

GENERAL CONDITIONS OF PURCHASE

1.0 General Provisions and Integrity Clause

1.1 These General Conditions of Purchase of SCHENKER LOGISTICS (MALAYSIA) SDN BHD (SCHENKER) shall apply exclusively. They are a component part of this Purchase or Contract whether or not expressly referred to in other documents of sale, invoices or delivery notes issued by the contractual parties. Any contradictory, supplementary or divergent conditions specified by the Contractor shall form a part of the Contract only if expressly accepted in writing by SCHENKER. This shall also apply to any terms and conditions stipulated in any order, confirmation note or other confirmation issued by the Contractor. The receipt of goods or services shall not constitute acceptance of the terms and conditions of the Contractor. The General Conditions of Purchase of SCHENKER shall also apply if the Contract with the Contractor is executed without reservation, despite knowledge of contradictory or supplementary conditions or conditions which diverge from the General Conditions of Purchase of SCHENKER.

1.2 The contractual parties undertake to introduce all necessary measures to prevent corruption and other criminal offences. In particular, the contractual parties shall take all necessary precautionary steps within their respective companies to prevent gross misconduct. Irrespective of the form of participation in committing, inciting or aiding and abetting an offence, gross misconduct is understood to be:

- a) serious criminal acts committed in business dealings, which shall include punishable offences in Malaysia and abroad particularly fraud, embezzlement, forgery or similar offences;
- b) offering, promising or conferring benefits to any civil servant, official or any other persons specifically bound to carry out public service duties (bribery or the conferring of benefits) or members of the board, managing directors or employees of SCHENKER or its affiliated companies (bribery in business conduct);
- c) offering, promising or conferring benefits to any person engaged in a freelance capacity by SCHENKER or its affiliated companies who is active in the award or execution of a Contract, eg. planners, consultants and project managers;
- d) in connection with the activity of the Contractor for SCHENKER or its affiliated companies the offering, promising or conferring benefits to any other Malaysian or foreign civil servant, official or any other persons specifically bound to carry out public service duties or to any employees or appointee of any other businesses in relation to the initiation, award or execution of a Contract by third parties;
- e) any unauthorised procurement, securing, use or communication of commercial or business secrets for competitive purposes, for personal gain, for the benefit of a third party or with the intention of inflicting damage or loss on the business owner; or any unauthorised use or communication for competitive purposes or for personal gain of documents or technical instructions in the course of business transactions; and any unauthorised use or transmission for competitive purposes or for personal gain of documents, technical instructions or commercial information entrusted in the course of

business transactions including any such material supplied on disk or other data storage medium;

- f) any infringement of provisions designed to protect unimpeded competition, inter alia collusive agreements on prices or price elements, prohibited price recommendations, involvement in recommendations or collusive agreements regarding the submission or non-submission of bids, the setting-off of deficiency compensation payments and any profit sharing and payments to other bidders; and
- g) any infringement of economic sanctions or the circumvention of other national or international embargo or trade-control regulations.

Gross misconduct, in the above sense, will also be deemed to have been committed if prohibited benefits are granted or promised to persons who are close to employees, executive directors or members of the board of SCHENKER and if specific assistance with planning or with the invitation to tender is rendered designed to undermine competition.

1.3 If the Contractor or a person mandated by the Contractor or acting on behalf of the Contractor has discernably come to an agreement on occasion of the award that constitutes an illegal restraint of competition, the Contractor shall be liable to pay damages of 10% of the net Contract value. This does not apply if the Contractor is not responsible for the violation. The right to prove and claim damages of different value remains unaffected. Further, any other contractual or statutory rights of SCHENKER remain unaffected.

