authority and under the sole responsibility of the SUPPLIER.

11.3.4 The SUPPLIER shall ensure to have available, at any time during the performance of the SERVICES, a sufficient number of personnel and adequate means necessary to carry out the SERVICES to match the programme as well as the DEADLINES.

11.3.5 PW reserves the right to refuse SUPPLIER's staff and/or means which the SUPPLIER uses or intends to use for the performance of the SERVICES for the following reasons (not exhaustive):

- Refusal of staff: serious professional deficiencies, insufficient qualification, breach of contractual obligations, misbehaviour, serious professional misconduct, violation of the safety, order, hygiene, social and environmental instructions and regulations,

- Refusal of means which are not appropriate for carrying out the SERVICES a) within the DEADLINES, b) with technical deficiencies and/ or defaults, c) improper for safety or d) which may have a detrimental effect on the environment.

11.3.6 The SUPPLIER shall replace such refused staff and/or means without undue delay.

11.3.7 Any costs and/or expenses and respective consequential effects (such as delays, work in extra-time) caused to the SUPPLIER and/or PW by the refusal and/or replacement of the SUPPLIER's staff and/or means shall be solely borne by the SUPPLIER.

11.3.8 PW may request immediate replacement and not allow entrance to SITE to anyone of SUPPLIER's and/or its SUBCONTRACTOR's staff who act(s) in a careless or disrespectful manner and/or in breach of any applicable LEGAL REQUIREMENTS, the CUSTOMER regulations, PW regulations as well as LAWS.

## 11.4 Environment

11.4.1. The SUPPLIER shall take all protective measures to avoid any nuisance to environment in accordance with the LEGAL REQUIREMENTS, the CUSTOMER regulations, PW regulations as well as the LAWS.

11.4.2. The SUPPLIER shall not bring to the SITE any hazardous and/or radioactive products without the prior written approval of the PW. Failing to do so, the costs incurred by the SUPPLIER, PW or any third party for the appropriate evacuation and handling of such products shall be entirely borne by the SUPPLIER.

11.4.3. If the SUPPLIER has been authorized to bring hazardous and/or radioactive products on SITE, the SUPPLIER shall (i) handle and store such products in due compliance with applicable LEGAL REQUIREMENTS, the CUSTOMER regulations, PW regulations, LAWS as well as (ii) take any and all preventive measures to avoid any contamination or pollution on SITE and/or to any person intervening on SITE.

11.4.4. All wastes, including hazardous and/or radioactive ones, produced or brought by the SUPPLIER to the SITE, shall be disposed, processed and/or removed regularly in due compliance with applicable LEGAL REQUIREMENTS, the CUSTOMER regulations, PW regulations, LAWS at the SUPPLIERS' sole expenses and risks.

11.4.5. If the SUPPLIER fails to fulfil this obligation upon receipt of a written notice by PW to dispose, process and/or remove the waste after a reasonable period of time, or in case of emergency, PW shall be entitled to appoint any third party to carry out aforesaid actions at SUPPLIER's costs.

11.4.6. The SITE shall be kept in a clean and tidy condition by the SUPPLIER. Rubbish, scrap and all unnecessary materials and equipment shall be regularly removed by it from the SITE by the SUPPLIER.

11.4.7 The SUPPLIER shall be fully responsible for any damages as well as any consequences, including personal injuries arising from not respecting of its obligations under article 11.4.

## 11.5 SUPPLIER'S and SUBCONTRACTOR'S compliance with tax and labour obligations

11.5.1 Throughout the performance of the ORDER, the SUPPLIER and its SUBCONTRACTOR's shall comply with all LEGAL REQUIREMENTS and LAWS, especially those relating to working permits, tax, employment, social contributions. The SUPPLIER and its SUBCONTRACTOR's shall effect in due time all their respective payments of any and all taxes, duties, salaries and social contributions in connection with its SERVICES under the ORDER. The SUPPLIER shall in particular

provide PW upon request with all documents evidencing that the SUPPLIER is in compliance with its obligations in this respect.

11.5.2 The SUPPLIER shall indemnify and hold PW harmless for all expenses resulting from noncompliance with its obligations under this article 11.5.

