

# General Terms & Conditions of purchase for Capital Goods & Services



## 1. DEFINITIONS

In these Terms and Conditions of Purchase for Capital Goods and related Services (the "Terms and Conditions") the following terms shall have the following meaning:

« **Affiliate** » : means in respect of a Party, any entity (a) in which such Party directly or indirectly controls more than 50 percent of the voting rights, or (b) which directly or indirectly controls more than 50 percent of the voting rights of such Party or (c) of which an entity as mentioned in (b) controls directly or indirectly more than 50 percent of the voting rights.

« **Provisional Acceptance Certificate** » : means the written certificate issued by the Company to acknowledge that the Equipment has successfully passed the Factory Acceptance Test as defined below.

« **Final Acceptance Certificate** » : means the written certificate issued by the Company to acknowledge that the Equipment has successfully passed the Site Acceptance Test as defined below.

« **Company** » : means the company that issues the Purchase Order

« **Contract** » : Has the definition provided in clause 3.

« **Contract Price** » : means the price to be paid by the Company to the Seller for the design, manufacture, test, delivery installation and commissioning of the Equipment and the provision of all work required to complete the Contract.

« **Equipment** » : means the Equipment agreed in the Contract to be bought by the Company from the Seller.

« **Effective Date** » : means the date of the Purchase Order (as defined here below).

« **Export Controls Laws** » : mean laws, regulations and rules relating to the export of dual-use and military items adopted by the European Union, the United States and any other relevant jurisdiction.

« **Factory Acceptance Test** » : means all test operations conducted by and under the Seller's responsibility at the Seller's factory, as further defined in the Specifications or in any other applicable contractual document such as a Statement of Word, etc.

« **Intellectual Property Rights** » : means all patents, designs and trademarks (whether registered or unregistered), copyright, know-how, database rights and all other intellectual property rights and similar or equivalent rights anywhere in the world which currently exist or are recognised in the future; and applications, extensions and renewals in relation to such rights.

« **Purchase Order** » : means the Company's written instruction to buy Equipment.

« **Sanctions Laws** » : mean any economic or financial sanctions laws, regulations and rules enacted or enforced by a governmental authority, including but not limited to sanctions and restrictive measures imposed by the United Nations, the European Union, the United States and any other relevant jurisdiction.

« **Seller** » : means the person, firm or company who accepts the Company's Purchase Order.

« **Site Acceptance Test** » : means all test operations conducted by and under the Seller's responsibility at the Company's premises, as further defined in the Specifications, or in any other applicable contractual document such as a Statement of Word, etc.

« **Specification(s)** » : means the technical or performance requirements issued by the Company in respect of the Equipment.

## 2. ENTIRE AGREEMENT

The present Terms and Conditions of Purchase for Capital Goods and related Services shall apply to any Purchase Order placed by the Company whether the Terms and Conditions are expressly referenced therein or attached thereto or not.

No other terms or conditions shall be applicable to the Purchase Order or to the Contract, whether delivered with or contained in any document submitted by the Seller such as a quotation, an order acknowledgement, order acceptance, specification or in any other document, unless specifically agreed to by the Company.

## 3. ORDER OF PRECEDENCE

The following documents shall form the Contract irrespective of their language(s).

1. The Purchase Order
2. The Company's Specification including the Company's Equipment Safety Standards Requirements
3. These Terms and conditions along with the Aliaxis Supplier Code of Conduct
4. Any other documents to which the Purchase Order expressly refers,
5. Any representations made by the Seller to the Company regarding the quality or specification of the Equipment
6. The Seller's Quotation without regard to its legal terms and conditions
7. The acceptance of the Purchase Order without regard to its legal terms and conditions

In the event of any conflict, inconsistency or discrepancy between any of the above documents the order of precedence shall be as listed, the highest-ranking document taking precedence over the other.

The Contract shall, unless otherwise agreed in writing by the Parties, comprise the Parties entire agreement in relation to the purchase Equipment and shall supersede all previous arrangements, discussions or agreements between the Parties.

