

PT Flender Drives Indonesia

1. Definitions and Interpretation

In these Conditions, the following words have the meanings set out below:

“**Agreement**” means the agreement between Flender and the Customer consisting of the Offer and these Conditions;

“**Additional Goods and Services**” means Goods or Services requested by the Customer in addition to those in the Offer;

“**Affiliate**” of a party means any entity that directly or indirectly: (a) Controls, or is Controlled by, the party; or (b) is under common Control with the party.

“**Indonesian Consumer Protection Law**” means Law No. 8 of 1999 concerning Consumer Protection of the Republic of Indonesia;

“**Authorisation**” means any approval, consent, licence, permit, certificate, waiver, or similar authorization required by Law, including any renewal or amendment;

“**Business Day**” means Monday to Friday, excluding gazetted public holidays in the province where the Site is located.

“**Change of Law**” means any change in Law, including its interpretation or application, occurring after the date of Flender’s Offer.

“**Commencement Date**” means the earlier of the commencement date set out in the Offer, or if unstated, the date Flender confirms the Customer’s Order or commences Services or supplies Goods.

“**Conditions**” means the Conditions for Goods and Services set out in this document;

“**Confidential Information**” means information (in any form) that is confidential by nature, designated as confidential, or reasonably ought to be known as confidential by the recipient, including information relating to IP Rights, business affairs, and communications between parties.

“**Contamination**” means any contamination not caused by Flender or by hazardous materials brought to Site by Flender;

“**Contract Price**” means the price payable by the Customer to Flender for the Goods and Services as specified in the Agreement as may be varied in accordance with the Agreement and where applicable may be calculated using the Schedule of Rates;

“**Control**” of an entity means the direct or indirect power to direct or cause the direction of its management and policies, whether through ownership of voting securities entitling the right to elect or appoint the majority of its board of directors (or similar managing authority), by contract, or otherwise.

“**Customer**” means the person for whom or which work under the Agreement is performed;

“**Consumer**” has the meaning given in the Indonesian Consumer Protection Law;

“**Defect**” means an error or defect in the Goods and Services, due to faulty material or workmanship for which Flender is responsible;

“**Defects Liability Period**” has the meaning set out in clause 15;

“**Delivery Date**” means the final date by which the Services must be performed and the Goods must be delivered under the Agreement;

“**Equipment**” means any equipment at the Site upon which the Services will be performed;

“**Flender**” means PT Flender Drives Indonesia, the party submitting the Offer;

“**Flender Offer**” or “**Offer**” means a written offer by Flender to perform the work under the Agreement;

“**Flender’s Personnel**” means all persons engaged by Flender to perform the work under the Agreement;

“**Force Majeure Event**” means any event beyond a party’s reasonable control, including but not limited to:

- (a) acts of war, invasion, hostilities (whether declared or not), civil war, revolution, insurrection, military or usurped power, or terrorism;
- (b) ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel;
- (c) contamination by hazardous or toxic materials or waste (including asbestos) existing on Site prior to the Agreement date or brought onto Site thereafter by or on behalf of the Customer (other than contamination caused by Flender or Flender’s Personnel);
- (d) shipping congestion at loading/unloading ports, blockades, embargoes, transport shortages, import, or currency restrictions;
- (e) acts (or omissions) of authorities (unless requiring compliance with mandatory Law at Agreement signature), non-approval of export licenses for the work under the Agreement, or Change of Law;
- (f) sabotage, strikes, lockouts, go-slow or any other industrial dispute or disturbance;
- (g) Acts of God, including severe weather, natural disasters, earthquakes, volcanic activity, hurricanes, cyclones, floods, fires, tsunamis, and lightning strikes; and
- (h) epidemics, pandemics, quarantines, and related events or impacts;
- (i) attacks on Flender’s IT systems (e.g., virus or hacker attacks);
- (j) embargoes or other trade sanctions imposed by the European Union (EU), United States of America (U.S.), or any public authority within EU or U.S. territory or by the United Nations which, in Flender’s sole discretion, may expose Flender or its Affiliates to sanctions, penalties, loss of privileges, or other detrimental acts or omissions by public authorities.

“**Goods**” means the goods to be supplied by Flender under the Agreement, as specified in the Offer (including any Additional Goods and Services and On Site Spares) as may be varied by the parties in writing from time to time;

“**Insolvency Event**” means:

- (a) in relation to a company: (i) it is insolvent; (ii) an administrator, controller, liquidator, provisional liquidator, receiver, receiver and manager, mortgage in

possession, or similar officer is appointed to it or over its assets; or (iii) it experiences an analogous event;

- (b) in relation to an individual: (i) he or she is insolvent; (ii) he or she enters a debt agreement or personal insolvency agreement; or (iii) he or she commits an act of bankruptcy or is bankrupt;

“**IP Rights**” means all intellectual property and industrial rights of any description, including without limitation, all rights conferred by statute, common law, or equity (whether registered or not) in relation to inventions (including patents), trademarks, designs, copyright, circuit layout rights, trade secrets, know-how, and Confidential Information, and all other proprietary rights created from intellectual activity in the industrial, scientific, literary, and artistic fields;

“**Law**” means any applicable statute, regulation, by-law, code, standard, ordinance, license, order, official policy, or Authorisation in force.