## **12. SITE conditions**

### **12.1 Conduct on SITE**

The SUPPLIER shall take all measures so as not to affect nor impair in any way the activities of PW and/or the CUSTOMER and/or any third party acting on behalf of PW and/or the CUSTOMER on the SITE.

### **12.2 Use of PW's and/or CUSTOMER's premises**

12.2.1. In case PW and/or its CUSTOMER puts at the SUPPLIER's disposal premises and/or facilities (including any equipment, machines, tools, materials) for and during the performance of the ORDER, the SUPPLIER shall use at its own risks and costs. The SUPPLIER shall also be responsible for its custody.

12.2.2. The SUPPLIER undertakes to maintain the premises and facilities (including any equipment, machines, tools, materials) in good state and condition, clean and safe throughout the performance of the ORDER and not to modify them without PW's and/or the CUSTOMER written authorization.

12.2.3. The SUPPLIER shall be liable for any losses or damages related to the use of said premises and facilities (including any equipment, machines, tools, materials), caused to it by the SUPPLIER.

## **13. Documentation**

13.1 The DOCUMENTATION prepared and/or to be provided by SUPPLIER or its SUBCONTRACTORS in connection with the SERVICES shall form part of the ORDER.

13.2 The SUPPLIER shall provide to PW the whole DOCUMENTATION by the due dates set out in the ORDER and in accordance with the form and contents agreed by PW and the SUPPLIER.

13.3 Notwithstanding article 13.2, PW is entitled, prior to the start of the SERVICES, to review and comment the DOCUMENTATION and instruct the SUPPLIER to make changes. In such cases, the SUPPLIER is obliged to implement said changes without undue delay.

13.4 The SUPPLIER shall remain wholly liable for the consequences of any inaccuracy, incompleteness, error and/or omission in the DOCUMENTATION whether or not PW has raised any reserves and/or comments with respect to the DOCUMENTATION.

13.5 The DOCUMENTATION shall be made available to PW for unrestricted use. All DOCUMENTATION as well as any rights related thereto shall become the property of PW.

## **14. Confidentiality**

14.1 The SUPPLIER shall observe strict secrecy and confidentiality of all and any CONFIDENTIAL INFORMATION received or disclosed to him by PW.

14.2 The SUPPLIER shall take all measures necessary to prevent disclosure or publication to third parties of all and any CONFIDENTIAL INFORMATION received or disclosed to him by PW. The SUPPLIER shall refrain from communicating in any way to third parties, without prior written authorisation from PW, all and any CONFIDENTIAL INFORMATION received or disclosed to him by PW.

14.3 The SUPPLIER shall not use all and any CONFIDENTIAL INFORMATION received or disclosed to him by PW for purposes other than dealing with PW. The SUPPLIER especially agrees and guarantees not to use said CONFIDENTIAL INFORMATION for himself or for providing services, designing, engineering, manufacturing, assembling, erecting selling and/or maintaining SERVICES to/for third parties.

14.4 The SUPPLIER shall strictly limit access to all and any CONFIDENTIAL INFORMATION received or disclosed to him by PW to those of his employees and/or SUBCONTRACTORS that will need said CONFIDENTIAL INFORMATION to carry out and perform their contractual obligations. He shall ensure that said people/companies comply with the stipulations of this article 14 and sign non-disclosure agreements sufficiently protecting PW and preventing them from revealing and/or using, even after their obligations with the SUPPLIER are terminated, all and any CONFIDENTIAL INFORMATION that they have received and/or learned while performing their contractual obligations.

14.5 The SUPPLIER shall not use all and any CONFIDENTIAL INFORMATION received or disclosed to him by PW to file in any country of the world, either directly or through an intermediary, patent or other industrial property right's applications based on said CONFIDENTIAL INFORMATION or derivable from said CONFIDENTIAL INFORMATION.

14.6 The SUPPLIER shall not refer to all and any CONFIDENTIAL INFORMATION received or disclosed to him by PW to assert personal possession or prior use rights.

