



# **Standard Terms & Conditions of Purchase**

---

Effective January 1, 2023

Thailand

Eng



## 1. INTERPRETATION

In this Purchase Order, the following words shall have the following meanings:

'Carrier'	means the Carrier entity that has issued the Purchase Order and includes its successors-in-title, transferees and assigns;
'Carrier Indemnitees'	means Carrier and its employees, directors, officers, affiliates and agents;
'Carrier IPR'	means any and all Intellectual Property Rights in and to the following: <ol style="list-style-type: none"> <li>the Services;</li> <li>where applicable, the Goods;</li> <li>all documents, designs, materials, specifications, user input, know-how, workflow information, methodologies, business models of Carrier; and</li> <li>all Documentation;</li> </ol>
'Confidential Information'	shall include: <ol style="list-style-type: none"> <li>information that is marked with a restrictive legend of Carrier or is identified by Carrier to the Supplier as confidential at the time of disclosure;</li> <li>financial, marketing, sales, technical, operational, commercial, and human resource information, and all trade secrets, business plans, financial and/or contractual arrangements, forecasts, accounting and tax records, strategies, models, product information, processes, formulas, designs, specifications, drawings, data, manuals, instructions, source codes, diagrams, workflow information, specifications and configurations of Carrier; and</li> <li>all communication between Carrier and the Supplier relating to the aforesaid, whether in written, electronic or oral form and whether or not such information belongs to Carrier or a third party;</li> </ol>
'Customs Services'	Means those activities involving transactions with customs officials or other government agencies to import and/or export goods to and/or from, and/or transport goods across boundaries within, a country in connection with Carrier's business, including (but not limited to) preparing and submitting documents, classifying and valuing goods, paying duties, taxes or other charges ; and clearance of goods into the importing country and/or out of the exporting country, or internal jurisdiction, in accordance with applicable government requirements
'Documentation'	means such manuals, documentation and other materials provided by Carrier as part of the Services, and such other materials as may be further instructed by Carrier;
'Fees'	means the sum in this Purchase Order;
'Goods'	the specific goods as set out in this Purchase Order to be provided by the Supplier to Carrier;
'Intellectual Property Rights'	means all copyright, patents, trademarks, service marks, domain names, layout design rights, registered designs, design rights, database rights, trade or business names, rights protecting trade secrets and confidential information, rights protecting goodwill and reputation, and all other similar or corresponding proprietary rights and all applications for the same, whether presently existing or created in the future, anywhere in the world, whether registered or not, and all benefits, privileges, rights to sue, recover damages and obtain relief for any past, current or future infringement, misappropriation or violation of any of the foregoing rights;
'Losses'	means losses, liabilities, settlement sums, costs (including, without limitation, legal costs and costs of other professionals), charges, expenses, actions, proceedings, claims and demands, whether foreseeable or not;
'Parties'	means Carrier and the Supplier, and ' <b>Party</b> ' shall mean either one of them;
'PDPA'	means Personal Data Protection Act 2019;
'Personal Data'	means all data relating to Carrier to which the Supplier may gain access to in connection with this Purchase Order including but not limited to, names, addresses, email addresses and if applicable, such other personal data as may be provided by Carrier or come into the possession of the Supplier in its provision of the Services;
'Services'	the specific services as set out in this Purchase Order to be provided by the Supplier to Carrier;
'Scope of Supply of Goods and/or Services'	means the specifications in relation to the Goods or Services to be provided by the Supplier under this Purchase Order including but not limited to any description, measure or standard of or for the Goods and/or Services (or any part thereof), including the purpose for which the item of Goods and/or Services is to be used, quality, quantity or reliability, skill or experience levels of the Supplier's personnel, technical or functional specifications, compliance with laws or standards, applicable regulations or directives;
'Subcontractors'	means all persons to whom a subcontract, assignment or delegation of this Purchase Order by the Supplier has been approved by Carrier in accordance with <b>Clause 25</b> , and ' <b>Subcontractor</b> ' shall mean any one of them;
'Supplier'	means the supplier indicated in this Purchase Order, and includes its successors-in-title, transferees and assigns;
'Supplier Representatives'	means the Supplier's owners, employees, directors, officers, subcontractors, affiliates, agents and/or representatives involved in performing the Services, and ' <b>Supplier Representative</b> ' shall mean any one of them;
'Carrier Code of Ethics'	means Carrier's code of ethics, a copy of which is available upon request;



