

General Purchase Conditions

Instructions

- a) **Acknowledgment:** Please acknowledge receipt and acceptance of the Purchase Order. If unable to fill the Purchase Order in accordance with the delivery requirements stated in the Purchase Order, advise us at once.
- b) **Invoices:** Mail commercial invoices with original bill of lading and detailed packing list to the respective Purchaser. Overseas firms will in addition to the above commercial invoice, supply an invoice certified for Hong Kong Customs purposes.
- c) **Order Numbers:** Purchase Order Numbers and item numbers must appear on all Bills of lading, Invoices, Packages and Delivery Slips.

1 Definitions

The following words shall, where the contents so permit have the following meanings:

'Goods' means all goods, chattels, plant, equipment, machinery, Stores, Services and the like.

'Hong Kong' means the Hong Kong Special Administrative Region of the People's Republic of China.

"Purchaser" means Companies of the Driventric Group with registered address in Hong Kong.

'Supplier' means the person and/or the Corporation to whom the Purchase Order is addressed from whom the Goods are being purchased.

2 Contract

- a) This **"Contract"** consists of, and is interpreted in the following Order of precedence:
 - i. The Purchase Order;
 - ii. The Framework Agreement (if any);
 - iii. These General Purchase Conditions; and
 - iv. The written quotation
- b) The Supplier shall not assign this Contract to any third party without Purchaser's prior written consent.
- c) The Purchase Order shall be regarded as unconditionally accepted unless the Supplier sends the Purchaser a written declaration to the contrary within 10 calendar days.
- d) A Framework Agreement must be in writing and must be signed by two authorised Driventric employees.
- e) No documentation, correspondence, verbal agreement or conversation shall form part of or modify the Contract.
- f) In the event of one or more clauses of the Contract being held by a court of law to be legally invalid the remainder of the Contract shall continue in full force and effect.
- g) The provisions of the Contract shall apply to any separable portion or portions of the equipment.
- h) Where any Provision of this Contract becomes prohibited or unenforceable, the parties agree to negotiate in good faith to replace that Provision with a Provision that is in accordance with the applicable law and which must be as close as possible to the original intent of the parties.
- i) A failure to exercise, or any delay in exercising any right, power, or remedy by a party does not operate as a waiver. A single or partial exercise of any right, power or remedy does not preclude any other right, power or remedy. A waiver is not valid or binding on the party granting that waiver unless it is made in writing.

3 Quantity and Quality

Neither the quantity nor the quality of Goods delivered shall differ from that specified in the Purchase Order unless the changed quantity or quality is ordered by Purchaser in writing specifically referring to the Purchase Order. Purchaser may return excess quantities to Supplier at Supplier's expense. The Supplier shall effect quality control by means of suitable documented procedures, tests and checks during the manufacture of the Goods which shall be made accessible to the Purchaser during any inspection in progress.

4 Inspection in Progress

Supplier agrees that Purchaser or its designated agent shall have the right of inspection of all work contained in the Purchase Order while in any stage of engineering, manufacture or installation. Supplier shall make this a condition of any subcontracted work. Purchaser or designated agent shall have the power to reject any work performed or being performed that does not conform to the Purchase Order, whereupon the work rejected shall be redone at no additional

cost to Purchaser. Any such inspection or any lack of such inspection shall not relieve Supplier of any obligations in the Purchase Order.

5 Engineering Data

Supplier shall furnish all engineering data in accordance with the Purchase Order and within the time stated.

6 Payment

Payment is due 45 days from the end of the month in which an Invoice requiring payment was received and approved by the Purchaser.

7 Invoices

Invoices must show the Purchase Order, name of the branch or other designation to which the Goods was delivered or shipped. If any sales tax, GST, duty, excise or other similar tax or Charge, for which Purchaser has not furnished or agreed to furnish an exemption certificate, is applicable to the Purchase Order, it must be stated separately on the invoice.