14.7 The SUPPLIER shall not dispute or question, at any time, either directly or indirectly, the validity of any patent letters and/or other industrial property rights granted or pending of PW GROUP and which are based on the CONFIDENTIAL INFORMATION and/or SERVICES, nor support or assist in any way third parties to do so.

14.8 The provisions of this article shall remain in full force and effect, irrespective of any termination, for a period of 15 years after the date of the ORDER.

## **15. Intellectual Property**

### **15.1 INTELLECTUAL PROPERTY RIGHTS**

15.1.1 All drawings, documents and models, patterns and moulds made available to the SUPPLIER by PW as well as PW's prior INTELLECTUAL PROPERTY RIGHTS shall remain the property of PW.

15.1.2 The SUPPLIER guarantees that neither the SERVICES nor the sale or the use thereof covered by the ORDER shall infringe upon or violate any INTELLECTUAL PROPERTY RIGHTS belonging to third parties. The SUPPLIER shall hold PW and his CUSTOMER harmless against all third-party actions or claims, liability, loss, costs, attorney's fees, expenses and damages due to or arising from any alleged infringement of third-party INTELLECTUAL PROPERTY RIGHTS.

15.1.3 In the event the SERVICES become the subject of actions or claims of infringement of INTELLECTUAL PROPERTY RIGHTS, SUPPLIER shall at its own expenses in the shortest possible period either obtain the right for PW and/or its CUSTOMER to use the SERVICES or modify or replace the SERVICES by a non-infringing, equivalent replacement. In any case, modification or replacement of the SERVICES shall never result in a deterioration or reduction of the functionality or fitness of the SERVICES for their particular purpose.

15.1.4 If the SUPPLIER fails to carry out its duties as set out herein, PW shall be entitled to take such actions as it deems necessary and to recover the total costs and/or damages resulting from such failure by the SUPPLIER.

15.1.5. The provisions of this article 15 shall survive any termination as set forth in article 27.

## **15.2 DEVELOPMENTS**

15.2.1. Any DEVELOPMENT shall belong to the SUPPLIER, if the SUPPLIER can prove that such DEVELOPMENT and any related INTELLECTUAL PROPERTY RIGHTS arise from SUPPLIER's sole inventive capacity independently of any CONFIDENTIAL INFORMATION obtained from PW GROUP. In such case, the payment of the ORDER price shall entail the granting of a right and/or a licence for PW, including the right for PW of transferring/granting such rights and/or of sub-licensing.

15.2.2. In all other cases title to and ownership of any DEVELOPMENT shall belong to PW.

## **16. Subcontracting**

16.1 The SUPPLIER is not entitled to subcontract any of his obligations, services or supplies under the ORDER to a third party, neither wholly nor in part, without PW's prior written authorization. In any case, any subcontracting, even if expressly authorized by PW, shall be at the SUPPLIER's sole risks and costs and shall not relieve the SUPPLIER from any of its obligations and liabilities under the ORDER.

16.2 The SUPPLIER shall be solely responsible and liable for the due compliance by its SUBCONTRACTOR's with these General Conditions of Purchase of Services and Site Works (GCP-S).

16.3 Any failure to comply with these obligations may result in the termination of the ORDER as per article 25 by PW.

## **17. Deadlines**

17.1 The ORDER shall be performed by the SUPPLIER in strict compliance with the DEADLINES.

17.2 The SUPPLIER shall immediately notify PW in writing of any delay and/or circumstances which may affect the due compliance with the DEADLINES. The SUPPLIER shall specify the reasons, consequences and expected duration of such circumstances as well as details relating to any actions. The SUPPLIER undertakes to make good or avoid such delays. In case the delay is due to reasons attributable to the SUPPLIER, any costs related to corrective or accelerative actions shall be solely borne by the SUPPLIER.

17.3 If the SUPPLIER fails to comply with the DEADLINES due to reasons attributable to the SUPPLIER, PW shall be entitled, after having granted a reasonable time of extension to the SUPPLIER, without further written notice to obtain compensation from SUPPLIER for any costs and damages incurred by PW, without prejudice to PW's other rights under the ORDER and the LAWS. The payment of compensation by the SUPPLIER shall not relieve the SUPPLIER from its other obligations and liabilities under the ORDER and LAWS.