## 4. VARIATION OF INTERPRETATION

No variation to the Contract shall have effect unless expressly agreed in writing by the Company.

A reference to one gender includes a reference to the other gender and terms defined in singular include the plural and vice versa.

Headings herein are for convenience only and do not affect the interpretation of the Terms and Conditions.

## 5. QUALITY AND STANDARDS

The Equipment shall be new, fit for purpose and of merchantable quality in accordance with all Contract requirements and with industrial norms and standards for similar products and contracts of a similar nature.

The Seller shall comply with all legislation applicable to the Equipment in the country where the Equipment is to be delivered including compliance with any health and safety requirements in respect of the Equipment and the Company's policies and procedures.

## 6. FACTORY ACCEPTANCE

Prior to shipment of the Equipment the Company shall have the right to inspect the Equipment at the Seller's premises and shall have the right to have the Equipment tested per the applicable Specifications (the "Factory Acceptance Test" or "FAT").

The FAT acceptance criteria shall be determined in accordance with the Specification.

If the Equipment does not successfully pass the FAT then the Company shall inform the Seller and the Seller shall immediately take such action as is necessary but no later than within 3 (three) month of the first attempt, to ensure compliance with the FAT.

If the Equipment fails the FAT twice the Company shall be entitled to avail itself by one of the remedies detailed in Article 9.

For any additional factory acceptance tests resulting from non-compliance, or any defects or deficiencies, Seller shall be responsible for Company's additional travel costs, including hotel rooms and expenses thereto.

If the Equipment successfully pass the FAT, the Company shall sign a Provisional Acceptance Certificate and the Seller shall be authorized to ship the Equipment.

Notwithstanding a successful FAT the Seller shall remain fully responsible for the Equipment and its compliance with the Contract's requirements. The FAT shall not diminish or otherwise affect the Seller's obligations under the Contract and does not imply acceptance of the Equipment by the Company.

Prior to the Company issuing the Provisional Acceptance Certificate, the Seller shall confirm to Buyer that Equipment complies with all applicable specifications and is otherwise in compliance with the terms of this Agreement. Any defects or deficiencies discovered by the Company shall be promptly repaired or replaced by Seller at Seller's sole cost and expense, and the Equipment shall be subject to another FAT inspection.

## 7. SHIPMENT AND DELIVERY

The Seller shall package and protect adequately the Equipment against damage and deterioration during loading and unloading operations, while the Equipment is in transit and until it is delivered in accordance with the Contract.

Irrespective of the delivery trade term, the Seller shall observe all legal and regulatory requirements in respect of the shipment and transit of the Equipment such as fumigation etc. Unless otherwise stated in the Purchase Order the Equipment shall be delivered DDP (Incoterms 2020) to the Company's designated place of business (the "Delivery").

The Delivery date shall be specified in the Purchase Order. Unless otherwise stipulated in the Purchase Order, the Delivery shall only be accepted by the Company in normal business hours.

Unless otherwise provided for, time is of the essence of the Delivery date.

The Seller shall ensure that each piece of Equipment is accompanied by the following documents:

- if applicable, a certificate of conformity CE in receiving country's language;
- the automation program
- the Equipment user's manual, instructions for use and maintenance electrical diagram and automation diagram and documentation in receiving country's language;

## 8. LATE DELIVERY

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Should the Equipment be delivered late then the Company shall have at its sole discretion the choice, without prejudice to any of the Company's rights under the Contract to claim Late Delivery Liquidated Damages at a rate which is the highest of (i) 0.5% per week (ii) the rate indicated in the Purchase Order. The Parties agree that the Late Delivery Liquidated Damages are a genuine pre-estimate of the damage that the Company would suffer in case late delivery and shall not amount to a penalty.

## 9. INSTALLATION & COMMISSIONING

Unless otherwise instructed by the Company, the Seller shall install, commission and start-up the Equipment at the Company's site in accordance with the Contract's requirements with professional skill and care and in accordance with sound and prudent practices.

Upon completion of the installation and commissioning operations at the Company's facility, Seller shall provide the Company with a notice that the Equipment is ready for acceptance testing.

