ARTICLE 1–GENERAL

1.1 The terms and conditions herein ("General T&Cs") shall constitute the exclusive terms and conditions of any purchase order resulting in sale of equipment and provision of related services on (installation, hook-up) between AIR LIQUIDE (THAILAND) LIMITED ("Seller") and Customer ("Buyer") unless different or additional terms and conditions are stated or referred to in Seller's proposal or acceptance, in which case such different or additional terms and conditions shall be exclusive as to the particular subject matter covered. Seller hereby gives notice of its objection to any different or additional terms and conditions of Buyer except for such terms and conditions which may be expressly accepted by Seller in writing.

The General T&Cs herein shall be deemed to have been accepted by Buyer upon acceptance by Seller of the purchase order. They shall supersede in any event any general terms and conditions or other documents issued by Buyer.

1.2 Each Seller's letter of proposal is valid for 30 days from the day of the proposal unless otherwise indicated in Seller's letter of proposal and is subject to change at any time prior to acceptance by Buyer.

1.3 Buyer's purchase order becomes definitive only when accepted by Seller in writing under the form of a purchase order acknowledgement (the "P.O. Acknowledgement"). It is expressly agreed that should an accepted P.O. Acknowledgement be cancelled by Buyer, Buyer shall pay the prices as set out in the purchase order, for equipment, material, works, preliminaries and engineering that are performed, delivered, incurred and/or spent. If not performed or delivered in full, the payment shall be prorated. For equipment, material, works, preliminaries and engineering that are committed but not delivered or performed, Buyer shall pay the cancellation costs that are imposed by Seller's suppliers. Seller shall use reasonable efforts to negotiate the cancellation costs with its suppliers.

As set forth in Article 18 hereafter, modifications of an accepted P.O. Acknowledgement shall only be valid upon the prior written approval of Seller. Seller shall not be bound, in any case, by any information, especially technical information, stipulated in generic commercial documents, brochures etc.

In the event of conflicting information between documents issued by Seller and Buyer, the documents will prevail in the following sequence:
1) P. O. Acknowledgement issued by Seller;
2) Seller's proposal and revisions in the order they were issued;
3) These General T&Cs; and
4) Buyer's request for proposal.

ARTICLE 2–SCOPE

2.1 Under these General T&Cs, Seller may, subject to and in accordance with any purchase order issued and accepted hereunder, furnish to Buyer:

a) equipment or material ("Equipment");
b) field services such as the providing of technical advice during installation, start-up and testing of the Equipment or specialized services such as those related to the hook-up of the Equipment to Buyer's installations ("Services").

Seller's work within such scope of any combination of 2.1 a) and b) is hereunder sometimes referred to as the "Work".

ARTICLE 3–INFORMATION AND SUPPLIES TO BE PROVIDED BY BUYER

3.1 Buyer shall provide, in a timely manner, all data, documents, and other information which are necessary for Seller to perform the Work and Seller shall be entitled to rely upon such data, documents, and information.

3.2 Buyer shall pay the extra cost reasonably incurred by Seller due to alterations of the Work necessitated by reason of inaccurate drawings, data or information so provided to Seller.

3.3 Buyer shall assist Seller in obtaining in a timely manner, all permits and authorizations (including visas) as required to enable Seller to perform the Work in an orderly manner.

3.4 Buyer shall obtain and pay for all permits and licenses required in connection with the performance of the Services, including those that will survive Seller's performance.

3.5 Buyer shall provide and pay the labour, material, tools, equipment and utilities (if necessary to perform the Services, as set forth on the purchase order.

ARTICLE 4–PRICE, PRICE ADJUSTMENT, TERMS OF PAYMENT AND TAXES

4.1 Prices for Equipment and Services, and price adjustment (if any) will be as set forth in Seller’s applicable proposal and as detailed in the P.O. Acknowledgement. They are exclusive of the taxes and costs provided in Article 4.4 below.