17.4 The acceptance by PW of any noncompliance with the DEADLINES by the SUPPLIER does not constitute a waiver of PW's rights, and more particularly PW's right to obtain compensation for any costs and damages incurred by PW as a result of such non-compliance.

## **18. Acceptance, Inspections and Workshop Tests**

18.1 During the performance of the ORDER, PW shall be entitled to verify the progress and proper performance of the ORDER by Inspections and/or Tests in accordance with PW's General Conditions related to Tests and Acceptances (GCTA).

18.2 All SERVICES covered by the ORDER shall be subject to acceptance in accordance with PW's General Conditions related to Tests and Acceptance (GCTA)

18.3 The General Conditions related to Tests and Acceptance (GCTA) shall form integral part of the present General Conditions of Purchase for Services and Site Works, the last version of which can be downloaded from [www.paulwurth.com](http://www.paulwurth.com).

## **19. Transfer of Risks, Transfer of Title**

19.1 In case the SERVICES are subject to a PROVISIONAL ACCEPTANCE, the transfer of risks related to the SERVICES to PW shall occur at the date of the PROVISIONAL ACCEPTANCE.

19.2 The transfer of risks shall not release the SUPPLIER from all its remaining obligations under the ORDER and/or LAW.

19.3 The transfer of title on any GOODS forming part of the SERVICES under the ORDER shall immediately and irrevocably become effective, after being in possession of PW or implemented with the SERVICES or parts thereof, irrespective of any seizure, bankruptcy, concordat, winding-up or insolvency of the SUPPLIER. The SUPPLIER undertakes to clearly identify the GOODS as being part of the ORDER either at the SUPPLIER works, warehouse or other location, or that of a third party.

19.4 The transfer of title shall not release the SUPPLIER from all its remaining obligations under the ORDER, LAWS and/or LEGAL REQUIREMENTS.

19.5 All retention of title by the SUPPLIER is refuted by PW. Any such rights require PW's prior written consent for each individual case. Should the SUPPLIER nevertheless assert ownership rights, shared ownership rights or liens or cause enforcement proceedings to be taken, PW shall hold the SUPPLIER liable for any resulting damages and/or losses.

19.6 Unless otherwise agreed, the SUPPLIER shall in no case and under no circumstances give the GOODS in pledge and/or pass the title to third parties.

19.7 The SUPPLIER shall be responsible for the safe custody, protection and preservation of the GOODS as being part of the ORDER until such time as PW physically takes possession of the GOODS.

## **20. Guarantee / Warranty**

20.1 The SUPPLIER guarantees that the SERVICES shall conform to the specifications and requirements set out in the ORDER. The SERVICES shall be fit for purpose as described in the ORDER. The SERVICES shall be new, free from deficiencies or defects in engineering, design, materials and workmanship. The SERVICES shall be free and clear of any claims of title by third parties, and SUPPLIER shall convey a good and clear title in accordance with the terms hereof. The SERVICES shall in any case meet and satisfy all applicable LEGAL REQUIREMENTS and/or LAWS and more particularly those relating to environment, health and safety.

This clause shall not be construed as amending or impairing in any way the terms and conditions set forth in article 15 here before.

20.2 Unless otherwise provided for in the ORDER, the warranty period shall be:

Ten (10) years for building and civil works,

Two (2) years for all other SERVICES.

each starting from the date of acceptance of the SERVICES by PW or, if the ORDER specifically provides for acceptance tests to demonstrate that the SERVICES comply with the ORDER in terms of characteristics, quality and performance, the date of PROVISIONAL ACCEPTANCE of the SERVICES.

20.3 If within the warranty period, PW notifies in writing the SUPPLIER of any deficiency, defect or non-compliance of the SERVICES or parts thereof with the ORDER, the SUPPLIER shall, upon



PW's first demand, promptly perform any remedial work required to make good such deficiency, defects or non-compliance. Notwithstanding afore mentioned, PW is entitled, at its own discretion, to demand either repair, corrections, modifications, replacement or new manufacture for remedying any and all defects of the SERVICES or parts thereof. The SUPPLIER shall, in any case, bear all and any related risks and costs (including related PW costs) for making good, including inter alia the costs for SERVICES, goods, travel expenditures, customs duties, etc.

