



A Member of  **MMC** Group

PURCHASE ORDER TERMS AND CONDITIONS GOODS AND SERVICES

Northport (Malaysia) Bhd
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Malaysia

PURCHASE ORDER TERMS AND CONDITIONS - GOODS AND SERVICES

1. DEFINITIONS

In this Agreement:

Acceptance means acceptance of the Goods in accordance with clause 5.

Agreement means this Purchase Order terms and conditions and any annexure or schedule).

Deliver or **Delivery** means packaging, transporting and unloading the Goods at the Delivery Point.

Delivery Date means the date for Delivery of the Goods stated in the Purchase Order.

Delivery Order is a document accompanying a shipment of goods that lists the purchase order number, description, and quantity of the goods delivered. A copy of the delivery note, signed by Store personnel is returned to the supplier as a proof of delivery.

Delivery Point means the place for Delivery of the Goods stated in the Purchase Order.

(**Goods** means the goods and/or services stated in the Purchase Order.

GST means any tax imposed under GST Law and includes GST within the meaning of the applicable law, regulation or similar provision governing the operation of the law.

GST Law means the Malaysian Goods and Services Tax Act 2014 (Act 762).

Input Tax Credit means a credit a taxpayer is entitled to claim to offset its GST liability in accordance with the GST Law of the applicable jurisdiction.

Legislative Requirements includes any:

- (a) federal, state or local acts, ordinances, regulations, by-laws, orders, awards, proclamations; and
- (b) certificates, licences, consents, permits, approvals and requirements of organisations having jurisdiction in connection with the supply of the Goods.

NMB Northport (Malaysia) Bhd

NMB Policies and Procedures includes any policy, standard, procedure, publication or guideline which NMB is subject to (as amended from time to time) and that is:

- (a) publicly available and relevant to this Agreement; or
- (b) notified by NMB to the Supplier from time to time.

Price means the price for the Goods stated in the Purchase Order.

Purchase Order means an order issued by NMB to the Supplier for the supply of Goods.

Specification means the specification for the Goods together with any measurements, performance data, plans, drawings or other information provided by the Supplier to NMB or contained in any catalogues brochures or descriptive literature produced by the Supplier.

Request for Quotation (RFQ) is a document that NMB submits to one or more potential suppliers eliciting quotations for a product or service. Typically, an RFQ seeks an itemized list of prices for something that is well-defined and quantifiable with delivery period, terms and conditions.

Supplier means an entity that supplies goods and services to NMB with terms and conditions stated.

Supplier Event of Default means each of the following:

- (a) the Supplier failing to Deliver the Goods in accordance with the requirements under this Agreement, including by providing defective Goods;
- (b) any representation or warranty made by the Supplier under clause 9 being untrue or misleading in any material respect; and
- (c) the Supplier being in breach of any of its obligations under this Agreement.

Taxes means all forms of taxes, duties, imposts, charges, withholdings, rates, levies and any other governmental impositions of whatever nature and by whatever authority imposed, assessed or charged together with all costs, charges, interest, penalties, fines, expenses and other additional statutory charges, incidental or related to the imposition.

Tax Invoice means an invoice which entitles the recipient of goods or services for GST purposes to a tax credit in compliance with the provisions of the relevant GST Law.

Warranty Period means the period stated in the Purchase Order, commencing from Acceptance.

2. ACCEPTANCE OF AGREEMENT

This Agreement, together with the Purchase Order is hereby accepted by the Supplier upon signing and submitting the RFQ form to NMB. NMB expressly rejects any additional or different terms, conditions or specifications proposed or modified by Supplier whether stated in Supplier's form of acknowledgment to this Purchase Order or elsewhere, except as expressly agreed to in writing by NMB.

3. SUPPLY AND DELIVERY

- (a) The Supplier must Deliver the Goods to the Delivery Point by the Delivery Date specified in the RFQ.
- (b) Unless otherwise agreed between the parties in writing, the Supplier must Deliver the Goods free of carriage and handling charges to the Delivery Point.
- (c) The Goods shall be properly packed, marked, loaded and transported. The risk of loss or damage in transit shall be upon Supplier.
- (d) The Goods must be accompanied by a delivery docket detailing the Goods, all relevant manufacturer's or supplier's instructions concerning the use of the Goods and all relevant manufacturer's or supplier's warranties in respect of the Goods.
- (e) Delivery is not complete until the Goods have been accepted in accordance with clause 5.

NMB will pay only for quantities ordered. Over-supplied quantities will be held at Supplier's risk and expense.

4. HAZARDOUS MATERIALS

- (a) The Supplier must transport and store all hazardous materials and dangerous Goods in accordance with all Legislative Requirements and must provide NMB with the relevant materials safety data sheet (MSDS) for all chemicals, chemical substances and other hazardous goods on Delivery of such Goods.
- (b) No hazardous Goods may be delivered until the relevant MSDS has been provided to NMB.