4.2 Payment shall be made in accordance with the payment provisions set forth in Seller’s proposal or in the P.O. Acknowledgement. Buyer shall make all payments required hereunder within thirty (30) days of date of Seller’s invoice net and free of any deduction, except as required by applicable law, by bank transfer to such bank account number as may be specified in Seller's invoices. Payments may not be refused, postponed or interrupted for any reason whatsoever.

4.3 If payments are not made strictly in accordance with the provisions of Article 4.2, late payment interest will, without prejudice to Seller's right to immediate payment, be added to the account of Buyer by an amount equal to the two percent (2%) per month calculated daily from the day after the due date until and including the day the amount is paid.

4.4 Buyer will pay any federal, state or local income, property licences, sales, uses, excise, value-added, gross receipts, or other like taxes, including import duties which may now or hereafter be applicable to, withheld, measured by, or imposed upon or with respect to the transaction, the Equipment, its sale, its value or its use, or any Services performed in connection therewith.

4.5 For the avoidance of doubt, Buyer shall not be responsible for any Thai income tax, corporate and personal, incurred by the Seller and its personnel in relation to the Work.

ARTICLE 5 – DELIVERY AND TRANSPORTATION – TRANSFER OF RISK

5.1 Shipment dates refer to the time when it is estimated the Equipment will be ready for shipment and subject to the prompt receipt by Seller of all information necessary to begin manufacture and continue without interruption.

5.2 Delivery will be made Ex Works as defined in Incoterms 2010, unless otherwise specified in the P.O. Acknowledgement.
5.3 In the event Seller is prevented from sending the Equipment or Buyer is unable to receive any Equipment furnished by Seller at the time scheduled for its delivery, for any reason not solely attributable to the fault of Seller, Seller may, upon notice to Buyer, give Buyer the reasonable opportunity to designate alternative destination, or place such Equipment in storage at any suitable location. Upon arrival of such Equipment at such storage location, the Equipment shall be deemed to have been delivered hereunder. Risk of loss to such Equipment shall then pass to Buyer if it has not already passed according to the Incoterm used.

5.4 In the event of such storage, all additional expenses thereby incurred by Seller, such as preparation for and placement into storage, handling, freight, storage, inspection, preservation, taxes and insurance, shall be paid by Buyer within thirty (30) days of the date of Seller’s invoices.

5.5 When conditions permit and upon payment to Seller of all amounts due hereunder, Buyer shall arrange, at its expense, for removing the Equipment from such alternative destination or storage.

5.6 If sea transportation is involved, packing will be that normally supplied by Seller for underdeck shipment or container shipment.

5.7 Seller shall be responsible for any required export or import licences and for all dealings with governmental authorities. The obligation of Buyer to pay for the Equipment shall not in any manner be waived by the delay or failure to secure or renew, or by the cancellation of any required export or import licenses. Buyer will, if requested by Seller, assent Seller, in applying for any required export or import licenses for the Equipment ordered.

ARTICLE 6 – TRANSFER OF PROPERTY

Title to the Equipment will pass when all monies owing by Buyer to Seller shall have been fully paid. Notwithstanding that the title to the Equipment has not passed to Buyer, the risk of loss or damage to the Equipment shall pass to Buyer upon delivery as specified in Article 5.

ARTICLE 7 – DELIVERY DATE

7.1 The delivery dates set forth in the proposal issued by Seller are for information only and are determined according to estimations established when the proposal is made. Seller shall do its best to observe the delivery dates set forth in the proposal as far as possible.

7.2 Failure to observe such dates shall not trigger the cancellation of the purchase order nor give rise to any indemnities other than possible liquidated damages for late delivery. Such liquidated damages shall be Buyer’s exclusive remedy for late delivery and shall be limited to half a percent (0.5%) per day of the value of the price of the item delivered late, up to a maximum of ten percent (10%) of the value of the price of the item delivered late and will be applicable only if they have been previously asked for in the purchase order and agreed upon in the P.O. Acknowledgement.