8 Cancellation/ Suspension

Purchaser may at its Option cancel any Purchase Order in respect of Goods not then delivered or in transit, provided that Purchaser is not in default. Purchaser shall pay to Supplier the cost incurred by Supplier in connection with the Purchase Order prior to the date of cancellation provided that the amount payable by Purchaser in respect of such cost when added to all previous payments made or becoming payable shall not exceed the total price stated in the Purchase Order. Upon such payment title to and property in any material or incomplete Goods shall pass to the Purchaser.

The Purchaser may suspend the Goods in whole or part at any time by notice in writing to the Supplier, stating the extent of the Suspension. The Supplier shall then suspend the progress of the work on the Goods. The Supplier shall not be entitled to compensation from the Purchaser for any costs arising out of the Suspension.

9 Termination

a) The Purchaser may terminate the Contract in whole or in part at any time before delivery with immediate effect by giving the Supplier written notice, whereupon the Supplier shall discontinue all work on the Contract. The Purchaser shall pay the Supplier fair and reasonable compensation for work-in-progress at the time of termination, but such compensation shall not include loss of anticipated profits or any consequential loss.

b) The Purchaser may terminate the Contract with immediate effect by giving written notice to the Supplier if the Supplier becomes subject to any of the following events:

- (i) the Supplier suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or (being a Company) is deemed unable to pay its debts within the meaning of section 178 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance, Cap. 32 or similar legislation, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 6A of the Bankruptcy Ordinance, Cap.6 or similar legislation, or (being a partnership) has any partner to whom any of the foregoing apply;
- (ii) the Supplier commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where the Supplier is a Company) these events take place for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other Companies or the solvent reconstruction of the Supplier;
- (iii) (being a Company) a Petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Supplier, other than for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other Companies or the solvent reconstruction of the Supplier;
- (iv) (being an individual) the Supplier is the subject of a bankruptcy Petition or order;

- (v) a creditor or encumbrancer of the Supplier attaches or takes possession of, or a distress, execution, Sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- (vi) (being a Company) an application is made to court, or an order is made, for the appointment of an administrator or provisional liquidator or if a notice of Intention to appoint an administrator or provisional liquidator is given or if an administrator or provisional liquidator is appointed over the Supplier;
- (vii) (being a Company) a floating Charge holder over the Supplier's assets has become entitled to appoint or has appointed an administrative receiver;
- (viii) a person becomes entitled to appoint a receiver over the Supplier's assets or a receiver is appointed over the Supplier's assets;
- (ix) any event occurs, or proceeding is taken, with respect to the Supplier in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 9(b)(i) to clause 9(b)(viii) inclusive;
- (x) the Supplier suspends, or threatens to suspend, or ceases or threatens to cease to carry on, all or substantially the whole of its business;
- (xi) the Supplier's financial Position deteriorates to such an extent that in the Purchaser's opinion the Supplier's capability to adequately fulfill its obligations under the Contract has been placed in jeopardy; or
- (xii) (being an individual) the Supplier dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.
- (xiii) by a breach of any of the terms of this Contract including Supplier's warranties;
- (xiv) by failure to obtain and maintain Insurance policies as specified in this Contract;
- (xvi) by failure to comply with clause 27 d);
- (xvii) In the event of a Force Majeure event (meaning any occurrence or event including, but not limited to an act of war, terrorism, civil commotion or unrest, natural disaster, industrial action of labour disturbance, provided it is outside of the control of the party asserting it) which prevents the party from performing its obligations under this Contract for a period of 3 months, the Purchaser may terminate the Contract immediately.

c) The Purchaser may, at any time and for any reason, terminate the Contract or any part of it by giving the Supplier not less than 30 days' notice of its Intention to do so. Upon receipt of a termination notice, the Supplier shall mitigate any liabilities incurred as a result of the termination. The parties will return the others' property. The Supplier will be entitled, in full compensation for the termination, to payment for all Goods fully or partially supplied and all reasonable out-of-pocket costs arising from the termination.

d) Termination of the Contract, however arising, shall not affect any of the Purchaser's rights and remedies that have accrued as at termination. Causes which expressly or by implication survive termination of the Contract shall continue in full force and effect.

