

CONDITIONS OF CONTRACT

1. DEFINITIONS OF TERMS

a. In the Contract Documents (as hereinafter defined) the following words and expressions shall have the meanings hereby assigned to them, except where the context otherwise requires: -

“BUYER”	means the person or persons, partnership, firm or company whose tender or offer has been accepted and/or referred to as such in the Letter of Acceptance and includes the BUYER’s personal representatives, successors, administrators, receiver, liquidator or permitted assigns.
“COLLECTION POINT”	means the SELLER’S PREMISES .
“CONTRACT”	means the CONTRACT as defined in Clause 3 herein.
“FORCE MAJEURE”	means any event beyond the reasonable control of or which could not have been reasonably foreseen and/or avoided by the party affected and which occurs without the fault or negligence of that party despite all reasonable efforts of that party to prevent it or to mitigate its effect and shall include acts of God, acts of public enemies, wars, riots, fire, perils of the sea and inclement weather of overwhelming proportions;
“GOODS”	means the GOODS whatsoever to be handed over by the SELLER to the BUYER upon payment and as described in the Schedule of Rates.
“LETTER OF ACCEPTANCE”	means the letter of formal acceptance of the BUYER’s tender or offer signed and issued by the SELLER .
“PARTY/PARTIES”	means the SELLER and the BUYER collectively, each of which shall be referred to as PARTY and PARTIES shall be construed accordingly.
“SCHEDULE”	means the Specification and the Schedule of Rates taken together.
“SELLER’S PREMISES”	means the premises at following address:- (i) Lot 6357 Lutong Baru, Lutong Lutong, Miri, Sarawak. (ii) PM5 Lutong, Lt 574 & Lt 158, Jln Lutong Kuala Baram, Miri, Sarawak. (iii) LinQ-uP Coworking Space, Level 5, Town Square, Jalan Tun Ahmad Zaidi, 97000 Bintulu, Sarawak.

“SST” means the Sales and Service Tax as defined in the Malaysian Sales Tax Act 2018 and Services Tax Act 2018 respectively.

“SELLER” means Sarawak Gas Distribution Sdn Bhd (SGDSB).

“TENDER DEPOSIT” means the deposit of 10% of the total bid price paid by the **BUYER** to the **SELLER** during the tendering process for this **CONTRACT**.

- b. Words importing the masculine gender include the feminine and the neuter gender.
- c. Words importing the singular also include the plural and vice versa where the context requires.
- d. Words referring to or denoting a person or persons shall include corporations and firms and all such words shall be construed interchangeably in that manner.
- e. The headings or notes in the Conditions of this **CONTRACT** shall not be deemed to be part thereof or be taken into consideration in the interpretation or construction of the **CONTRACT**. All reference to clauses unless otherwise stated, means the clauses in the Conditions of this **CONTRACT**.

2. PRICE / RATES

- 2.1 The prices / rates for the **GOODS** shall be the price in Schedule of Rates attached to this **SALE / CONTRACT**.

3. CONTRACT

- 3.1 The **CONTRACT** consists of the following documents: -
 - (i) **LETTER OF ACCEPTANCE**;
 - (ii) Terms and Conditions of **CONTRACT**; and
 - (iii) Any other document which is attached to, or incorporated by reference in the **LETTER OF ACCEPTANCE** or in the Conditions of **CONTRACT**.
- 3.2 The above documents shall be taken as mutually explanatory of one another, but in the event of any conflict or inconsistency between these documents, the priority shall be accorded in the order as listed above.
- 3.3 Unless otherwise stated, the **CONTRACT** shall be for a period of two (2) months commencing from the date of the **LETTER OF ACCEPTANCE**.

4. CONDITION & QUALITY OF GOODS

- 4.1 The **GOODS** are sold on “as is where is” basis. No warranty, express or implied is given as to the conditions or suitability of purpose of the **GOODS**.

5. QUANTITY

- 5.1 Subject to Clause 7 below, the quantity of the **GOODS** shall be deemed to be that which is set out in the Schedule of Rates which shall be the basis of calculation of the **CONTRACT** sum.

6. PAYMENT

- 6.1 Full payment for the **GOODS** shall be made prior to the collection of **GOODS** and credited into the **SELLER's** bank account within fourteen (14) days from the date of the **LETTER OF ACCEPTANCE** or any other time period as may be stated in the **LETTER OF ACCEPTANCE**, failing which, the **SELLER** may terminate the **CONTRACT** and, without prejudice to any other rights the **SELLER** may have, forfeit the **TENDER DEPOSIT**.