“**Major Failure**” in respect of goods or services, means a defect or non-conformity that would cause a reasonable consumer not to have acquired them had they known of the issue, or which renders them substantially different from their description or unfit for purpose;

“**Order**” means a written order for Goods and Services from the Customer in accordance with an Offer, in the form required by Flender from time to time;

“**Fiduciary Security Law**” means Law No. 42 of 1999 concerning Fiduciary Security as amended and its implementing regulations;

“**Schedule of Rates**” means the schedule of charging rates calculated on an hourly or other basis as set out in a Flender Offer and varied in accordance with the Agreement;

“**Services**” means the Services to be provided by Flender to the Customer under the Agreement, as specified in the Offer (including any Additional Services) as may be varied by the parties in writing from time to time;

“**Site**” means the Customer’s premises at which Flender is to perform the work under the Agreement;

“**Software**” means any software supplied by Flender for use with Goods and Services, including its machine-executable object code, firmware, user documentation, and any adaptation, copy, derivation, development, enhancement, improvement, modification, translation, update (for bug fixes or operational improvements), or upgrade (for extended functionality or performance).

“**Taxable Supply**” has the meaning of a supply of goods or services subject to VAT under the VAT Law;

“**Taxes**” means all taxes, including without limitation, VAT, construction tax, excise duties, stamp duties, customs duties, and other government charges, imposts, and levies; and

“**Term**” means the term of the Agreement as set out in the Flender Offer (or if no term is stated, 12 months), as extended or terminated in accordance with the Agreement.

“**VAT**” has the meaning given to it in Law No. 8 of 1983 regarding Value Added Tax on Goods and Services and Sales Tax on Luxury Goods, as amended and its implementing regulations;

1.2 Interpretation

Unless otherwise indicated:

- (a) a reference to the Agreement or any other document includes its variations, replacements, or novations;
- (b) headings are for ease of reference only and do not affect interpretation;
- (c) “Rp” refers to Indonesian Rupiah (IDR);
- (d) a reference to a party includes its successors, permitted substitutes, and assigns (and, where applicable, its legal personal representatives);
- (e) where a word or phrase is defined, other grammatical forms have corresponding meanings, and a reference to a Law includes that Law as amended, consolidated, re-enacted, or replaced from time to time;
- (f) if a payment or act is required on a non-Business Day, it must be made or done on the next Business Day; and
- (g) a reference to a ‘person’ includes a firm, partnership, joint venture, association, unincorporated body, corporation, or other entity.

1.3 Flender’s rights and remedies

Unless expressly stated otherwise, Flender’s rights and remedies are in addition to those conferred by Law.

2. OFFER, ACCEPTANCE AND VARIATIONS

2.1. Offer and acceptance

(a) These Conditions form part of the Flender Offer. Any Customer Order acceptance containing inconsistent provisions is subject to these Conditions unless Flender expressly agrees to any variation in writing. Unless previously revoked, the Flender Offer remains valid for the period stated, or if none, for thirty (30) days from its date.

2.2 Variations

Flender shall notify the Customer as soon as practicable after receiving a variation request:

- (a) whether the proposed variation can be affected and, if so, Flender’s offer including its costs, payment terms, and estimated impact on the Delivery Date.

If the Customer expressly accepts Flender’s offer in writing, Flender will perform the variation; the cost will be added or deducted from the Contract Price, and the Delivery Date extended accordingly.

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3. Specifications and drawings

3.1. Not part of Agreement

Unless expressly agreed in writing, all descriptions, specifications, drawings, dimensions, and weights submitted with Flender's Offer are approximate, and promotional material descriptions, illustrations, and data are for general idea only and do not form part of the Agreement.

3.2. Provision of necessary information

The Customer shall provide Flender with all information reasonably required to proceed without delay within 7 days of the Customer's Order, and approve, amend, reject, and return drawings or other information requiring Customer approval within 7 days of receipt (or as agreed);

3.3. Approval of drawings

Drawings or other information requiring Customer approval must be approved, amended, rejected, and returned within 7 days of receipt (or as agreed); otherwise, clause 17(e) applies.

3.4. Incorrect information

The Customer bears the cost of any alteration necessitated by error or omission in information supplied or approved by the Customer.

3.5. Responsibility for Authorisations

Unless otherwise agreed, the Customer is responsible for obtaining and providing all necessary Authorisations for Agreement performance at its cost.

4. Services

- (a) Flender will perform Services during the Term, commencing on the Commencement Date, during hours described in the Flender Offer or Flender's normal working hours. Services performed outside normal hours with prior Customer agreement may incur additional charges per the Schedule of Rates or at reasonable rates.
- (b) Flender will perform Services in accordance with its occupational, health, safety, and environment policies and all applicable Laws; the Customer shall pay costs associated with specialist safety equipment.
- (c) The Customer may request Additional Goods and Services; if Flender agrees, these will be governed by this Agreement and documented in writing.
- (d) Flender will use reasonable endeavours to provide Services within any specified response times.
- (e) The Services only include those set out in the Offer and any agreed Additional Goods and Services. Unless otherwise agreed, the following are not included in the Contract Price and, if performed, shall be charged as Additional Goods and Services at mutually agreed rates:
 - (i) correction of faults caused by lightning damage or electromagnetic interference;
 - (ii) correction of faults caused by misuse, negligence, or failure to observe the Equipment instructions or by unauthorized modifications or alterations to the Equipment;
 - (iii) correction of faults caused by matters external to the Equipment, such as electricity supply failure or fluctuation, and any other fault not resulting from fair wear and tear;
 - (iv) the provision of more than one specialist engineer who, due to circumstances, is required to attend the Site, diagnose the fault, and perform repair Services;
 - (v) replacement of consumable materials such as batteries for the Equipment;
 - (vi) any alterations or extensions to the Equipment requested by the Customer; and
 - (vii) civil or structural defects or faults in the Equipment or catastrophic failure, including catastrophic failure of large rotating plant.