'Carrier Corporate Policy Manual' means Carrier's corporate policy manual;

'Carrier Health, Safety and Environment Policy' means Carrier's health, safety and environment policy, a copy of which is available upon request;

'Carrier Supplier Code of Conduct' means Carrier's code of conduct, a copy of which is available upon request;

## 2. **CONTRACT OF PURCHASE**

Subject to the terms and conditions stated herein and on the Purchase Order (including all drawings, specifications and other documents attached to or referred to in the Purchase Order), the Supplier agrees to supply, and Carrier agrees to purchase from the Supplier, the Goods and/or Services described in the Purchase Order. Carrier shall have the right to vary the Goods and/or Services required to be provided by the Supplier from time to time by providing 7 days' notice in writing.

## 3. **DURATION**

Where a Purchase Order does not specify its duration, the Purchase Order shall commence from the date it is signed by Carrier and the Supplier and shall continue until the completion of the parties' obligations under the Purchase Order, subject to any extension that may be confirmed by Carrier in writing.

## 4. **PAYMENT**

In consideration for the provision of the Goods and/or Services and subject always to Carrier's receipt of the Supplier's valid invoices, Carrier shall pay to the Supplier the Fees. The Fees shall be inclusive of all applicable taxes, duties, levies and other charges which may be imposed by a governmental or regulatory authority on the relevant Goods and/or Services. The following are conditions to payment of each invoice submitted by the Supplier:

- (a) each invoice submitted by the Supplier shall show such details as reasonably specified by Carrier, including details of the Goods and/or Services and billing information, such as the order reference number, as is necessary to satisfy Carrier's internal accounting department;
- (b) all payments made by Carrier hereunder shall be made in accordance with the mode of payment of Carrier's choice; and
- (c) the Supplier shall be solely responsible for ensuring that its invoices are billed with the correct details for Carrier's settlement.

It shall be the responsibility of the Supplier to submit invoices and the relevant supporting documents in the format required by Carrier in respect of the Goods and/or Services provided by the Supplier in a billing month, within seven (7) days of the last day of that billing month. Any late submission of an invoice and/or the relevant supporting documents for Goods and/or Services already provided in a calendar month may cause a delay in the payment of the invoice due to the Supplier. Carrier shall not be liable for any loss or damage suffered by the Supplier as a result of any delayed payment of an amount due to the Supplier. Subject to this clause, Carrier shall make payment of an invoice submitted by the Supplier within 90 days of its receipt of the invoice. Payment by Carrier is without prejudice to any claim or rights, which Carrier may have against the Supplier and shall not constitute any admission by Carrier as to the performance by the Supplier of its obligations hereunder. Where the Supplier is providing Customs Services, the Supplier acknowledges that success or similar contingency fee arrangements are strictly prohibited, whether performed by the Supplier or its subcontractor or other third party.

## 5. **TAXES**

Unless exempted, all duties and taxes which the Supplier is required by law to collect from Carrier are embedded in the Fees. If Carrier is required by any applicable law to make any withholding in respect of any taxes from payments made or due to the Supplier under this Purchase Order, Carrier will make such withholding from the net balance payment to the Supplier. Carrier will, upon request from the Supplier, provide the Supplier official tax receipts or other evidence issued by the applicable tax authorities sufficient to establish that any taxes which are withheld have been paid. Each Party shall support the other Party in obtaining any tax exemptions and tax relief achievable in connection with the performance of the Purchase Order, if any, and shall give all such other assistance as may be reasonably required to redeem any withholding tax. The Supplier shall, at all times, remain responsible for obtaining all customs clearance in connection with the provision of the order, where relevant. For the avoidance of doubt, Carrier shall not be responsible for taxes based on the Supplier's income, which shall be the sole responsibility of the Supplier. In the event of a change in any governmental regulations concerning taxes and duties payable in respect of the Goods and/or Services, Carrier shall pay to the Supplier, where applicable, any increase in the said taxes and duties, and the Supplier, where applicable, shall refund to Carrier, if such amount has been paid by Carrier, any reduction in these taxes and duties notwithstanding any other provisions contained in this Purchase Order.