ARTICLE 8 – FORCE MAJEURE – EVENTS BEYOND THE SELLER’S CONTROL

Seller shall not be considered in default in the performance of its obligations hereunder to the extent that the performance of any such obligation is hindered, prevented or delayed by force majeure. Force majeure shall mean any cause existing or future, which is beyond Seller’s or its subcontractors’ control including but not limited to: acts of God, storm, flood, earthquake, fire, or any kind of natural disaster riot, political or civil unrest, sabotage, embargo, prohibition of trade, strike, lock-out or any combination of workmen which may interfere with the commencement or progress of Work, effects of energy shortage, machinery breakdown, delays or accidents in the dispatch of equipment related to the Work or in the transport of the same from causes listed herein as force majeure, interference by civil or military authorities, acts, regulations or orders of any governmental authorities (including delay or failure to issue licences, permits, or authorizations of any kind whatsoever), acts of war (declared or undeclared), hostilities, acts or failure to act of Buyer or its agents, suppliers and subcontractors. Promptly upon the discovery of the occurrence of any of such causes, Seller shall give Buyer written notice thereof and thereupon, the contractual delivery schedule will be extended by a period of time as is reasonably necessary to reflect the delay and Seller shall be entitled to the reimbursement of costs and expenses, reasonably and necessarily incurred as a result of the delay or in overcoming the effect of such delay.

ARTICLE 9 – INSPECTION AND TESTS

All Equipment furnished hereunder will be manufactured, inspected, and tested in accordance with applicable Seller’s technical specifications. Moreover, the Equipment will undergo specific tests during the commissioning mentioned in Article 10. Any additional inspections or tests will be for the account of Buyer and all expenses incurred by Seller in connection therewith are payable upon submission of Seller’s invoices.

ARTICLE 10 – COMMISSIONING

The Equipment shall be subject to commissioning tests as detailed in Seller’s proposal or P.O. Acknowledgement, whichever applicable. Should the Equipment not succeed in whole or in part the agreed commissioning tests, Buyer may issue a provisional acceptance notice stating its reservations and the agreed time limit to remedy in view of definitive acceptance (‘Definitive Acceptance’). Seller and Buyer shall jointly declare Definitive Acceptance in writing on the date of successful commissioning tests performance. In case Definitive Acceptance has not been formally declared by Seller and Buyer, Definitive Acceptance will be deemed to have been occurred sixty (60) days as from the delivery date as further detailed in Article 12.1.

ARTICLE 11 – USE, MAINTENANCE AND ALTERATIONS

Buyer shall not make any alterations or additions to the Equipment or replace any part of the Equipment with components other than those supplied by Seller, without the prior written authorization of Seller. In the event that Buyer makes any alteration or addition, or replaces any part with components which are not provided by Seller without Seller’s authorization in writing, or uses or operates the Equipment other than in the manner specified by the manufacturer, any warranty with respect to the Equipment shall immediately terminate (in particular, any modification made by Buyer to the software operating the Equipment will immediately waive any warranty of performance).

ARTICLE 12 - WARRANTY

12.1 Equipment and Services

a) Equipment

Seller warrants to Buyer that the Equipment shall be new, and that, under normal and reasonable use, it will be free from defects in material and workmanship. This warranty shall be of twelve (12) months and shall run from the date of the Definitive Acceptance. As to all apparatus and accessories not manufactured by Seller which are part of the Equipment furnished by Seller, Seller’s only obligation shall be to obtain for Buyer such warranties as are available from the vendors thereof over the longest period of
time obtainable by Seller without payment by Seller of additional consideration therefor.

Seller further warrants that the Equipment will perform in accordance with the performance characteristics, if any, or such specifications that may be part of the purchase order issued and accepted hereunder. The ability of the Equipment to meet this performance warranty shall be determined by the results of the commissioning tests. Upon the successful completion of such commissioning tests, all liability of Seller under this performance warranty shall terminate. If such performance tests are specified, but for reasons beyond the control of Seller, are not completed within sixty (60) days after the delivery of the Equipment or sixty (60) days after the Equipment is first put into operation, whichever shall first occur, the Equipment shall be conclusively deemed to have satisfied this performance warranty and all liability of Seller therefore shall terminate.

