

Document: International Purchase Order Terms and Conditions - Good and Services

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MMA
OFFSHORE

International Purchase Order Terms and Conditions – Good and Services

1. Definitions and Interpretation

1.1 Definitions

In this agreement:

Agreement means the contract comprising of this agreement and any Purchase Order.

Company means the MMA Offshore entity named in the Purchase Order.

Company Policies means all of Company's environment, health or safety guidelines, standards, policies, regulations, manuals or procedures as amended from time to time.

Confidential Information means any and all information of a party to this agreement relating to the business, operations or affairs of that party and which is provided to the other party (or its employees).

Contractor means the party named in the Purchase Order as the supplier of the Goods or Services.

Defects means any aspect of the Goods not in accordance with this Agreement, or which are damaged, deficient, faulty, inadequate or incomplete in design, performance, workmanship, quality or makeup.

Defects Correction Period means, unless otherwise agreed in writing, 12 months from the date on which the Goods or Services are supplied in accordance with the Purchase Order or in the case of defective Goods or Services, 12 months from the date of remediation or re-supply under this Agreement.

Force Majeure Event means any or all of the following events or occurrences and the effects thereof: acts of God or the public enemy, flood, earthquake, storm, cyclone, tornado, hurricane, lightning, fire, explosion, epidemic, war, embargoes, sabotage, riot or civil disturbances, expropriation, confiscation or requisitioning of facilities and orders or temporary or permanent injunctions of any duly constituted court of competent jurisdiction which is beyond the control of Contractor or Company.

Goods means the parts, equipment, machinery, or any other articles or items specified in any Purchase Order.

Good Operating Practices means practices, methods and acts undertaken with a degree of diligence, prudence and foresight reasonably and ordinarily exercised by skilled and experienced persons engaged in providing the same type of Services as Contractor.

Insolvency Event means in respect of a party, any of the following events:

- (a) an administrator is appointed or a resolution is passed or any steps are taken to appoint, or to pass a resolution to appoint an administrator to that party;
- (b) a receiver, receiver manager, official manager, trustee, administrator, other controller, or other similar insolvency official is appointed over the assets or undertakings of that party;
- (c) that party enters into or proposes to enter into any arrangement, composition or compromise with or

assignment for the benefit of, its creditors or a class of them; or

- (d) anything analogous to or of a similar effect to anything described above under the law of any relevant jurisdiction occurs in respect of the party.

Purchase Order means the document headed as such and describing the Goods or Services to be supplied by the Contractor.

Services means the services specified in any Purchase Order.

1.2 Interpretation

In this Agreement headings are for convenience only and do not affect interpretation and, unless the contrary intention appears:

- (a) a word importing the singular includes the plural and vice versa, and a word of any gender includes the corresponding words of any other gender;
- (b) the word including or any other form of that word is not a word of limitation;
- (c) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (d) a reference to a person includes an individual, the estate of an individual, a corporation, an authority, an association or parties in a joint venture, a partnership and a trust;
- (e) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes any substituted or additional trustee;
- (f) a reference to a document (including this Agreement) is to that document as varied, novated, ratified or replaced from time to time;
- (g) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this Agreement, and a reference to this Agreement includes all schedules, exhibits, attachments and annexures to it;
- (h) a reference to a statute includes any regulations or other instruments made under it (delegated legislation) and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements; and
- (i) this Agreement must not be construed adversely to a party just because that party prepared it or caused it to be prepared.

1.3 Incoterms

Where the Agreement includes a term included in Incoterms 2010, the rules and definitions governing that term in Incoterms 2010 will apply, except that to the extent that they conflict with any provision of the Agreement.

Conditions Applicable to Supply of Goods

2. Supply of Goods

2.1 Supply

Contractor will supply the Company with the Goods on the terms and conditions set out in this Agreement.

2.2 Delivery/Collection

- (a) The Contractor shall deliver the Goods, or make the Goods available for collection, in accordance with the Purchase Order.
- (b) If nothing is specified in the Purchase Order the delivery shall be FCA (Free Carrier) to a carrier nominated by the Company at the location nominated by the Company.