## 6. **SET-OFF**

Carrier shall be entitled to set-off against any payment due or payable to the Supplier under this Purchase Order, any sums the Supplier is obliged to pay or credit Carrier under this Purchase Order and Carrier may by notice to the Supplier reduce the Fees or any other charges, sums or monies due or payable to the Supplier under this Purchase Order by any amount the Supplier is obliged to reimburse, pay or credit Carrier under this Purchase Order.

## 7. **RESPONSIBILITY OF THE SUPPLIER**

The Supplier shall comply with the following requirements in the performance of the Services:

- (a) the Supplier shall ensure at all times that its owners, employees, directors, officers, subcontractors, affiliates, agents and/or representatives involved in performing the Services (collectively as the "**Supplier Representatives**" and individually referred to as a "**Supplier Representative**") are duly authorised by the Supplier to provide the Services and where applicable, holds the required work permits to perform the Services. The Supplier shall ensure that the Supplier Representatives performing the Services are not in breach of applicable



laws and regulations in Thailand in the performance of the Services. Where so requested, the Supplier shall submit documentary proof of the Supplier Representatives citizenship or work permit or any other supporting documents to Carrier's Human Resource Department;

- (b) the Supplier Representatives who are employees of the Supplier shall at all times remain under the sole employment of the Supplier;
- (c) the Supplier shall at all times remain solely responsible for all employment related obligations owed to these Supplier Representatives who are employees under the laws of Thailand. The Supplier shall, at its own cost and expense, comply and be responsible for the Supplier Representatives' salary payments, statutory deductions, welfare benefits, medical care, Workmen Compensation Insurance and any other obligations required under the laws of Thailand. The Supplier shall indemnify and keep Carrier harmless from all losses, damages, costs, expenses, claims, fines, penalties and other liabilities (including legal costs and expenses on a full indemnity basis) suffered by Carrier arising out of the Supplier and/or the Supplier Representative's non-compliance with the law of Thailand and any claim from a Supplier Representative against Carrier arising from, with respect to and/or in connection with any employment or industrial relations claims by such Supplier Representative against Carrier;
- (d) the Supplier shall ensure that it and the Supplier Representatives who are involved in the performance of the Services shall strictly adhere to Carrier's Quality and Ace requirements, Environmental, Health and Safety Rules and Regulations, and all other Carrier's company policies, directions and instructions;
- (e) the Supplier shall remove a particular Supplier Representative upon request by Carrier if Carrier in its sole discretion be dissatisfied with the performance or conduct of such Supplier Representative and the Supplier shall provide a replacement Supplier Representative within two (2) calendar days from the date of Carrier's request;
- (f) the Supplier and the Supplier Representative shall comply with Carrier's directions and instructions, and Carrier may at its sole discretion be entitled to deploy or instruct the Supplier Representative to do different work or tasks within the scope of the Services; and
- (g) the Supplier shall maintain the Supplier Representatives' skill and experience records to enable Carrier to exercise its right under **Clause 7.2(f)**.

#### **8. PERFORMANCE OF SERVICE**

The Services are to be performed by the Supplier for Carrier in consideration of the payments specified herein and with the obligation that should any of the work related to the Services not prove satisfactory at any time, in Carrier's sole judgment, the Supplier shall re-perform all work originally undertaken by the Supplier necessary to correct such unsatisfactory work, at no additional cost to Carrier. In the event of failure by the Supplier to correct defects in or replace non-conforming Services promptly, Carrier after reasonable notice to the Supplier, may make such correction or replace such Services and charge the Supplier for the cost incurred by Carrier thereby. Carrier may also require the Supplier to take appropriate and reasonable steps to ensure that future performance of the Services will be in accordance with the requirements of this Purchase Order.

#### **9. DELIVERY**

Unless otherwise agreed in writing, the Goods shall be delivered to Carrier assembled, completed, and ready for use, and Carrier shall accept delivery of such Goods at the location designated on the Purchase Order. The obligation by the Supplier to meet the delivery or performance date is material; time is of the essence. Upon request, the Supplier shall give Carrier advance notice of when shipments will be made. Delivery of goods or performance of any required services is not complete until the Goods have been received and accepted by Carrier.