7. COLLECTION OF GOODS

- 7.1 The **BUYER** shall collect the **GOODS** from the **COLLECTION POINT** within the duration of the **CONTRACT** or such other time period as may be notified by the **SELLER**, provided always that the **SELLER** has received the payment in full.
- 7.2 The **BUYER**, at his own cost and expense, shall be fully responsible to arrange for his own manpower, equipment and transportation for the collection or removal of the **GOODS** from the **COLLECTION POINT** and shall notify the **SELLER** in writing the name of such person, agent or nominee that the **BUYER** may nominate to collect the **GOODS**.
- 7.3. The **BUYER**, or his servant, agent or nominee collecting the **GOODS** on his behalf, shall ensure that: -
- (i) he complies with all applicable laws, rules and regulations in connection with the loading, transportation, carriage and/or unloading thereof, failing which the **BUYER** shall be liable for and/or shall indemnify or compensate the **SELLER** any fines and/or penalties imposed on the **SELLER** as a result of any non-compliance thereof; and
 - (ii) he takes all reasonable precautions to prevent personal injury or death or injury or damage to any property arising out of or in the course of collecting and/or accepting delivery of the **GOODS** and shall be solely liable and shall indemnify the **SELLER** in respect of any loss, liability, claim or proceedings whatsoever arising in respect of such injury, death or damage.
- 7.4 In the event that the **BUYER** fails to collect the **GOODS** within the time period so specified or within any extension as may be granted by the **SELLER**, the **SELLER** may terminate the **CONTRACT** and, without prejudice to any other rights the **SELLER** may have, forfeit the **TENDER DEPOSIT** and the amount of payment that had been made by the **BUYER**. The **SELLER** shall then be entitled to dispose the **GOODS** by whichever means the **SELLER** shall deem fit and the proceeds from such disposal (if any) shall belong to the **SELLER**.

8. TITLE AND RISK

- 8.1 The legal ownership and title to the **GOODS** shall remain vested in the **SELLER** until the **CONTRACT** sum including any variation thereof has been paid in full and any money due to the **SELLER** has been paid.
- 8.2 The **BUYER** shall assume the risk of loss or damage for the **GOODS** commencing from the date that the **GOODS** are collected by the **BUYER** in the manner prescribed in Clause 7 of this **CONTRACT** notwithstanding that the ownership of the **GOODS** has not been passed.

9. TRANSFER OF OWNERSHIP IN THE CASE OF VEHICLES

- 9.1 Transfer of ownership for vehicle(s) purchased by the **BUYER** from the **SELLER** shall only be effected in the name of the **BUYER**;
- (i) Upon making the full payment in accordance with Clause 6 above, and upon the same being credited into the **SELLER**'s bank account, the **BUYER**, at its own cost, shall arrange for the transfer of ownership of the vehicle(s) with the relevant authorities.
 - (ii) Prior to the collection of the vehicle(s), the **BUYER** shall provide a new insurance policy under his name and furnish sufficient proof that his name has been registered at Jabatan Pengangkutan Jalan (JPJ) and duly endorsed on the Vehicle Registration Card (VOC) as the new owner of the said vehicle(s).
- 9.2 The existing insurance for the said vehicle(s) shall not be transferable to the **BUYER**. The **SELLER**, upon written request from the **BUYER**, shall provide the original certificate of insurance in respect of such **GOODS** for the sole purpose of the **BUYER** obtaining the new insurance policy. However, the **BUYER** shall return the said original certificate of insurance to the **SELLER** upon obtaining the insurance policy and in any event, prior to the collection of the **GOODS**.

10. NOTICES

- 10.1 Any notice served under or in connection with the **CONTRACT** shall be in writing and addressed to the **SELLER** or the **BUYER** (whichever is applicable) at the addresses and facsimiles as stipulated in the **LETTER OF ACCEPTANCE** or such other addresses or facsimiles as each may substitute from time to time by notice in writing and shall be deemed to have been made or given in the case of:
- (i) personal delivery, on the day of delivery;
 - (ii) facsimile, on the day of transmission and upon receipt by the sender of a transmission report generated by the dispatching terminal of the sender confirming that such facsimile has been duly transmitted; and
 - (iii) ordinary post, on the seventh (7th) day after posting.

11. EFFECTS OF FORCE MAJEURE

- 11.1 Neither party shall be liable to the other for any breach of the terms and conditions herein arising as a result of **FORCE MAJEURE**.

12. TAXES AND DUTIES

- 12.1 Unless otherwise agreed by the **SELLER**, the **BUYER** shall pay for all taxes, surtaxes, duties (including but not limited to stamp duty), levies, and premiums payable in respect of the execution of the **CONTRACT**.

13. AMENDMENT

- 13.1 No modification, amendment or waiver of any of the provisions of the **CONTRACT** shall be effective unless made by mutual consent and made in writing by way of supplementary contract specifically, referring to the **CONTRACT** and duly signed by the **SELLER** and the **BUYER**.