2.3 Late Supply

- (a) If it ever appears that the time for delivery of the Goods will not be met, or that the Goods will not be available for collection at the specified time, the Contractor must immediately notify the Company of any anticipated delay, with complete information regarding the cause and the earliest possible delivery date.
- (b) In such event, the Company may (without prejudice to any other rights which it may have for late delivery);
 - (i) terminate all or any part of the Purchase Order; or
 - (ii) accept late delivery of the Goods.
- (c) If the Company agrees to accept late delivery of the Goods, the Contractor shall pay the Company liquidated damages;
 - (i) commencing from the date on which the Goods should have been delivered until the date until the Goods are delivered; and
 - (ii) payable at a rate of 1.5% of the purchase price for those Goods, for each week of delay, to a maximum of 10% of the purchase price.

2.4 Title and Risk

- (a) The Contractor must give the Company title to the Goods free from all encumbrances and third-party interests.
- (b) Title to and property in the Goods passes immediately to the Company upon payment or delivery, whichever occurs first.

3. Warranties as to quality of Goods

Contractor warrants that:

- (a) if Contractor provided Company with a demonstration of the Goods before Company issued a Purchase Order for any of those Goods, the Goods correspond in nature and quality with the goods demonstrated;
- (b) if Contractor showed Company a result achieved by the Goods before Company issued a Purchase Order for any of those Goods, the Goods correspond in nature and quality with the goods that achieved that result;
- (c) unless otherwise agreed, all Goods will be provided in accordance with the drawings, design specifications and plans provided to Company;
- (d) all Goods provided will comply with all relevant laws and regulations and any other standards and specifications agreed between the parties; and

- (e) the Goods are of merchantable quality and are fit for the purposes for which those type of goods are commonly bought and for any other purposes described by the Company prior to issuing a Purchase Order.

Conditions Applicable to Supply of Services

4. Supply of Services

4.1 Supply

Contractor will supply the Company with the Services:

- (a) on the terms and conditions set out in this Agreement; and
- (b) in accordance with Good Operating Practices and all relevant laws and regulations.

4.2 Completion Time

The Contractor must complete the Services by the completion date (if any) specified in relation to those Services in the Purchase Order.

4.3 Progress Reports

- (a) Contractor shall inform Company from time to time and not less than on a weekly basis on the progress of the Services.
- (b) Company may request Contractor to provide a written report setting out in detail such information about the Services, or any other obligations of Contractor under this Agreement, as Company may from time to time require, and Contractor must provide the report to Company within 3 Business Days of that request.

4.4 Provision of Labour, Plant and Equipment

Unless otherwise agreed in this Agreement or in writing, Contractor must at the Contractor's expense, supply all labour, plant and equipment necessary to perform the Services.

5. Warranties as to quality of Services

Contractor warrants that:

- (a) if Contractor provided Company with a demonstration of the Services before Company entered into this Agreement or issued a purchase order for any of those Services, the Services correspond in nature and quality with the works or services demonstrated;
- (b) if Contractor showed Company a result achieved by the Services before Company entered into this Agreement or issued a purchase order for any of those Services, the Services correspond in nature and quality with the Services that achieved that result;
- (c) unless otherwise agreed, all Services will be performed in accordance with the drawings, design specifications and plans provided to Company;
- (d) all Services performed and materials provided will be in accordance with Good Operating Practices and all relevant laws and regulations;
- (e) all Services will be performed with due care and skill by appropriately qualified and trained personnel.

General Conditions

6. Access to Company Site

Contractor must at all times when performing the Services, supplying the Goods or on the Company premises:

- (a) comply with and ensure their personnel comply with all applicable laws and Company Policies;

- (b) not interfere with any of the activities of the Company or any other person at the premises;
 - (c) prevent nuisance and unreasonable noise and disturbance;
 - (d) comply with any direction given by the Company to remove any of the Contractor personnel from the premises; and
 - (e) do not otherwise act in a manner which disrupts or adversely affects the Company's business reputation, interests or goodwill.
- (ii) make good or engage another contractor to make good the Defect.
- (c) If Company reasonably considers that it is necessary to immediately make good the Defect for any safety reason, then Company is not obliged to give Contractor an opportunity to make good the Defect before Company does so.

