

## 1. DEFINITIONS AND INTERPRETATION

In these Conditions:

1.1 the following terms have the following meanings:

"Affiliate" any persons that Control, are Controlled by or are under common Control with us from time to time;

"Change" any mechanical, software or other change in design, manufacturing process, supply chain, specifications, materials or product standards (including part substitutions or internal relocation of parts) which affects or potentially affects performance, reliability, function, safety, appearance, quality, dimensions, tolerances or any other Specifications of Deliverables.

"Claims" claims or proceedings made, brought or threatened against us by any person;

"Confidential Information" any Contract and any information that relates to a party (or any of its Affiliates) disclosed to the other party in connection with the Contract, but excluding information received by the other party that: (i) is publicly available (other than through a breach of Condition 0); (ii) was received from a third party who did not acquire it in confidence; or (iii) is developed without any breach of the Contract;

"Contract" a contract for the supply of Deliverables by you to us incorporating these Conditions, including pursuant to a Framework Agreement, as formed under Condition 2.1 (Contract Formation);

"Control" in relation to a person, the power to direct or cause the direction of its affairs, whether by means of holding shares, possessing voting power, exercising contractual powers or otherwise and "Controlled" is construed accordingly;

"Customer ESG Policies" our and our Affiliates' policies and statements which are available at www.smiths.com from time to time and which apply to entities which supply any good or services to us or any of our Affiliates including our and our Affiliate's procurement policies, sustainability policies, HSE policies and water waste and biodegradability statements, in each case as amended from time to time.

"Cyber Security Incident" means (a) any information security incident or any event or incident having an adverse effect on any element of the security of the IT infrastructure of us or any of our Affiliates, you or any of your permitted subcontractors; (b) any reasonably suspected event or "near miss" incident; (c) any event or incident involving any breach of security leading to a loss of any data of, controlled by or in the possession of us or our Affiliates or controlled by, processed or in the possession of you and/or your permitted subcontractors in connection or as a result of this Contract; (d) any event or incident which involves the compromise of confidentiality, integrity and or availability of data.

"Deliverables" means Goods, Work Product and/or Services;

"Delivery" delivery of the Goods in accordance with Condition 4 (Delivery of Goods / Supply of Services);

"ESG" environmental, social and governance factors and standards;

"Framework Agreement" a framework agreement in place between you and us for the supply of Deliverables incorporating these Conditions;

"Force Majeure Event" means any unforeseen and unforeseeable event arising which is beyond the reasonable control of the affected party (including any industrial dispute affecting any third party, fire, flood, disaster, civil riot or war, but excluding pandemic, public health events, industrial disputes, labour disturbances or strikes facing the Supplier or its subcontractors, breakdown or failure of equipment and any failures of supplier's to the Supplier or its subcontractors).

"Goods" the goods set out in the Order or any Specification or referred to in the Framework Agreement;

"IPR" all intellectual and industrial property rights of any kind including patents, trade secrets, supplementary protection certificates, rights in know-how, registered and unregistered trade marks and designs, models, rights to prevent passing off or unfair competition and copyright, database rights, topography rights, any rights in any invention, discovery or process, and applications for and rights to apply for any of the foregoing, in all countries in the world and together with all renewals, extensions, continuations, divisions, reissues, re-examinations and substitutions;

"IPR Claim" a Claim that the possession, use and/or sale of Deliverables by us, our Affiliate or our or their customers infringes the IPR of any person;

"Liability" liability arising out of or in connection with a Contract, whether in contract, tort, misrepresentation, restitution, under statute or otherwise including any liability under an indemnity contained in a Contract and/or arising from a breach of, failure to perform, or delay in performing any of a party's obligations under a Contract, howsoever caused including if by negligence;

"Losses" all losses, liabilities, costs, demands, damages and expenses that are or will be incurred by us or our Affiliates including in respect of any Claims, including IPR Claims;

"Order" our written acceptance of your quotation for the supply of Deliverables to us AND/OR any purchase order submitted by us to you for Deliverables;

"Price" (i) the lower of the price for the Deliverables set out in the Order and your price for the Deliverables in force at the time of Delivery of Goods or completion of Services; or (ii) where there is a Framework Agreement in place, the price for the Deliverables as set out in the Framework Agreement;

"Services" the services set out in the Order or any Specification or referred to in the Framework Agreement;

"Specification" the specifications and requirements for the Deliverables set out or referred to in the Order or as defined in the Framework Agreement;

"Supplier Personnel" has the meaning given to it in Condition 17.6

## 多國

## 1. 定義和解釋

在本條件中：

1.1. 下列術語應具有下列含義：

"關聯人" 指不時控制我方、受我方控制或與我方共同受控制的任何人員；

"改變" 指在設計、製造過程、供應鏈、規格、材料或產品標準方面影響或可能影響可交付成果的性能、可靠性、功能、安全性、外觀、品質、尺寸、公差或任何其他規格的任何機械、軟體或其他改變（包括部件替換或部件內部遷移）。

"索賠" 指任何人針對我方提出、提起或揚言提起的索賠或程式；

"保密資訊" 指任何合同和針對該合同向另一方披露的與該方（或其任何關聯人）有關的任何資訊，但不包括另一方收到的下列資訊：（i）可公開獲得的（除違反第 12 條外）；（ii）從並非基於保密而獲得該資訊的協力廠商處獲得的；或（iii）在不違反合同的情況下開發的；

"合同" 指根據第 2.1 條（合同的訂立）所訂立納入本條件的貴方向我方供應可交付成果的合同，包括框架協議；

"控制"，就某人而言，指指示或促使指示其事務的權力，無論通過持有股份、擁有表決權、行使合同權力或其他方式，且"受控"應做相應解釋；

"客戶 ESG 政策" 指我方及我方關聯人時不時於 www.smiths.com 網站上公佈、適用於所有向我們或任何關聯人供應商品或服務之實體的政策與聲明，當中涵蓋我方及我方關聯人的採購政策、可持續發展政策、健康安全環境（HSE）政策，以及水資源廢棄物與生物降解性聲明，各項內容均以不時修訂的版本為準。

"網絡安全事故" 指 (a) 任何對我方或任何關聯人、貴方或貴方任何獲准分包商之資訊科技基建安全構成不利影響的資訊安全事故或任何事件；(b) 任何合理懷疑的事件或「險些發生」的事故；(c) 任何涉及安全漏洞、導致與本合同相關或因其而造成的資料損失之事件或事故，該等資料為我方或我方關聯人所擁有、控制或持有，或由貴方及/或貴方獲准分包商控制、處理或持有；(d) 任何涉及損害資料保密性、完整性及/或可用性的事件或事故。

"可交付成果" 指貨物、工作產品和/或服務；

"交付" 指根據第 4 條（交付貨物/提供服務）；

"ESG" 指環境、社會及管治因素與標準；

"框架協議" 指貴方和我方之間為提供可交付成果而訂立的包含本條件的框架協議；

"不可抗力事件" 指受影響一方無法合理控制、且既未預見亦不可預見的任何事件（涵蓋影響任何第三方的工業糾紛、火災、水災、災難、內亂或戰爭；但不包括供應商或其分包商所面對的疫症、公共衛生事件、工業糾紛、勞工騷亂或罷工、設備故障，以及供應商或其分包商自身的供應商出現的任何失靈情況）。

"貨物" 指訂單或任何規格中規定的或框架協議提及的貨物；

"智慧財產權" 指任何種類的所有智慧財產權和工業產權，包括專利、商業秘密、補充保護證書、專有知識、註冊和未註冊的商標和外觀設計、模型、防止假冒或不正當競爭的權利和著作權、資料庫權、拓撲權，任何發明、發現或方法中的任何權利，以及在世界所有國家申請和有權申請前述任何權利，連同所有續期、展期、延期、分立、重新簽發、重新審查和替換；

"智慧財產權索賠" 指認為我方、我方關聯人或我方或其客戶持有、使用和/或銷售可交付成果侵犯任何人智慧財產權的主張；

"責任" 由合同引起的或與合同有關的責任，無論基於合同、侵權、虛假陳述、償還、制定法或其他方面，包括合同中賠償條款項下的任何責任和/或由違反、未履行或延遲履行合同項下任何一方的義務，不論如何產生，包括由於疏忽造成的；