20.4 The SUPPLIER shall perform and complete any remedial work only in accordance with the provisions of the ORDER and in accordance with a programme and methodology defined by the SUPPLIER and accepted by PW. In such case the SUPPLIER is under obligation to provide the SERVICES free of defects. These shall, in particular, comply with the agreed quality criteria, characteristics and performances set forth in the ORDER. Should the SUPPLIER wish to take possession of the deficient SERVICES or parts thereof, the SUPPLIER shall be responsible for collecting the same and bear all handling, transport and all other associated costs.

20.5 Any remedial work, repair, replacement of defective SERVICES and/or parts thereof and/or repetition of the acceptance tests, if any, must not conflict with CUSTOMER's interest to keep its installations or parts thereof in commercial operation. Therefore, in case of conflict, PW is entitled to reject and reasonably postpone such remedial work, repair, replacement or a repetition of acceptance tests to a later date acceptable to PW and the CUSTOMER, provided the safety and health are not affected.

20.6 In case (i) the SUPPLIER does not take action within a reasonable time following PW's notice as per article 20.3 or (ii) in case of emergency or (iii) when there is a risk of disproportional high damages, PW has the right, without obligation to give further notice to the SUPPLIER and without prejudice to any other rights, to take remedial actions either by itself or a third party at the SUPPLIER's costs and risks. This does not relieve the SUPPLIER from its obligations under the ORDER.

20.7 In the event PW has notified the SUPPLIER within the warranty period of any defects or non-compliances of the SERVICES or any part thereof in relation with the ORDER, the warranty period for the SERVICES or for the respective part thereof shall be suspended until the SUPPLIER has remedied to the failure. The warranty period shall be extended by the time period equivalent to the period of suspension. The provisions of this article also apply to article 20.5.

20.8 The warranty period for all repaired, replaced or modified SERVICES or parts thereof shall restart for the respective warranty period as specified under article 20.2 as of the date of the date of the completion of their respective replacement, repair or modifications accepted by PW and documented by issuance of a certificate.

20.9 The SUPPLIER shall indemnify and hold PW harmless as well as PW's CUSTOMER and/or any third party from and against any damages, material and consequential losses which PW, its CUSTOMER and/or any third party may suffer as a result from the failure of defective SERVICES or parts thereof.

## **21. Liability**

21.1 The SUPPLIER shall be liable for any and all injuries, losses and damages suffered by PW, its employees, agents, and representatives, CUSTOMER(S) and third parties arising out of the breach by SUPPLIER of any of its obligations under the ORDER, or arising out of any negligent or other wrongful act or omission by SUPPLIER, its employees', agents', representatives' and/or SUBCONTRACTORS' in connection with the ORDER. For the purposes of this clause, "damages" shall include direct, indirect, consequential, special and incidental, physical and/or moral damages suffered by the parties aforesaid without prejudicing all other PW rights and remedies. Absent an express, written agreement to the contrary, SUPPLIER's liability for such damages shall be unlimited, however, in no event shall any limit apply in the case of personal injuries.

21.2 The SUPPLIER shall indemnify and hold PW harmless from any actions, suits, claims and demands arising out or in connection with the ORDER and/or the SERVICES, including those of any third parties caused by a breach of any of obligation under the ORDER by the SUPPLIER. This indemnification by the SUPPLIER shall include any and all expenses (including but not limited to attorney's fees and court costs) in relation therewith.

## **22. Insurance**

22.1 The SUPPLIER shall take out and maintain as the case may be any and all insurances coverage's necessary to cover SUPPLIER's liabilities under the ORDER and/or the LAW.

22.2 On PW's first request, the SUPPLIER shall provide to PW certificates issued by SUPPLIER's respective insurers attesting the existence and validity of the insurance coverage as well as the payment of the corresponding premiums. Such certificates shall be replaced and/or renewed upon expiration.