The Seller confirms it gained sufficient knowledge of the Company's site where the Equipment is being delivered installed commissioned inspected and started-up and recognizes the site is a fully operational site where operations may continue during delivery installation, commissioning inspection and start-up phases.

Subsequently all on-site work under the Contract shall be performed with minimal impact to the Company operations and should be coordinated with the Company site representative.

Company cannot guarantee full unimpaired total access to the work site, power etc. at any one time and the Seller must satisfy himself etc. The Seller is required to familiarize itself with any local conditions that could impede or delay his tasks.

On occasions when power is required to be switched off, this may only be authorized by the Company.

The Seller shall regularly and swiftly clean up the site and dispose of any hazardous material transported into the Site by the Seller or the Seller's suppliers or contractors.

The Seller shall notify the Company immediately upon the discovery of the presence of any hazardous material on, or the release of hazardous material on or from, the Site. The removal, transportation and disposal of such hazardous materials shall be conducted in accordance with all applicable laws and regulations.

The Seller shall be deemed to have examined any Site or facility and the Company shall not be liable for any claim from the Seller in relation to its misinterpretation of any Site-related or facility-related matter, or any other matter in respect of which the Seller could reasonably have satisfied. The Company will provide such information reasonably required by the Seller in relation to the Site or facility that it is able to do at the time of the request but makes no warranty as to the existence of any easements, agreements, statutory entitlements, or other freedoms of access to Sites or facilities.

Prior to commencing work the Seller shall ensure that its personnel, agents and subcontractors undergo induction training in respect to the Company and/or the receiving site's operational and health and safety requirements.

The Seller shall comply with and ensure that all personnel, agents and subcontractors comply with, all site access requirements expressed and required by the Company, direct its personnel, agents and subcontractors to follow all reasonable directions of the Company's representatives, maintain all records it is required by law to maintain and such other records as will enable it to demonstrate to the Company compliance with all its legal obligations under the Contract. It will provide and permit the Company and its employees and agents to inspect all such records at the Company's request at any time on reasonable notice, notify the Company of any dispute affecting work on the site and shall not take any action in relation to this without prior consultation with the Company, provide, at its own cost, to all personnel, agents and subcontractors, the Personal Protective Equipment (PPE) required by the Company in good working condition and fit for the purpose of the role and with appropriate safety and quality standards for the tasks to be performed including.

When applicable, the Seller shall apply timely for a fire permit.

The Seller shall strictly comply with the Health and Safety set forth in the Contract, with the Company's Health and Safety Policy as communicated from time to time by the Company.

When the Equipment has been commissioned at the site, the Company in the presence of representatives from the Seller shall undertake a Site Acceptance Test (SAT).

The provisional SAT shall consist of a series of performance & production tests. Such performance tests shall be agreed in advance between the parties and the Company shall, if the Equipment is operating in accordance with the Specification and meets the performance & production test performance criteria, issue a Certificate of Acceptance within seven (7) days of the passing of the appropriate criteria.

Should the Equipment not pass the performance & production tests or not operate in accordance with the Specification, then the Company shall have at its sole discretion the choice, without prejudice to any of the Company's rights under the Contract, to:

- Request that the SAT be retaken. All costs involved in modifications to the Equipment necessary to meet the Specification and pass the retaken performance & production tests are to be borne by the Seller.
- Accept the Equipment with such shortfalls in performance and claim from the Seller the Performance Liquidated Damages set forth in the Specification or otherwise agreed upon by the Parties. The Parties agree that the Performance Liquidated Damages are a genuine pre-estimate of the damage that the Company would suffer in case of poor performance of the Equipment.