5. Information and Communication

The Customer must provide Flender with sufficient information to enable work to proceed promptly and without interruption and is responsible for the accuracy and completeness of information supplied, bearing the cost of any necessary alterations due to errors or omissions.

6. Intellectual Property Rights

6.1. Ownership of Intellectual Property Rights

Ownership of the Software and all IP Rights developed, subsisting, or created by Flender in connection with the Goods, Services, and Software (including training materials, designs, reports, etc.) shall remain Flender's or its third-party suppliers' exclusive property. Flender grants the Customer a non-transferable, non-exclusive license to use such IP Rights solely for operating and maintaining the specific Customer facility or Goods. The Customer shall promptly execute documents as necessary to give effect to this clause. Flender is not obliged to provide source codes except as required by Law.

6.1A Software Licence

- (a) Customer's use of Software supplied by Flender is governed by its associated license. Absent a separate license, Customer is granted a non-exclusive, non-transferable license to use the Software with Goods

and Services. This license excludes rights to source code and is without prejudice to agreed license fees. Customer shall not reverse assemble, reverse compile, defeat, bypass, remove, deactivate, circumvent Software protection mechanisms, or derive source code from the Software, except as permitted by applicable Law.

- (b) Without Flender's prior written consent, Customer shall not modify, merge, copy, reproduce, or make the Software available to any third party.
- (c) Subject to Flender's Defects Liability obligations under clause 15, Flender is not obliged to provide updates or upgrades under the Agreement and may charge for any supplied.
- (d) To the extent permitted by Law, Flender may refuse maintenance or support services if Customer rejects any recommended Update or Upgrade.

6.2. Indemnity

- (a) Flender shall indemnify Customer against claims for infringement of a third party's intellectual property rights (copyright, registered design, trademark, or patent published before Flender's Offer date) relating to any work supplied by Flender (an "Infringing Part"). This indemnity excludes Infringing Parts based on Customer's design, or if the claim results from non-compliant use or use with Goods not supplied by Flender. Flender's indemnity obligation is subject to Customer:
 - (i) promptly giving Flender written notice of the claim; not making admissions or prejudicing Flender's defence/settlement; allowing Flender to control (at Flender's expense) the defence/settlement; and giving Flender (at Flender's expense) reasonable assistance and information for the defence/settlement.
 - (b) Flender's indemnity obligation under the Agreement shall be reduced or voided if Customer's (or its personnel's) act or omission contributed to the loss or damage, or Customer failed to mitigate its loss.

The indemnity shall cease two years after the earlier of Agreement termination/expiry or work completion.

6.3. Remedies

- (a) Flender shall, at its option, either replace or modify the Infringing Part with a non-infringing part or procure Customer the right to use such Infringing Part.
- (b) The remedies in this clause 6 are Customer's sole and exclusive remedy and represent the full extent of Flender's liability for intellectual property infringement.

6.4. Warranty by Customer

Customer warrants that Flender's use of any design materials, documents, and methods provided or directed by Customer to perform work under the Agreement will not infringe third-party intellectual property rights. Customer will indemnify Flender upon request for any related loss or damage.

7. Contract Prices and Payment

7.1. Contract Price

The Contract Price is based on the quantity and scope in Flender's Offer, including any minimum order values. Flender may adjust the Price for quantity/scope variations, or as stated in the Offer (e.g., foreign exchange, rise/fall).

Standard packing is included. Special packing costs requested by Customer will be separately charged and payable.

On each Commencement Date anniversary, Flender may review and notify Customer of proposed Contract Price and Schedule of Rates changes, applicable for the next 12 months unless objected in writing within three (3) Business Days.

7.2. VAT and Taxes

- (a) Unless stated in the Flender Offer, the Contract Price is strictly net and exclusive of Taxes, which Customer must pay. If VAT is payable for a Taxable Supply, the amount payable includes VAT. Both parties must provide documentation (e.g., Tax Invoice) required to claim any input tax credit, set-off, rebate, or refund for VAT.
- (b) In this clause, "VAT", "input tax credit", "Tax Invoice" and "Taxable Supply" have the meaning given to them in the VAT Law.

7.3. Change of Law

If after the Commencement Date, Flender's cost of performing the work is varied due to any Change of Law, such variation shall be added to or deducted from prices charged. If the Change of Law causes delay, Flender's performance time shall be extended accordingly.

7.4. Invoicing

- (a) Unless otherwise agreed, Flender may invoice the Contract Price upon delivery of Goods to the Site and/or performance of Services. Flender may invoice Customer for any variations or additional work requested at agreed or other reasonable times, and for any other amounts payable under the Agreement as and when they occur.

