

1. DEFINITIONS

- 1.1. 'BUYER' means, ASPERA LIMITED having its office at: Room 803, Chevalier House, 45-51 Chatham Road South, Tsim Sha Tsui, Kowloon, H.K. or its nominated branch or office hereafter termed 'ASPERA'.
- 1.2. 'SUPPLIER' means a body corporate, legal entity or individual engaged in manufacture, trade, agency of a foreign Principal or generally in the business of sale of materials / services and is registered with. As a Registered Vendor for the supply of specific materials or group of materials. Both ASPERA and SUPPLIER shall also be referred to as "party" or "parties".
- 1.3. 'PURCHASE ORDER' means a mutually agreed written agreement of contract between the SUPPLIER and ASPERA for the supply and delivery of materials / associated services as per specifications, special terms and other conditions thereof, drawings, annexure or any other document set out as part of the Purchase Order, and also includes this General Conditions of Purchase enumerated hereunder.
- 1.4. These General Conditions of Purchase are construed a part of the Purchase Order and shall invariably be read and interpreted as part of the terms and conditions of the Purchase Order.
- 1.5. 'ITEM' means those Goods, commodities, materials or other articles serially itemized and described in the Purchase Order, including their constituent parts or materials of which the Items are comprised of.
- 1.6. 'SPECIFICATIONS' means ASPERA description of an Item, its detailed specifications like physical and / or dimensional details, chemical and / or metallurgical composition, and any other feature that distinguishes it from any similar other material as spelt out in the Purchase Order. Such specification shall incorporate all information necessary to fully define the Item to be supplied, and shall include technical data, plans, drawings, relevant standards, quality requirements, etc. as the case may be.
- 1.7. 'PRICE' means the total value payable for the supply of the Items enlisted as denominated by the currency specified in the Purchase Order.
- 1.8. 'CLIENT' means the Employer or Main Contractor who enters into a contract, agreement or any other arrangements with ASPERA for carrying out the work- matter agreed upon.

2. ENTIRE AGREEMENT

- 2.1. The Purchase Order, along with its latest revision numbers, its attachment, including this General Conditions of Purchase constitutes the entire agreement between the parties thereto and supersedes all previous communications between the parties, oral or written, relating to the subject matter. Anything mentioned in any of the documents comprising the Purchase Order shall be of like effect as if stated or mentioned in all of them.
- 2.2. Neither party shall be liable for any statement, representation, promise or understanding not set forth therein. No changes, amendments or modifications of the Terms and Conditions of the Purchase Order shall be valid unless reduced in writing and accepted by the parties.
- 2.3. Failure on the part of ASPERA at any time to enforce or to require the strict adherence to any performance of any of the terms and conditions of the Purchase Order shall not constitute a waiver of such terms or conditions or impair in any way the right of ASPERA at any time to avail itself of such right.

3. ACCEPTANCE OF ENTIRE AGREEMENT

- 3.1. On receipt of the Purchase Order, the SUPPLIER shall acknowledge its receipt and acceptance immediately to ASPERA by email or by fax shown on the Purchase Order quoting the Order no., the revision no. as applicable, in all future correspondence. In case no acknowledgment of acceptance is received within 5 working days from the date of the Purchase Order, it shall automatically be considered to have been accepted in its totality.

4. PRICES

- 4.1. As full consideration for supply and performance of all SUPPLIER's obligations under the Purchase Order, ASPERA shall pay SUPPLIER the Price. The Price charged by the SUPPLIER for the supply of items covered in Purchase Order shall be on fixed price basis.

5. INVOICES AND PAYMENT

- 5.1. Invoices shall be submitted within 30 calendar days of the delivery of items. Claims for payment for Items delivered but not invoiced will not be accepted after 12 months from delivery date. Invoices shall be accompanied by all the relevant supporting documentation as required by ASPERA and shall quote the Purchase Order Reference Number and Title. Invoices shall be forwarded only to the addressee given under "Invoice To" of Purchase Order.
- 5.2. Payment shall be effected to SUPPLIER within 60 calendar days from receipt of correctly prepared and adequately supported invoice, unless otherwise agreed and recorded mutually in the Purchase Order.
- 5.3. Presentation, payment or non-payment of a particular invoice shall not constitute a settlement of a dispute, an accord and satisfactions, a remedy of account stated, or otherwise waive or affect the rights of the parties hereunder.
- 5.4. Payment against Invoices will be paid against submission of:
- (a) Material Certificates
 - (b) Data Books
 - (c) Operation Manuals