"損失" 指我方或我方關聯人發生或將會發生的包括針對任何索賠（包括智慧財產權索賠）在內的所有損失、債務、成本、要求、損害賠償和支出；

"訂單" 指我方書面接受貴方向我方提供可交付成果的報價和/或我方方向貴方提交的針對可交付成果的任何採購訂單；

"價格"（i）訂單中規定可交付成果的價格和交付貨物或完成服務時貴方針對可交付成果屆時有效的價格，以較低者為準；或（ii）已有框架協定的情況下，框架協定中規定的可交付成果的價格；

"服務" 指訂單或任何規格中規定的或框架協定中提及的服務；

"規格" 指訂單中規定或提及的或框架協議中定義的可交付成果的規格和要求；

"供應商人員" 一詞的定義載於第 17.6 條。

"we" or "us" or "our" the person named as the customer in the Order and/or referred to as "Customer" in a Framework Agreement;

"Work Product" any reports, documents, work product or other materials created for us by you, or on your behalf, arising from the Services;

"you" the person named as the supplier in the Order and/or referred to as the "Supplier" in a Framework Agreement;

1.2 headings are for ease of reference and do not affect the interpretation of these Conditions;

1.3 references to a "person" include any individual, body corporate, partnership, government authority, agency or department, state or any other entity (in each case whether or not having separate legal personality);

1.4 any words following the words "include", "in particular" or any similar expressions will be construed without limitation and accordingly will not limit the meaning of the words preceding them;

1.5 an obligation on a party to procure or make sure the performance or standing of another person will be construed as a primary obligation of that party; and

1.6 a reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.

1.7 the English language version of these Conditions is the binding version as between you and us. Any translation has been prepared for convenience only. In the event of any conflict, ambiguity or inconsistency between the English language version of these Conditions and any translated version, the English language version shall prevail.

## 2. CONTRACT FORMATION

2.1 A Contract is formed when we accept any quotation issued by you (verbal or written) by issuing an Order (whether or not there is a Framework Agreement in place) OR where you perform any act consistent with fulfilling an Order submitted by us for Deliverables. We are not obliged to accept any quotation issued by you.

2.2 These Conditions are the only terms and conditions on which we will purchase Deliverables. They apply in place of any terms and conditions that you may seek to apply or which may otherwise be implied, including any which are endorsed on, delivered with or contained in your quotation, Order acknowledgement, on your website or other sales materials or media or on any delivery note ("Seller T&Cs") and you waive any rights to rely on any such Seller T&Cs. Delivery of Goods and/or commencement of performance of Services is conclusive evidence of your acceptance of these Conditions.

2.3 You may not cancel a Contract. Unless you notified us in writing before we placed an Order that we may not cancel it, we may cancel a Contract in whole or part any time before Delivery or completion of performance of Services. Our sole Liability will be to pay to you fair and reasonable compensation for work-in-progress at the time of cancellation provided that:

2.3.1 such compensation will not include any loss of profits OR any indirect or consequential loss; and

2.3.2 where Goods are not manufactured specifically for us to our Specification, our sole Liability will be to pay you a fair and reasonable restocking charge.

## 3. QUALITY CONTROL & TESTING

3.1 The quantity, description and Specification of Deliverables will be as set out in the Order. You must not make any Change to Deliverables without our prior written consent. You will carry out any reasonable Change that we request to any Deliverables. We will negotiate, in good faith, with you an agreed adjustment to the price, Delivery date or both as a result of a Change.

3.2 You will maintain detailed quality control and manufacturing records for the shorter of any maximum period permitted by law and at least ten (10) years from the date of Delivery (or such other period of time as set out in a Framework Agreement or Order) from the date of Delivery of Goods which we or a third party on our behalf may inspect or receive copies of on demand.

3.3 We may inspect and test Goods at any time prior to Delivery. You will allow us and our representatives to enter your premises to carry out such inspection and testing and will provide us with all facilities reasonably required. If, following such inspection or testing, we are not satisfied that the Goods will comply with **Condition 5.1 (Your Obligations)**, you will take all steps necessary to ensure compliance at no additional cost to us.

3.4 You will maintain a quality control system that meets any international standard as required by us, or which is otherwise approved by us and such test and inspection system as we may require.

3.5 You may not deliver the Goods by separate instalments without our prior written consent. Instalments will be invoiced separately by you.

## 4. DELIVERY OF GOODS / SUPPLY OF SERVICES

4.1 Unless otherwise specified in an Order, you will deliver the Goods DDP (Incoterms 2020) to the address specified in the Order during our normal business hours on the date specified in the Order. You will be responsible for off-loading the Goods from the delivery vehicle. Delivery of the Goods will occur when they have been offloaded at the delivery address.

4.2 You will perform Services in accordance with the applicable timetable communicated to you or as set out in the Order to meet all Specifications.

4.3 Time is of the essence for performance of your obligations under the Contract. If you are late performing your obligations under the Contract, you will pay to us liquidated damages of 1.5% of the Price for each week of delay up to a maximum of 15% of the Price. You and we agree that this amount is reasonable and proportionate AND the most effective way of compensating us for part or all of our

"我方"或"我方的"指在訂單中被指定為客戶和/或在框架協定中被稱為客戶的人;

"工作產品"指由貴方或代表貴方為我方製作的產生於服務的任何報告、檔、工作產品或其他材料;

"貴方"指訂單中被指定為供應商和/或在框架協議中被稱為供應商的人;

1.2 標題僅供參考之便，不影響對本條件的解釋;

1.3 對"人"的提述包括任何個人、法人團體、合夥、政府當局、機構或部門、州或任何其他實體(在每種情況下無論是否具有獨立法人資格);

1.4 前接"包括"、"具體地"或任何類似表述的任何詞語將被解釋為沒有限制，並且相應地不會限制在其之前詞語的含義;

1.5 一方促成或確保另一方履行或資格的義務將被解釋為該方的主要義務;

1.6 對制定法或制定法規定的提述是對經修訂或重新頒佈的制定法或制定法規定的提述。對制定法或制定法規定的提述包括根據該制定法或制定法規定制定的所有次級立法

1.7 本條件的英文版本是貴方和我方之間具有約束力的版本。任何翻譯僅為方便而備。如果本條件的英文版本與任何翻譯版本之間有任何衝突、不明確或不一致之處，應以英文版本為準。

## 2. 合同的訂立

2.1 我方通過簽發訂單(無論是否存在框架協議)接受貴方(口頭或書面)簽發的任何報價，或貴方實施與履行我方針對可交付成果提交的訂單相一致的任何行為時，合同成立。我方沒有義務接受貴方簽發的任何報價。

2.2 本條件是我方據以購買可交付成果的唯一條款和條件。其替代適用貴方尋求適用或貴方網站或其他銷售材料或媒體或任何交付單上顯示的任何條款和條件("賣方條款和條件")，包括貴方報價、訂單確認書中背書、交付或所含任何條款和條件，且貴方放棄信賴任何該賣方條款和條件的權利。交付貨物和/或開始履行服務是貴方接受本條件的確認性證據。

2.3 貴方不得取消合同。除非貴方在我方下訂單前書面告知我方不得取消合同，否則我方可在交付或完成履行服務前任何時間全部或部分取消合同。我方的唯一責任是在取消時針對正在進行的工作向您支付公平合理的補償，但：

2.3.1. 該補償不包括任何利潤損失或任何間接或結果產生的損失；且

2.3.2. 如果貨物不是按照我方規格專為我方生產，我方的唯一責任是向您支付公平合理的補償費用。

## 3. 品質核對和測試

3.1 可交付成果的數量、描述和規格將在訂單中列出。未經我方事先書面同意，貴方不得對"可交付成果"作出任何更改。貴方將執行我方針對任何可交付成果提出的任何合理更改。我方將誠意與您就因更改而產生的價格、交貨日期或兩者的調整達成一致。

3.2 貴方將保存詳細的品質核對總和生產記錄，保存時間為法律允許的最長時間和自交貨之日起至少十(10)年(或框架協定或訂單中規定的其他時間期間)，以較短者為準；自交貨日起計，我方或代表我方的第三方可以查看或應要求獲得文本複本。