## 10. REMEDIES – TERMINATION

Without prejudice to any other right or remedy which the Company may have, if the Equipment is not supplied in accordance with, or the Seller fails to comply with, any of the terms of the Contract the Company shall be entitled to avail itself of any one or more of the following remedies at its discretion, whether or not the Equipment has been accepted by the Company:

- to rescind the Purchase Order and/or;
- to reject the Equipment and return it to the Seller at the risk and cost of the Seller and/or;
- at the Company's option to give the Seller the opportunity at the Seller's expense either to remedy any defect in the Equipment or to supply a replacement and carry out any other necessary work to ensure that the terms of the Contract are fulfilled and/or
- to claim such damages as may have been sustained in consequence of the Seller's breach or breaches of the Contract and/or.
- To charge liquidated damages at a rate indicated in the Contract.

## 11. TRANSFER OF RISK & PROPERTY

The Equipment shall remain at the risk of the Seller until the issue of the Final Certificate of Acceptance.

## 12. WARRANTY

When a Final Certificate of Acceptance has been issued the Warranty period shall commence. The Equipment supplied and its associated installation and commissioning work shall be subject to a warranty period of two (2) years or such longer period as may be agreed by the parties and stated on the Contract.

The Seller shall be responsible for making good within the period of time as reasonable instructed by the Company at its sole expense any warranted defect or damage to any part of the Equipment which may appear or occur during the Warranty period and which arises either from any material, workmanship or design, or from any act or omission of the Seller. All costs whatsoever associated with the remedy shall be borne by the Supplier, such as removal and refitting, transport, mobilization of technicians etc.

The Seller warrants any repair or replacement part for a period equal to the Warranty Period from the date of its repair or replacement.

## 13. PRICE AND PAYMENT

Unless stated in the Purchase Order the default payment schedule shall be:

- Upon Purchase Order: 20% downpayment against bank guarantee and correct tax invoice payable within 60 days from the date of invoice
- Upon successful completion of Factory Acceptance Test: 30% payable within 60 days from the date of invoice
- Upon successful completion of Site Acceptance Test: 40% payable within 60 days from the date of invoice
- 12 months after the date of Site Acceptance Test: 10% payable within 60 days from the date of invoice

No variation in the Contract Price or extra charges shall be applicable unless agreed in writing by the Company prior to incurring the same or to executing the change. No payment will be made for crates or packing material unless agreed by the Company and stated on the Purchase Order.

Unless otherwise stated in the Purchase Order the price shall be exclusive of value added tax but inclusive of all other charges and duties as well as all costs associated with the delivery, installation and commissioning of the Equipment, operator training and operator and maintenance manuals are included within the Contract Price.

Without prejudice to any other right or remedy, the Company reserves the right to set off any amount owing at any time from the Seller to the Company against any amount payable by the Company to the Seller under the Contract.

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## 14. TAXES

The Supplier and its subcontractors shall be solely responsible for the payment of social security contributions and taxes related to the members of the Supplier Personnel. The Supplier shall indemnify, defend and hold the Customer and the Customer Affiliates harmless from any Losses suffered or incurred due to a breach of this clause 14 by the Supplier.

## 15. LIABILITY, INDEMNITY & INSURANCE

The Seller shall hold the Company harmless and keep the Company indemnified in full against all liabilities loss, damages, injury, costs and expenses (including legal and other professional fees and expenses) awarded against or incurred or paid by the Company as a result of or in connection with:

- Any breach to the Contract
- Loss, damage or claims arising from defective or non-conforming Equipment;
- or an infringement or alleged infringement of any Intellectual Property Rights caused by the use, manufacture or supply of the Equipment;
- a breach of clause 17 Confidentiality.

The Seller shall take out and maintain with a reputable and financially sound insurance company insurance policies sufficient to cover any liability of the Seller towards the Company and third parties in respect of the provision of the Equipment. The Seller shall provide copies of its insurance policies and premium receipts following a request by the Company or a confirmation that the insurance is current.

The Seller shall procure that any Supplier's subcontractor has taken out and will maintain with a reputable and financially sound insurance company insurance policies sufficient to cover any liability of the subcontractor towards the Company and third parties in respect of the provision or the transport of the Equipment.

Insurance		Yes	Minimum Amount of Cover (EUR)
a)	Public Liability	<input type="checkbox"/>	€5,000,000
b)	General Product Liability	<input type="checkbox"/>	€5,000,000
c)	Workers compensation	<input type="checkbox"/>	Amount consistent with the applicable law

The Seller shall procure that the subcontractor provide copies of its insurance policies and premium receipts following a request by the Company or a confirmation that the insurance is current.

