



A Member of  **MMC** Group

TERMS AND CONDITIONS FOR PURCHASE ORDER

PENANG PORT SDN BHD

TERMS AND CONDITIONS FOR PURCHASE ORDER

1. DEFINITIONS & INTERPRETATION

1.1 In this Agreement as hereinafter defined, the following words shall have meanings herein assigned to them unless stated otherwise:

Acceptance

means acceptance of the Deliverables by PPSB in accordance with Clause 5.

Agreement

means this Terms and Conditions for Purchase Order together with any annexure or schedule, the Purchase Order and any other documents in connection therewith

Applicable Taxes

means tax charged and levied by the Government and/or Taxation Authority including without limitation to income tax, value added tax, duty and charge, sales tax, service tax, consumption tax or any tax, duty, charge or imposition of a similar or equivalent nature by whatever name called which may from time to time be imposed under the Malaysian law.

Business Day

means any day on which commercial banks are open for business in Pulau Pinang excluding public holidays in Pulau Pinang, Saturdays and Sundays;

Customs

means Royal Malaysian Customs Department or any government's agency responsible for administering Malaysia's indirect tax policy.

Deliver or Delivery

means the process of packaging, marking, loading, transporting and unloading the Deliverables at the Delivery Point.

Deliverables

means the goods, services and/or works to be supplied and/or delivered by the Supplier to PPSB as specified in the Purchase Order.

Delivery Date

means the date for delivery of the Deliverables stated in the Purchase Order.

Delivery Order

means a document accompanying the delivery of the Deliverables, setting out amongst others the Purchase Order number, description, specification and quantity of the Deliverables.

Delivery Point

means the place for delivery of the Deliverables stated in the Purchase Order.

Event of Force Majeure

means an event beyond the control of either Party and shall mean including but not limited to:

- i. strike, lockout, other work stoppage or industrial action (other than those caused by the Party claiming the same as an Event of Force Majeure);
- ii. act of public enemies or terrorists, act of war (declared or undeclared), act of force by a foreign nation or embargo;
- iii. public disorder, insurrection, rebellion, sabotage, riot, violent demonstration or national quarantine;
- iv. explosion, fire, earthquake, hurricane, landslide, subsidence, epidemic, pandemic, another natural calamity or acts of God; or
- v. any declaration from the government that may interrupt the operation of either Party.
- vi. Force Majeure shall exclude financial distress on the part of the Supplier.

Intellectual Property

means any patent, trademark, service mark, domain name, registered design, utility model, application for and the right to make application for any such right, invention, trade and business name, including right in any trade dress, copyright, right in computer software and in website, right in database, right under licence, consent, order, statute or otherwise in respect of any right of the nature specified in this definition and right of the same effect or nature as or to those above in each case in any jurisdiction.

Invoice

means a bill issued by the Supplier stating the Price of the Deliverables that shall be paid by PPSB.

Liquidated Ascertained Damages or LAD

means the amount imposed by PPSB on the Supplier in accordance with Clause 17.

Legislative Requirements

means any:

- (a) federal, state or local act, ordinance, regulation, by-law, order, award, proclamation; and
- (b) certificate, licence, consent, permit, approval and requirement of organisation having jurisdiction in connection with the supply of the Deliverables.

Party or Parties

means PPSB and/or the Supplier.

PPSB

means Penang Port Sdn Bhd (Registration No. 199301028806 (283544-D)) and shall include its successors in title and permitted assigns.

PPSB Policies and Procedures

means any policy, standard, procedure, publication and/or guideline established by PPSB (as amended and supplemented from time to time) including but not limited to PPSB Terms and Conditions of Business.

Price

means the price for the Deliverables stated in the Purchase Order inclusive of all costs, expenses, Applicable Taxes and charges.

Purchase Order

means an order issued by PPSB to the Supplier for the supply of the Deliverables.

Specification

means the description of the Deliverables, including but not limited to any measurement, performance data, plan, drawing, purpose of the Deliverables and other information in any form and/or contained in any catalogue, brochure or descriptive literature provided by the Supplier to PPSB.

Supplier

means an entity and its successors in title and permitted assigns that supplies the Deliverables to PPSB.

