

## 1 INTRODUCTION

1.1 These general purchase conditions shall apply unless expressly excluded and other conditions shall apply only if they are agreed upon in writing between the parties. In the event of any conflict or inconsistency between these general purchase conditions and other expressly agreed conditions, the expressly agreed conditions shall prevail.

## 2 DEFINITIONS

2.1 BUYER refers to Misi Setia company as appear in the header of the Purchase Order, inclusive but not limited to Misi Setia Utilities Sdn Bhd, Misi Setia Products & Services Sdn Bhd, MSPL Engineering Sdn Bhd.

2.2 SELLER refers to the Manufacturer / Supplier / Company / Person specified as such in the Purchase Order.

2.3 PURCHASE ORDER refers to order in writing issued to the SELLER by the BUYER, comprising documents referred to therein and constituting a binding agreement between the parties.

2.4 PRICE refers to the price specified in the Purchase Order.

2.5 SUPPLY refers to the whole of materials/services to be provided under the Purchase Order.

## 3 OFFERS / QUOTATION

3.1 Costs related to bid preparation and submission to BUYER shall be borne by the SELLER. Deviations from the inquiry documents shall be clearly specified in writing.

## 4 PURCHASE ORDER

4.1 The Purchase Order (which shall be deemed to incorporate all these general purchase conditions as though set out at length therein) constitutes the entire agreement between the parties and shall supersede the inquiry, bid and other agreements previously made between the parties.

4.2 Other conditions shall not apply to the Purchase Order unless BUYER has expressly accepted these in writing.

4.3 Only Purchase Orders accepted in writing by the BUYER shall be considered as binding on the BUYER.

## 5 PURCHASE ORDER CONFIRMATION

5.1 SELLER shall confirm the order by signing BUYER's Purchase Order confirmation in accordance to the Purchase Order's requirements. If the Purchase Order confirmation is received by BUYER later than fourteen (14) days after the Purchase Order date, BUYER may treat the Purchase Order as Null & Void and BUYER could cancel the said Purchase Order.

## 6 SCOPE OF SUPPLY

6.1 The Supply is as specified in the Purchase Order.

6.2 All products, material exportable or importable and equipment forming part of the Supply shall be exportable without restriction to Malaysia. If the products, materials and equipment proposed are under patent or license, the SELLER shall verify that such patent or license is valid in Malaysia. The obligation extends to each component of the Supply.

6.3 SELLER shall specify the country of origin of the Supply.

6.4 SELLER shall cooperate with BUYER to furnish all documents, which may be needed by BUYER in connection with the Supply.

6.5 The spare parts if any, shall be packed separately from the main equipment. A specific packing list shall be issued. All parts or groups of identical parts shall bear their tag numbers. Two (2) copies of documents required for their identification shall be placed inside the packing. The packing shall bear the order number and mention "Spare Parts".

6.6 The specifications, packing list and drawings furnished or approved by BUYER shall not relieve the SELLER from its obligation to perform the Supply in accordance with good practice and applicable laws and regulations, whether it is expressly specified in the Purchase Order.

## 7 FABRICATION

7.1 Within seven (7) days after the issue of Purchase Order, the SELLER must issue a Production/Delivery Schedule indicating clearly the overall period of the Purchase Order.

## 8 INSPECTION & TESTING

8.1 BUYER or their representatives, shall have the right at all times to examine, inspect and test the Supply and/or any part of the said Supply.

8.2 If at any time, any part(s) of the supply are inferior in quality to those specified, BUYER may reject such defective part(s) and SELLER shall immediately correct the defects or supply new part(s) free from any defect and in conformity with the specifications.

8.3 If SELLER unduly delay conducting tests, BUYER hereby reserve the right to notify SELLER in writing, to conduct the test within seven (7) days of the date of such notice, failing which the BUYER may proceed with such tests with a separate Third Party. All the costs incurred thereafter shall be borne by the SELLER.