10 Warranty

Supplier warrants that the Goods:

- a) will conform to the description and any applicable specifications;
- b) shall be of good merchantable quality and fit for the purpose for which it is sold;
- c) is new unless otherwise specified;
- d) is free from all liens and encumbrances and Supplier has good title; and
- e) is free of all defects in materials, workmanship and design.

These warranties are in addition to any other warranty or Service guarantee contained in the Contract or implied by law.

The warranty period shall be a minimum of 12 months from commercial Utilisation, and not longer than 24 months after complete delivery, unless separately specified in the Purchase Order and agreed by the Supplier. The warranty period for repaired or replacement parts shall be 12 months from the repair or replacement.

11 Prices

All prices stated on the Purchase Order are firm and not subject to escalation unless specified in the Purchase Order.

12 Patents, Trademarks and Copyrights

Supplier warrants to Purchaser and its successors in interest that the manufacture, sale or use of the Goods will not infringe or contribute to the infringement of any patents, trademarks, designs or Copyrights in Hong Kong

or in any other country. Supplier indemnifies Purchaser and its successors in interest against any loss or demand (including legal fees and costs) arising from breach of this warranty or prevention or hindrance of use of the Goods.

13 Property & Risk

Property and risk in the Goods shall, subject to Purchaser's right to subsequent rejection, pass to the Purchaser upon delivery to the location specified in the Contract.

14 Transportation and Packaging

Upon despatch of the Goods, the Supplier shall notify Purchaser of the date and time of despatch, the number of the Purchase Order, the kind and amount of Goods despatched and the route and method by which the Goods will be transported. All Goods shall be packed, marked and transported as specified in the Contract, but if not specified then in a proper and suitable manner and in all cases in accordance with the proper requirements for carriers. Purchaser and Supplier shall assist each other in obtaining documents and other information desirable for the prosecution of Claims against carriers. Damage to any material not packed to ensure proper protection to same will be charged to Supplier. Packages must bear shipper's name, shipping address and all information requested. Supplier undertakes to only ship the Goods in a packing that is environmentally friendly and, in the case of goods imported into Hong Kong, to observe all applicable quarantine regulations relative to the packing materials.

15 Inspection of Goods

Notwithstanding any prior payment therefor, all Goods are subject to inspection and testing by Purchaser after arrival and unpacking at the ultimate destination and if the Goods are to be installed or incorporated into a plant or premises such inspection and testing may be carried out after installation or incorporation and under operating conditions. If upon or after any such inspection or test any Goods is found unsatisfactory, defective or of inferior quality or workmanship or fails to meet the specifications or any other requirements of the Purchase Order, Purchaser, without prejudice to any other rights or remedies it might have, may return the Goods to Supplier at Supplier's expense, or in urgent cases or for the purpose of reducing the damage, be repaired at the place of testing at the Suppliers' cost.

Upon return of any unsatisfactory or defective Goods or advice of in- situ repairs, Supplier shall reimburse Purchaser for any amounts paid by Purchaser on account of the purchase price of returned Goods and any price of returned Goods and any other cost, expense, or damage incurred or suffered by the Purchaser in connection with the delivery or return of the Goods or the failure of the Supplier to comply with the terms of the Purchase Order. Any payments made by the Purchaser shall not be construed as a relinquishment of any Claim in respect of any defect(s).

16 Delivery Times

Time shall be the essence of the Contract, and should the Purchaser grant the Supplier an extension of the delivery date(s) then time shall be the essence of each revised delivery date(s). The Supplier shall give written notice of any delay or impediment that delays or is likely to delay the delivery date, and where this occurs before the delivery date(s) any Claim the Supplier may have for an extension of time.

17 Late Delivery Compensation

Where delivery is delayed, as compensation the Purchaser shall be entitled to a reimbursement of costs for each week or part thereof after the due delivery date(s) a flat rate of 0.5% of the total value of the Purchase Order to a maximum of 5% of the total value of the Purchase Order. Acceptance of any delayed delivery date(s) shall be without prejudice to the rights to late delivery compensation.