If during the applicable warranty period, any part of the Equipment is claimed to be defective and the claimed defect is confirmed by Seller’s inspection, Seller shall, at its sole option and as Buyer’s sole remedy, repair or replace the defective Equipment or component part thereof without cost to Buyer.

Seller reserves the right to alter any part of the defective Equipment or component part thereof as it may deem necessary to meet its obligations hereunder.

b) Services

Seller agrees to act with all reasonable care and diligence that may be reasonably expected when carrying out these types of services. Seller warrants that the recommendations, guidance and performance of its personnel will reflect competent professional knowledge and judgment. In the event any portion of the Services furnished to Buyer fails to comply with this warranty obligation and Seller is so notified in writing prior to twelve (12) months after the completion of such portion of Services, Seller will promptly re-perform, at its own expense, such portion of the Services.

As to services not performed by Seller which are part of the Services furnished by Seller, Seller’s only obligation shall be to obtain for Buyer such warranties as are available from the suppliers thereof over the longest period of time obtainable by Seller without payment by Seller of additional consideration therefore.

c) General Provisions

Performance of Seller’s obligations under this warranty is contingent upon Buyer giving notification in writing of the existence and nature of the defect to the Work no later than ten (10) days from the discovery thereof together with reasonable proof of the date of purchase or delivery, and the return of the defective part(s), freight prepaid, to Seller or the licensed Seller dealer or agent from whom the Equipment was procured, if any.

Seller shall not be liable under this warranty or otherwise for damages which occur to the Work after the delivery to Buyer or for defects caused by abuse or misuse, corrosion, fire, heat, improper handling, or the effects of normal wear, negligence or by the failure on the part of Buyer to provide maintenance which is expected to be the responsibility of Buyer. Furthermore this warranty is voided by alterations, repairs and acts by others.

12.2 Hazards and Indemnity

Buyer acknowledges that there are hazards associated with the use of the Equipment and the materials used therewith, and Buyer shall be responsible for training its employees and others in the proper uses of the Equipment and for warning and protecting Buyer’s employees and others who may be exposed to such hazards. Buyer assumes any and all liability for and shall defend, indemnify and hold Seller and its Affiliated Companies and employees harmless from any and all claims (including, but not limited to, all costs, expenses, damages, liability and reasonable attorneys’ fees) which may arise in connection with the delivery, presence, condition or use of the Equipment. Further, it is the responsibility of Buyer, as stated above, to warn and protect its employees and others exposed to the hazards posed by Buyer’s use and storage of products within the Equipment.

ARTICLE 13 – LIMITATION OF WARRANTY AND LIMITATION OF LIABILITY

13.1 There are no express warranties other than those specified in Article 12. Where permitted by law, Seller’s liability shall be limited to that set forth in the warranty. Seller makes no other warranty of any kind whether statutory, express or implied, save for the warranty of Seller’s title, i.e. its right to transfer the Equipment; and all other warranties of any kind, implied warranties of merchantability and fitness for a particular purpose and warranties arising from course of dealing or usage of trade which exceed the obligations and time limits stated in these warranties are hereby disclaimed by Seller and excluded from the warranty.

13.2 Seller’s total liability to the Buyer for any claim arising out of or in connection with this Agreement (including but not limited to any claim arising out of or in connection with breach of contract, breach of warranty, breach of statutory duty or negligence or other tort, whether by virtue of strict liability or otherwise) shall be limited to direct physical damage to Buyer’s property (which includes the cost of repairing, reinstating or replacing the property) up to a limit of

(i) the lower of THB 200,000 or 20% of the purchase order value per incident; and
(ii) THB 1,000,000 for all incidents during the term of this Agreement.

13.3 Neither Seller nor its subcontractors, suppliers, agents shall be liable for any special, indirect, incidental or consequential loss or damage of any kind arising out of any defect in or failure or malfunction of the Work furnished hereunder and Buyer shall be responsible for and shall indemnify and hold harmless Seller against any claim, liability or expense which Seller may incur to any person or entity with respect thereto. Claims related to the loss or destruction of anything stored in the Equipment and any profits or revenues associated therewith, loss of use, loss of product, claims of customers shall be considered as consequential damages and are expressly excluded.