## **23. Publicity**

Without PW's prior written consent, the SUPPLIER is not permitted to refer neither to the ORDER nor to the contractual relations with PW, neither for publicity purposes nor for any other kind of publications, such as but not limited to articles, photographs, films, advertising posters.

## **24. Suspension**

24.1 PW may at any time suspend performance of the ORDER or any part thereof by giving SUPPLIER prior written notice to that effect. Upon receipt of such notice, the SUPPLIER shall cease all activities on suspended SERVICES without undue delay, but shall continue to prosecute any unsuspended SERVICES.

24.2 The SUPPLIER shall, for the duration of the suspension, be responsible for storage, care, custody and risk of loss and damage for all SERVICES or parts thereof already executed.

24.3 PW reserves the right to request the SUPPLIER to withdraw its staff and/or means from the SITE. In such case PW shall bear the provable, documented direct costs incurred by the SUPPLIER by the suspension of the ORDER and the return of the staff and/or its means to the SITE.

24.4 PW may, at any time, instruct resumption of all or any part of the suspended SERVICES by giving written notice to the SUPPLIER. In such case, DEADLINES shall be extended by suspension time only. Suspended SERVICES shall be resumed by SUPPLIER without undue delay after receipt of such notice.

24.5 In case suspension lasts for a period of more than ninety (90) DAYS in aggregate, all additional direct expenses and costs incurred as a result of PW's instructions pursuant to this article shall be determined without undue delay and be settled by the parties.

## **25. SUPPLIER's failure**

25.1 Non fulfilment of any of SUPPLIER's obligations under the ORDER shall entitle PW to the following actions, without limiting or prejudicing any other PW rights:

- i. constrain the SUPPLIER, without delay nor limit of means, to fully comply with the ORDER,
- ii. postpone the date of the acceptance, PROVISIONAL ACCEPTANCE or the date of FINAL ACCEPTANCE of the SERVICES,
- iii. apply liquidated damages, if so, specified in the ORDER,
- iv. after a formal prior notice as specified in article 25.2 hereunder:
  - a. replace the SUPPLIER or appoint any third party to fulfil SUPPLIER's obligations or any parts thereof under the ORDER at SUPPLIER's costs,
  - b. seek for compensation of incurred direct costs and expenses by PW,

- c. terminate or cancel the ORDER,
- d. claim for indemnification of any other damages.

Non fulfilment of the SUPPLIER's obligations under the ORDER includes, without this list being exhaustive:

- i) breach of contract;
- ii) no or unsatisfactory performance of the ORDER or parts thereof;
- iii) noncompliance of the SERVICES with LEGAL REQUIREMENTS, the CUSTOMER regulations, PW regulations, LAWS and/or the ORDER;
- iv) noncompliance with health, safety, social and environmental LEGAL REQUIREMENTS and/or the CUSTOMER regulations and/or PW regulations;
- v) non-compliance with SMS supplier code of conduct
- vi) subcontracting the ORDER or parts thereof contrary to the provisions of the ORDER;
- vii) failing to perform the ORDER or parts thereof in accordance with the DEADLINES;
- viii) assigning any rights and/or obligations under the ORDER or parts thereof to any third party without prior written authorization by PW;
- ix) non achievement of agreed safety indicators;

25.2 In case of SUPPLIER's failure as specified in article 25.1, PW shall give written notice to the SUPPLIER to remedy its failure. Upon receipt of said written notice, the SUPPLIER shall provide PW, without undue delay, with a corrective action plan describing the corrective measures and the time schedule to implement such measures in order to remedy its failure. Such corrective action plan has to be approved by PW.

25.3 In case the SUPPLIER fails to provide PW with said corrective action plan or to comply with said corrective action plan or take corrective actions within the time schedule approved by PW, PW shall be entitled to take actions as specified in article 25.1 here before.

25.4 Notwithstanding the foregoing, no prior written notice shall be required to be given by PW to the SUPPLIER in case of emergency, in particular for health and safety reasons and/or risk of disproportional high damages. In such cases PW is entitled to implement any reasonable measures to mitigate any consequences arising from SUPPLIER's failure. PW shall send to the SUPPLIER formal written notice thereof without undue delay.