## 16. HSE & ENVIRONMENT

The Supplier and the subcontractors involved in the Contract shall abide by the HSE requirements and Environmental policies as communicated by the Company.

Without prejudice to the foregoing, the Contractor shall:

- conduct a general hazard identification, risk assessment and control process in relation to the Contractor's activities;
- conduct a job specific hazard identification, risk assessment and control process in relation to the Contractor's activities;
- train, induct and instruct all relevant site personnel on safe work practices and the environmental and workplace health and safety obligations before commencing any work; and
- ensure that all site personnel comply with any relevant legislative requirements, Company policies and HSE rules as well as sound industry practices.

The Contractor shall submit a risk assessment analysis for each major task or activity required for performing the work under the Contract, to the Superintendent for approval within 14 days of the Date of Acceptance of the risk assessment

Prior to commencing work on any site or premises of the Principal, the Contractor shall ensure that its personnel, agents and subcontractors undergo induction training in respect to the Principal's, and the relevant site's, operational and health and safety requirements.

## 17. CONFIDENTIALITY

The Seller shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Seller by the Company or its agents and any other confidential information concerning the Company's business or its products including a Purchase Order and its subject matter which the Seller may obtain and the Seller shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors as need to know the same for the purpose of discharging the Seller's obligations to the Company and

shall ensure that such employees, agents or sub-contractors are subject to like obligations of confidentiality as bind the Seller. The Seller shall not disclose the fact it is supplying Equipment to the Company without the Company's prior written consent. The Seller shall comply with the provisions of this Article for a period of three (3) years after the Contract has been completed or is terminated for whatever reason.

## 18. TERMINATION FOR CONVENIENCE

The Company shall have the right at any time to terminate all or any part of the Contract for convenience by sending a two (2) week prior written notice to this effect to the Seller. Subject to the Seller complying with the provisions of the Contract, the Company shall pay to the Seller:

- the documented cost work completed in accordance with the Contract;
- the documented cost of any work in progress authorised by the Company subject to such work not being in excess of two (2) weeks of production;
- The Seller shall not be entitled to any other payment from the Purchaser due to termination of the Contract.

## 19. TERMINATION FOR DEFAULT

The Company shall have the right at any time by giving notice in writing to the Seller to terminate the Contract immediately without having to request a court order and without liability to the Seller if:

- the Seller fails to or threatens not to fulfil any of the terms and conditions of the Contract; or
- any distress, execution or other process is levied upon any of the assets of the Seller; or
- the Seller has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Seller or notice of intention to appoint an administrator is given by the Seller or its directors, or a resolution is passed or a petition presented to any court for the winding-up of the Seller or for the granting of an administration order in respect of the Seller, or any proceedings are commenced relating to the insolvency or possible insolvency of the Seller; or
- in case of merger, spin-off or direct or indirect change of control of the Seller; or
- the financial position of the Seller deteriorates to such an extent that in the opinion of the Company the capability of the Seller adequately to fulfil its obligations under the Contract has been placed in jeopardy.

The termination of the Contract, however arising, shall be without prejudice to the rights and duties of the Company accrued prior to termination. The provisions which expressly or impliedly have effect after termination including but not limited to confidentiality, remedies indemnity and guarantee shall continue to be enforceable as long as necessary to give them full force and effect notwithstanding termination.

## 20. ASSIGNMENT & SUBCONTRACTING

The Seller shall not be entitled to subcontract its rights or obligations in or assign the Contract or any part of it without the prior written consent of the Company. If Company authorizes the Contract to be subcontracted the Supplier remains fully responsible for the proper execution of the Contract.

The Company may assign the Contract or any part of it to any person firm or company.