18 Safety; Protection of the Environment

a) If the Supplier has to provide Services on premises where the Purchaser has a duty of care or other liability, the Supplier shall ensure that all legal rules, regulations or other requirements are observed by its employees, legal representatives or vicarious agents, and that they are suitably trained and competent to perform the required work. The Supplier shall be liable for any actions or the results of any actions of its employees, legal representatives or vicarious agents. Vicarious agents shall also include the Supplier's personnel placed to work under instruction of the Supplier.

b) The Supplier shall ensure that its deliveries and Services meet the environmental protection, accident prevention and work safety regulations in force at the premises of the Purchaser or other place of performance if the Purchaser points out such regulations at said premises or place to the Supplier, in order to avoid or reduce harmful impacts on human beings and environment. The Purchaser shall have the right, if applicable, to require proof of the management System installed at the Supplier and to conduct audits at the

Suppliers site.

19 Confidential Information

Any engineering or other data furnished to Supplier by Purchaser is confidential and shall not be disclosed by Supplier to any third person without prior written consent of Purchaser. Unless otherwise provided in the Purchase Order, all plans, drawings and specifications prepared or supplied by or on behalf of Purchaser and any patterns made therefrom shall be and remain the property of Purchaser, shall be used by Supplier only in performance of the Purchase Order, shall be treated with care, and shall be returned by Supplier on completion of the Purchase Order.

20 Licences; Software

Unless otherwise specified in the Purchase Order, Supplier at its cost shall obtain all requisite licences, permits and authorities required in performance of the Purchase Order and shall comply with all applicable laws and regulations in relation to the Goods and its installation (where applicable). Before any Software is shipped or installed on a System of the Purchaser or its end customers, the Supplier shall check it for viruses, Trojans or other Computer malware using up-to-date anti-virus Software.

21 Insurance

The Supplier must effect and maintain the following insurances for amounts not less than, and with deductibles not more than those specified below, unless otherwise specified in the Purchase Order:

a) General liability insurance: A Public and Products Liability Insurance policy, written on an occurrence basis, which covers the liability of the Supplier and the Purchaser in respect of:

- i) damage to, loss or destruction of, or loss of use of, real and personal property;
- ii) injury to, or death or disease of persons,

arising out of, or in any way in connection with, the manufacture of and/or supply of the Goods.

The limits and deductibles are as follows:

Products Liability: HKD 70 million per occurrence.
Maximum deductible HKD 350,000

Public Liability: HKD 70 million per occurrence.
Maximum deductible HKD 350,000

b) Employees' Compensation Insurance: to the extent the Supplier's activities are carried out within Hong Kong, an employees' compensation insurance policy against any liability for death of, or injury to, persons employed by the Supplier in carrying out the Supplier's activities within Hong Kong, whether under Statute or common law. For Supplier activities outside of Hong Kong, the equivalent local insurance policy applies.

c) Transit Insurance: HKD 70 million per conveyance

d) During the term of the Contract and for a period of six (6) years thereafter, the Supplier shall maintain in force, with a reputable insurance Company, Professional indemnity insurance, product liability insurance and public liability insurance to cover such heads of liability as may arise under or in connection with the Contract between the parties on these Conditions of Purchase, and shall, on the Purchaser's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

22 Indemnity

a) The Supplier must indemnify and keep indemnified the Purchaser, its officers, employees and agents, against all Claims, demands, proceedings, liabilities, costs, charges and expenses suffered by the Purchaser and its officers, employees and agents, including Claims by third parties, arising out of any act, neglect or default of the Supplier, its officers, employees and agents related to its obligations under this Contract.

b) As part of its liability under clause 22 a), the Supplier is also obliged to reimburse any expenses incurred by the Purchaser from or in connection with a warning issued or recall conducted by the Purchaser. Where possible and reasonable, the Purchaser shall inform the Supplier of the content and scope of the measures to be performed and coordinate them with the Supplier. Other Claims under product liability law shall remain unaffected.

c) The Purchaser shall not be liable to the Supplier for any indirect or consequential loss arising out of or in connection with the Contract, in fort,

equity or otherwise at law, including (without limitation) loss of profits, revenue, production, opportunity, goodwill, reputation and use, whether or not in the reasonable contemplation of the parties to this Contract.