6. WARRANTIES – GUARANTEES

- 6.1. The SUPPLIER warrants that the items supplied under the Purchase Order are new, unused, of the most recent or current models and incorporates all recent improvements in design and materials unless provided otherwise in the Purchase Order. The SUPPLIER further warrants that the goods supplied under the said Purchase Order shall have no defect arising from design, materials or workmanship or from any act or omission by the SUPPLIER that may develop under normal use of the supplied goods in conditions obtaining where the goods are meant to operate / perform. ASPERA has the right to vest SUPPLIER; warranty to the client with whom ASPERA enters into a contract, agreement or any arrangement.
- 6.2. In case of Proprietary items the SUPPLIER shall warrant the Items for a period of one (1) year from the date of acceptance by ASPERA, unless the standard manufacturer's warranty period is longer than one (1) year. In such case ASPERA shall be granted the standard manufacturer's warranty period.
- 6.3. If Purchase specifications or Project demands for an extended warranty period for the material covered under Purchase Order, SUPPLIER shall meet such requirements as specified in the Purchase Order.
- During the warranty period, at ASPERA LIMITED option, SUPPLIER shall, at no cost to ASPERA, promptly repair or replace defective Items after receipt of ASPERA LIMITED written notice of a defect. The warranty stipulated in Clause 6.1 above shall apply to any repaired or replaced Items.
- 6.4. SUPPLIER warrants good title to the Items supplied hereunder by SUPPLIER, its sub-Suppliers or Principals as the case may be, and that the Items are provided free and clear of any liens, encumbrances or other third party security interest.
- 6.5. If Purchase Order stipulates submission of a Performance Bond by the Supplier, within - 15 (Fifteen) calendar days from the Purchase Order date, SUPPLIER shall provide to ASPERA an unconditional and irrevocable bank guarantee payable on first demand of ASPERA to guarantee the performance of SUPPLIER's obligations under the Purchase Order, as per the standard approved format of ASPERA.
- 6.6. The bank guarantee shall be provided or endorsed by a bank operating in, shall be in the specific form set out by ASPERA, and shall be valid for a period of thirty (30) calendar days after the expiry of stated warranty period. [In the event warranty period is not specified, then it shall be for a period of thirty (30) calendar days after the expiry of the scheduled (or) actual Delivery Date, whichever is later.]
- 6.7. The bank guarantee shall remain in force irrespective of any circumstances which might constitute legal discharge of surety or guarantor, and shall not be affected by any change in the legal status of either Party.
- 6.8. The amount of the bank guarantee shall be as specified or named in the Purchase Order.

7. TITLE AND RISK OF LOSS

- 7.1. Except as otherwise provided, all Items supplied by SUPPLIER hereunder shall become the property of ASPERA upon full or start of partial payment thereof or upon delivery, whichever occurs earlier.

8. PATENT

- 8.1. SUPPLIER represents and warrants that the Items are free from any claims of patent infringement and that any labels or trademarks affixed thereto are free from any copyright or trademark infringement and SUPPLIER agrees to protect, defend indemnify and hold harmless ASPERA from and against any such claims and liability. ASPERA shall promptly notify SUPPLIER of any such claim. If the use or sale of any Item is vested on account of a legal action, SUPPLIER, at no expense to ASPERA, shall obtain for ASPERA the right to use and sell said Items or shall substitute the same with equivalent Items.

9. LIABILITY

- 9.1. The SUPPLIER is an Independent legal entity and shall indemnify, protect and save harmless ASPERA, its clients, agents, employees, successors and assigns from any and all damages,
- 9.2. liabilities and claims of whatsoever nature arising out of the supply of the Items and / or performing of the services covered by this Purchase Order, or incidental thereto.

10. DOCUMENTS

- 10.1. In the event of any apparent inconsistency, inaccuracy or ambiguity in the specifications, drawings or other documents supplied by ASPERA, the SUPPLIER shall notify ASPERA immediately and obtain instruction in writing before proceeding with the item in question. Any work performed after such discovery, until authorized in writing by ASPERA, will be at the SUPPLIER's risk and cost. The SUPPLIER will provide, at no extra cost to the Price, detail drawings and other documents as mentioned in the Purchase Order.