3.3 我方可在交貨前任何時間核對總和測試貨物。貴方將允許我方和我方代表進入貴方營業場所進行該核對總和測試，並將向我方提供合理要求的所有設施。如果在該檢驗或測試後，我們認為貨物不符合第 5.1 條(貴方義務)規定，貴方將採取一切必要措施確保其符合規定，而我方無須承擔額外成本。

3.4 貴方將維持符合我方要求的任何國際標準的品質檢驗體系，或者由我方以其他方式同意的品質檢驗體系，以及我方可能要求的核對總和測試。

3.5 未經我方事先書面同意，貴方不得分期分批交付貨物。分期分批貨物將由貴方單獨開具發票。

## 4. 交付貨物/提供服務

4.1 除非訂單中另行明確規定，貴方應在訂單中指定日期正常營業時間期間將貨物按照完稅後交貨(DDP, Incoterms 2020)交付至訂單中指定的位址。貴方將負責從運輸工具上卸載貨物。貨物在交付地址卸貨後，視為交付貨物。

4.2 貴方將根據傳達給貴方或訂單中規定的相關時間表履行服務，以符合所有規格。

4.3 時間對履行貴方在合同項下的義務至關重要。如果貴方延遲履行貴方在合同項下的義務，貴方每延遲一周將向我方支付價格 1.5% 的算定損害賠償金額，但最高為價格的 15%。貴方和我方同意該金額是合理和相稱的，並且是賠償我方部分或全部因延遲履行而遭受損失的最有效方式。然而，貴方和我方意欲，如果我方因貴方延遲履行

losses arising from late performance. However, you and we intend that we should be able to recover general damages as well as liquidated damages in circumstances where we have suffered loss in excess of the liquidated damages as a result of your late performance. Therefore, our rights to any liquidated damages under this **Conditions 4.3** is without prejudice to any other rights which we may have under the Contract or otherwise in respect of late performance, including the right to sue for damages or other relief and/or to terminate the Contract. A claim for general damages for late performance will be reduced by the amount of liquidated damages pursuant to **Conditions 4.3** actually applied or paid in respect of such late performance.

- 4.4** Services will be accepted by us when we are satisfied that the Services comply with the Specifications.
- 4.5** You will make sure that the Goods are marked in accordance with our instructions and any applicable laws, rules and regulations and are properly packed and secured; marked with information on their origin; Delivery is accompanied by a prominently displayed delivery note showing the Order number, date of Order, type and quantity of Goods, and any special storage instructions; and delivered with all operating and safety instructions, clearly displayed warning notices and such other information as may be necessary for the proper use, maintenance and repair of the Goods.
- 4.6** If you fail to deliver the Goods on time we may terminate the Contract immediately by giving you notice, in which case you will refund any monies already paid by us in relation to the Goods that have not been delivered and indemnify us and our Affiliates against our Losses as a result of your failure to supply Goods, including obtaining substitute goods from another supplier.
- 4.7** We will have a reasonable period of time following Delivery to inspect Goods. We may reject Goods which do not meet Specifications. We can also reject Goods which are more or less than the quantity or type Ordered or delivered prior to the date specified on the Order. Rejected Goods will be returned at your cost and expense. If we accept Goods delivered prior to the date specified on the Order we may charge you the cost of storing them until the actual specified Delivery date.
- 4.8** Risk in the Goods passes to us on the later of acceptance and Delivery. Ownership of the Goods passes to us on the earlier of payment of the Price and Delivery.
- 4.9** You will notify us in writing as soon you are aware that any Goods or the product support for the Goods are to be discontinued or made of "end of sale" or "end of life". At our request, you and we will agree in good faith a reasonable period of time during which you will keep agreed spare parts available for us for any discontinued, desupported, end of life or end of sale Goods. You shall provide us a last time buy opportunity at a price not exceeding the then current pricing for such existing Deliverable or (at our choice) a right of first refusal to purchase all or a portion of your remaining inventory for a price not exceeding the then current pricing.

## 5. YOUR OBLIGATIONS

**5.1** You will make sure that the Goods will:

- 5.1.1** be of satisfactory quality, comprise genuine, new materials (which are not used, refurbished, reconditioned, remanufactured, counterfeit or of such age as to impair usefulness or safety) and be fit for any purpose notified by us to you;
- 5.1.2** conform to, satisfy and be capable of the Specifications;
- 5.1.3** be free from defects in design, materials and workmanship;
- 5.1.4** be sold to us with full and unencumbered title and not infringe the IPR of any third party;
- 5.1.5** comply with all (i) applicable laws, (ii) regulatory requirements and (iii) standards (or local equivalent) and requirements of relevant statutory and regulatory bodies; and
- 5.1.6** be safe and without risk to health.
- 5.2** In respect of Services, You will:
- 5.2.1** perform Services with the best care, skill and diligence in accordance with best practice;
- 5.2.2** use personnel (and sufficient number of personnel) who are suitably skilled and experienced to perform the Services;
- 5.2.3** make sure that the Services conform with our reasonable instructions, comply with Specifications, are performed to meet the purposes notified by us to you and do not infringe the IPR of any third party;
- 5.2.4** provide all equipment, tools and vehicles and other items required to provide the Services;
- 5.2.5** obtain and at all times maintain all licences and consents required for the provision of the Services;
- 5.2.6** comply with all applicable laws, regulations, regulatory policies, guidelines or industry codes which may apply to the provision of the Services; and
- 5.2.7** not do or omit to do anything which may cause us or our Affiliates to lose any licence, authority, consent or permission required for our or their business.

**5.3** You will observe all health and safety rules and regulations and any other security requirements that apply at any of our premises and ensure that your personnel are insured against all risks while working on our premises.

**5.4** Without affecting any of our other rights or remedies, if you materially breach any of these Conditions OR any Goods (whether or not accepted in whole or in part) do not conform with **Condition 5.1** during the longer of (i) your warranty period for the Goods and (ii) 12 months following Delivery OR any Services breach **Condition 5.2**, then we may:

- 5.4.1** terminate the Contract and any other existing Contracts immediately with

而遭受的損失超過算定損害賠償，我方應該能夠獲得一般損害賠償和算定損害賠償。因此，我方根據本**第 4.3 條**獲得任何該等金額的權利不會影響我方針對延遲履行根據合同或其他而享有的任何其他權利，包括起訴獲得損害賠償或其他救濟和/或終止合同。因延遲履行而主張獲得的一般損害賠償，將扣除根據**第 4.3 條**針對該延遲履行實際適用或支付的金額。

**4.4.** 我方信納服務符合規格時，視為我方接受服務。

**4.5.** 貴方應確保貨物根據我方指示和任何相關法律、法規和規章進行標示，且妥善包裝和保管；標示有關其原產地的資訊；交貨應附有突出顯示的交貨單，表明訂單編號、訂單日期、貨物類型和數量，以及任何特殊存儲說明；交貨應附有所有操作和安全說明、清晰顯示的警告，以及正確使用、維護和修理貨物所需的其他資訊。

**4.6.** 如果貴方未能按時交付貨物，我方可通知貴方立即終止合同，在該情況下，貴方將退還我方針對未交付貨物已支付的任何款項，並賠償我方和我方關聯人因貴方未提供貨物而遭受的損失，包括從其他供應商處獲得替代貨物。

**4.7.** 交貨後我方可在合理期間內檢查貨物。我方可拒絕不符合規格的貨物。我們亦可拒絕大於或小於訂購品質或類型的貨物，或在訂單規定日期前交付的貨物。拒絕貨物的返還將由貴方承擔費用和支出。如果我方接受訂單指定日期前交付的貨物，我方可向貴方收取實際規定交付日期前產生的存放費用。

**4.8.** 貨物風險在驗收和交付（以較遲發生者為準）後轉移至我方。貨物的所有權在付款和交付（以較早發生者為準）時轉移至我方。

**4.9.** 如果貴方獲悉將中斷任何貨物或產品支援或“停止銷售”或“停止生產”，貴方應儘快以書面方式告知我方。應我方要求，貴方和我方將善意約定一段合理期間，在此期間貴方將針對任何中斷、不提供支援、停止銷售或停止生產的貨物向我方提供約定的備件。貴方須給予我方最後採購機會，價格不超過該交付成果的當時價格；或（由我方選擇）授予我方優先購買權，以不高於當時價格購買貴方全部或部分剩餘庫存。