8.4 BUYER shall be entitled to take all measures to test the accuracy of instruments, appliances and test pieces used for testing purposes, and any instruments, appliances or test pieces found to be inaccurate shall be replaced or repaired immediately by the SELLER. Testing shall include all tests and measurements of the purpose of verifying degree of accuracy and performance, and for proving that the supply has been manufactured in accordance with the specifications.

8.5 SELLER shall give due adequate notice of a minimum 14 (Fourteen) Calendar days in advance so as to enable BUYER to send the representative to attend and witness the said testing.

## 9 PRICE

9.1 The prices shall be as stipulated in the Purchase Order. The Price shall be in Malaysian Ringgit or otherwise as agreed upon all inclusive and non-escalating for the duration of the Supply.

9.2 All goods, services and documentation required, to be supplied or performed by the SELLER shall be at the SELLER's expense and shall be deemed to be included in the Price.

9.3 Price is inclusive of all taxes and duties of whatsoever nature levied upon the SELLER or its sub-supplier and their employees in connection of the Purchase Order, but exclusive of personnel costs of the inspectors appointed by the BUYER, unless otherwise expressly stated in the Purchase Order.

9.4 In the case of deliveries charged on a reimbursable basis, payment will become due according to clause 7 only when the BUYER has had a reasonable time to examine and verify as accurate all documentation on which the account is based.

## 10 TERMS OF PAYMENT

10.1 BUYER shall make payment within 45 calendar days (unless otherwise stated) after the receipt of a verified invoice accepted as correct by the BUYER, provided that all SELLER's obligations according to the Purchase Order have been fulfilled and that a complete delivery has taken place.

10.2 If delivery takes place earlier than agreed, the starting point for calculation of the payment date shall be the agreed delivery date or the invoice receipt date whichever occurs last.

- 10.3 In the event that interest is chargeable on any overdue payment, such interest on overdue payment shall notwithstanding any provision to the contrary not exceed the rate at which interest could be ordered to be paid on awards of the court where no separate agreement has been made in respect thereof.
- 10.4 If advance payments are agreed upon, SELLER shall provide on demand guarantee in form and substance acceptable to the BUYER issued by a bank acceptable to the BUYER in a corresponding amount.
- 10.5 Each invoice shall be supported with the following documents:
- i) Copy of Purchase Order
  - ii) Packing List / Delivery Order
  - iii) Mill Certificate
  - iv) Other miscellaneous documents, etc.

## 11 TERMS OF DELIVERY / SHIPPING INSTRUCTIONS

- 11.1 The provisions of INCOTERMS 2010 shall apply to the delivery.
- 11.2 If the BUYER is responsible for the transportation, the SELLER shall in good time prior to despatch, request despatch instructions from the BUYER. If SELLER is responsible for the transportation, it shall as soon as possible, and not later than the date of despatch, send an advice note advising of despatch so that BUYER may make preparations for receipt of the goods.

## 12 SHIPPING DOCUMENTS

- 12.1 Shipping Documents refers to Packing List, Delivery Order and Proforma Invoice.
- 12.2 Shipping Documents shall only relate to one Purchase Order and shall be duly marked according to specifications stated in the Purchase Order. Shipping Documents shall be completed so that each item corresponds to the Purchase Order with respect to item no, goods description and specification.
- 12.3 All goods shall be duly marked in accordance with packing lists and instructions stated in the Purchase Order. If the consignment consists of more than one package, each package shall contain a detailed list of contents.
- 12.4 In the case of delivery by a local supplier, SELLER shall submit to BUYER one (1) original Shipping Documents with and one (1) copy, otherwise SELLER shall submit to BUYER one (1) original with three (3) copies. Invoices which do not comply with these purchase conditions will be returned by BUYER.
- 12.5 For all deliveries, the goods and packing lists shall be duly marked with the gross weight.
- 12.6 Any certificates and other VDRL documents specified in the Purchase Order shall be delivered together with the goods. These documents are considered to be a part of the delivery and invoices shall not be paid until they have been received.