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7.5. Payment terms and credit facilities

- (a) Unless otherwise agreed in writing, Customer shall pay all amounts invoiced by Flender within 30 days from the invoice date.
- (b) Flender may provide credit facilities at its discretion and reserves the right to withdraw them at any time prior to delivery.
- (c) Payment shall become due immediately upon the Customer suffering an Insolvency Event.

7.6. Payment when delivery of Goods is delayed

If Goods delivery is delayed by Customer or its agents, consultants, employees, officers, representatives, or other contractors, full Contract Price for the delayed Goods shall be paid by Customer to Flender within 30 days after Flender notifies that the work under the Agreement was ready to be performed.

7.7. Delay or default in payment

Flender may charge interest on overdue amounts (at the prevailing Bank Indonesia benchmark interest rate plus 2% per annum), calculated daily from the next Business Day after payment became due until full payment. Any Customer payment shall be credited first against accrued interest, and the balance applied to reduce the outstanding Contract Price balance.

7.8. Trade In's

Customer warrants that any goods traded-in (as set out in Flender's Offer) are its absolute and unencumbered property. Customer agrees such items become Flender's absolute property, free from charges, liens, and encumbrances, from the date Flender takes possession. Risk of loss, damage, or deterioration remains with Customer until then.

7.9. Financing

If the Customer informs Flender that finance is to be arranged in respect of the Goods, the following shall apply:

- (a) If Customer informs Flender that finance is to be arranged for the Goods, Customer agrees to: (a) procure a finance company to purchase the Goods and notify Flender; (b) ensure Flender forwards the invoice to the finance company, whose payments discharge Customer's corresponding obligations, while other Conditions remain effective; (c) be bound to purchase and pay for the Goods if the nominated finance company fails to pay the full invoiced amount by the due date; and (d) acknowledge that discussions regarding finance availability do not affect Customer's obligations.

8. Customer's Obligations

Customer must:

- (a) give reasonable prior notice of the time when Flender is required to be on Site;
- (b) promptly answer all queries and provide to Flender complete and accurate information and documents that are necessary to enable it to provide the Goods and Services;
- (c) provide customs clearance and obtain and maintain any approvals, licenses or permits that are necessary for the Goods and Services;
- (d) be solely responsible for providing the Pemberitahuan Impor Barang ("PIB") and all other import documentation required by Indonesian customs for the Goods. Failure to provide the PIB within the required timeframe shall render Customer liable for all costs, taxes, duties, penalties, and charges imposed by the authorities, including but not limited to VAT, import duty, excise, and administrative fees. Flender may recover such amounts from Customer upon demand, and Customer shall indemnify and hold Flender harmless against any resulting losses or expenses
- (e) provide Flender with Site access and take all necessary measures (including scheduling planned Services) to ensure Flender personnel can safely commence work under the Agreement immediately upon arrival at Site;
- (f) ensure Flender personnel have sufficient Equipment access to perform work under the Agreement uninterrupted;
- (g) supply all necessary information with regard to the location of underground cables and pipes together with static data for structures;
- (h) whilst the Equipment is operating, maintain the environmental conditions specified by the manufacturer;
- (i) ensure that the personnel operating the Equipment are properly trained in its operation;
- (j) make no attempt to modify, alter, or repair the Equipment unless otherwise agreed in writing by Flender;
- (k) ensure Flender is provided with adequate secure storage space, free from condensation, dust, and heat, for Goods and tools;
- (l) maintain the Site in a safe, secure condition to ensure compliance with all applicable Laws and Indonesian standards for occupational health, safety, and environment, and to properly induct all Flender personnel to the Site;
- (m) provide adequate power supply, lighting of work areas, and ventilation for the performance of work under the Agreement;
- (n) provide Flender with details of the Customer Representative; and

- (o) ensure the Customer Representative issues Flender purchase orders confirming any verbal directions to proceed for any Additional Services. If Customer fails to comply with its obligations under this clause, the Delivery Date and Services performance time shall be extended until such obligations are fulfilled, and Customer shall pay Flender the reasonable costs incurred due to such delays.

9. Services Materials

- (a) Unless stated in the Offer, all Services Materials (except On-Site Spares) retained or brought onto the Site are Flender's property and include its proprietary information. Customer acknowledges that Services Materials may only be used by Flender's personnel, are to be returned upon Agreement termination, and Flender has the right to remove them from the Site at any time. Parts replaced during work performance shall become Flender's property, and Flender may dispose of them as it deems fit. Replacement parts used in Services may be new or refurbished, provided they meet agreed functional specifications. If Emergency Breakdown Equipment is made available, Flender may later replace it with a permanent replacement or the repaired original Equipment or part.

10. Title and Risk

10.1. Passing of risk

- (a) Risk to the Goods shall pass to Customer upon delivery to Site, and from then, the risk of damage, deterioration, or loss of or to the Goods from any cause whatsoever shall pass to Customer.
- (b) On Site Spares shall be at Customer's risk at all times.

10.2. Passing of title

Title and property in the Goods shall remain with Flender, and Customer holds the Goods as bailee and fiduciary agent, until full payment of all amounts due and owing by Customer to Flender.

10.3. Right of recovery

If Customer fails to pay amounts due to Flender, or an Insolvency Event occurs with respect to Customer, Flender may recover the Goods. For that purpose, Flender's representatives may, in accordance with applicable Law and court orders (if required), enter premises where Flender reasonably suspects the Goods are located to effect recovery. Flender shall have the right to resell or otherwise dispose of the Goods so recovered without reference to Customer.