#### **10. DELAY**

The Supplier shall not be deemed to be in default on account of delays in the delivery of Goods to the extent it is beyond the Supplier's control and not occasioned by the Supplier's fault or negligence, provided that promptly upon the occurrence of any event which may result in a delay, the Supplier shall give notice thereof to Carrier, which notice shall identify such occurrence and specify the period of delay which may reasonably be expected to result therefrom. In the event delivery of the Goods shall be delayed due to any cause beyond the Supplier's control and not occasioned by the Supplier's fault or negligence for a period of more than thirty (30) days after the end of the calendar month in which delivery is otherwise required, Carrier shall have the option to terminate the Purchase Order upon written notice given to the Supplier within five (5) business days after the expiration of such thirty (30) day period, and such termination shall discharge all obligations and liabilities of the parties hereunder with respect to undelivered Goods, data or other items to be furnished hereunder.

#### **11. INSPECTION AND ACCEPTANCE**

Unless the Parties agree otherwise in writing, the inspection and acceptance shall be conducted by Carrier or its appointed agent (or if Carrier so elects in respect of any inspection and acceptance, by the Supplier or jointly with the Supplier) with the full and timely technical and administrative assistance, support and cooperation of the Supplier. Carrier may inspect all Goods at any time, including during the manufacture process at the Supplier's facility. Such inspection may at Carrier's option include confirmation of the Supplier's compliance with all requirements of the Purchase Order. The Supplier will permit Carrier and/or its designees access to the Supplier's facilities at all reasonable times and will provide all tools, facilities and assistance reasonably necessary for such inspection and/or confirmation. All goods are subject to final inspection and acceptance at any time after delivery to Carrier. Carrier, without prejudice to any other rights or remedies, shall have the right to reject defective Goods and, at the Supplier's risk (notwithstanding the terms of delivery) and expense, return the same to the Supplier or dispose of the same according to the Supplier's instructions. Payment or transfer of title shall not constitute acceptance. Carrier may return any non-confirming Goods to the Supplier for reimbursement, credit, replacement or correction as Carrier may direct, or Carrier may correct and/or replace such Goods at the Supplier's expense. If the Supplier fails to correct or replace non-confirming Goods, per Carrier's direction, in a timely manner, Carrier may cancel the Purchase Order as to all such Goods, and in addition, may cancel the remaining balance of the Purchase Order. Any Goods rejected by Carrier will be held by Carrier temporarily at the Supplier's risk and expense. The Supplier will not tender Goods for acceptance unless any former rejection or requirement of correction is disclosed. The Supplier will reimburse Carrier for any packaging, handling and transportation costs Carrier incurs with respect to rejected Goods. Carrier may revoke its acceptance of Goods at any time, whether or not a substantial modification to the Goods has been made, if Carrier finds a previously undiscovered defect in the Goods which substantially impairs the value of the Goods to Carrier.



## 12. PASSING OF TITLE AND RISK

All tools, equipment dies, gauges, models, drawings or other materials furnished by Carrier to the Supplier or made by the Supplier for the purpose of this Purchase Order or paid for by Carrier, and all replacements thereof and materials fixed or attached thereto, shall be and the remain property of Carrier. All Carrier's property and, whenever applicable and otherwise adequately identified by the Supplier, each individual item thereof, will be plainly marked as the property of Carrier, and will at the Supplier's expense be safely stored (separate and apart from the Supplier's property whenever practicable) and will be kept free of all liens, claims encumbrances and interests of third parties. The Supplier will not substitute any property for Carrier's property, will not deliver or make available to any third party of Carrier's property or any property or goods developed, manufactured or created in filling the orders of Carrier. Upon completion of the Purchase Order, or upon the written request of Carrier at any time, the Supplier will prepare all Carrier's property for shipment and deliver such property to Carrier in the same condition as originally received by the Supplier, reasonable wear and tear excepted. Carrier shall have the right, at all reasonable times upon prior notice, to enter the Supplier's premises to inspect any and all Carrier's property and any property or goods manufactured, developed or created with the aid of any Carrier's property. The Supplier shall have such responsibility for Carrier's property as is chargeable to the Supplier by law by reason of its position as a bailee.