## 13 CERTIFICATES OF ORIGIN / PROFORMA INVOICES

- 13.1 In the case of goods of EEC or EFTA origin, BUYER or any third party specified by BUYER shall be supplied with a certificate of origin and proforma invoice.
- 13.2 Costs incurred by BUYER due to lack of certificate of origin or customs invoices shall be charged to SELLER and deducted from the purchase price or, in the case of advance payments of the full purchase price having already been made to the SELLER, be paid by the SELLER to the BUYER within fifteen (15) days of receipt of a notice from the BUYER demanding payment.

## 14 TIME OF DELIVERY

- 14.1 The delivery shall take place at the time of delivery agreed upon. SELLER shall be deemed to have fulfilled its obligation only when all items specified in the Purchase Order have been completely delivered at the time(s) and place(s) stipulated in the Purchase Order.

- 14.2 Time is of essence and SELLER undertakes to comply with the delivery dates indicated in the Purchase Order. At any time, during the execution of the Purchase Order, SELLER is required to demonstrate the smooth and regular progress of the production/delivery of the Supply, failing which BUYER hereby reserves the rights to notify the SELLER to expedite the said progress at its own cost and expenses within 7 (Seven) days thereof.

- 14.3 In additions, the BUYER also reserve the right to appoint any Third Party Expediting and Inspection Services to expedite and inspect the specific items at the SELLER's manufacturer's factory premises and if necessary arrange for all necessary special arrangement to pick up the items and deliver to Site on behalf of the Sellers. All the costs involved shall be borne by the SELLER.

- 14.4 If delivery is delayed, BUYER is entitled to the liquidated damages amounting to 0.2% of the total Purchase Order price per calendar day of delay beyond the due date of delivery. However, the maximum amount of the liquidated damages shall not exceed 15% of the total Purchase Order price.

- 14.5 Partial deliveries shall not be accepted and cannot be considered as a partial fulfillment of SELLER's obligations unless accepted in writing in advance by BUYER.

- 14.6 As soon as SELLER believes, or has grounds for believing, that the delivery will be delayed, he shall immediately notify BUYER in writing of the delay and the cause thereof. SELLER shall furthermore inform BUYER of the measures it will initiate in order to minimize the delay and also state a revised delivery date and in such an event the BUYER shall be entitled at its discretion to accept such revised delivery date or to cancel the Purchase Order without any liability to the SELLER.

## 15 CHANGES IN THE PURCHASE ORDER SPECIFICATIONS

- 15.1 The BUYER has the right to change the specifications at any time.
- 15.2 Changes agreed upon shall be confirmed by BUYER by the issuance of a change order. This change order shall thereafter be confirmed by SELLER according to clause 5.1 above. SELLER shall as soon as possible within 14 days inform BUYER in writing of the effects the requested change will have on the price, time of delivery and technical specifications. If SELLER fails to provide such information, it shall lose its right to demand a change order.

- 15.3 Disagreement as to compensation payable in respect of such change order shall not entitle SELLER to withhold its delivery.

## 16 ACCESS TO THE WORKS, EXPEDITING REPORTS AND INFORMATION

- 16.1 The BUYER and any person authorized by the BUYER shall at all reasonable times be given the access to the SELLER's Manufacturer's Factory/Premise to inspect and examine the intended partially completed works.

- 16.2 The SELLER shall provide all the necessary and relevant information and documentations substantiating the progress of production/delivery works such as copies of Purchase Orders and Work Orders as and when placed; expediting reports - showing the status of each order, its estimated ex-works and shipment dates, so as to satisfy documents himself as to the progress of the SELLER's procurement activities in accordance with agreed production and delivery work program provided always that these provisions do not relieve the SELLER of his contractual obligations contained herein.

- 16.3 The BUYER hereby reserve the right to appoint any Third Party Expediting and Inspection Services to expedite and inspect the specific items at the SELLER's manufacturer's factory premises and if necessary arrange for all necessary special arrangement to pick up the items and deliver to Site on behalf of the SELLERS. All the costs involved shall be borne by the SELLER.