7. Invoicing and Payment

7.1 Payment

- (a) In consideration for Contractor providing the Goods or Services, Company agrees to pay the amount specified in the Purchase Order.
 - (b) Unless there is a bona fide dispute in relation to any invoice, or unless Company requires further information from Contractor, Company will pay the amount set out in the invoice within the time specified in the Purchase Order or if no time is specified within 30 days of Company receiving a valid invoice from Contractor which meets the requirements of clause 7.2.
- (d) At Company's request, Contractor must:
 - (i) resupply any Goods or Services with a Defect that Company rejects under clause 8(b)(i) free of charge; and
 - (ii) reimburse Company for any expenses Company incurs in making good any Defect under clauses 8(b)(ii) or 8(c).

7.2 Invoices for Goods

Contractor's invoice must contain:

- (a) a description of the Goods or Services supplied by the Contractor;
 - (b) the Purchase Order number to which the invoice relates;
 - (c) an invoice number;
 - (d) statement of the currency of the invoice;
 - (e) the applicable taxes payable;
 - (f) the Contractor's bank account details; and
 - (g) details of associated costs (which the Contractor is entitled to recover).
- (e) If Contractor does not resupply the Goods or Services pursuant to clause 8(d)(i) and:
 - (i) Company has already paid Contractor for the Goods with the Defect, Contractor must repay Company any amounts paid to the Contractor for the Goods or Services rejected under clause 8(b)(i); or
 - (ii) Company has not already paid Contractor for the Goods or Services with the Defect, Company is not liable to pay Contractor for the Goods rejected under clause 8(b)(i).

7.3 Company may withhold payment

- (a) Contractor is only entitled to payment in respect of Goods or Services provided in accordance with this Agreement.
 - (b) Company may withhold payment in relation to any part of an invoice where the Goods or Services have not been supplied in accordance with this Agreement.
- (f) Where Contractor has made good any Defect under this clause 8, those Goods and Services will be subject to the same Defects Correction Period as the original Goods and Services, from the date Contractor made good the Defect.
 - (g) Company must issue any notice under clause 8(a) within Defects Correction Period.
 - (h) If Company decides to accept some Goods or Services with a Defect, this decision does not bind Company to accept any other Goods or Services with a Defect and does not affect any of Company's other rights under this Agreement in respect of those Goods or Services.
 - (i) The Contractor is liable for all additional costs (including without limitation, transport, insurance etc.) associated of any replacement of Goods or parts as required under this clause 8, and all transport of any replacement Goods or parts shall be at the Contractor's risk.
 - (j) The rights and obligations under this clause 8 continue after the supply of the Goods or Services.

7.4 Additional Costs

Except as otherwise provided in the Agreement, the Contractor will be responsible for all costs, expenses and liabilities incurred by the Contractor in connection with the supply or re-supply of the Goods or Services.

8. Defects

- (a) If during the Defects Correction Period, Company finds any Defect in the Goods or Services, then (subject to clause 8(c)) Company may give Contractor notice in writing of the Defect and require Contractor to remedy the Defect within a reasonable period stated in the notice.
- (b) If Contractor does not make good the Defect within the period stated in the notice given pursuant to clause 8(a), Company may:
 - (i) reject the Goods or Services with the Defect; or

9. Contractor Insurances

9.1 Insurance

- (a) Contractor must at its sole cost and expense, procure and keep in place for the duration of the Agreement and any applicable Defects Correction Period the following insurances:
 - (i) workers' compensation and employer's indemnity insurance which complies with the relevant laws covering all claims and liabilities under any statute and where common law claims are allowed outside of the statutory scheme, for employer's liability at common law, for not less than \$50,000,000, for the death of or injury to any person employed by the Contractor;
 - (ii) public liability insurance of an amount not less than \$10,000,000 in the any one occurrence for general liability and \$10,000,000 in the any one occurrence and in the aggregate during any one 12-month

period of insurance, which covers the liability of Contractor in respect of:

- A. loss of, damage to, or loss of use of, any real or personal property; and
 - B. the bodily injury of, disease or illness (including mental illness) to, or death of, any person; and
- (iii) motor vehicle compulsory third party liability insurance as required by law, and motor vehicle third party property damage for an amount of not less than \$10,000,000 for any one occurrence; and
- (iv) professional indemnity insurance of an amount no less than \$5,000,000 in the aggregate.
- (b) The insurance policies referred to in clause 9.1(a) must provide that:
- (i) to the extent commercially available, Company is named as an additional insured; and
 - (ii) the insurers waive their right of subrogation against the Company.