1.4 If in connection with the execution of the award or the provision of goods or services, gross misconduct within the meaning of section 1.2 is committed to the detriment of SCHENKER by an employee, executive directors or a member of the board of the Contractor or of any sub-contractor working under the direction of the Contractor, the Contractor shall pay SCHENKER a contractual penalty. This, however, does not apply if the Contractor is not responsible for the violation. The penalty amounts to:

- (a) 5% of the net contract value if the gross misconduct is committed by an executive director or member of the board of the Contractor; or
- (b) 3% of the net contract value if the gross misconduct is committed by an authorised signatory or authorised representative; or
- (c) 1% of the net contract value if the gross misconduct is committed by other employees of the Contractor or by sub-contractors;

but the contractual penalty shall at least amount to RM5,000. This contractual penalty shall not affect the rights of SCHENKER to claim damages for misconduct. However in this case the contractual penalty shall be set off against any such claims for damages. The contractual penalty in accordance with the provisions of this section shall be inapplicable if an act of gross misconduct within the meaning of section 1.2 is committed by a sub-contractor of the Contractor and the choice of this sub-contractor was made obligatory by SCHENKER and the Contractor or his employees, board members, executive directors or other third parties working under his instruction did not participate in committing this act of gross misconduct. Cases of illegal restraints of competition according to section 1.3 and violations according to section 1.2 conducted in coincidence shall not be subjected to the contractual penalty under section 1.4. Section 1.3 shall be exclusive insofar.

1.5 If an act of gross misconduct within the meaning of section 1.2 is committed by an employee, executive directors or members of the board of the Contractor:

- (a) SCHENKER shall be entitled to terminate the contract without notice for exceptional reasons
- (b) the Contractor shall be debarred from competing for orders awarded by SCHENKER and its affiliated companies for a period of between four (4) months and three (3) years. In particularly serious cases, the ban may be extended to cover a period of up to seven (7) years. A debarment may also be imposed if there is a strong suspicion that gross misconduct within the meaning of section 1.2 has been committed.

The extent of the ban and the re-admission to the competitive tendering process are governed by the 'DB AG Guidelines on Debarring Contractors and Suppliers'. These guidelines may be inspected at any time at SCHENKER's premises.

1.6 The Contractor undertakes to contribute towards preventing gross misconduct according to section 1.2 and clarifying suspected misconduct as well as to cooperate with SCHENKER in this respect.

The Contractor is obliged to immediately notify SCHENKER in writing if the Contractor gains knowledge of facts that constitute a suspicion of gross misconduct under section 1.2 with an impact on SCHENKER and in addition, in cases where the gross misconduct may possibly lie within the sphere of the Contractor, the Contractor is obliged to investigate the circumstances of the case. If the suspicion is confirmed, the Contractor is obliged to take appropriate measures to terminate the misconduct without delay and – as far as not yet implemented – to sustainably prevent such misconduct in the future. The Contractor informs SCHENKER on the progress and outcome of the investigation of the circumstances of the case and on the measures taken, if any.

1.7 To make it possible to establish and organise legally-compliant business relations, SCHENKER and the Contractor shall each give their consent to the other party for regular checks of their information against the latest versions of the sanctions lists based on national and international embargo and trade-control regulations. As the parties do so, they will observe all relevant provisions based on data protection law, especially with regard to data economy and data security.

The Contractor declares that its company and employees are not included on the aforementioned sanctions lists. The Contractor agrees to use appropriate measures to ensure that the anti-terror regulations and other national and international embargo and trade-control regulations are implemented in its company's business operations. The Contractor also agrees to notify SCHENKER immediately in writing, should any matches be found during the checks against the aforementioned sanctions lists.

2.0 Implementation Documents

2.1 The documents supplied to the Contractor shall not be disclosed to third parties without the consent of SCHENKER, nor copied, nor used for any other than the agreed purpose. They shall be returned to SCHENKER on demand.

2.2 SCHENKER shall be entitled to keep any documents supplied by the Contractor. SCHENKER shall be entitled to use the documents for training and maintenance purposes and in individual cases, by prior agreement, to copy such documents and use them for other purposes.

3.0 Execution, Provision of Materials

3.1 SCHENKER shall be entitled to verify (during business or operating hours) that goods are supplied and services rendered in compliance with the Contract. Upon request, SCHENKER shall be provided with the documents relating to the Contract which are required to obtain such information. Due attention must be paid to the Contractor's legitimate confidentiality interests.

3.2 All materials provided by SCHENKER shall remain the property of SCHENKER and must be stored, labelled and managed separately free of charge. They may be used only for the purpose specified in the Contract.

4.0 Force Majeure

4.1 If, as a result of force majeure, the provision of goods or services is delayed, SCHENKER shall be entitled to demand the supply of goods or services from the Contractor at a later date on the same conditions or, on expiry of a reasonable extension, to withdraw from or terminate the Contract in full or in part.