5. ACCEPTANCE OF GOODS

- (a) NMB may require the Supplier to provide evidence, acceptable to NMB, that the Goods are in accordance with this Agreement and the Supplier must provide such evidence within the time prescribed in the request or such longer time as may be agreed.
- (b) All Goods shall be subject to NMB's inspection and acceptance, but such inspection or acceptance shall not relieve Supplier from any obligations or liability under this Agreement. Acceptance of Goods by NMB shall not be conclusive with respect to latent defects or misrepresentations. Goods may be rejected for defects or defaults revealed by inspection, analysis or subsequent manufacturing operations even though such items previously may have been accepted, at NMB's sole discretion.

6. (a) REJECTION

NMB may, at any time and despite Acceptance of the Goods, reject the Goods if it reasonably determines that:

- (a) the Goods do not comply with this Agreement;
- (b) the Supplier has breached any term of this Agreement; or
- (c) the Goods Delivered are in excess of the quantities stated in the Purchase Order.

NMB may, at the Supplier's cost, sell or dispose of the rejected Goods if the Supplier does not repossess the Goods within 30 days of being notified of the rejection.

(b) RETURN OF GOODS

NMB may return any Goods to the Supplier, at the latter's expense, goods which exceed and/or incorrectly delivered by the Supplier as indicated in the Purchase order.

7. DISPATCH – ROUTING OF GOODS AND CUSTOMS CLEARANCE

- (a) The supplier shall strictly follow the instructions attached to the PO for the dispatch, routing and customs clearance of the goods, and shall remain solely responsible for the consequences if these instructions are not followed.
- (b) The supplier shall always be responsible for the routing of the goods to NMB site and for providing the proper mode of Transport. Charges for such additional services shall be borne by the Supplier.
- (c) Whenever Transport insurance is required, the Supplier shall take out an insurance policy covering all risks and damages during the transportation of goods from the Supplier's warehouse to the NMB site, unloading included.

8. NMB NOT BOUND TO ORDER

This Agreement is not evidence of, nor does it create an exclusive relationship between NMB and the Supplier in respect of the Goods. The Supplier acknowledges that NMB may purchase Goods or goods similar to the Goods from any supplier at all times during the term of this Agreement.

9. WARRANTY PERIOD

- (a) At any time during the term of this Agreement and the Warranty Period, NMB may notify the Supplier if it determines that the Goods are defective or not compliant with this Agreement.
- (b) Upon receipt of notice from NMB pursuant to clause 9(a), the Supplier must remedy such defect at its cost by either repairing

or replacing the Goods within timeline stipulated in the notice. If the Supplier fails to repair or replace those Goods, NMB may engage others to repair or replace those Goods at the Supplier's cost.

- (c) Where the Specification so provides, the Supplier must obtain for NMB the benefit of any manufacturer's warranty in respect of the Goods.

10. SUPPLIER'S WARRANTIES

The Supplier warrants that:

- (a) it has the right to sell and transfer unencumbered title to the Goods to NMB;
- (b) the Goods will be new, free from defects and of merchantable quality when Delivered to NMB and will be fit for the purpose stated in the Specification, or if no purpose is stated, the purpose for which the Goods would ordinarily be used and will conform to the description, model number and the sample (if any) provided by the Supplier;
- (c) the Goods comply with all relevant Legislative Requirements;
- (d) it will pay all Taxes in connection with the Goods under this Agreement;
- (e) it will effect and maintain all relevant insurances during the term of this Agreement in relation to the supply of Goods; and
- (f) it has not suffered an insolvency event. The Supplier acknowledges that NMB has relied upon such warranties in entering into this Agreement.

11. SUPPLIER TO COMPLY

The Supplier must, in carrying out this Agreement, comply with:

- (a) all relevant Legislative Requirements, including but not limited to:
 - (i) those Legislative Requirements in relation to the transport and storage of hazardous materials; and
 - (ii) anti-bribery and corruption and anti-money laundering laws; and
- (b) all NMB Policies and Procedures.
- (c) all relevant NMB and national legislation in safety and health matters in relation with the safety regulations in force thereon, which he is required to become conversant. He shall take all necessary measures to this effect.

12. INDEMNITY BY SUPPLIER

To the maximum extent permitted by law, the Supplier indemnifies NMB against all actions, claims, costs, charges, damages, expenses, liabilities, losses or damages (including legal costs on an indemnity basis whether incurred by or awarded against NMB) that NMB may incur or sustain arising out of or in relation to the performance or non-performance by the Supplier of its obligations under this Agreement including the provision of the Goods.