11. Delivery terms

11.1. Incoterm

Unless otherwise stated in the Agreement, the Goods are supplied Delivery Duty Paid to the Site according to INCOTERMS 2020 (as amended) and delivery shall take place when the Goods are delivered to the Site, cleared for import and not unloaded. Customer shall do everything necessary to take delivery of the Goods at the Site.

11.2. Storage

If, after 7 days from notification that Goods are ready for delivery, delivery is delayed for any reason beyond Flender's reasonable control, Flender may arrange for storage of the Goods at Flender's premises or elsewhere. Customer shall pay all associated costs including all applicable storage, insurance, demurrage, and handling costs.

11.3. Partial deliveries

Flender reserves the right to make partial deliveries and to separately invoice them unless otherwise agreed in writing.

12. Performance, Inspection and tests

12.1. Performance

Flender shall supply the Goods and perform the Services in accordance with the Agreement. Any performance figures given by Flender are based on Flender's experience and expected testing results. Subject to recognized tolerances, Flender shall not be liable if such figures are not attained unless specifically guaranteed in writing.

Where Flender has agreed to performance figures but does not achieve them, that shall be regarded as a Defect, and Flender shall make good any such Defect in accordance with clause 15. Flender's liability, if any, shall in any case be limited as provided in clause 16.

12.2. Inspections and acceptance tests

If Flender has agreed to perform any inspections or acceptance tests, they will be performed in accordance with Flender's standard procedures at the place of manufacture or another location at Flender's option. Flender shall bear the cost of performing any inspections and acceptance tests specified in its Offer. Flender may agree to carry out additional inspections or acceptance tests requested by Customer, in which case Customer shall bear the cost, and Flender's performance time shall be extended accordingly. If Flender agrees to perform witnessed inspections or tests, Customer must arrange for a representative to attend. If Customer fails to do so, Flender may proceed without the representative, and such tests shall be deemed made in Customer's presence. Flender shall not be

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responsible for any expenses incurred by Customer or its representative related to inspections or tests.

13. Term

The Agreement shall be effective for the Term commencing on the Commencement Date. The Term shall be extended automatically for further periods of twelve (12) months on each anniversary of the Commencement Date, unless either party gives 90 days' written notice prior to expiry that it does not wish to renew.

14. Suspension and Termination

14.1. Right to terminate

Either party may terminate the Agreement with immediate effect, by notice to the other party, if the other party: (a) suffers an Insolvency Event; or (b) commits a material breach and fails to diligently remedy it within 21 days (or a reasonable longer period) after receiving a notice from the non-defaulting party. Without limiting the foregoing, Flender may also terminate with immediate effect, by notice to Customer, if Customer has not paid an amount due and owing. Any action taken by Flender under this clause shall not invalidate the Agreement or prejudice any of Flender's rights, powers, and remedies, whether under the Agreement or at Law.

14.2. Right to suspend

If any of the events referred to in clause 14.1 happen to Customer, Flender may elect to suspend performance of the whole or any part of the remaining work under the Agreement. This suspension right is in addition to any other rights and remedies available to Flender at Law. The Delivery Date shall be extended by a period equal to the period of any such suspension. Customer shall pay Flender all additional costs and expenses suffered or incurred by Flender by reason of any such suspension.

14.3. Recourse of security

If Customer has provided any security under the Agreement and Flender exercises any rights under clause 14.1, Flender may have recourse to any security given or monies paid by Customer under the Agreement and apply this against the loss and/or damages incurred by Flender as a result of exercising such rights.

14.4. Termination by the Customer for Flender default

In case of termination by Customer for Flender default under this clause, Flender is only entitled to be paid the Contract Price for any Goods delivered and Services performed to the date of termination. This clause sets out the Parties' sole and exclusive rights and remedies in such circumstances.

14.5. Termination by Flender

In the event of termination by Flender, Customer shall pay Flender the Contract Price in full plus any additional costs and expenses reasonably incurred (including demobilisation costs and the cost of any Flender Personnel who become redundant because of the termination) less any savings due to such earlier termination. Customer shall be entitled to obtain any fully completed work in its conditions at the point in time Flender has received or as the case may be has issued the termination notice.

15. Defects Liability

15.1. Defects Generally

- (a) Customer must notify Flender of the alleged Defect in writing as soon as it becomes or should have become aware of the Defect during the Defects Liability Period. Flender shall rectify any Defects occurring during the Defects Liability Period, at its option, by repair, replacement, or supply of equivalent Goods and Services (or by payment of the cost of doing so).
- (b) Notwithstanding clause 15.1(a), Flender will not cover:
 - (i) The Goods and/or the Equipment or system in respect of which work under the Agreement has not been carried out or properly handled, used, operated, and maintained in accordance with Flender's instructions or, absent instructions, in accordance with the Installation and Operational Manual;
 - (ii) such Defects caused by incorrect Operating Material or lubricants, faulty civil or mechanical work, unsuitable soil conditions, or any other chemical, electrochemical, and/or electrical influences not provided for in the Agreement;
 - (iii) the Goods are not a consumable, not liable to deterioration, or do not have a low rated service life;
 - (iv) unauthorised repair or alteration to the Goods or equipment with non Flender parts);
 - (v) damages or failures caused by the use of Goods or Equipment and/or material supplied by the Customer, other than those for which it was designed; and
 - (vi) Defects caused by fair wear and tear, improper storage, excessive heating, mechanical vibration, overloading or contravention of prevailing standards and regulations applicable to electrical work.