## 5. 貴方義務

**5.1.** 貴方將確保貨物：

- 5.1.1.** 品質令人滿意，含有全新材料（不是已使用、翻新、修復、再製造、假冒或具備損害使用性或安全性的陳舊程度），且適合我們告知貴方的任何用途；
- 5.1.2.** 符合、滿足且具備規格；
- 5.1.3.** 在設計、材料和工藝上沒有缺陷；
- 5.1.4.** 出售給我方時具有完全且無負擔的產權，不侵犯任何協力廠商的智慧財產權；
- 5.1.5.** 遵守所有（i）相關法律，（ii）監管要求和（iii）相關法定和監管機構的標準（或當地同等標準）和要求；且
- 5.1.6.** 安全且無健康風險。

**5.2.** 就服務而言，貴方將：

- 5.2.1.** 根據最佳實踐，盡最大注意、技能和勤勉履行服務；
- 5.2.2.** 使用具有適當技能和經驗的人員（和足夠數量的人員）履行服務；
- 5.2.3.** 確保服務遵守我方合理指示，符合規格，其履行符合我方告知貴方的用途，且不會侵犯任何第三方的知識產權；
- 5.2.4.** 提供服務所需的所有設備、工具和車輛以及其他物品；
- 5.2.5.** 獲取並始終維持提供服務所需的所有許可證和同意書；
- 5.2.6.** 遵守可能適用於提供服務的所有相關法律、法規、監管政策、準則或行業準則；且
- 5.2.7.** 不從事或忽略從事任何可能導致我方或我方關聯人喪失我方或其業務所需的任何許可、許可權、同意或准許。

**5.3.** 貴方將遵守我方任何經營場所適用的所有健康和安法法規和規章以及任何其他安全要求，並確保貴方人員針對在我方經營場所工作的所有風險投保。

**5.4.** 在不影響我方任何其他權利或救濟的情況下，如果貴方在下列期間實質性違反本條件任何規定或任何貨物（無論是否全部或部分接受）不符合**第 5.1 條**規定：（i）貴方針對貨物的保證期；和（ii）交貨後或任何服務違反**第 5.2 條**規定後12 個月（以較長者為準），我方可：

- 5.4.1.** 通知貴方立即終止合同和任何其他現有合同；

- notice;
- 5.4.2 require you, at our option, to promptly repair or replace the relevant Goods or reperform the relevant Services free of charge;
- 5.4.3 reject the Deliverables (in whole or in part) and require you to refund the Price for the relevant Deliverables;
- 5.4.4 accept the Deliverables subject to an equitable Price reduction; or
- 5.4.5 at your expense, repair or have a third party repair the Goods or reperform or have a third party reperform the Services and you will indemnify us and our Affiliates against our Losses (including from any IPR Claims) arising from such breach.
- 5.5 Condition 5.4 will apply to any repaired or replacement Goods supplied under Condition 5.4.2.**
- 5.6** If, as a result of any Goods not conforming with **Condition 5.1** or Services not conforming with **Condition 5.2** or otherwise representing an unreasonable risk of harm to the public or the environment, we determine a recall, removal or correction campaign ("campaign") is necessary or are required to carry out a campaign, we may implement such campaign and you will indemnify us and our Affiliates against all Losses incurred as a result of any such campaign.
- 5.7** You will, upon our request, promptly provide accurate and complete documentation in a form acceptable to us as may be required to permit Smiths to comply fully with all applicable governmental regulations or requirements that enable us to claim relief or tariff and/or duty exemptions, reductions or preferential treatment. This includes but is not limited to:
- 5.7.1 Valid certificates of origin in compliance with the requirements of any applicable free trade agreements, or where there is no applicable free trade agreement, standard certificate(s) of origin in the form which we may reasonably request;
- 5.7.2 Harmonised Tariff Schedule codes for the Goods;
- 5.7.3 Manufacturer's affidavits confirming the origin of the Goods;
- 5.7.4 Documentation of smelt or mill origin (such as smelter or mill certificates) to verify the country(ies) of origin of materials or inputs, including first country of smelt / mill and country of cast / pour; and
- 5.7.5 Any additional records or declarations required by applicable customs authorities to validate costs and places of origin of the Goods and materials contained therein or used in the performance thereof and support claims for relief from any tariff or duty.
- 5.8** You will retain all documentation in connection with Condition 5.7 for a period of no less than 5 years. You will notify us immediately in writing of any changes to information previously supplied which affects the origin, composition or eligibility of goods for preferential tariff treatment. If you do not comply with Condition 5.7 or this Condition 5.8, this will be a material breach of these Conditions.
- 6. OUR PROPERTY**
- 6.1** All patterns, dies, moulds or other tooling or materials, supplied by us or prepared or obtained by you for us at our cost ("**Tooling**"), will be marked with our name or as otherwise specified by us and will be and remain our exclusive property returnable in good condition on demand.
- 6.2** You will insure against all risks any Tooling and also any of your own tooling or property which may be kept on our premises for the purposes of providing Deliverables. You will keep all Tooling safe and in good condition while in your custody and/or under your control. All Tooling will be kept separately from your stock and other inventory.
- 6.3** We reserve the right to charge to you the cost of any Tooling if it is destroyed or damaged or rendered unfit for the purpose for which it was originally manufactured while under your control.
- 6.4** You will not dispose of any Tooling other than in accordance with our prior written instructions. You will not, at any time, use Tooling, nor will you allow Tooling to be used by anyone else for any purpose other than the supply of the Deliverables unless we have previously provided our consent in writing.
- 6.5** We will have the right to enter your premises and remove Tooling at any time without being liable for trespass or for damages of any sort.
- 7. IPR**
- 7.1** This **Condition 7** will apply if the Goods are to be made, modified or redesigned to our Specification. Any bespoke Specification or Work Product you create or have created for us will be treated as "Goods" for the purposes of this **Condition 7 (IPR)**.
- 7.2** We will own all present and future IPR (together with all economic and other proprietary rights) in the Goods and our specification. Accordingly, you will not use our specification other than to manufacture the Goods for us. With full title guarantee, you:
- 7.2.1 assign to us all IPR in the Goods which subsist as at the date of the Contract;
- 7.2.2 assign to us (by way of present assignment of the future copyright) all future copyright in the Goods immediately upon their creation; and
- 7.2.3 agree to assign to us all other IPR in the Goods immediately upon their creation.
- 7.3** You will:
- 7.3.1 at your own cost, execute all such documents and do all such acts and things as we may request from time to time in order to secure our full right, title and interest in the IPR in the Goods; and
- 7.3.2 obtain the waiver of all moral rights (and any broadly equivalent rights) in the Goods.
- 7.4** The exception to **Condition 7.2 (IPR)** above is that any IPR in existing products,
- 5.4.2. 根據我方選擇要求貴方及時修理或更換相關貨物或免費重新提供相關服務；
- 5.4.3. 拒絕可交付成果（全部或部分），並要求貴方退還相關可交付成果的價格；
- 5.4.4. 接受可交付成果，但應扣除合理金額；或
- 5.4.5. 由貴方承擔費用，修理或由第三方修理貨物或重新履行或由第三方重新履行服務，且貴方將針對我方因該違約產生的損失（包括因任何知識產權主張產生的損失）對我方和我方關聯人進行賠償。
- 5.5. 第 5.4 條將適用於根據第 5.4.2 條提供的任何修理或更換貨物。**
- 5.6.** 如果由於任何貨物不符合**第 5.1 條**或服務不符合**第 5.2 條**或以其他方式呈現對公眾或環境造成不合理危害的風險，我方認為有必要或被要求進行召回、移除或更正活動（“活動”），我方可實施該運動，且貴方將針對因任何該活動造成的所有損失賠償我方和我方關聯人。
- 5.7.** 應我方要求，貴方須及時提供準確、完整且格式合乎我方要求的文件，以便 Smiths 能完全遵守相關政府規例，從而使我們能成功申請關稅及稅項的減免、豁免或優惠待遇。此等文件包括但不限於：
- 5.7.1. 符合相關自由貿易協議要求的有效產地來源證；若無適用的協議，則為我方合理要求格式的標準產地來源證；
- 5.7.2. 貨物的協制關稅編碼；
- 5.7.3. 製造商出具確認貨物產地的宣誓聲明；
- 5.7.4. 證明材料或投入物產地國家的熔煉廠或軋製廠來源文件（例如熔煉/軋製證明），包括首次熔煉/軋製國及澆鑄國；和
- 5.7.5. 適用海關當局要求用以核實貨物及其所含或用於其生產材料的成本及產地，並支持申請任何關稅或稅項減免所需的任何額外記錄或聲明。
- 5.8.** 貴方須保留所有與第 5.7 條相關的文件，為期不少於 5 年。若先前提供的任何資料有變，且影響貨物的產地、成分或享受優惠關稅的資格，貴方須立即書面通知我方。若貴方未能遵從第 5.7 條或第 5.8 條，將構成對本條件的重大違反。
- 6. 我方財產**
- 6.1.** 由我方提供或由貴方為我方獲得但由我方承擔費用的圖案、模具、模型或其他工具或材料（“工具”），將以我方名稱或我方另行規定的方式標示，並將是且持續是我方的獨家財產，應要求應在良好狀態下返還。
- 6.2.** 貴方將針對任何工具和為了提供可交付成果而在我方經營場所存放的貴方工具或財產投保一切險。貴方應負責在貴方保管和/或控制之下的所有工具始終處於安全和良好狀態。所有工具將與貴方庫存和其他存貨分開存放。
- 6.3.** 如果任何工具在貴方控制期間發生毀損損失或不適合其最初製造的目的，我方保留針對任何工具向貴方收取任何費用的權利。
- 6.4.** 除非按照我方事先書面指示，貴方不得處置任何工具。除非我們事先書面同意，貴方不得在任何時間基於除提供可交付成果外的任何其他目的使用或允許任何其他人使用工具。
- 6.5.** 我們有權隨時進入貴方營業場所並移除工具，無需承擔侵害責任或任何形式的損害賠償責任。
- 7. 知識產權**
- 7.1.** 如果需根據我方規格製造、修改或重新設計貨物，適用本**第 7 條**規定。貴方為我方製作的任何預定規格或工作產品，就本**第 7 條（知識產權）**而言，均被視為“貨物”。
- 7.2.** 我方將對貨物和我方規格擁有所有現時和未來的知識產權（連同所有經濟和其他專有權利）。因此，除了為我方製造貨物外，貴方不得使用我方規格。具備完整所有權保證，貴方：
- 7.2.1 向我方轉讓在訂立合同時存在於貨物的所有智慧財產權；
- 7.2.2 在創作時立即向我方轉讓在貨物中的所有未來版權（通過現時轉讓未來版權的方式）；且
- 7.2.3 同意在創作後立即向我方轉讓貨物中的所有其他知識產權。
- 7.3.** 貴方將：
- 7.3.1 自行承擔費用，簽署我方不時可能要求的所有文件並作出我方不時可能要求的一切作為及事情，以確保我方對貨物中知識產權享有全部權利、產權和利益；並
- 7.3.2 獲得對貨物所有精神權利（以及任何廣泛對等的權利）的放棄。
- 7.4.** 上述**第 7.2 條（知識產權）**的例外情況是，用於創建貨物的現有產