Supplier Event of Default

means any of the following:

- i. the Supplier's failure to deliver the Deliverables in accordance with any requirement under this Agreement;
- ii. any representation or warranty made by the Supplier under this Agreement being inaccurate, false or misleading in any aspect;
- iii. the Supplier has infringed any Legislative Requirements; or

- iv. the Supplier being in breach of any term under this Agreement.

Taxation Authority

means Inland Revenue Board of Malaysia ("IRB") and any other government agency responsible for the collection of government revenue, including tax and non-tax revenue.

Warranty

means the maintenance, adjustment, modification and/or replacement against the defective material, design, workmanship, equipment and performance of the Deliverables at the cost and expense of the Supplier.

Warranty Period

means the period of time for the Warranty commencing from the Acceptance as stated in the Purchase Order, subject to Clause 9.

1.2 In this Agreement, except to the extent that the context requires otherwise:

- a) words of any gender include the other gender;
- b) words using the singular or plural number also include the plural or singular number, respectively;
- c) the terms "thereof", "thereunder", "herein", "hereby" and similar words refer to this entire Agreement;
- d) the words "include" or "including" shall be deemed to be followed by "without limitation" or "but not limited to" whether or not they are followed by such phrases;
- e) references to any statute or statutory provision shall be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or re-enacted;
- f) references to "this Agreement" or any other agreement or document shall be construed as a reference to such agreement or document as amended, modified or supplemented and in effect from time to time and shall include a reference to any document which amends, modifies or supplements it, or is entered

into, made or given pursuant to or in accordance with its terms;

- g) whenever this Agreement refers to “day”:
 - i. such day shall mean a 24-hour period beginning and ending at 00:00 hours and whenever this Agreement refers to a number of days, such number shall refer to calendar days unless Business Days are specified;
 - ii. if a day on or by which anything is to be done or any payment is to be made is not a Business Day, it shall be done or paid on the next Business Day;
 - iii. if any period of time is specified from a given day, or the day of a given act or event, it is to be calculated exclusive of that day; and
 - iv. if any expiry period of time falls on a day which is not a Business Day, then that period is to be deemed to expire only on the next Business Day.
- h) all accounting terms used in this Agreement and not expressly defined shall have the meanings given to them under generally accepted accounting principles of Malaysia applied on a consistent basis; and
- i) this Agreement shall not be construed adversely to a Party solely because that Party was responsible for preparing it.

2. AGREEMENT

- a) This Agreement is hereby accepted by the Supplier upon returning the acknowledged receipt of the Purchase Order to PPSB.
- b) Upon acceptance of this Agreement, the Supplier shall observe and comply strictly with this Agreement and PPSB Policies and Procedure.
- c) Subject to Clause 30, PPSB expressly rejects any additional, modification, variation, alteration, deviation and/or different term, condition or specification proposed and/or modified by the Supplier whether stated in acknowledged receipt of the Purchase Order or elsewhere, except as expressly agreed in writing by PPSB.

3. SUPPLY AND DELIVERY

- a) The Supplier shall supply and deliver the Deliverables to the Delivery Point by the Delivery Date specified in the Purchase Order and shall ensure that the Deliverables:
 - i. are in accordance with this Agreement and the Specification including but not limited to conforming to the sample (if any), quantity, quality, model number, and description as stated in the Purchase Order or other document issued in connection therewith;
 - ii. fit for PPSB’s purpose and/or of merchantable quality whether expressly or impliedly stated;
 - iii. in compliance with the Legislative Requirements; and
 - iv. do not infringe the Intellectual Property rights of any third party.
- b) The Deliverables shall be properly delivered to the Delivery Point. The risk of loss or damage in respect of the Deliverables during the transit (if any) shall be solely borne by the Supplier. PPSB at all time reserves its right to receive the Deliverables in accordance with this Agreement and the Specification. In the event there is no specification provided, the Deliverables shall be in a good working condition and in a workmanlike manner where it would ordinarily be used.
- c) The Deliverables shall be accompanied by a delivery docket detailing the Deliverables, all relevant manufacturer's or the Supplier's instructions concerning the use of the Deliverables (if applicable) and all relevant manufacturer's or the Supplier's warranties in respect of the Deliverables (if applicable).
- d) The Supplier shall provide its own labour and employee or may hire anyone that the Supplier deemed fit to supply and deliver the Deliverables to PPSB at the Supplier’s cost and expense.
- e) Whenever transport insurance is required, the Supplier shall subscribe and maintain the relevant insurance policy covering all risks and damages during the transportation of Deliverables from the Supplier's warehouse (if applicable) to PPSB, including any activities of loading and unloading.
- f) Unless otherwise mutually agreed between the Parties in writing, the Supplier shall deliver the Deliverables free of carriage, handling charge