11. EXPEDITING AND INSPECTION / TESTING

- 11.1. SUPPLIER shall strictly adhere to the specifications, drawings, quality & HSE requirements, samples or other description furnished or approved by ASPERA.
- 11.2. Goods furnished under the Order shall be subject to expediting / inspection / testing by ASPERA.
- 11.3. ASPERA's personnel or nominated representatives shall be given access to Supplier's premises and those of their sub-Suppliers for expediting / inspection / testing purposes. SUPPLIER shall provide schedules and progress reports for ASPERA's use in expediting / inspection / testing as per the agreed terms of the Purchase Order.
- 11.4. ASPERA shall have the right, but not the obligation, at all times to expedite, inspect, test and examine the Items and to witness any test performed on the Items by the

SUPPLIER or any third party. ASPERA LIMITED failure to expedite, inspect or waive inspection shall not relieve SUPPLIER from any of their obligations / liability under the Purchase Order.

12. GENERAL REQUIREMENTS

12.1. SUPPLIER shall ensure that the Items:

- (a) Will be provided in accordance with the Purchase Order conditions;
- (b) Are fit and sufficient for the purpose intended;
- (c) Are new, unless expressly stated otherwise;
- (d) Will not infringe any intellectual property rights of others;
- (e) Are of good material and workmanship;
- (f) Are free from defect or fault of any kind;
- (g) Are free from any charge or other encumbrance;
- (h) Include all necessary commissioning & operating spare parts and maintenance manuals;
- (i) Comply with applicable legal requirements in all stages.

13. DELIVERY

13.1. The Items shall be delivered at the point of delivery as specified in the Purchase Order and within the delivery time(s) or by the delivery date(s) specified therein.

13.2. Without prejudice to Supplier's obligation to deliver the Items in time, SUPPLIER shall give ASPERA immediate notice in writing if any delay is foreseen, stating the reason and extent of such delay.

13.3. Partial delivery shall not be accepted by ASPERA and invoices will not be paid unless acceptance for partial delivery is clearly specified in the Purchase Order or by prior agreement in writing by an authorized representative of ASPERA.

13.4. Relevant Material Test Certificate to be provided as per the Scope. The Materials will be rejected if do not comply with MTC's. Any rejected materials shall be retrieved and replaced by the SUPPLIER, at SUPPLIER sole expenses within Delivery Schedule.

13.5. Supplier shall strictly adhere to deliver the materials as per the agreed schedule. In the event of any delay, ASPERA shall charge Supplier at the rate of 1.0% per week or part thereof for the delayed portion, subject to a maximum of 10% of the total order value.

13.6. If the Supplier fails to deliver the material as per the agreed schedule, ASPERA shall procure the same from other vendors; any additional charges made by ASPERA shall be deducted in Suppliers succeeding Invoice.

14. PACKING AND MARKING

14.1. SUPPLIER shall be responsible for safe and adequate packing of the Items for transportation and storage, which shall conform to industry standards and applicable legal requirements. SUPPLIER shall separately number all cases and packages, showing the corresponding numbers on the invoices. Each case shall bear an itemized packing slip. No extra charge is payable for packaging or packing materials unless set forth in the Purchase Order.

15. SHIPPING

15.1. Unless otherwise stipulated in the Purchase Order, all supplies shall be shipped by the Supplier freight prepaid. Partial shipments for Items requiring customs declarations must be agreed in advance with ASPERA. Original shipping documents including the packing list shall be couriered by the SUPPLIER to the ASPERA LIMITED authorized Purchase representative.

16. INSURANCE

16.1. Unless otherwise specified in the Purchase Order all cargo shipped to ASPERA is covered under Insurance by ASPERA. SUPPLIER has to notify ASPERA with the nominated insurance company within prescribed time period as mentioned in the Purchase Order or letter of credit for the required set of dispatch particulars for every shipment made.

17. LIQUIDATED DAMAGES

17.1. If the SUPPLIER fails to deliver the items covered in Purchase Order within the time period specified, ASPERA shall, without prejudice to its other remedies under the terms of Purchase Order, deduct liquidated damages at the rate of 0.5% for each week or part thereof of delay in supply / commissioning up to a maximum deduction of 10% of price. ASPERA also reserve the right to terminate the order after 2 to 4 weeks and in such situation ASPERA also reserve the right to invoke the provision mentioned under risk purchase clause (20).

18. FORCE MAJEURE

18.1. Any unforeseen event directly interfering with the supply of goods arising during the currency of the Purchase Order such as war, hostilities, acts of the public enemy, civil sabotage, fire, floods, explosions, epidemic quarantine restriction, shall be notified to ASPERA in writing by the SUPPLIER within a week from the commencement with reasonable evidence thereof. If the force majeure condition(s) mentioned above are likely to be in force for more than a period of 60 days at any time, ASPERA shall have the option to terminate the Purchase Order on commencement of such force majeure by giving 14 days' notice to the SUPPLIER in writing. In case of such termination, no claim for damages shall lie with either party against the other save and except other instance dispute, which had occurred and claimed under any other clause of this Purchase Order prior to such termination.