- materials or data used to create Goods ("**Existing Materials**") will continue to belong to you (or your suppliers). You grant (and, where applicable, will ensure that your suppliers grant) to us, our Affiliates and our and their end customers a non-exclusive, perpetual, -royalty free, irrevocable licence to use and to have used Existing Materials which form part of any Goods.
- 7.5 You will indemnify us and our Affiliates against all losses, liabilities and costs (including legal expenses) sustained, incurred or suffered by them as a result of any claim, action or proceeding that our or their use, possession or receipt of the Goods, Deliverables or Services (an "**Infringing Item**") infringes the IPR of any third party.
- 8. PRICE AND PAYMENT**
- 8.1 As long as you perform your obligations in accordance with the terms of the Contract, we will pay the Price to you in accordance with this **Condition 8 (Price and Payment)**.
- 8.2 The only sums of money we will pay in connection with the supply of the Deliverables are the Price which will be inclusive of all costs and expenses incurred by you including all packaging, insurance, carriage, duties and delivery costs.
- 8.3 Any sum payable under the Contract is exclusive of value added tax, sales tax and/or goods and services tax (and any other similar or equivalent taxes, duties, fees and levies imposed from time to time by any government or other authority) upon any supply made to us which will be payable in addition to that sum in the manner and at the rate prescribed by law from time to time but inclusive of all other taxes, fees and levies imposed from time to time by any government or other authority. Any import duties or tariffs shall not be separately chargeable to us pursuant to Delivery Condition 4.1.
- 8.4 You may invoice us for the Price for the Goods following Delivery and for Services following completion.
- 8.5 Other than as set out in **Conditions 8.7 and 8.9**, invoices will be payable by us within 60 days from the date of receipt by us, plus the number of days until our next payment run. You will send invoices to the address specified in the Order.
- 8.6 No payment made by us will constitute acceptance by us of any Deliverables or otherwise affect any rights or remedies which we may have against you including the right to recover any amount overpaid or wrongfully paid to you.
- 8.7 We may withhold payment of any disputed sum until the dispute is settled.
- 8.8 If any undisputed sum payable under the Contract is not paid when due you may charge us interest daily on that sum at 2% per year subject to any maximum or minimum rate of interest on overdue invoices specified by applicable law from the due date until the date of payment (whether before or after judgment).
- 8.9 We may set-off, deduct or withhold any liability which you have to us against any liability which we have to you.
- 9. TERMINATION**
- 9.1 Without limiting any other right we may have to terminate a Contract, if you commit a material breach of these Conditions we may terminate the Contract and any other existing Contracts immediately with written notice. Any breach of **Conditions 12 (Confidentiality), 14 (Ethical Conduct) or 17.9 (Assignments)** will be deemed to be a material breach.
- 9.2 Without limiting any other right we may have to terminate a Contract, we may terminate the Contract immediately by giving you written notice if you (a) have a receiver, administrator or liquidator (provisional or otherwise) appointed; (b) are subject to a notice of intention to appoint an administrator or any other resolution on insolvency; (c) pass a resolution for your winding-up; (d) have a winding up order made by a court in respect of you; (e) enter into any composition or arrangement with creditors; (f) cease to carry on business; (g) are the subject of anything similar or equivalent to that set out in (a) to (f) under any applicable laws; or (h) you are subject to any change of Control and you will notify us immediately upon the occurrence of any such event or circumstance.
- 9.3 Following expiry or termination of the Contract:
- 9.3.1 any Conditions which expressly or impliedly continue to have effect after expiry or termination of the Contract will continue in force; and
- 9.3.2 all other rights and obligations will immediately stop but will not affect any of your or our rights, obligations, claims and liabilities which may exist prior to the date of expiry or termination; and
- 9.3.3 each party will immediately stop using the other party's Confidential Information and will as soon as reasonably possible, if requested to do so, return to the other party all of the other party's Confidential Information (including all copies and extracts) in its possession or control or confirm its secure destruction; and
- 9.3.4 each party may keep any of the other party's Confidential Information which it has to keep to comply with any applicable law and **Condition 9.3.3** will not apply to such Confidential Information. **Condition 12 (Confidentiality)** will continue to apply to retained Confidential Information.
- 9.4 If we terminate a Contract, we may require you to deliver to us any supplies, materials or drawings produced or acquired by you for the terminated part of the Contract and we will agree, in good faith, on the amount payable for the same.
- 10. LIABILITY AND INSURANCE**
- 10.1 You will indemnify us and our Affiliates against all our and their Losses arising from your breach of or negligent performance of or your failure to perform or delay in performing any part of these Conditions. We may, at our discretion, control the defence of any claim in respect of which you are required to indemnify us under a
- 品、材料或資料 ("**現有材料**") 中的任何知識產權將繼續屬於貴方 (或貴方的供應商)。貴方向我方、我方關聯人和我方或其終端客戶授予 (並視情況而定確保貴方的供應商向授予) 非獨占、永久、免特許使用費、不可撤銷的許可, 以使用或允許他人使用構成任何貨物一部分的現有材料。
- 7.5 若我方或我方關聯人因使用、持有或接收貨物、交付成果或服務 ("**侵權物品**") 而侵犯任何第三方知識產權, 並因此招致索賠、訴訟或法律程序, 貴方須就我方或我方關聯人所承受、產生或遭受的一切損失、責任及費用 (包括法律費用), 向我方及我方關聯人提供賠償保障。
- 8. 價格與支付**
- 8.1 只要貴方按照合同條款履行義務, 我方將根據 **第 8 條 (價格與支付)** 向貴方支付價款。
- 8.2 我方針對供應可交付成果應支付的金額僅為價格, 其中包括貴方產生的所有費用和支出, 包括所有包裝、保險、運輸、關稅和交付費用。
- 8.3 合同項下應支付的任何金額不包括針對向我方供應貨物徵收的增值稅、銷售稅和/或商品和服務稅 (以及任何政府或其他機構不時徵收的任何其他類似或相當的稅收、關稅、費用和徵稅), 該等稅費應另行按照法律不時規定的方式和費率支付, 但應包括任何政府或其他機構不時徵收的所有其他稅費、費用和徵稅。根據交付條件 4.1, 任何進口關稅或稅項均不得向我們另行收取。
- 8.4 貴方可交付貨物後和完成服務後針對貨物和服務的價格向我方開立帳單。
- 8.5 除 **第 8.7 條** 和 **第 8.9 條** 規定外, 我方應在收到帳單之日後 60 日, 再加上直至我方下一付款流程前之天數之期間內支付帳單。貴方應將帳單發送至訂單中指定的位址。
- 8.6 我方付款不構成我方對任何可交付成果的接受或以其他方式影響我方可能對貴方享有的任何權利或救濟, 包括追償向貴方多付或錯付金額的權利。
- 8.7 我方可在糾紛解決前扣留任何爭議款項。
- 8.8 如果根據合同應支付的任何無爭議金額到期未予支付, 貴方可自到期日至付款日 (無論在判決前還是判決後) 按 2% 的年利率按日向我方收取利息, 但以相關法律規定的逾期帳單的任何最高或最低利率為限。
- 8.9 我方可從我方欠貴方的任何債務中抵銷、扣除或扣留貴方欠我方的任何債務。
- 9. 終止**
- 9.1 在不限制我方可終止合同的其他權利的情况下, 如果貴方嚴重違反本條件, 我方書面通知貴方立即終止合同和任何其他現有合同。對 **第 12 條 (保密性)**、**第 14 條 (道德行為)** 或 **第 17.9 條 (轉讓)** 的違反將被視為重大違約。
- 9.2 在不限制我方可終止合同的其他權利的情况下, 發生下列任一情況的, 我方可向貴方發出書面通知立即終止合同: (a) 獲任命財產接管人、財產管理人或清算人 (臨時或其他); (b) 有意就任命財產管理人或任何其他破產決議發出通知; (c) 通過決議解決清盤問題; (d) 法院針對貴方簽發清盤令; (e) 與債權人達成任何債務和解或安排; (f) 停止營業; (g) 根據任何相關法律類似或等同於 (a) 至 (f) 項所列任何情況的客體; 或 (h) 貴方發生任何控制權變更, 發生任何該等事件或情況時, 貴方應立即告知我方。
- 9.3 合同到期或終止後:
- 9.3.1 任何明示或默示在合同到期或終止後繼續有效的條件將繼續有效;
- 9.3.2 所有其他權利和義務將立即停止, 但不會影響到期或終止日期之前可能存在的貴方和我方的任何權利、義務、索賠和債務;
- 9.3.3 各方將立即停止使用另一方的保密資訊, 並在合理可能的情况下儘快 (如被要求) 將由其持有或控制的另一方的保密資訊 (包括所有副本和摘錄) 返還另一方, 或確認其安全銷毀; 且
- 9.3.4 各方可保留其遵守任何相關法律應保留的另一方的任何保密資訊, **第 9.3.3 條** 不適用於該等保密資訊。 **第 12 條 (保密性)** 將繼續適用於保留的保密資訊。
- 9.4 如果我方終止合同, 我方要求貴方針對合同已終止部分向我方交付由貴方生產或獲得的任何物資、材料或圖紙, 我方將善意約定為此應支付的金額。
- 10. 責任和保險**
- 10.1 對於因貴方違約、疏忽履行或未履行或延遲履行本條件任何部分而對我方和我方關聯人產生的損失, 貴方將賠償我方和我方關聯人。我方可自行酌情控制貴方根據合同應向我方作出賠償的任何