9.2 Certificates of Currency

At the request of the Company, a Contractor must provide copies of the certificates of currency for the insurances it is required to maintain under this clause 9.

10. Indemnity

10.1 Indemnified Person

In this clause 10, "Indemnified Person" means:

- (a) Company, subsidiaries of Company and Company's parent company; and
- (b) each of their directors, employees, agents, servants, contractors, clients, and subcontractors.

10.2 Indemnity

- (a) Contractor shall supply the Goods and Services, and enter onto the Company's premises at Contractor's sole risk and Company shall not be liable to Contractor for any loss, damage, injury or death sustained by any person or to any property or for any pollution, howsoever caused arising out of or in connection with this Agreement.
- (b) Contractor must indemnify, keep indemnified and hold harmless the Indemnified Person, against any liability, loss, damage, cost or expense, suffered or incurred by the Indemnified Person or any action, claim, liability, suit, proceeding, application or demand of any kind brought against the Indemnified Person by any person in respect of:
 - (i) injury to or death of any person;
 - (ii) loss or damage to any property and for losses resulting from such loss or damage; and
 - (iii) pollution and for losses and clean-up costs resulting from such pollution,
 arising out of or as a consequence of or in relation to:
 - (iv) Contractor's provision of Goods or Services under this Agreement;
 - (v) a breach of this Agreement by Contractor; or
 - (vi) a Defect in the Goods or Services.

11. Force Majeure

Where Contractor is unable, wholly or in part, by reason of a Force Majeure Event to provide the Goods or Services or to carry out any obligation under this document, Contractor shall:

- (a) give Company notice of the Force Majeure Event;
- (b) use all reasonable efforts to remove the Force Majeure Event as quickly as possible; and
- (c) that obligation is suspended so far as it is affected by the Force Majeure Event.

12. Relationship of Parties

Contractor is engaged as an independent contractor and nothing in this Agreement will be construed so as to constitute as between Company and Contractor (or any of its employees) a relationship of partnership, principal and agent, employer and employee or joint venture. Neither Contractor nor any directors, officers or employees of Contractor shall have any authority to, and shall not bind Company to any agreements.

13. Taxes

The Contractor must pay, or reimburse to Company, all taxes including sales tax, payroll tax, levies, duties and assessments due in connection with the Goods and Services. Where any Goods and Services and/or value added taxes payable by Company at the rate applicable at the time of supply (**Services Tax**) applies to any supply made under this Agreement, the Contractor may recover from Company an additional amount on account of the Services Tax to the extent to which Services Tax is not already included in the price of the Goods and Services. If an amount in respect of Services Tax is included in the total amount payable by Company, the Contractor will, at the time of making the supply, or any other time as agreed by the parties, issue to Company a tax invoice in the form prescribed by the relevant law.

14. Anti-Bribery and Corruption

- (a) The Contractor must not, and must ensure that its subcontractors and personnel do not, in connection with the Agreement, either directly or indirectly offer or give or agree to give to any person in the services of the Company any gift or consideration of any kind as an inducement or reward for any act or omission of that person or another in relation to the obtaining or execution of this of any other agreement with the Company.
- (b) The Contractor warrants that it has not made and will not make, with respect to or in connection with the matters provided for in the Agreement, any payments, loans, gifts, or promises or offers of payments, loans or gifts, directly or indirectly to or for the use or benefit of any official or employee of any relevant government or to or for the use of any political party, official or candidate or to any other person if the Contractor knows or should have known or has reason to suspect that any part of such payment, loan, or gift or such promise or offer, would violate any applicable governmental laws, rules or regulations including but not limited to the United States *Foreign Corrupt Practices Act 1977* and the United Kingdom *Bribery Act 2010*.
- (c) The Contractor will ensure that the requirements of this clause 14 form part of or are otherwise imposed on any party from which Goods or Services are procured, including the obligation to impose such terms on any subcontractor.