**17 LIABILITY FOR DEFAULT / INSOLVENCY**

17.1 SELLER shall ensure that the goods comply with standards of good workmanship, the Purchase Order specifications and applicable laws and regulations. SELLER undertakes to repair all defects caused by faults in construction, materials or production, during a period of at least 18 months from the date the goods are taken into use for their intended purpose. The maximum guarantee period is however limited to 24 months from the time of delivery. In the event that the goods are not usable for the intended purpose for a period owing to SELLER's default the guarantee period shall be prolonged for a period corresponding to the time it has not been possible to use the goods for their intended purpose.

17.2 Parts which are replaced/repared in accordance with the above guarantee provisions, shall have a renewed guarantee period equal to the original guarantee period.

17.3 SELLER undertakes under the above guarantee that the goods shall be rectified to comply with the Purchase Order or replaced by new goods as soon as possible and free of charge.

In addition, SELLER undertakes to send a qualified personnel to the work site to repair and/or replace all defective parts during the guarantee period. The following expenses shall be borne by SELLER:

- i) repair and/or replacement of the defective part.
- ii) personnel needed for repairs and/or replacement including related expenses.
- iii) special tools if not available at work site.
- iv) uncovering, dismantling, recovering and making good all works disturbed.
- v) All other costs incurred by BUYER related to the said repair and/or replacement.

17.4 If SELLER fails to fulfil its obligations in accordance with the Purchase Order, or becomes insolvent, BUYER may at its sole discretion choose one or more of the following alternatives:

- i) Cancel the order.
- ii) Demand that SELLER immediately performs the necessary rectification work.
- iii) Retain from the purchase price an amount sufficient to ensure rectification of the goods.
- iv) Demand compensation for all losses incurred by BUYER with the maximum amount of such compensation being limited to the Purchase Order price.
- v) Demand a new delivery.
- vi) After informing SELLER in writing, rectify the defects at SELLER's cost, either with own resources or by use of other suppliers.
- vii) Demand a price reduction.

**18 FORCE MAJEURE**

18.1 Both parties may be relieved from their respective obligations to the extent that they can prove that they have been prevented from keeping such obligations due to force majeure.

18.2 The affected party shall immediately notify the other party of the force majeure situation. If a party fails to give such notice, it shall be precluded from claiming the right to be relieved of its obligations.

18.3 In case of force majeure, each party shall be responsible for its own costs resulting from the force majeure situation.

**19 RIGHT TO INFORMATION**

19.1 Upon request, BUYER shall be entitled to obtain all necessary information from SELLER including satisfactory progress reports, information relating to sub-contractors, etc.

19.2 SELLER shall permit BUYER or BUYER's clients or sub-contractors to carry out such inspections as BUYER deem to be necessary. Inspections carried out by the BUYER shall not relieve the SELLER of its contractual responsibilities.

**20 OWNERSHIP**

20.1 Proprietary rights to the goods, or parts of the goods, together with the technical documentation to be supplied by SELLER according to the Purchase Order passes to the BUYER upon payment.

20.2 All drawings, specifications and other technical documentation which is transmitted by BUYER to SELLER shall remain the property of BUYER and shall not be copied or disclosed to any third party without the prior written consent of BUYER.

**21 ROYALTIES, PATENT RIGHTS AND FEES**

21.1 All payments for royalties, patent rights and fees due to payable for or in connection with the supply or any other matter or things used or required to be used in the performance of the Purchase Order, or to be supplied under the Purchase Order, whether payable in one sum or by installment, or otherwise, are to be included by the SELLER in the price and shall be paid accordingly to the relevant parties.

21.2 SELLER shall indemnify BUYER against any claims by third parties in relation to any patent infringement by SELLER.

21.3 Notwithstanding anything in this Purchase Order to the contrary, if SELLER is unable to comply with any provisions of this Article, BUYER may deem that SELLER to have materially breached this Purchase Order and BUYER may immediately terminate this Agreement without any liability whatsoever to SELLER on BUYER'S part.

**22 DISPUTES**

22.1 This Purchase Order is governed by Malaysian Law.

22.2 All disputes related to this Purchase Order shall be settled by the ordinary court of justice within the local jurisdiction of which BUYER's purchasing office is located.

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