- Contract.
- 10.2** Subject to **Condition 13.3**, we will not have any Liability to you for any (i) loss of profit, goodwill or revenue; or (ii) any indirect, consequential or special loss.
- 10.3** Nothing in these Conditions or any Contract will operate to exclude or restrict one party's Liability (if any) to the other (including for a person for whom it is vicariously liable):
- 10.3.1 for death or personal injury resulting from its negligence;
- 10.3.2 for its fraud or fraudulent misrepresentation;
- 10.3.3 for any matter for which it is not permitted by law to exclude or limit its liability,;
- 10.3.4 any breach of **Conditions 12 (Confidentiality)**; or
- 10.3.5 any indemnities given in these Conditions.
- 10.4** The exclusions from and limitations of liability contained in these Conditions will apply after as well as before the date of expiry or termination of any Contract.
- 10.5** The exclusions from, and limitations of, liability set out in this **Condition 10 (Liability and Insurance)** will be considered severally. The invalidity or unenforceability of any one sub-clause or clause will not affect the validity or enforceability of any other sub-clause or clause and will be considered severable from each other.
- 10.6** You will have satisfactory insurance cover with a reputable insurer to cover your obligations to us, including public liability insurance cover and any potential liabilities arising from a Contract and insurances required by law. You will provide evidence of your insurance coverage at our request.
- 11. CYBER SECURITY INCIDENT**
- 11.1** You shall promptly notify us of any Cyber Security Incident that could impact your ability to supply goods or services and provide timely updates on the steps being taken to restore continuity. You agree to co-operate with us in assessing the impact on our supply chain and in responding to any reasonable requests for information related to the incident.
- 12. CONFIDENTIALITY**
- 12.1** Except as set out in Condition 12.2, each party will:
- 12.1.1 only use the other party's Confidential Information for the purpose of performing its obligations and exercising its rights under the Contract;
- 12.1.2 keep the other party's Confidential Information secret, safe and secure; and
- 12.1.3 not disclose the other party's Confidential Information to any other person.
- 12.2** Each party may disclose the other party's Confidential Information:
- 12.2.1 to the extent required by law, any court of competent jurisdiction or the rules of any government, public or regulatory body or any stock exchange; and
- 12.2.2 to its officers, directors, employees and professional advisers and, in our case, our Affiliates, agents and sub-contractors, who need the Confidential Information in order for that party to perform its obligations and exercise its rights under the Contract. A party disclosing the other party's Confidential Information under Condition 12.2.2 will make sure that each person to whom it discloses that Confidential Information is bound by obligations of confidentiality no less onerous than those set out in this Condition 12 (Confidentiality).
- 12.2.3 Each party acknowledges and agrees that damages alone would not be an adequate remedy for breach of Condition 12 (Confidentiality) by that party. Accordingly, the other party will be entitled, without having to prove special damages, to injunctive relief, equitable relief and/or specific performance for any breach or threatened breach of Condition 12 (Confidentiality) by the first party.
- 13. FORCE MAJEURE**
- 13.1** A party who becomes aware of a Force Majeure Event which gives rise to, or which is likely to give rise to, any failure or delay in performing its obligations under this Agreement will forthwith notify the other in writing and will inform the other in such notification of the period for which it is estimated that such failure or delay will continue. The affected party will:
- 13.1.1 take all reasonable steps to mitigate the effect of the Force Majeure Event;
- 13.1.2 keep the other party regularly informed in writing of all developments relating to the Force Majeure Event; and
- 13.1.3 continue to perform all of its obligations under this Agreement in accordance with their terms, the performance of which are not affected by the Force Majeure Event.
- 13.2** The Customer will have no liability to pay for any Services or Deliverables or pay any charges to the Supplier in respect of any Services or Deliverables which the Supplier does not supply or which are delayed as a result of the Force Majeure Event. The Supplier will immediately refund to the Customer any amount that the Customer has paid as advance payment for any Services or Deliverables not delivered or supplied as a result of the Force Majeure Event.
- 13.3** The Customer may terminate this Agreement (and or any or all Statements of Work) immediately at any time by written notice to the Supplier if the Supplier has been subject to a Force Majeure Event for a continuous period of more than thirty (30) days.
- 14. ETHICAL CONDUCT**
- 14.1** You will conduct your business ethically and lawfully and in accordance with our
- 索賠的抗辯。
- 10.2.** 在不違反**第 13.3 條**規定的情況下，我們針對以下損失對貴方不承擔任何責任：（i）利潤、商譽或收入損失；或（ii）任何間接、結果或特殊損失。
- 10.3.** 本條件或任何合同中的任何規定均不得排除或限制一方針對以下內容向另一方承擔的責任（如果有）（包括其承擔替代責任的人）：
- 10.3.1. 因過失導致的死亡或人身傷害；
- 10.3.2. 因欺詐或欺詐性虛假陳述；
- 10.3.3. 法律不允許排除或限制責任的任何事項；
- 10.3.4. 違反**第 12 條（保密性）**的任何行為；或
- 10.3.5. 根據本條件作出的任何賠償。
- 10.4.** 本條件規定的責任排除條款和責任限制將在任何合同到期或終止之後以及之前適用。
- 10.5.** 本**第 10 條（責任和保險）**規定的責任排除和限制將分別予以考慮。任何條款無效或不可強制履行均不會影響任何其他條款的有效性或可強制履行性，且將被視為可相互分割。
- 10.6.** 貴方應向有信譽的保險人購買令人滿意的保險，承保貴方針對我方的義務，包括公共責任險、潛在合同責任險和法律規定的保險。應我方要求，貴方應提供保險證據。
- 11. 網絡安全事故**
- 11.1.** 若發生任何可能影響貨物或服務供應能力的網絡安全事故，貴方須及時通知我方，並就為恢復正常運作所採取之步驟提供最新進展。貴方同意與我方合作，評估事故對我方供應鏈的影響，並回應任何與事故相關的合理資料索取要求。
- 12. 保密性**
- 12.1.** 除第 12.2 條規定外，各方將：
- 12.1.1. 僅為了履行其在合同項下的權利和義務而使用另一方的保密資訊；
- 12.1.2. 使對方的保密資訊處於保密、安全、有保障的狀態；且
- 12.1.3. 不向任何其他人士披露對方的保密資訊。
- 12.2.** 在下列情況下，各方可披露對方的保密資訊：
- 12.2.1. 在法律、任何有管轄權的法院或任何政府、公共或監管機構或任何證券交易所的規章所要求的範圍內；和
- 12.2.2. 向需要保密資訊以履行其在合同項下權利和義務的其高級職員、董事、僱員和專業顧問，以及就我方而言，我方關聯人、代理人和分包商。一方根據**第 12.2.2 條**披露另一方保密資訊時，應確保獲披露保密資訊的每個人受保密義務約束的程度，不低於本**第 12 條（保密性）**規定的程度。
- 12.3.** 各方承認並同意，損害賠償本身並不足以成為該方違反**第 12 條（保密性）**行為的充分救濟。因此，另一方將有權在無需證明特別損害賠償的情況下，針對前者違反或可能違反**第 12 條（保密性）**規定的行為獲得禁令救濟、衡平救濟和/或強制履行。
- 13. 不可抗力**
- 13.1.** 任何一方若知悉發生不可抗力事件，並已造成或可能造成其未能或延遲履行本協議義務，須立即以書面通知另一方，並於通知中說明預計此等履約受阻或延遲將持續多久。受影響一方將：
- 13.1.1. 採取一切合理步驟，以減輕不可抗力事件所造成的影響；
- 13.1.2. 定期以書面向另一方通報有關該不可抗力事件的所有最新情況；和
- 13.1.3. 繼續按協議條款履行所有未受該不可抗力事件影響的義務。
- 13.2.** 若供應商因不可抗力事件而未能提供或延遲提供任何服務或交付成果，客戶無須為此付款，亦無須就此向供應商支付任何費用。對於客戶已預付、但因不可抗力事件而未能交付或提供的任何服務或交付成果，供應商須立即向客戶退還相關款項。
- 13.3.** 倘若供應商持續受不可抗力事件影響超過三十 (30) 天，客戶可隨時以書面通知供應商，即時終止本協議（及/或任何或所有工作說明書）。
- 14. 道德行為**
- 14.1.** 貴方應遵守我方的“ 供應商商業道德準則 ”