19. TERMINATION BY DEFAULT

19.1. ASPERA may without prejudice to any other remedy for breach of contract by written notice of default sent to SUPPLIER, terminate the Purchase Order in whole or part: If,

- (a) The SUPPLIER fails to deliver any or all of the material / services within the time period thereof granted in the Purchase Order.
- (b) The SUPPLIER or its representatives found attempting to violate the Code of Business conduct and its Clients.
- (c) The SUPPLIER fails to perform any other obligation(s) under the Purchase Order and / or the General Conditions.

19.2. In the event ASPERA terminate the Purchase Order (in whole or) in part, ASPERA may procure, upon such terms as in such manner, as the situation warrants, goods or services similar to those undelivered and SUPPLIER shall be liable for any excess cost for such similar goods or services so procured. However, the SUPPLIER shall continue supplies under the Purchase Order to the extent not terminated.

19.3. In the event of termination; the SUPPLIER shall have to promptly return the free supply / sample items, if any made available to him by ASPERA.

20. RISK PURCHASE

In the event of failure or delay on the part of SUPPLIER to fulfill his obligation in the execution of Purchase Order to ASPERA LIMITED satisfaction, ASPERA shall have right to terminate the Purchase Order and make necessary alternate arrangement for completion of the Purchase Order through other means at diligent SUPPLIER risk or cost. In such an event the performance bond (if any) will be without prejudice to ASPERA LIMITED right to claim compensation from SUPPLIER for the loss incurred by ASPERA as a result of Supplier's failure to fulfill his obligation under the Purchase Order conditions. The damage so claimed by ASPERA consequent to the termination will be in addition to the liquidated damage recoverable by ASPERA as per the Liquidated damages clause. The Supplier shall have no claim for compensation for any loss that may occur from any material he might have collected or services obtained on account of the Purchase Order.

21. VARIATION IN THE SCOPE OF SUPPLY

21.1. The total quantity may vary to the extent of +/- 10%. The quantity shown in the enquiry is approximate estimate and the payment will be made on the basis of actual receipt of accepted quantity by ASPERA.

22. ASSIGNMENT

22.1. SUPPLIER shall not assign whole or any part of the Purchase Order to any other supplier without obtaining a prior written consent from ASPERA for such assignment.

22.2. At any time before starting delivery of whole or any part of the materials or equipment under the Purchase Order, ASPERA may have the right to assign whole or any part of the Purchase Order which has become unneeded for any reason to any other purchaser as per the corresponding situation that may arise. In such instance, ASPERA will bear the differences (if any) in cost of delivery to the respective purchaser.

23. GOVERNING LAW

23.1. This agreement shall be governed and construed in accordance with the Laws of P.R.C. and Hong Kong.

24. BRIBERY

24.1. No influence shall be made to any employee at the ASPERA to secure more business, as the employee involved in such an act shall be terminated & the business with the supplier will be ceased immediately. The disciplinary action against the individual / supplier shall be taken as per ASPERA's Bribery Policy.

25. SETTLEMENT OF DISPUTE

25.1. In the event of any dispute or difference arising out of or relating to the Purchase Order and / or this General Conditions or its breach thereof, the parties shall use their best endeavors to settle such disputes of differences. To this end, they shall consult and negotiate with each other, in good faith, to reach a just and equitable solution satisfactory to both parties. If such a solution is not reached within a period of 30 days, the dispute or difference shall be finally settled either by:

- (a) Submission to the competent courts of P.R.C. / H.K. when the supplier is P.R.C. / H.K. corporate / entity, individual domiciled in P.R.C. / H.K. or acting in P.R.C. / H.K. as an Agent to a foreign company, or
- (b) On all other instances, by Arbitration in accordance with the then prevailing rules of International Chamber of Commerce (ICC) and shall be conducted in English / Chinese language. The Arbitration Tribunal shall be formed of three Arbitrators, one to be appointed by each party and the third (umpire) shall be appointed by the first two. The Arbitration proceedings shall be taken place in P.R.C. / H.K. The award of Arbitrators shall be final and binding on both parties and not subject to any appeal excepting case of fraud or apparent mistake of fact.