13.4 Beyond such provisions and maximum amount stated in second paragraph of this Article, Buyer waives any right of recourse against Seller, its employees, agents, representatives and insurers, and shall obtain waiver by its insurers of their rights of subrogation with respect to such claims.

ARTICLE 14 – INSURANCE

a) Comprehensive Liability Insurance

Each party shall take up and maintain a comprehensive general liability insurance for third party bodily injury (including death), property damage and product liability, workmen compensation policy which includes coverage for employer's liability covering all operations and activities of the party arising out of the purchase order.

b) Property Damages

Each party will take appropriate insurance coverage for its property. In particular, Buyer, at its own expense shall insure the
ARTICLE 15 – SUB-CONTRACTING

Seller is entitled to sub-contract part or whole of its obligations hereunder. Without prejudice to the other provisions contained herein (in particular in Article 12 - Warranty), Seller will remain liable for the performance of the subcontracted obligations.

ARTICLE 16 – PROPRIETARY INFORMATION AND NON-DISCLOSURE

16.1 Seller has a proprietary interest in all of the drawings, designs, specifications, documents, information or know-how which may be furnished pursuant to any purchase order, discovery or invention which can be made, developed, or conceived in the performance of the Work, hereunder or which may arise or result therefrom. Buyer shall maintain all such proprietary information in confidence, and shall not use, copy, reproduce, release, disclose, or publish in any manner or allow access or possession of said proprietary information to any third party without the prior consent of Seller. The provisions of this paragraph shall not apply to information which is known to Buyer, which is or becomes generally available to the public without breach of the receiving party, which is required to be disclosed by the court’s order or as a matter of law, or which is received from a third person without limitation or restriction at the time of disclosure.

16.2 The said proprietary information will remain the property of Seller and shall be loaned to Buyer only for the purpose specified in any purchase order issued hereunder.

16.3 Buyer shall indemnify and hold Seller harmless from any liability or loss suffered by Seller or its subcontractors as a result of Buyer’s disclosure to third parties or the improper use of said proprietary information.

ARTICLE 17 – INTELLECTUAL PROPERTY

17.1 Seller has a proprietary interest in all of the drawings, designs, specifications, documents, information or know-how which may be furnished pursuant to any purchase order, discovery or invention which can be made, developed, or conceived in the performance of the Work, hereunder or which may arise or result therefrom. Buyer shall maintain all such proprietary information in confidence, and shall not use, copy, reproduce, release, disclose, or publish in any manner or allow access or possession of said proprietary information to any third party without the prior consent of Seller. The provisions of this paragraph shall not apply to information which is known to Buyer, which is or becomes generally available to the public without breach of the receiving party, which is required to be disclosed by the court’s order or as a matter of law, or which is received from a third person without limitation or restriction at the time of disclosure.

17.2 In case the said Equipment is in such suit or proceeding held to constitute infringement and the use of said Equipment is enjoined, Seller shall, at its own expense and at its option, either procure for Buyer the right to continue using the said Equipment, or replace the same with non-infringing Equipment or modify it so it becomes non-infringing, or remove the said Equipment and refund the purchase price without interest.

17.3 The foregoing states the entire liability of Seller for intellectual property rights infringement and the liability of Seller shall in no event exceed the aggregate purchase price of the infringing Equipment furnished hereunder, nor shall liability include consequential damages of any kind including but not limited to those based upon loss of Buyer’s product or claims of third parties.

17.4 The provision of this Article 17 shall not apply to

17.4.1 any Equipment manufactured to Buyer’s specification or modified by Buyer;

17.4.2 systems or combinations in which Buyer incorporates Equipment furnished hereunder; and

17.4.3 any third party equipment.