(d) The Contractor shall provide, upon request by the Company, written certification that the Contractor has complied with the provisions of this clause 14.

15. Confidentiality

Each party must keep confidential the terms of this Agreement and the contents of all negotiations leading to its preparation and the Confidential Information and must not disclose or permit the disclosure of such information to any other person except where:

- (a) the other party has consented in writing to the disclosure of the information;
- (b) the disclosure is specifically permitted by this Agreement;
- (c) the disclosure of information is to an employee, subcontractor, agent or representative who needs it for the purposes of this Agreement and the party disclosing the information ensures that the relevant employee, subcontractor, agent or representative understands and complies with the terms of this clause;
- (d) the disclosure is to a professional adviser in order for it to provide advice in relation to matters arising under or in connection with this Agreement and the party disclosing the information ensures that the professional adviser understands and complies with the terms of this clause; or
- (e) the disclosure is required by law or the rules of any stock exchange.

16. Termination

16.1 Termination without cause

- (a) Company may in its absolute discretion terminate this Agreement or any Purchase Order by giving 60 days' written notice to the Contractor.
- (b) Upon termination under this clause 16.1, Company's liability shall be strictly limited to its obligations under clause 2.3.

16.2 Termination for breach

A Party (**Non-Defaulting Party**) may immediately terminate this agreement by notice in writing to the other party (**Defaulting Party**) if:

- (a) the Defaulting Party breaches this Agreement and the breach is incapable of being remedied, or is not remedied within 7 business days (or such longer period as the parties agree) of receipt of a written notice by the Non-Defaulting Party setting out the breach and requiring its remedy; or
- (b) an Insolvency Event occurs with respect to the Defaulting Party.

16.3 Obligations upon termination

Upon termination or expiration of this Agreement, Company must pay for Goods or Services provided as at the date of termination, less any payments previously made by the Company in respect of those Goods or Services.

17. General

17.1 Entire Agreement

- (a) The Agreement embodies the entire understanding of the parties and supersedes any prior agreement (whether in writing or not) between the parties, in relation to the subject matter of the Agreement.

(b) To the extent the Contractor's terms and conditions are supplied to Company (including as printed on consignment notes, invoices, purchase orders or other documents), those terms and conditions will be of no legal effect and will not constitute part of the Agreement (even if Company or the Company's personnel sign those terms and conditions or annex those terms and conditions to the Agreement).

17.2 Governing Law and Jurisdiction

This Agreement is governed by and is to be construed in accordance with the laws of Singapore and each party irrevocably:

- (a) submits to the exclusive jurisdiction of the courts of Singapore with respect to any proceedings that may be brought at any time relating to this Agreement; and
- (b) waives any objection it may have now or in the future to the venue of any proceedings, and any claim it may have now or in the future that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 17.2(a).

17.3 Severability

Any provision of this Agreement which is illegal, void or unenforceable is only ineffective to the extent of that illegality, voidness or unenforceability, without invalidating the remaining provisions.

17.4 Amendments

This Agreement may not be modified, amended or otherwise varied except by a document in writing signed by or on behalf of each of the parties.

17.5 Waiver

No waiver or indulgence by any party to this Agreement is binding on the parties unless it is in writing. No waiver of one breach of any term or condition of this Agreement will operate as a waiver of another breach of the same or any other term or condition of this Agreement.

17.6 Further acts

The parties will promptly do and perform all further acts and execute and deliver all further documents required by law or reasonably requested by another party to carry out and affect the intent and purpose of this Agreement.

17.7 Costs

Each party must bear its own costs in relation to the negotiation and preparation of this Agreement.

17.8 Assignment

None of the parties may assign any of its rights or obligations under this Agreement without the prior written consent of the other parties.

17.9 Counterparts

This Agreement may be executed in any number of counterparts, all of which will, taken together, constitute one and the same document.