- (c) Customer must dismantle and install repaired or replacement Goods at its own cost. Flender may reimburse reasonable costs up to 10% of the defective Goods' or Equipment's price.

15.2. Customer's obligation with respect to repair or replacement

If Customer notifies Flender of an alleged Defect per Clause 15.1, Customer shall, upon Flender's request:

- (a) Customer must promptly return Defective parts to Flender for repair or enable Flender to repair/replace them by providing access. Unless agreed otherwise, Customer performs removal and installation at its own risk and expense. Replaced Defective parts become Flender's property; replacement parts become Customer's upon installation.

15.3. Exclusive remedy

Subject to Clauses 15.5-15.7 and applicable Law, Flender's sole and exclusive remedy for Defects, and Customer's full liability for them, is rectification under this clause. All other express or implied representations, warranties, and conditions (including merchantability and fitness for purpose) for Goods and Services not in this Agreement are excluded.

15.4. Defects Liability Period

The Defects Liability Period is:

- (a) For Goods: 12 months after risk transfers to Customer;
- (b) For Overhauls: as per the Scope of Work.
 - (i) For replaced Parts: 12 months after risk transfers back to Customer.
 - (ii) For Labour: 12 months after risk transfers back to Customer.
- (c) For Field Services: 90 days from performance date; and
- (d) For Services (excluding Overhauls and Field Service): as stated in the valid quotation.

15.5. Implied conditions, warranties and consumer contracts

Nothing in this clause excludes conditions, guarantees, warranties, or remedies implied into the Agreement by Indonesian Consumer Protection Law or other applicable Indonesian Laws, to the extent such exclusion is prohibited by express agreement.

15.6. Where goods and/or services are supplied to the Customer:

If any supply of goods and/or services under the Agreement to the Customer is a supply to a Consumer, the following applies:

- (a) Flender's goods and services include guarantees not excludable under Indonesian Consumer Protection Law. Customer is entitled to remedies for Major Failure and compensation for reasonably foreseeable loss or damage, and to repair or replacement if goods fail to meet acceptable quality without being a Major Failure.
- (b) Flender provides Defects Liability Period cover under Clause 15.1, in addition to Customer's rights under Indonesian Consumer Protection Law. Customer must claim under this cover by notifying Flender in writing per Clause 15.1(a) at the address in Clause 15.6(c).

Flender will pay Customer's reasonable, direct expenses for claims under this clause. Customer shall submit details and proof of expense claims to Flender for consideration.

15.7. Supply to a Consumer of goods and services not ordinarily for personal, domestic, or household use or consumption

If Customer is a Consumer under the Laws referenced in Clause 15.5, and goods or services supplied by Flender are not ordinarily for personal, domestic, or household use, Flender's liability for breach of any implied condition, guarantee or warranty under such Law shall, to the extent permitted, be limited to: (a) for goods: repair, or at Flender's option, replacement, supply of equivalent goods, or payment of their cost; and (b) for services: resupply or payment of resupply cost.

15.8. Software

Notwithstanding this clause, defect liability claims for software are excluded for: (a) insignificant deviation from agreed characteristics; (b) defects not reproducible by Customer in Flender's presence; (c) errors or restrictions originating after risk transfer to Customer due to improper operation, usage, or handling; (d) errors or restrictions from unapproved modifications, maintenance, or improper interconnection/integration with third-party equipment (unless by Flender or its subcontractors); and (e) defects in freeware, shareware, or open source software.

16. Limitation of Liability

Notwithstanding any other Agreement provision and except to the extent liability cannot be legally limited or excluded under applicable Indonesian Law:

- (a) Flender's total liability to the Customer for all claims, whether pursuant to indemnity or in contract, tort (including negligence and breach of statutory duty), or otherwise arising from or in connection

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with the Agreement, shall not exceed twenty percent (20%) of the Contract Price per event or series of connected events, and shall in any event be limited in aggregate to one hundred percent (100%) of the Contract Price.

- (b) Flender shall under no circumstances be liable for any indirect, incidental, special, punitive, or consequential loss or damage, including but not limited to economic loss, loss of contract, profit or revenue, business interruption, production loss or stoppage, loss of information or data, loss of power, replacement power, cost of capital, loss of interest, damages based on Customer's third party contracts, or any similar losses, to the extent permitted by Indonesian law.
- (c) If Customer is not or shall not be the sole end user and ultimate owner of the Supplies, or is procuring them for a joint venture, Customer shall include a clause in its contracts with the end user, ultimate owner, or joint venture participants so that Flender is given the benefit of the indemnities, exclusions, and limitations of liability in the Contract by all such users, owners, or participants (which shall apply as if the user, owner, or participant were the Customer) and shall indemnify Flender against claims by them to the extent Flender would not be liable to Customer under the Contract if the claim had been made by Customer. Customer shall, upon request, provide Flender with evidence of such contractual provisions.
 - (d) This limitation and exclusion of liability shall apply whether the liability claim is based on breach of contract, tort (including negligence), under a warranty or indemnity, under statute, in equity, or otherwise, to the extent permitted by Indonesian law. Nothing in this clause shall operate to exclude or limit liability to the extent such exclusion or limitation is prohibited by law. Flender's liability to the Customer shall be proportionately reduced to the extent that any act or omission of the Customer or its associated parties contributed to the loss or damage.
- (e) Any and all Flender liability under or in connection with the Agreement shall cease with the expiry of the Defects Liability Period in Clause 15.4 or upon early termination of the Agreement, whichever occurs first, except for liability that cannot be excluded or limited by law.