## **26. Termination**

### **26.1 Termination by PW for reasons not attributable to the SUPPLIER**

26.1.1. PW may at any time and at its sole discretion, with or without cause, terminate by written notice to the SUPPLIER the ORDER or parts thereof.

26.1.2. Upon receipt of the written termination notice, the SUPPLIER shall promptly stop all the works under the ORDER which are subject to termination. The SUPPLIER shall without undue delay terminate all and any agreements with his SUBCONTRACTOR's and/or third parties related to the ORDER or parts thereof.

### **26.2 Termination by PW for reasons attributable to the SUPPLIER**

26.2.1 In case the SUPPLIER did not remedy or did not commence taking appropriate actions to remedy to his failure as per article 25 here before, PW may terminate the ORDER or parts thereof with immediate effect by giving official notice.

26.2.2 Notwithstanding the provisions of article 25, PW is entitled, upon occurrence of one or more of the following events, to terminate the ORDER with immediate effect by giving official notice:

- i) SUPPLIER's financial situation could be construed by PW as preventing the concerned ORDER from being implemented properly and/or timely;
- ii) SUPPLIER becoming subject to a corporate action and/or legal procedure such as insolvency, liquidation, winding-up, cessation of business, indebtedness, bankruptcy or any other similar legal procedure;
- iii) substantial corporate modification(s) affecting SUPPLIER's legal structure or any important change(s) in the control of the SUPPLIER's share capital;

### **26.3 Consequences of the termination**

26.3.1. In any case of termination set forth under this article the financial consequences of the termination shall be determined as follows:

- i) In case of termination under article 26.1, PW undertakes to compensate the SUPPLIER
  - a) for all SERVICES completed prior to the date of termination in accordance with the ORDER
  - b) for the properly documented and provable direct costs incurred for the SERVICES in process
  - c) for the properly documented and provable direct costs incurred as a result of termination.

Further claims of the SUPPLIER in relation with the termination, in particular any further compensation for indirect costs such as losses of profits, loss of contract, unabsorbed overhead are excluded.

- ii) In case of termination under article 26.2,
  - a) PW undertakes to compensate the SUPPLIER for all SERVICES completed prior to the date of termination and compliant with the ORDER;
  - b) at PW's sole discretion PW may take possession of the SERVICES in process and pay properly documented and provable direct costs incurred for such SERVICES.
  - c) the SUPPLIER shall be fully liable for PW's costs and expenses for completion of the ORDER as well as any damages for which PW would be liable as a result of SUPPLIER's failure to complete the ORDER.

26.3.2 Considering the foregoing terms, the amounts over- or underpaid by PW with respect to progress of the ORDER at the effective date of termination, shall be paid or reimbursed by the SUPPLIER to PW or vice versa without undue delay as from the effective date of termination of the ORDER.

26.3.3 In case of termination as specified above of the SERVICES or parts thereof which have been paid for by PW shall become the property of PW. The SUPPLIER shall place these SERVICES or parts thereof at PW's disposal.

26.3.4 Upon termination of the ORDER, the SUPPLIER shall, without being requested to do so and within 14 DAYS at the latest, return to PW all drawings, documentation and/or CONFIDENTIAL INFORMATION and/or other materials provided to the SUPPLIER by PW GROUP.

26.3.5 The termination of the ORDER pursuant to articles 26.1 and 26.2 shall be made notwithstanding any other rights of PW.

## **27. Force Majeure**

27.1 Neither PW nor the SUPPLIER shall be held responsible for the non-fulfilment of respective obligations under the ORDER caused by a Force Majeure event, i.e. an unforeseeable and

irresistible event beyond the PARTIES' reasonable control and which prevents the performance by the affected party of its obligations under the ORDER. Only those events defined by Document ME 188 in Article 10.1 of the "General Conditions for the Supply of Plant and Machinery for Export", recommended by the United Nations Economic Commission for Europe, Geneva, March 1953, which may be downloaded from PW website [www.paulwurth.com](http://www.paulwurth.com), are considered as Force Majeure events

27.2 Should any such Force Majeure event occur and prevent either party from performing in whole or in part its obligations under the ORDER, then such party shall (i) duly inform the other party of said Force Majeure event in writing no later than two (2) DAYS after the occurrence of said Force Majeure event and (ii) take all necessary steps and actions to mitigate the effects resulting from said Force Majeure event. These written notices shall be accompanied by the necessary official statements confirming Force Majeure.