and any other charge to the Delivery Point. In the event there is any carriage, handling charge and any other charge, the said charge shall be borne solely by the Supplier.

- g) For the avoidance of doubt and unless stated otherwise in the Purchase Order, the Delivery Duty Paid (“DDP”) based on Incoterms 2020 rules shall always be applicable for the Deliverables procured from any Supplier outside Malaysia.
- h) Delivery is not complete until the Deliverables have been accepted by PPSB in accordance with Clause 5.

4. HAZARDOUS MATERIALS AND DANGEROUS GOODS

- a) If the Deliverables are categorised as hazardous materials and/or dangerous goods under the law or contain any hazardous materials and/or dangerous goods, the Supplier shall ensure that the said Deliverables are delivered in accordance with all Legislative Requirements.
- b) The Supplier shall provide PPSB with the relevant Safety Data Sheet (“SDS”) for all chemicals, chemical substances and/or hazardous materials on the delivery of such Deliverables.
- c) The delivery of the hazardous materials and/or dangerous goods is only completed upon the perusal and approval of the SDS by PPSB and subject to Clause 5.

5. ACCEPTANCE OF DELIVERABLES

- a) PPSB may within the time prescribed in the request, require the Supplier to provide evidence and/or supporting documents acceptable to PPSB, that the Deliverables’ conditions are in accordance with this Agreement and the Specification. In the event there is no specification stated, the Deliverables shall be in a good working condition and in a workmanlike manner where it would ordinarily be used.
- b) The Deliverables shall subject to PPSB’s inspection and Acceptance. However, such inspection or Acceptance shall not relieve the Supplier from any obligation or liability under this Agreement.

- c) Acceptance of the Deliverables by PPSB shall not be conclusive with respect to latent defect or misrepresentation and subject to Clause 6.

6. REJECTION & RETURN OF DELIVERABLES

- a) PPSB may, at any time and despite the Acceptance, reject and return the Deliverables if it reasonably determines that:
 - i. the Deliverables do not comply with Clause 3(a);
 - ii. the Supplier has breached any term of this Agreement;
 - iii. there is over-supply of the Deliverables;
 - iv. there is a defect or default revealed from findings of inspection, analysis or subsequent manufacturing operation; or
 - v. there is latent defect or misrepresentation of the Deliverables.
- b) In the event PPSB reject the deliverables, PPSB shall ask the Supplier to collect the said deliverables at the Supplier’s cost and expense. In the event the Supplier fails to collect such rejected deliverables within thirty (30) days of being notified, PPSB reserves its right to either keep, use, sell, transfer and/or dispose the rejected deliverables at the Supplier’s cost and expense without any liability to PPSB.

7. DISPATCH, ROUTING OF GOODS AND CUSTOMS CLEARANCE

- a) The Supplier shall strictly follow the instructions for the dispatch, routing and Customs clearance of the Deliverables attached to the Purchase Order and any other Legislative Requirements for the supply of the Deliverables and the Supplier shall be solely responsible for the consequences if the said instructions are not being complied with.
- b) The Supplier shall always be responsible for the routing of the Deliverables to PPSB and for providing proper mode of transport for the said delivery. All charges related to it shall be solely borne by the Supplier.

8. NON-EXCLUSIVITY

- a) This Agreement is not an evidence nor does it create an exclusive relationship between PPSB and the Supplier in respect of the supply of the Deliverables.

- b) The Supplier acknowledges that PPSB may purchase Deliverables or goods or services similar to the Deliverables from any supplier at all times during the term of this Agreement.