16.2 Third-Party Benefit

Flender holds the rights under this clause for itself, and as agent and trustee for its Affiliates, other contractors, subcontractors, consultants, employees, directors, officers, agents, and suppliers ("Associates") respectively. For the purpose of this clause, each Associate must be treated as a party to the Agreement and may plead the Agreement as a bar to any claims by the other party under the Agreement.

17. Force Majeure and Delays

- (a) If a Force Majeure Event prevents a party from partially or wholly complying with its obligations under the Agreement (other than payment obligations), that party shall not be obliged to perform those obligations until no longer prevented, and the time for performance shall be extended by the delay period.
- (b) If Customer suspends its obligations, Customer shall pay Flender for all work performed until the suspension notice, plus all additional reasonably incurred costs (e.g., waiting time, demobilization, remobilisation, work protection). Flender may take back the work, and Customer shall return it upon Flender's request. Taking back, asserting retention of title/security interest, or taking possession of work by Flender shall not imply Agreement termination/restitution, unless expressly stated by Flender.
- (c) If a party is prevented by a Force Majeure Event or suspension from carrying out its obligations for over 180 days, either party may terminate this Agreement by written notice. Upon termination, rights and obligations cease (accrued rights/remedies unaffected). Customer shall pay Flender: (a) all amounts due for work carried out; (b) cost of materials/equipment reasonably ordered for work and liable to accept (including profit/overheads); (c) Flender's reasonable demobilisation costs (including profits/overheads); and (d) compensation equal to 30% of the balance of the Contract Price payable.
- (d) If Customer's act or omission, Change of Law, Restricted Site Access, Contamination, or a Force Majeure Event causes delay to Flender: (a) time for Flender's performance extends by the delay; and (b) Customer shall pay Flender all resulting additional costs, including profits and expenses (e.g., idle or retrenched or re-employed personnel, work outside normal hours, additional travel).

18. Liquidated Damages for Delay

If Flender is delayed in performing Services or delivering Goods by the Delivery Date solely due to Flender, and Customer suffers direct loss, Customer's sole remedy shall be liquidated damages, for each complete week of delay, at 0.5% of the price of the delayed portion of the Goods and Services, up to a maximum aggregate of 5.0% of the price of the portion which cannot be commercially and effectively used due to such delay. Payment of such liquidated damages shall be in full satisfaction of Flender's entire liability for such delay.

19. Fiduciary Security

Customer acknowledges the Agreement may constitute a security agreement for the Fiduciary Security Law. To secure performance, Customer agrees to

execute a separate deed of fiduciary security over the Goods upon Flender's request. Customer shall not create any other encumbrance over the Goods without Flender's prior written consent, and agrees to do all things reasonably requested by Flender to register the fiduciary security with the relevant Fiduciary Registration Office in Indonesia.

20. Non-Solicitation

Customer shall not, during the Agreement term (and for 12 months after Term expiry), directly or indirectly solicit or entice away for employment any person engaged by Flender to perform works under the Agreement. Customer shall indemnify Flender upon demand against all loss, costs, and expenses incurred by Flender arising from or in connection with a breach of this clause (including costs to replace such person).

21. Dispute Resolution

21.1. Notice of Dispute

If any dispute or difference occurs between the Parties arising from or in connection with the Agreement ("a **Dispute**"), it shall be notified to the other party by written notice detailing the subject-matter ("**Notice of Dispute**").

21.2. Escalation of dispute

Upon giving a Notice of Dispute, the following applies:

- (a) The Dispute shall be submitted for negotiation by the respective Chief Executive Officers of the parties (or their delegates);
- (b) If after twenty-one (21) days of the Notice of Dispute, the Dispute has not been resolved between the Chief Executive Officers (or their delegates), either party may refer the Dispute to arbitration at the Indonesian National Board of Arbitration (BANI) Arbitration Center (www.baniarbitration.org) in accordance with the BANI rules by one arbitrator who shall be a lawyer and who shall give his or her decision in writing and based on legal substance chosen by the Parties or, if they cannot agree within 42 days of the Notice of Dispute, appointed in accordance with the BANI rules.

21.3. Award, seat and language

The award of such arbitration shall be final and binding on both parties in accordance with legislation applying to arbitration, and judgment thereon may be entered in any court having jurisdiction. The seat of arbitration shall be Jakarta, Indonesia. The arbitration shall be conducted in English, but the award shall be issued in both English and Indonesian.

21.4. No relief from performance of other obligations

A reference to arbitration under this clause shall not relieve either party of any other obligations under the Agreement, including, if reasonably practicable, the obligation to take steps necessary during arbitration proceedings to ensure the Agreement's progress is maintained.

22. Reservation

Flender's obligation to fulfill the Agreement and any Purchase Orders is subject to the proviso that fulfillment is not prevented by impediments arising from national or international foreign trade and customs requirements, embargoes, or other sanctions.