14. WAIVER

- 14.1 No failure or delay on the part of any party in exercising, nor any omission to exercise any right, power, privilege or remedy accruing to the other party under the **CONTRACT**, upon any default on the part of the other party, shall impair any such right, power, privilege or remedy or to be construed as a waiver thereof or any acquiescence in such default; nor shall any action by any party in respect of any default or any acquiescence in such default affect or impair any right, power, privilege or remedy of the other party in respect of any other or subsequent default. Any waiver made under the **CONTRACT** shall only be valid if it is made in writing and signed by the parties to the **CONTRACT** or their respective authorised representatives.

15. DETERMINATION OF CONTRACT

- 15.1 The **SELLER** may, by a notice sent by registered post, determine the **CONTRACT** on the occurrence of any one or more of the following, but without prejudice to its rights to claim for any loss or damage arising as a result of any the following: -

(i) the **BUYER** fails to observe and/or perform the terms and conditions of the **CONTRACT** or fail to observe and/or perform them to the satisfaction of the **SELLER** after being given seven (7) days written notice to remedy the default;

(ii) an encumbrance takes possession of or a receiver is appointed over any of the properties or assets of the **BUYER** or the **BUYER** is wound up or goes into liquidation/bankruptcy;

(iii) the **BUYER** makes any voluntary arrangement with its creditors or becomes subject to an administration or winding up order;

(iv) the **BUYER** ceases or threatens to cease to carry on business; or

(v) The **BUYER** engages in a behaviour that is dishonest, fraudulent or constitutes a conflict of interest with the **BUYER's** obligations hereunder or has acted in breach of PETROS Code of Ethics and Business Conduct for Contractors, Suppliers and Consultants.

- 15.2 Notwithstanding sub-clause 15.1 (i), the **SELLER** may terminate the **CONTRACT** without assigning any reasons by the giving of fourteen (14) days prior written notice to the **BUYER** of its intention to terminate the **CONTRACT**. Such termination shall be without prejudice to **SELLER's** rights to claim for any loss or damage arising as a result of any antecedent breach.

16. LEGAL FEES AND STAMP DUTY

- 16.1 The **BUYER** shall be responsible to pay his own legal fees and shall bear the stamp duty chargeable in respect of this **CONTRACT**.

17. COMPLIANCE WITH LAWS AND ANTI-BRIBERY & CORRUPTION RULES AND REGULATIONS

- 17.1 The **PARTIES** shall comply with all applicable laws and governmental rules, regulations and orders in the performance of the **CONTRACT** to the Malaysian Anti-Corruption Commission (MACC) Act 2009.

- 17.2 The **BUYER** represents that in connection with this **CONTRACT** and related matters, the **BUYER** has not made, offered, authorized, or accepted, and will not make, offer, authorize, or accept, any payment, gift, promise or other advantage, whether directly or indirectly, to or for the use or benefit of any Government Official or any other person where that payment, gift(s), promise, or other advantage(s) would (i) comprise a facilitation payment; or (ii) violate the relevant Anti-Bribery laws.
- 17.3 The **BUYER** shall maintain adequate internal controls and procedures to ensure compliance with all Anti-Bribery laws in force. The **BUYER** shall immediately notify the **SELLER** if the **BUYER** receives or becomes aware of any request from a Government Official of any other persons that is prohibited by the preceding paragraph.
- 17.4 The **PARTIES** have at all times to the best of their effort and knowledge conducted their businesses in compliance with the MACC Act and similar laws, rules or regulations (as amended from time to time) (collectively) and have instituted, maintained and at all times complied with their policies and procedures designed to ensure continued compliance with such Anti-Bribery and Corruption Rules and Regulations.
- 18. MISCELLANEOUS**
- 18.1 The **CONTRACT** shall be governed and construed in accordance with the laws of Malaysia applicable in Sarawak.
- 18.2 The **CONTRACT** shall be binding upon the **SELLER** and the **BUYER** and their respective successors-in-title and permitted assigns.
- 18.3 The **BUYER** shall be an independent contractor for the purpose of this **CONTRACT**.
- 18.4 All information obtained by the **BUYER** from the **SELLER** in the course of performing their obligations shall be treated as confidential and shall not be disclosed to any third party unless with the prior written approval of the **SELLER**.
- 18.5 If any provision of the **CONTRACT** is held to be illegal or is invalid under any laws or regulations effective and applicable during the term of the **CONTRACT**, such provision shall be fully severable, and the **CONTRACT** shall be construed as if such illegal or invalid provision had never comprised as part of the **CONTRACT** and the remaining provisions of the **CONTRACT** shall remain in full force and effect and shall not be affected by the illegal or invalid provisions or by its severance from the **CONTRACT**.

[END OF CLAUSES]