9. WARRANTY

- a) The Supplier agrees to provide the Warranty for the Deliverables at any time during the term of this Agreement and the Warranty Period. PPSB may notify the Supplier if PPSB determines that the Deliverables are defective or non-compliant with this Agreement or the Specification.
- b) Upon receipt of notice from PPSB pursuant to Clause 9(a), the Supplier shall remedy such defect at its own cost and expense by either repairing, altering, modifying or replacing the Deliverables. If the Supplier fails to remedy the defect, PPSB reserves its right to engage any third party to remedy such defect at the Supplier's cost and expense.
- c) Where it is provided in the Specification or in any part of this Agreement, the Supplier shall obtain the benefit of any manufacturer's warranty in respect of the Deliverables for or on behalf of PPSB. In the event where the Supplier fails to obtain such warranty, the Supplier shall bear all damages, costs and expenses incurred by PPSB in the sense that such damages, costs and expenses will be covered under the manufacturer's warranty.

10. INSURANCE

- a) The Supplier shall affect and maintain all relevant insurance policies in relation to the Deliverables.
- b) The Supplier shall name PPSB as additional insured party under such policies (to the extent permitted by law) without any right of subrogation against PPSB in respect of any claim that may be made against PPSB arising out of this Agreement. For avoidance of doubt, all costs and deductibles from such claims shall be solely borne by the Supplier.
- c) The Supplier shall submit to PPSB a copy of the said insurance policies and proof of premium payment for verification prior to the delivery of the Deliverables.

11. SUPPLIER'S WARRANTIES

- a) The Supplier warrants that:

- i. it has the right to sell and supply the Deliverables to PPSB;
- ii. the Deliverables shall be in accordance with Clause 3(a), new and free from defect when delivered to PPSB;
- iii. the Deliverables shall be in a good working condition and in a workmanlike manner where it would ordinarily be used;
- iv. the Deliverables comply with all relevant Legislative Requirements;
- v. it will pay all Applicable Taxes in connection with the Deliverables under this Agreement;
- vi. it will affect and maintain all relevant insurances during the term of this Agreement in relation to the supply of Deliverables; and
- vii. it does not go into liquidation, become insolvent or commit any act of bankruptcy.

- b) The Supplier acknowledges that PPSB has relied upon such warranties in entering into this Agreement.

12. SUPPLIER'S OBLIGATIONS

- a) The Supplier shall in carrying out this Agreement, comply with:
 - i. all relevant Legislative Requirements, including but not limited to in relation to the transport and storage of hazardous materials, anti-bribery and corruption, anti-money laundering, safety, security, health and environment; and
 - ii. all PPSB Policies and Procedures.
- b) The Supplier undertakes that at all material times, the supply of the Deliverables to PPSB, shall not affect or cause disruption to PPSB's operation in whatsoever means.

13. INDEMNITY

- a) To the maximum extent permitted by law, the Supplier shall indemnify PPSB against any action, claim, cost, charge, expense, liability, loss or damage (including legal cost on a solicitor-client basis) incurred by or awarded against PPSB arising out of or in relation to the Supplier's non-compliance, performance or non-performance of its obligations under this Agreement.
- b) The Supplier shall indemnify PPSB against any claim of infringement of Intellectual Property rights which may arise as a result from the supply of the Deliverables.

14. PRICE

PPSB shall pay the Price to the Supplier subject to Clauses 16 and 19 without any additional charge.

15. WITHOLDING FOR PAYMENT AND TAXES

- a) PPSB may, in relation to the Price to be paid to the Supplier, withhold any amount as it is required as the Applicable Taxes under the Legislative Requirement.
- b) If the Price paid is free of withholding Applicable Taxes, and at any time after such payment, PPSB becomes aware (either by notification from the Taxation Authority or otherwise), that an amount of Applicable Taxes should have been withheld from such payment, PPSB shall recover from the Supplier that amount of Applicable Taxes and any subsequent amount PPSB may be required to pay to the Taxation Authority for failing to withhold. Such amount shall be paid to PPSB by the Supplier within thirty (30) days from the date of notice from PPSB.