23. Export Control

- (a) If Customer transfers goods (hardware, software, technology) and corresponding documentation delivered by Flender ("Goods"), or works and services, or any technical support provided by Flender ("Services") to a third party, Customer must comply with all applicable national and international (re-)export control regulations, including those under national law, EU law, USA law, and UN regulations.
- (b) For all deliveries by Flender Affiliate entities with registered offices in the European Union and the United Kingdom, all direct or indirect sales, exports, or re-exports of any Flender Goods or Services must comply with EU regulations, including but not limited to Articles 12g and 12ga of Council Regulation No. 833/2014, Article 8g of Council Regulation No. 765/2006, and all other Articles within these Council Regulations, as amended. These regulations are principles of the Agreement; any violation by Customer shall entitle Flender to seek appropriate remedies, including termination and/or liquidated damages of five percent (5%) of the price of the Goods exported or rights/information provided, unless higher amount is required by EU regulations. Liquidated damages serve as minimum damage amount and are not a penalty. Assertion of further damages is not excluded.
- (c) The Customer hereby represents and warrants that the Customer, its customer, and the End-User of the Goods or Services are not listed on any applicable restricted party list (e.g., those of the EU, USA, or the UN), and are not under the direct or indirect control of any such party.
- (d) Upon Flender's request, Customer shall promptly provide Flender with all information pertaining to the End-Customer, the particular destination, and the particular intended use of Goods and Services, as well as any existing export control restrictions.
- (e) Customer shall indemnify and hold harmless Flender from and against any claim, proceeding, action, fine, loss, cost, and damages arising from or relating to any noncompliance with the above export control obligations, and Customer shall compensate Flender for all resulting losses and expenses.

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24. Confidential Information

- a. Each party acknowledges the other party's Confidential Information is valuable and undertakes to keep such Confidential Information secret, to procure that its representatives keep such Confidential Information secret, and to preserve its confidential nature and secrecy.
- b. This confidentiality obligation shall not apply to Information which: (i) is or becomes public domain other than by receiving party's fault; (ii) is disclosed in good faith by an entitled third party; (iii) is developed independently by the receiving party without reliance on Information; (iv) was known to the receiving party prior to disclosure; or (v) is required to be disclosed by law (subject to timely notification to the disclosing party).

The Confidentiality obligations for each party shall survive the Agreement's expiration or termination.

25. Notice

25.1. Form of notices

Any notice to be given under the Agreement shall be in writing and delivered personally or sent by pre-paid post (airmail if to or from outside Indonesia) addressed to the other party at such address as a party notifies the other for this clause. Any notice shall be deemed served: (a) when delivered, if in person; and (b) 3 days (7 days if to or from outside Indonesia) after posting, if by post.

26. General

26.1. Precedence

If any inconsistency exists between the documents comprising the Agreement, the following order of precedence shall apply (with the document in Clause 26.1.a having the highest priority):

- a. Flender's order confirmation (if any);
- b. any amendments to Flender's Offer or the Conditions which have been agreed between the parties in writing;
- c. Flender's Offer (including all documents attached by Flender or which Flender agrees are incorporated by reference); and
- d. these Conditions.

26.2. Severance

If the whole or any part of these Conditions and the Agreement is or becomes or is held to be illegal, invalid, or unenforceable, then the whole and each part of the Agreement's clauses shall (to the extent necessary to avoid such illegality, invalidity, or unenforceability) be interpreted, read down, or severed without affecting the remaining clauses' operation.

26.3. Assignment

Customer shall not assign, pledge or transfer its interest in the Agreement (or any part) without Flender's prior written consent. Flender may assign, pledge or transfer its interest in the Agreement (or any part) to an Affiliate. Flender may also assign to any person all or part of any debt owing by the Customer to Flender.

26.4. Amendment

The Agreement may only be varied by written agreement between the parties. No other documentation, correspondence, verbal agreement, or conversation shall be part of, affect, or modify any aspect of Flender's Offer or the Agreement unless accepted and confirmed by Flender in writing. These Conditions shall apply to any separable portion of Flender's Offer.

26.5. Governing Law and Jurisdiction

These Conditions and the Agreement, and to the extent permitted by Law, each security interest under it, shall be governed and interpreted in accordance with the Laws of the Republic of Indonesia. The parties irrevocably waive the application of Article 1266 of the Indonesian Civil Code to the extent it requires a court order for the Agreement's termination. Subject to the dispute resolution provisions in Clause 21, the parties irrevocably submit to the exclusive jurisdiction of the South Jakarta District Court.

The application of the United Nations Convention on Contracts for the International Sale of Goods, 1980 (Vienna Convention) is excluded.

The Agreement constitutes the entire agreement between the parties as to its subject matter, and the parties acknowledge no other understandings, agreements, or representations, whether express or implied, in any way relating to the Agreement. The Agreement is made in English and an Indonesian version. Both texts are equally authentic, and in any inconsistency or different interpretation between the English and Indonesian text, the Indonesian text shall prevail.

26.6. Waiver

No consent or waiver by a Party to or of any breach of any Agreement provision shall be construed as consent or waiver to or of any other breach of an Agreement provision.

26.7. Survival

Any indemnity or other obligation of confidence under the Agreement is independent and will survive the Agreement's termination.