## 13. TERMINATION

Notwithstanding anything else contained herein, Carrier may terminate this Purchase Order in whole or in part immediately by notice in writing to the Supplier, if:

- (a) the Supplier commits any material breach of any term of this Purchase Order, a breach of ethics and compliance covenant or requirements in the Carrier Supplier Code of Conduct or the Carrier Corporate Policy Manual or the Carrier Health, Safety and Environment Policy under **Clause 23**, and such breach is not capable of being remedied, or in the case of a breach capable of being remedied, the Supplier has failed, within 30 days after the receipt of a request in writing from Carrier to remedy such breach;
- (b) the Supplier fails to perform and/or fulfil any material part or material obligation under this Purchase Order, and such failure is not capable of being remedied, or in the case of a failure capable of being remedied, the Supplier has failed, within 30 days after the receipt of a request in writing from Carrier to remedy such failure;
- (c) any distress or execution is levied upon the Supplier's property or assets;
- (d) the Supplier fails to proceed regularly and diligently with this Purchase Order;
- (e) the Supplier fails or refuses to cooperate with any Carrier audit or investigation;
- (f) the Supplier or any of its directors, officers, or employees is prevented from performing the Services in a jurisdiction where work is performed or to any public official, foreign or local, in conjunction with an administrative, public, court or political decision or order;
- (g) the Supplier becomes subject to any bankruptcy or winding-up petition;
- (h) the Supplier has a receiver and/or manager appointed over it or any part of its undertaking or assets;
- (i) the Supplier passes a resolution for winding-up (otherwise than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction) or a court of competent jurisdiction makes an order to that effect; and
- (j) the Supplier becomes subject to a judicial management order or has entered into any composition or arrangement with its creditors or ceased or threatens to cease to carry on business.

The Supplier shall have no claims whatsoever against Carrier in respect of such termination. On termination of this Purchase Order, Carrier shall be relieved of its obligations to make further payments to the Supplier and shall be entitled to recover damages arising from such breach. Carrier's right of termination of this Purchase Order shall be without prejudice to any claim, remedy or right of action that it may otherwise have under this Purchase Order. Without prejudice to any other rights Carrier may have under this Purchase Order or at law, Carrier may terminate this Purchase Order in whole or in part without cause, at any time by giving at least 30 days written notice to the Supplier. Upon termination of this Purchase Order, subject to the provision of such reasonable documents to justify the charges, fees, consideration or other payment claimed by the Supplier as may be reasonably requested by Carrier and any such Goods and/or Services being accepted by Carrier in accordance with the terms of this Purchase Order and subject to such Goods and/or Services having been of satisfactory standard and accepted by Carrier, the Supplier shall be entitled to any charges, fees, consideration or other payment for any Services provided under this Purchase Order or for any Goods delivered under this Purchase Order up to the date of termination. Save and except for the aforementioned amounts, Carrier shall not be liable for any loss suffered or incurred by the Supplier arising from any such termination, or to compensate the Supplier for any period of the term of this Purchase Order. Subject to this clause, Carrier may terminate this Purchase Order in part by giving the Supplier at least 30 days' notice in writing. Termination in part of this Purchase Order means termination of this Purchase Order by the removal from its scope the provision of the relevant Goods and/or Services which have not been delivered or provided to Carrier, and upon the effective date of such termination as may be determined by Carrier, each Party's obligations under this Purchase Order relating to such terminated Goods and/or Services shall be removed from the scope of this Purchase Order. If Carrier exercises such right to terminate in part, for whatever reason, Carrier shall not be obligated to pay the fees for such terminated Goods and/or Services unless otherwise specified in this Purchase Order.