## 21. FORCE MAJEURE

Neither party shall be liable for failure to perform its obligations under this Contract if such failure results from circumstances that are unforeseeable and unavoidable such as wars and hostilities and Acts of God such as fire, flood (a "Force Majeure Event").

if either party is affected by a Force Majeure Event, it will use all best endeavours to avoid or cure the Force Majeure Event and will promptly notify the other party of the nature of the Force Majeure Event, the nature of any actual or anticipated failure, delay or imperfect performance and the anticipated consequence and length of such failure, delay or imperfect performance.

If either party is prevented by Force Majeure Event from performance of its obligations for a continuous period in excess of one month the other party may terminate this Agreement forthwith on service of written notice upon the party so prevented, in which case neither

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party shall have any liability to the other except that rights and liabilities which accrued prior to such termination shall continue to subsist.

## 22. MAINTENANCE & SPARES

Except as may otherwise be provided for within the Contract, the terms and prices under which the Company may enter into a maintenance contract shall be separately agreed between the Company and the Seller; such a contract will include a recommended spares holding along with their appropriate prices in order for the Company to adequately support the Equipment for a two (2) year period from the date of issue of the Certificate of Acceptance.

The Seller guarantees to make available to the Company the opportunity to purchase consumables, components, spares parts etc., in order for the Company to maintain and support the Equipment for a period of at least 20 (twenty) years from the date of issue of the Certificate of Acceptance. If after this period the Seller elects to cease the manufacture of such items they shall inform the Company at least six (6) months before such stoppage to allow the Company one last life-time purchase.

## 23. EXPORT CONTROLS

The Supplier is responsible for obtaining any approval, license or registration required by law, including export licenses and approvals (if applicable).

The Supplier represents that it is not targeted by the European Union, the United States or any other relevant state Sanctions Laws. It further represents that (i) none of its directors or officers are targeted by Sanctions Laws; (ii) no entities of its group are owned or controlled by persons targeted by Sanctions Laws.

The Supplier confirms that it has established procedures and controls to ensure compliance with customs, Export Control Laws and Sanctions Laws and agrees to provide the Buyer with any information necessary to comply with such regulations, including but not limited to European Union, United States or any relevant state military or dual-use classification of the Products (if applicable) and their customs classification.

The Supplier and its related entities or representatives (including but not limited to employees, directors, officers or agents) represents that it will not sell, provide, ship or otherwise procure to the Buyer any products manufactured by/in, purchased or obtained from (i) individuals and/or entities targeted by financial sanctions administered by the European Union, the United States and/or any other relevant state; (ii) countries or regions subject to such sanctions including but not limited to Crimea and Sevastopol, Cuba, Iran, Libya, North Korea, Russia, South Sudan, Sudan, Syria, Venezuela or Yemen, or the so-called Donetsk People's Republic and Luhansk People's Republic, without having obtained prior written consent of the Buyer.

The Company may, at its entire discretion, suspend and/or terminate the Agreement immediately for cause and without indemnity nor prior notice, if the Company has evidence or sufficient reason to suspect that the Supplier may have violated Export Controls Laws, Sanctions Laws, or any of the provisions in this Clause.

## 24. GENERAL

If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall, to the extent of such illegality, invalidity, voidness, unenforceability or unreasonableness, be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.

Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Seller shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.

Each right or remedy available to the Company under the Contract (including warranty) is notwithstanding anything to the contrary without prejudice to any other right or remedy of the Company whether under the Contract or at law.

Any notice to be served under the Contract must be in writing and may be delivered in person, by courier or by prepaid first class post. Delivery shall be deemed to have taken place when reaching the recipient or forty-eight (48) hours after posting.

The Contract and any part thereof shall be governed and construed in accordance with the laws of Belgium, excluding the provisions of the United Nations Convention on Contracts for the International Sale of Equipment, Vienna dated 11 April 1980, any statute implementing that convention and any conflict of law provisions.

Any disputes arising out of or in connection with the Contract and any part thereof shall be brought exclusively in the court(s) of Brussels.

## 25. BUSINESS ETHICS

The Seller shall at all time strictly abide by the Aliaxis Supplier Code of Conduct and shall ensure that the principles enshrined in the Code are applicable throughout its own supply chain.