16. TERMS OF PAYMENT

- a) All payments to the Supplier will be made after the Acceptance of the Deliverables with complete documents submitted by the Supplier and verified Invoice by PPSB. The Supplier shall state the Purchase Order number in the respective invoice.
- b) Payment will be made by PPSB to the Supplier within forty-five (45) days upon receipt of undisputed Invoice.
- c) Payment of the Invoice will not be construed as an evidence or admission that the Deliverables have been delivered in accordance with this Agreement.
- d) PPSB shall not pay for the Deliverables which are:
 - i. non-compliance with Clause 3(a); or
 - ii. not delivered due to, including but not limited to, shortages, theft, etc. or otherwise.

The Delivery Order shall be attached to the Invoice and submitted to Finance Department of PPSB within three (3) days after the delivery of the Deliverables. For avoidance of doubt, PPSB will pay

only for the Deliverables delivered and accepted in accordance with this Agreement.

17. LIQUIDATED ASCERTAINED DAMAGES

- a) If the Supplier fails to supply the Deliverables within the period as sets out in this Agreement, PPSB shall impose LAD without prior notice to the Supplier.
- b) In addition, PPSB shall impose the LAD on the Supplier in the event that:
 - i. the Deliverables are return to the Supplier for reparation, alteration, modification and/or replacement during the term of the Warranty Period; and
 - ii. there is a delay on the Supplier's part in returning the repaired, altered, modified and/or replaced Deliverables to PPSB.

Notwithstanding this provision, in the event the Supplier has foreseen that the reparation, alteration, modification and/or replacement of the Deliverables are unable to be completed within the timeline as required by PPSB, the Supplier shall notify PPSB of the same and subject to PPSB's consent, the timeline may be extended. However, PPSB reserves its right to impose LAD for the period taken for the reparation, alteration, modification and/or replacement of the Deliverables.

- c) PPSB shall be entitled to impose LAD at the rate of one per centum (1%) of the Price per day up to maximum fourteen (14) days for each delay or part thereof. In the event the LAD exceeds fourteen (14) days, PPSB reserves its right to terminate this Agreement.

18. TERMINATION

- a) If any of the Supplier's Event of Default occurs, PPSB shall give a notice to the Supplier to remedy the said Supplier's Event of Default within a specified time stated in the notice, failing which, PPSB shall forthwith terminate this Agreement by giving notice of termination to the Supplier.
- b) In the event the Supplier is suffering from bankruptcy or insolvency, PPSB reserves its right to terminate this Agreement forthwith by giving a notice of termination to the Supplier.

- c) If the Supplier fails to supply the Deliverables within the period as set out in this Agreement, PPSB reserves its right to terminate this Agreement at any time during such delay but such termination does not relieve Supplier's obligation to pay the total LAD imposed up to the termination date subject to Clause 17.
- d) PPSB may without cause and at any time, by giving seven (7) days' notice to the Supplier, terminate this Agreement prior to delivery of the Deliverables. PPSB shall not bear any cost and expense in respect of the Deliverables.
- e) Upon the termination of this Agreement:
 - i. PPSB reserves its right to set-off or retain payment of the Price;
 - ii. if PPSB has made full or part payment for the Deliverables to be delivered by the Supplier, the Supplier shall within seven (7) days from the receipt of the termination notice, refund to PPSB whatever amount that have been paid by PPSB together with all costs and expenses that may be reasonably incurred by PPSB;
 - iii. PPSB may engage any third party to supply the Deliverables;
 - iv. If this Agreement is terminated pursuant to the Supplier's Event of Default, PPSB reserves its right to engage any third party to remedy such defect at the Supplier's cost and expense;
 - v. The Supplier shall return or destroy all of the Confidential Information (as defined in Clause 22(a)) that are in the possession of the Supplier; and
 - vi. Neither Party shall have any further claim against each other except for antecedent breach.

19. CHANGE OF PURCHASE ORDER

- a) PPSB reserves its right to make any change, addition, modification or alteration including but not limited to the item, quantity, destination, specification, drawing, design or delivery schedule to the Purchase Order in whole or in part at any time and for any reason upon notice to the Supplier and there shall be no additional charge imposed on PPSB for the said change.
- b) The Parties shall negotiate an appropriate adjustment for the price of the Deliverables where the Supplier's direct cost is materially

affected by such change provided that the Supplier provides documentary evidence to substantiate the material changes.