27.3 If despite the implementation of the steps and action as per article 17.2, the execution of the ORDER becomes impossible or will have to be postponed for more than three (3) months as from the date of notification of such a Force Majeure event, the ORDER may be cancelled by either party in writing upon fifteen DAYS prior notice.

27.4 In any case, each party shall bear its own costs and expenses incurred from the starting date of the Force Majeure event up to the end of the said Force Majeure or up to the date of termination of the ORDER according to this article.

## **28. Compliance / Code of conduct/ESG**

28.1 The SUPPLIER declares that he is familiar with, and that he shall comply with, the SMS's Code of Conduct and SMS supplier code of conduct and SMS Policy statement on respect for human rights, the latest version of which can be downloaded from PW website [www.paulwurth.com](http://www.paulwurth.com) or [www.sms-group.com](http://www.sms-group.com). The SUPPLIER shall take all reasonable measures to this effect and shall consult PW in the event of problems and uncertainties. The SUPPLIER shall obligate his subcontractors in writing by comparable means and shall submit this written a proof to PW on request.

28.2 If there is any suspicion that the SMS's compliance principles and requirements are not being adhered to, PW reserves the right to demand information on the relevant facts and circumstances and, if required, to conduct his own investigations, for which the SUPPLIER shall provide his support. If the SUPPLIER violates one of the obligations mentioned in Article 30 of this document, or if a claim is made against PW, PW shall be entitled, without prejudice to further claims, to demand compensation, terminate the contract or withdraw from it, and the SUPPLIER shall indemnify the PW against all claims.

28.3 The SUPPLIER shall be responsible for complying with all SMS ESG (Environment, Social and Governance) regulations <https://www.sms-group.com/company/esg> and SUPPLIER shall be also responsible for ensuring that its SUBCONTRACTORS comply with all SMS ESG policies.

## **29. Severability**

If any provisions of these "General Conditions of Purchase of SERVICES" and/or the ORDER are found to be illegal, invalid or unenforceable under any laws, all other terms and conditions of the "General Conditions of Purchase of SERVICES" and/or of the ORDER shall remain unaffected thereby. The PARTIES agree to replace such void provision by provision(s) having the same or similar effect or meaning as the illegal, invalid or unenforceable provision, or being at least as close as possible to the economic purpose initially agreed upon by the PARTIES with respect to said provision(s).

## **30. Disputes, Applicable Law**

30.1 Unless otherwise stipulated in the ORDER, these General Conditions of Purchase of SERVICES as well as the ORDER shall exclusively be governed by and construed in accordance with the laws of the place where PW is domiciled, to the exclusion of international civil law, standard international law and the United Nations Convention on Contracts for the International Sale for Goods (CISG).

30.2 By accepting the ORDER, the SUPPLIER accepts the jurisdiction of the courts where PW is domiciled. Any and all claims or disputes arising out of or in connection with the ORDER, regardless of the nature and cause of the claim/dispute, shall be settled by the competent court of the place of the registered office of PW. Notwithstanding the foregoing, PW reserves the right to bring any claim/dispute before the competent court of the SUPPLIER's registered office, branch, agency or establishment or the place where under the ORDER the SERVICES were delivered or should have been delivered.

### **31. Form of communications**

31.1 The expressions "written," "in writing," as well as any formal communications and notices required by the terms of the ORDER may be made by email but must be confirmed by a written original document duly signed by the sender which has to be transmitted by public or private carrier with acknowledgement of receipt.

31.2 The effective date of communications shall be the date of the communication if received by the recipient prior to 12:00 o'clock a.m. on a normal working day; otherwise, the effective date shall be the business day following transmittal. Signature of documents may not be repudiated on the basis that the document was sent or received by mail, email or via the platform.