5.0 Default

5.1 Upon issuance of the purchase documents, the delivery periods and dates specified in the Contract for the supply of goods or services are binding:

- a) In the event the Contractor fails to comply with any of the terms, conditions or warranties stipulated or otherwise agreed, SCHENKER reserves the right to cancel the purchase forthwith and claim full refund for any prior deposit and/or purchase price paid to the Contract; or
- b) In the event of default on the part of the Contractor, SCHENKER shall be entitled to full statutory rights. SCHENKER shall be entitled to impose a penalty amounting to 0.3% of the contractual value of those goods and services that are in default per day but not exceeding 10% thereof. SCHENKER reserves the right to enforce the penalty up to the time of final payment; and
- c) The Contractor shall also be liable for any losses suffered by SCHENKER as a consequence of the partial, delayed or non-delivery of the product or services purchased.

5.2 SCHENKER shall be entitled to vary the purchase (whether in terms of quantity, specifications or delivery date) so long as the variation order is given in writing and agreed to by the Contractor. In the event, the Contractor is unable to provide the goods as required under the variation order, SCHENKER shall be entitled to either proceed with the original order prior to the variation or terminate the Contract. If SCHENKER decides to terminate the Contract, SCHENKER shall be entitled to claim full refund for any prior deposits and/or purchase price paid to the Contractor.

5.3 In the event any terms of this purchase is modified, replaced to become partly or wholly invalid by mutual consent of both parties or by law, all other terms shall remain in force and the purchase shall be deemed amended accordingly.

6.0 Acceptance, Time Limit for Complaints, Transfer of Title

6.1 SCHENKER shall check the goods and services supplied for any defects within a reasonable period. The delivery of an incorrect item or an insufficient quantity shall be considered to be defects. Notification of defects shall be deemed punctual if submitted within two weeks. In the case of obvious deviations in quality and quantity, the notification period shall commence on the date of transfer of goods and services at the place of receipt. In the case of hidden deviations in quality and quantity, the notification period shall commence on the date of their discovery.

6.2 During the delivery of the goods by the Contractor to SCHENKER, the Contractor shall assume all risks, responsibility and liability for any loss and damage resulting from the transportation and handling of the goods. SCHENKER shall be entitled to replacement of the

goods from the Contractor due to any loss or damage discovered upon delivery to SCHENKER or thereafter and the Contractor shall make good the replacement with immediate effect. All costs incurred for the replacement of the goods shall be borne by the Contractor.

6.3 If the goods and services that were supplied under the Contract or parts thereof are rejected after the confirmed transfer or during the agreed acceptance procedure owing to a failure to comply with the Contract, the Contractor shall be obliged to take back the goods and services supplied under Contract or parts thereof immediately and at his own expense. If a reasonable period for collection expires, SCHENKER shall be entitled to return the goods and services supplied under Contract or parts thereof; to the Contractor at the latter's expense. In the above cases, risk shall not be passed to SCHENKER prior to renewed confirmation of transfer or the renewed agreed acceptance procedure.

6.4 The Contractor shall be obliged at his own expense and own risk to redeliver those goods and services that were supplied under the Contract or parts thereof or any replacement items to SCHENKER against the issue of a delivery note or subject to a renewed agreed acceptance procedure.

7.0 Claims Arising from Defects, Liability of Contractor

7.1 Any claims arising from defects asserted by SCHENKER shall be governed by statutory regulations subject to the following conditions:

- a) The Contractor shall remain fully responsible for the faultless supply of goods and services even in the event that SCHENKER has signed, approved, stamped or marked "Seen" etc. any plans, drawings, calculations or other implementation documents submitted by the Contractor.
- b) In cases of particular urgency and/or imminent danger, SCHENKER shall be entitled to remedy the defects and demand reimbursement of the necessary expenses if it cannot reasonably be expected to grant the Contractor an extension for performance. SCHENKER shall notify the Contractor immediately of any claims arising from such defects and of the nature and scope of the emergency measures taken.
- c) SCHENKER shall be entitled to grant the Contractor a reasonable period in which to remove a defective item. On expiry of that period, SCHENKER shall be entitled to realise the goods and services supplied under the Contract eg. by way of sale, at the Contractor's expense and paying due attention to the Contractor's business interests.
- d) The period in which claims arising from defects may be asserted shall be two (2) years from the date of acceptance or the date of issue of a transfer confirmation note, unless a longer period has been agreed in individual cases or a longer period is prescribed by law. This period shall be extended by the duration of the period in which the defective goods and services cannot be used for their intended purpose.
- e) The period in which claims arising from defects may be asserted shall be suspended if the Contractor is the party examining the existence of a defect. Suspension of this limitation period shall be lifted only when the Contractor notifies SCHENKER in writing that negotiations have been concluded or the results of the examination are sent to SCHENKER; or the Contractor sends a written refusal to continue rectification of the defect. In the event of recommencement of negotiations, examination or rectification of the defect, the period of limitation shall again be suspended.
- f) In the event the Contractor fails to comply with any of the terms, conditions or warranties stipulated in the Contract or otherwise agreed between the parties, SCHENKER reserves the right to cancel the purchase forthwith and claim full refund for any prior deposit and/or purchase price paid to the Contractor.

7.2 The Contractor hereby verifies the warranty and fitness expressed or implied of the goods supplied or services rendered within the specifications stated in this purchase and/or other documents of sale. The Contractor Warranty is valid for a period as stipulated in this purchase and/or other documents of sale but which shall in any case not be less than 12 months after the date of delivery of the goods supplied. This warranty shall not extend to normal wear and tear.

In the case of a complaint by SCHENKER concerning the goods or services rendered, where the goods have become unserviceable within the period specified above due to a consequence of defective design, material or workmanship, the Contractor shall immediately upon the complaint being addressed to the Contractor – repair, exchange or take back (with full refund of purchase price to SCHENKER) the rejected goods or the unserviceable part thereof; repeat or refund for the rejected service.

7.3 The Contractor shall be liable in accordance with the statutory regulations.

8.0 Confidentiality

8.1 Press releases and other publications relating to orders placed shall be permissible only with the consent of SCHENKER. This shall also apply to any disclosure of rounded or approximate values and to the percentage values for the purpose of comparison with previous orders.

9.0 Industrial Property Rights

9.1 In the event that any claims are filed against SCHENKER by a third party for alleged infringement of industrial property rights, the Contractor shall be obliged to indemnify SCHENKER from such third-party claims upon the first written demand by SCHENKER unless the infringement is beyond the control of the Contractor. This indemnity obligation shall cover all expenses sustained by SCHENKER in connection with the claims filed by third parties.

The right of indemnity shall be limited to a period of two (2) years from the date at which the circumstances establishing this right becomes known to SCHENKER or which would have become known had SCHENKER not acted in a grossly negligent manner. Otherwise, the right of indemnity shall lapse after a period of ten (10) years from the date of establishment of this right irrespective of SCHENKER's knowledge or grossly negligent action.

10.0 Invoices, Prices, Supplements

10.1 The accounts for each Contract (including any supplements) shall be settled with an invoice. Instalment invoices, partial invoices, partial final invoices and final invoices must be indicated as such and consecutively numbered. Invoices not expressly marked otherwise shall be treated as final invoices.

10.2 Invoices subject to Sales and Services Tax (SST) regulations, must specify the ordering party, the date and reference number of the Contract, the Contractor's tax number given by the tax office or his SST identity number and the place of receipt. The delivery or purchase documents that are to be handed over must also include the Contract number and the ordered item details.

10.3 The price specified in the Contract is a fixed price that excludes any subsequent demands. The fixed price does not include the Contractor's statutory SST. Payment of the SST presupposes that the Contractor is entitled and obliged pursuant to the relevant legal regulations to charge the tax separately and that the tax is indicated separately in the invoice.

10.4 Payment shall be made for any additions and/or modifications to the supply of goods and services only if the parties have entered into a written supplementary agreement prior to the provision of these additional or modified goods or services.

10.5 In the event SCHENKER discovers any discrepancies on the invoice when compared to the purchase documents, SCHENKER shall be entitled to suspend payment until the Contractor provides adequate proof of the correctness of the invoice to SCHENKER.

11.0 Applicable Law, Written Form

11.1 The validity, interpretation and performance of these terms and conditions shall be governed and construed in accordance with the laws of Malaysia.

11.2 Any amendment to the Contract must be made in writing for the preservation of evidence.