23 Entrepreneurial responsibility; Code of Conduct

The Supplier declares its commitment within the scope of its entrepreneurial responsibility to ensuring that it complies with legal provisions, including environmental protection laws, regulations relating to labour law and laws on the safety of employees, and does not tolerate child or forced labour in or in relation to the production and sale of its goods or the Provision of its Services. Upon accepting the order, the Supplier further confirms that it shall not commit or tolerate any form of bribery and corruption.

24 Relationship

The Purchaser and Supplier agree and acknowledge that the Supplier provides the Goods as an independent contractor and that nothing in the Contract will be construed so as to constitute a partnership between the parties or a relationship of agent or representative of the other party.

The Supplier shall be responsible for the payment of all relevant Hong Kong and overseas taxes, good and Services taxes, PAYG taxes, duties and charges payable with respect to the Goods.

25 Subcontractors

The Supplier must only engage suitably qualified and experienced personnel to perform the duties allocated to them. The use of subcontractors must be pre-approved in writing by the Purchaser.

The Supplier must:

- a) meet all payment obligations to its personnel and must pay all taxes, levies, charges applicable with respect to the engagement of, or payments to its personnel;
- b) fully comply with all relevant laws in relation to its personnel including the payment of any amounts which may be payable under or in relation to any relevant tax law, employment legislation, mandatory provident fund obligations and industrial relations legislation; and
- c) comply with all reasonable requests from the Purchaser to verify compliance with subclauses a) and b) above.

26 Quality Assurance

a) The Supplier warrants permanent quality assurance for its goods by means of installation of an adequate quality assurance System, e.g. ISO 9001 or similar and undertaking of quality tests and checks that are prescribed by the Purchaser or are otherwise suitable during and after production of its deliverables. The Supplier shall create documentation on these tests and checks.

b) The Purchaser shall have the right to require proof of the quality assurance System installed at the Supplier, to satisfy itself of how the quality tests and checks are carried out on site, including if applicable at subcontractors' premises and to conduct audits at the Suppliers site.

c) Without being requested to do so, the Supplier shall immediately inform the Purchaser of changes in the composition of the processed material or design of its deliverables or Services. The changes shall require the written consent of the Purchaser.

d) The quality assurance policy of the Purchaser disclosed to the Supplier and the quality assurance agreements concluded with the Supplier shall be part of the Contract between the Purchaser and the Supplier on these Conditions of Purchase.

27 Export Control

a) The Supplier must inform the Purchaser, if requested, of any approvals required on the (re-)export of its Goods under export or customs regulations of Hong Kong or any other applicable export or customs regulations in accordance with EU or US export law.

b) For this purpose the Supplier shall, insofar as this was not already provided in its offer, supply the required information next to the relevant item references at the Purchaser's request when an order is accepted and on every delivery note.

c) At the request of the Purchaser, the Supplier shall inform the Purchaser in writing of all further foreign trade data related to the Goods, as well as inform the Purchaser immediately in writing of all changes to the data specified above.

d) If details required in accordance with subclauses a), b) or c) above, are not provided or are provided incorrectly, the Purchaser shall, without prejudice to

further rights, be entitled to terminate the Contract for cause.

28 Applicable law and Jurisdiction

a) This Contract is to be governed by, and is to be construed, in accordance with the law of Hong Kong.

b) Subject to clause 28 c), the parties submit to the exclusive jurisdiction of the courts of Hong Kong.

Notwithstanding the preceding subclause, the Purchaser may at its election Institute proceedings against the Supplier in the courts of the place where the Supplier carries on business.