13. PRICE

NMB must pay the Supplier the mutually agreed Price for the supply of the Goods. The Price is inclusive of all costs and expenses of the Supplier whether foreseen or unforeseen, including all insurances and Taxes which must be paid by the Supplier.

14. GOODS & SERVICES TAX ("GST")

Where GST is applicable under this Agreement including all transaction contemplated hereunder are subject to GST, the Supplier shall be liable for the payment of all GST.

15. WITHOLDING FOR PAYMENT AND TAXES

- (a) NMB may, in relation to any payment it is required to make to the Supplier, withhold from that payment any amount it is required to withhold as Tax under a Legislative Requirement.
- (b) If any consideration paid to the Supplier by NMB under or in connection with this Agreement is paid free of withholding Tax, and at any time after such payment, NMB becomes aware (either by notification from a regulatory authority or otherwise), that an amount of Tax should have been withheld from such payment, NMB will be entitled to recover from the Supplier that amount of Tax and any subsequent amount NMB may be required to pay to a regulatory authority for failing to withhold (including any amounts required to be withheld). Such payments must be paid to NMB within 30 days of receipt of notice from NMB.

16. TERMS OF PAYMENT

- (a) All payments to Supplier will be made as per agreed credit terms after which Acceptance of the Goods occurs and complete documents submitted and invoice verified by NMB.
- (b) Payment of a Tax Invoice will not be construed as evidence or an admission that the Goods have been supplied in accordance with this Agreement but is a payment on account only.
- (c) NMB shall not accept responsibility for payment of goods not delivered due to shortages, theft, etc. or otherwise non-conforming shipments. NMB's count or quantity measurements shall be accepted as final and conclusive.
- (d) NMB shall put in writing on the DO in relation with the LAD to be charged to the Supplier for the late delivery. Supplier must ensure that the LAD amount being charged (if any) is reflected in the Tax Invoice in order for payment to be processed and showing net billing amount. Delivery Order must be attached to the invoice and submitted to NMB's Finance Department for payment process. Payment will only be processed after Tax Invoice reflecting LAD charges and all relevant documents as mentioned above are received.

17. CONFIDENTIALITY

- (a) The Supplier must not disclose or use any information relating to NMB or its related bodies corporate (including the terms of this Agreement and the fact of its existence) which is not in the public domain and comes into the Supplier's possession during the term of this Agreement (Confidential Information).
- (b) The Supplier may only disclose Confidential Information either with NMB's prior written consent or if required by Legislative Requirements.

18. TERMINATION

- (a) NMB may without cause and at any time, by giving 7 days' written notice to the Supplier, terminate this Agreement (in whole or in part) prior to Delivery of the Goods.
- (b) Upon termination, NMB may engage alternate suppliers to supply the Goods.

- (c) If a Supplier Event of Default occurs, NMB may give the Supplier a notice requiring the relevant failure, misrepresentation or breach to be remedied within a specified time stated in the notice.
- (d) If the Supplier fails to remedy the relevant failure, misrepresentation or breach or, if the relevant failure, misrepresentation or breach is not capable of remedy, NMB may, by written notice to the Supplier, terminate this Agreement.

19. SURVIVAL

Clauses 1, 9, 12, 17, and 18 shall survive the termination or expiration of this Agreement.

20. LIQUIDATED ASCERTAINED DAMAGES ("LAD")

If the supplier fails to observe the time limits for executing the PO, he shall be liable to LAD. Prior notice by NMB shall not be necessary. In such a case, NMB shall be entitled to impose LAD of 1% per day up to maximum of 10% of purchase cost for each delay or part thereof.

21. CHANGE OF PURCHASE ORDER

NMB reserves the right to change the PO in whole or in part at any time and for any reason upon written notice to Supplier. There shall be no charges for canceling orders in accordance with this provision.

NMB shall have the right to make any changes, additions or alterations in the items, quantities, destination, specifications, drawings, designs or delivery schedules. The parties will undertake to negotiate an appropriate adjustment in price and terms where the Seller's direct costs are materially affected by such changes.

22. BANKRUPTCY

In the event of bankruptcy or of proceedings being opened which may lead to bankruptcy, NMB reserves the right to cancel the PO without compensation, by serving notice of cancellation.

23. ASSIGNMENT

Assignment of this PO, any interest herein, or any payment due or to become due hereunder, by the Supplier without NMB's prior written consent shall be void.

24. PURCHASE FROM ANOTHER SUPPLIER

In the event the Supplier is not able to supply according to the agreed delivery period stipulated in the PO, NMB shall have the option to purchase from another Supplier and charge the difference of the buying price from another Supplier against the selling price to the Supplier.

25. GOVERNING LAW

This Agreement is governed by and must be construed according to the Malaysian Law and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of that jurisdiction.