Supplier Code of Business Ethics (<http://www.smiths.com/responsibility-supplier-code-of-business-ethics.aspx>) or an equivalent code of ethics.

- 14.2 You represent and warrant that you and your subcontractors and suppliers do not use or permit unacceptable labour practices, such as child or forced labour, or unsafe working conditions and comply with all applicable labour and employment laws, regulations, standards and conventions, including the, the UN's Guiding Principles on Business & Human Rights and the International Labor Organization's Conventions and any similar or equivalent laws applying in the jurisdiction in which we are registered.
- 14.3 You hereby acknowledge that you are aware of, and agree to comply with all applicable anti-bribery and anti-corruption laws, including but not limited to the Foreign Corrupt Practices Act (FCPA) (and related regulation and guidance) and any similar or equivalent laws applying in the jurisdiction in which we are registered.
- 14.4 You represent and warrant that you only supply minerals to us and our Affiliates from sources that do not (i) contribute to conflict; and/or (ii) benefit or finance armed groups in the Democratic Republic of Congo or any adjoining country. You have adopted, and require your suppliers of minerals to adopt, conflict mineral policies and management systems.
- 14.5 You will permit us, and any person nominated by us, to have such access to your premises, personnel, systems, books and records as we may require to verify your compliance with this **Condition 14 (Ethical Conduct)**. We also reserve the right to inquire and investigate your conduct to satisfy our self of your compliance with this **Condition 14 (Ethical Conduct)** and to discontinue a business relationship with you if you or any of your officers, directors or employees is found to have breached any part of this **Condition 14 (Ethical Conduct)**.
- 14.6 We are required to demonstrate that our products and our use of certain materials comply with laws and regulations (including environmental laws and regulations) and international standards. You will promptly provide us with information and declarations that we may reasonably request to enable us to comply with all applicable laws, regulations and standards, including but not limited to IEC 62474 - Material Declaration for Product of and for the Electrotechnical Industry.
- 14.7 In performing your obligations under the Contract, you will and will procure that your sub-contractors will use reasonable endeavors to comply with the Customer ESG Policies and will comply with all laws and regulations relating to ESG.

## 15. NOTICES

- 15.1 Notices and other communications provided for the purposes of a Contract will be in writing, and delivered by courier or by hand to the relevant party's address as specified on the Order (or such other address which is notified to the other party in writing from time to time), in the case of a notice to us, marked for the attention of such person as we specify.

## 16. EXPORT / IMPORT / ECONOMIC SANCTIONS CONTROLS

- 16.1 You agree to comply with all applicable export controls and import and economic sanctions laws and regulations, including those of your country of incorporation, from where the Goods will be supplied, where the Goods will be received and any other relevant jurisdiction. You will also obtain, as required, and comply with all applicable government authorizations and their provisos in supplying the Goods. Without limiting the foregoing, you will not transfer any export controlled item, data or services provided by us in relation to the Contract, to include transfer to any persons, including those persons employed by or associated with, or under contract to you or your lower-tier suppliers, without the authority of an applicable licence, exemption or exception.
- 16.2 You are responsible for exporting the Goods and for importing the Goods into the country in which we are registered, including the payment of any tariffs or duties on the imported merchandise.
- 16.3 You will provide to us all information necessary to support any regulatory or government authorization requirements we have regarding the Goods.
- 16.4 You will indemnify us and our Affiliates for all Losses arising out of any breach by you of this **Condition 16 (Export / Import / Economic Sanctions Controls)**.