As to such Equipment, third party equipment, combination or systems, Seller assumes no liability whatsoever for intellectual property rights infringement. Buyer undertakes to defend and indemnify Seller from and against any claim, expenses or proceeding resulting from any claim that any Equipment manufacture to Buyer’s specification or any unauthorized modified version of the Equipment directly infringes any patent right of a third party.

ARTICLE 18 – CHANGES

18.1 Any changes to the Work, whether proposed by Buyer or Seller shall be subject to agreement between the parties and implemented following written modification to the purchase order, except that Seller may make changes in the Equipment without agreement of or compensation from Buyer, if such changes shall not adversely affect its warranty (including performance warranty), the technical soundness of the Work, or the contractual schedule. If any change is such as to cause an increase or decrease in the cost or time of performance or affect any other pertinent provisions of any purchase order issued hereunder, an equitable adjustment will be made in the price, contractual schedule, as well as any other terms and conditions as may be affected, including warranties. Seller will be under no obligations to proceed with a change unless or until a change order acceptable to and signed by both parties.

18.2 Any change in design or Equipment required by any lawful authority of Buyer’s country, or any change in the laws, regulations and standards which affects any purchase order issued hereunder shall be deemed a change requested by Buyer.

ARTICLE 19 – USE OF EQUIPMENT AND SERVICES

The Equipment and Services are intended for use only for the purpose for which they were expressly provided and with the operating conditions as specified in Seller’s documents such as operating manuals, if any. With respect to any other use, Seller makes no representation or warranty and assumes no liability of any kind, including liability as to completeness, accuracy, usefulness, or non-infringing nature of the Equipment or Services.

ARTICLE 20 – TERMINATION

Buyer may terminate any purchase order pursuant to the provisions of article 1.3.

Furthermore, each party may terminate any purchase order issued hereunder immediately in case of insolvency of the other party or if the other party undergoes any bankruptcy, winding-up or similar procedure or in case of material default of the other party.

ARTICLE 21 – INDEPENDENT CONTRACTOR

Seller shall be and shall remain an independent contractor. Save as expressly stated otherwise, nothing contained herein shall be interpreted to create a master-servant, principal-agent, or
employer-employee relationship between Buyer and Seller. Seller’s employees will remain at all time employees of Seller and will be under its exclusive authority.

ARTICLE 23 – MISCELLANEOUS

23.1 The laws, regulations and standards applicable to the performance of the Work will be specified in any purchase order issued hereunder, and Buyer or its agents shall assist Seller in identifying and interpreting any special requirement or any change in the laws, regulations, codes and standards issued by any lawful authority or regulatory agency of Buyer’s country.

23.2 The terms and conditions contained herein including limitation of liability, intellectual property, proprietary information and nondisclosure and all of the terms and conditions providing for limitation of or protection against liability, shall apply notwithstanding any other provisions and shall survive termination, cancellation, or expiration of any purchase order governed by these terms and conditions.

23.3 In the event that any of the provisions, or portions, or applications thereof of these terms and conditions are held to be unenforceable or invalid by any court of competent jurisdiction, the validity and enforceability of the remaining provisions, or portions, or applications thereof, shall not be affected thereby.

23.4 No waiver of rights under these General T&Cs by a party shall constitute a subsequent waiver of the purchase agreement issued hereunder or any other rights hereunder.

23.5 Except as expressly stated otherwise, neither party shall have the right to assign the purchase agreement issued hereunder or any of its rights or obligations hereunder without the prior written consent of the other party, which consent shall not be unreasonably withheld. Seller shall have the right to freely assign the purchase agreement issued hereunder or any of its rights or obligations hereunder without Buyer’s consent, to any of its Affiliated Company. For the purpose of this General T&Cs, “Affiliated Company” shall mean any company which directly or indirectly controls, is controlled by, or is under common control with Seller. “Control”, for purposes of the preceding sentence, shall mean the ownership, directly or indirectly, through one or more intermediaries, of 50% or more of the voting rights of a company.

23.6 A person who is not a party to the purchase agreement issued hereunder has no right enforce any term of the purchase agreement and these General T&Cs.