- c) In the event the Parties fail to mutually agree on the adjustment, PPSB reserves its right to terminate this Agreement.

20. ASSIGNMENT AND NOVATION

- a) The Supplier shall not assign and novate any interest or benefit of this Agreement or thereunder to any third party without written consent or written approval from PPSB.
- b) PPSB may assign or novate whether in whole or in part of this Agreement at any time to any third party and the Supplier irrevocably consents to such assignment or novation and undertakes to execute within a reasonable time following written demand from such third party, all documents necessary to effect such assignment or novation.

21. PURCHASE FROM ANOTHER SUPPLIER

- a) In the event the Supplier is unable to supply the Deliverables by the Delivery Date, the Deliverables are rejected by PPSB or the Deliverables do not fulfilled the Specification, PPSB shall have the option to purchase from another supplier and the difference of the buying price from another supplier against the selling price to the Supplier shall be charged upon the Supplier.
- b) Notwithstanding Clause 21(a) above, any LAD imposed and/or losses and damages incurred by PPSB shall be borne by the Supplier.

22. CONFIDENTIALITY

- a) The Supplier shall not disclose:
 - i. any information or document belonging to PPSB or its associated companies, and
 - ii. any information or document relating to PPSB or its associated companies, whether orally or in writing, including but not limited to the terms of this Agreement and the fact of its existence, financial and technical information as well as any compilation of information which is not publicly available, furnished or made available by PPSB to the Supplier ("**Confidential Information**").

- b) The Supplier's confidentiality obligations as contained in this Agreement shall continue so long as PPSB or its associated companies shall treat the said information and documents as being confidential.
- c) The Supplier may only disclose or use the Confidential Information with PPSB's prior written consent.
- d) The Confidential Information shall remain the property of PPSB or its associated companies, and PPSB or its associated companies may demand the return of the Confidential Information at any time by giving notice to the Supplier.
- e) To ensure compliance with the relevant privacy and applicable laws as well as the Personal Data Protection Act 2010 ("PDPA") (as may be revised from time to time) by the Parties, the Supplier shall ensure that the Confidential Information pertaining to personal data furnished to it by PPSB, shall be collected, stored, retained, processed, used or otherwise dealt with (collectively, "Process") solely for the purpose of this Agreement and shall be in full compliance with the PDPA. In so complying, the Supplier shall ensure that the Process shall not result in the violation or contravention of the PDPA by PPSB or its associated companies.

23. GOVERNING LAW

This Agreement is governed by and construed according to the Malaysian law and each Party irrevocably and unconditionally submits to the exclusive jurisdiction of Malaysian courts.

24. FORCE MAJEURE

- a) Neither Party shall be in breach of this Agreement and neither Party shall have any further claim against each other if it is unable to perform in whole or in part of its obligation as a result of the Event of Force Majeure.
- b) In the occurrence of Event of Force Majeure, the Party shall as soon as possible send a notice to notify the other Party. The Parties may choose to suspend or terminate the Agreement or any other solution that is to be mutually agreed between the Parties.

25. AMENDMENT

No modification or amendment to the terms of this Agreement shall be effective unless made in writing, agreed and signed by the authorised representatives of PPSB.

26. NOTHING TO CONSTITUTE PARTNERSHIP

Nothing in this Agreement shall be deemed to constitute a partnership between the Parties or constitute either Party as an agent for the other for any purpose.

27. TIME

Time, whenever mentioned in this Agreement shall be of the essence of this Agreement.

28. NOTICES

Unless otherwise provided herein, any notice, request or other communication with reference to this Agreement shall be in writing.

29. SEVERABILITY

If any provision contained in this Agreement or in any other documents executed in connection herewith shall be invalid, illegal or unenforceable in any respect under the Legislative Requirements the validity legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired.

30. SPECIAL CONDITIONS

- a) The terms and conditions in the Special Conditions shall be in addition to the terms and conditions herein and shall be read as inserted herein.
- b) Notwithstanding anything else stated herein, the Special Conditions shall, in so far as conflicts and differences are concerned, take precedence over the terms and conditions herein.
- c) Unless expressly stated, changed, amended or varied in the Special Conditions, the terms and conditions stated in this document shall remain unchanged, applicable and enforceable.