## 17. GENERAL

- 17.1 The Contract constitutes the entire agreement between the parties and supersedes any prior agreement or arrangement in respect of its subject matter and:
- 17.1.1 neither party has entered into the Contract in reliance upon, and it will have no remedy in respect of, any misrepresentation, representation or statement (whether made by the other party or any other person and whether made by the first party or any other person) which is not expressly set out in the Contract; and
- 17.1.2 nothing in **Condition 17.1** will limit or exclude the liability of any person for fraud or fraudulent misrepresentation.
- 17.2 A party's delay in exercising, partial exercising or failure to exercise a right or remedy under the Contract will not constitute a waiver of, or prevent or restrict future exercise of, that or any other right or remedy. A waiver of any right, remedy, breach or default will only be valid if it is in writing and signed by the party giving it.
- 17.3 If any term of the Contract is found by any court or body or authority of competent jurisdiction to be illegal, unlawful, void or unenforceable, such term will be deemed to be severed from the Contract and this will not affect the remainder of the Contract which will continue in full force and effect.
- 17.4 Except to the extent otherwise specified in these Conditions, variations to the Contract must be agreed in writing and signed by both parties.

(<http://www.smiths.com/responsibility-supplier-code-of-business-ethics.aspx>) 或相應的道德準則，以合乎道德且合法的方式開展業務。

- 14.2. 貴方陳述和保證，貴方和貴方的分包商和供應商不會使用或允許不可接受的勞動行為，如童工或強迫勞動或不安全的工作條件，遵守所有相關勞動和職業法律、法規、標準和慣例，包括聯合國的《工商企業與人權問題指導原則》和國際勞工組織的各項公約，以及適用於我方登記所在司法管轄區的任何類似或同等法律。
- 14.3. 貴方特此確認，貴方瞭解並同意遵守所有相關的反賄賂和反腐敗法律，包括但不限於《海外反腐敗法》(FCPA) (及相關法規和指南) 以及適用於我方登記所在司法管轄區的任何類似或同等法律。
- 14.4. 貴方陳述和保證，貴方向我方和我方關聯人供應礦產的來源不得 (i) 導致衝突；和/或 (ii) 使剛果民主共和國或任何相鄰國家的武裝團體獲得利益或資助。貴方已採納並要求貴方礦產供應商採納衝突礦產政策和管理體系。
- 14.5. 貴方將允許我方及我方任命的任何人獲取我方要求的許可權，查看貴方的經營場所、人員、系統、帳簿和記錄，以驗證貴方是否遵守本第 14 條 (道德行為)。我方亦保留對貴方行為進行查詢和調查的權利，以信納貴方遵守本第 14 條 (道德行為) 規定，且如果貴方或貴方任何高級職員、董事或員工被認定違反本第 14 條 (道德行為) 任何部分，我方有權終止與貴方的業務關係。
- 14.6. 我們需要證明我們的產品和使用的材料符合法律法規 (包括環境相關的法律法規) 和國際標準。您將及時向我們提供我們合理要求的資訊和聲明，以使我們能夠遵守所有適用的法律、法規和標準，這標準包括但不限於 IEC 62474 - 電工行業產品聲明。
- 14.7. 在履行本合同義務時，貴方須 (並應確保貴方的分包商) 盡合理努力遵從客戶的 ESG 政策，且須遵守所有與 ESG 相關的法律法規。
15. 通知
- 15.1. 為合同目的提供的通知和其他通訊應採用書面形式，通過快遞或親自交付至訂單指定的相關方位址 (或不時書面告知另一方的其他地址)，如向我方發出通知，請註明收件人為我方指定人員。
16. 出口/進口/經濟制裁控制
- 16.1. 貴方同意遵守所有相關出口管制及進口和經濟制裁的法律法規，包括貴方公司成立地、貨物供應地、收貨地和任何其他相關司法管轄區的法律法規。貴方還應獲得並遵守所有相關政府授權和其針對供應貨物的附帶條件。在不限制前述規定的情況下，如果不存在任何相關許可、豁免或例外情況，貴方不得轉讓我方針對合同提供的任何出口管制物品、資料或服務，包括向任何人轉讓，包括受僱於貴方或貴方下級供應商或與貴方或貴方下級供應商有關聯或有合同關係。
- 16.2. 貴方負責將貨物出口以及將貨物進口至我們註冊所在的國家，包括支付進口商品的任何關稅或稅項。
- 16.3. 貴方將向我方提供所有必要資訊，以支援我方滿足針對貨物的任何監管或政府授權要求。
- 16.4. 因貴方違反本第 16 條 (出口/進口/經濟制裁控制) 而產生的任何損失，貴方將向我方和我方關聯人進行賠償。
17. 一般規定
- 17.1. 合同構成雙方之間針對其標的的完整協議，取代任何先前協議或安排，且：
- 17.1.1 任何一方訂立合同均未信賴合同未明確規定的任何虛假陳述、陳述或聲明 (無論由另一方或任何其他人作出或由該方或任何其他人作出)，且不會對此享有任何救濟；和
- 17.1.2 第 17.1 條的任何條款，均不會限制或免除任何人就欺詐或欺詐性失實陳述所須承擔的責任。
- 17.2. 一方延遲履行、部分履行或未履行合同項下的權利或救濟不構成對該權利或任何其他權利或救濟的放棄，阻止或限制今後對該權利或任何其他權利或救濟的行使。對任何權利、救濟、違約、不履行義務的棄權，只有在採用書面形式，並經棄權方簽署方生效力。
- 17.3. 如果合同任何條款被任何具有管轄權的法院或機構或當局認定為不合法、非法、無效或不可強制履行，則該條款將被視為從合同中分割，且不會影響合同剩餘部分繼續完全有效。
- 17.4. 除本條款另行明確規定外，變更合同必須經雙方書面同意並簽署。

- 17.5 No partnership, agency or joint venture between the parties will be created by the Contract.
- 17.6 Each party agrees that it is an independent contractor and is entering into the Contract as principal and not as agent for or for the benefit of any other person. Nothing in any Contract will make any individuals employed or engaged by you or any of your sub-contractors (“**Supplier Personnel**”) an employee, worker, agent or partner of us or any of our Affiliates.
- 17.7 Each of our Affiliates will be entitled to enforce in their own capacity the terms of any Contract under which that Affiliate receives a benefit and we shall also be entitled to enforce such terms on their behalf.
- 17.8 Save as provided in Condition 0, the parties do not intend that any term of a Contract will be enforceable by any person who is not a party to it.
- 17.9 You may not assign, transfer, charge, hold on trust for any person or deal in any other manner with any of your rights under the Contract or sub-contract any of your obligations under the Contract. We may assign a Contract to our Affiliates.
- 18. GOVERNING LAW AND JURISDICTION**
- 18.1 The Contract and any non-contractual obligations arising in connection with it are governed by the law of the jurisdiction in which we are registered or incorporated. The courts of such jurisdiction (and if applicable to the relevant jurisdiction any district in which we are registered) have exclusive jurisdiction to determine any dispute arising in connection with the Contract.
- 17.5. 合同不會在雙方之間設立任何合夥、代理或合資關係。
- 17.6. 各方同意其為獨立締約方，以本人而非作為代理人代表任何他人或為任何他人利益訂立合同。任何合同的條款，均不致使貴方或貴方分包商所僱用或聘用的任何個人（“**供應商人員**”）成為我方或我方任何關聯人的僱員、工人、代理人或合夥人。
- 17.7. 我方各關聯人將有權以自身能力強制履行該關聯人獲得利益的任何合同條款，而我方亦應有權代表該等關聯人強制履行該等條款。
- 17.8. 除第 17.7 條規定外，雙方並未意圖使非合同當事人的任何人強制履行該合同的任何條款。
- 17.9. 貴方不得轉讓、讓與、設定擔保、為任何人信託持有或以任何其他方式處理貴方在合同項下的任何權利，亦不得轉包貴方在合同項下的任何義務。我們可向我方關聯人轉讓合同。
- 18. 管轄法律和管轄權**
- 18.1. 合同和針對合同產生的任何非合同義務受我方註冊或成立公司所在司法管轄區的法律管轄。該司法管轄區的法院（如果適用於相關司法管轄區，我方註冊所在區）具有專屬管轄權，可裁定與合同有關的任何爭議。