## 14. EFFECT OF TERMINATION

Any termination of this Purchase Order (howsoever occasioned) shall not affect any accrued rights or liabilities of either party nor shall it affect the coming into force or the continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination. In the event of termination of this Purchase Order by Carrier for cause, the following shall apply, without prejudice to any other rights or remedies which shall have accrued or shall thereafter accrue to Carrier as a result of the termination for the Supplier's breach of this Purchase Order:

- (a) all advance payments that have been made to the Supplier by Carrier under this Purchase Order, less the value of all Goods and/or Services provided by the Supplier which have been accepted by Carrier in writing, shall be refunded by the Supplier to Carrier forthwith; and
- (b) Carrier shall be entitled to recover from the Supplier any damages, losses, costs and expenses which Carrier may sustain or incur in consequence of such breach and termination arising therefrom.

In the event of termination of this Purchase Order howsoever occasioned:

- (a) without prejudice to Carrier's rights under this Purchase Order in respect of any breaches by the Supplier, Carrier shall be entitled to engage any other party or parties ("**New Supplier**") to continue with the provision of the Goods and/or Services and the Supplier shall refund to Carrier, on a pro-rate basis, all fees or payments made in advance or previously paid to the Supplier for the Goods not yet delivered to and accepted by Carrier, and/or periods for which the Services have not yet been carried out under this Purchase Order;





- (b) the Supplier shall furnish to Carrier any documents or other property provided by Carrier to the Supplier for the purpose of the Services without charge;
- (c) the Supplier shall take all such steps as may be necessary to prepare and agree with Carrier on a detailed plan for the orderly handover of such Services to Carrier or a New Supplier or such other third party as may be engaged by Carrier, with minimum interruption and inconvenience to Carrier; and
- (d) the Supplier shall cease to use Carrier's trade name or trademarks.

Where the Supplier undertakes to remove all markings, colours or paintings which bear reference to or is associated with Carrier, the Supplier agrees that Carrier shall have the right to withhold any payment due from Carrier to the Supplier at the time of the notice of the termination in respect of the Services performed by the Supplier prior to the termination of this Purchase Order until Carrier is satisfied that all the terms under this Purchase Order have been satisfactorily carried out.

#### 15. GENERAL WARRANTIES

The Supplier represents and warrants that:

- (a) if it is a body corporate, it has been duly incorporated and is validly existing under the law of the country of its incorporation and has full capacity, power and authority to own its properties and to conduct the businesses in which it is now engaged;
- (b) it has the right and authority to enter into this Purchase Order, the full power and authority to grant the rights granted by this Purchase Order, and that entering into and carrying out the terms and conditions of this Purchase Order will not (a) violate any provision of the constitution of the Supplier or any law, statute, ordinance, regulation, order, judgment or decree of any court or governmental agency or (b) violate, conflict with, result in a breach of, or entitle any person to terminate the terms of any contract or agreement to which the Supplier is a party or (c) cause the Supplier to lose the benefit of any right, licence or privilege it enjoys at present or (d) result in any present or future borrowing or indebtedness of the Supplier becoming due or payable or capable of being declared due and payable prior to its date of maturity;
- (c) any factual information provided by it for the purposes of this Purchase Order was true and accurate in all material respects as of the date it was provided or as of the date (if any) at which it is stated;
- (d) no order has been made or petition presented or resolution passed for the winding up of the Supplier and no distress, execution or other process has been levied on any of its assets. The Supplier is not insolvent or unable to pay its debts and no receiver or receiver and manager has been appointed by any person of its business or assets or any part thereof and no power to make any such appointment has arisen;
- (e) it has or will acquire good and valid title to the Goods delivered to Carrier, and shall deliver to Carrier such good title free of any lien, pledge, encumbrances, mortgage, or any other charge or right whatsoever of any third party;
- (f) it and its Supplier Representatives possess the requisite qualifications, professional skill and technical expertise to perform the obligations under this Purchase Order in compliance with all applicable law and regulations;
- (g) in the supply of Goods and/or Services to Carrier, it shall and shall procure its Supplier Representatives to comply at all times with applicable law, including law prohibiting collusion, conflicts of interest, corruption and unfair competition, and all other Carrier policies and such other applicable policies of Carrier as notified to the Supplier from time to time;
- (h) it will promptly and accurately record in its books and records all transactions and expenses related to the Goods and/or Services; and
- (i) the prices, charges, or rates set forth or incorporated via reference in this Purchase Order are not less favourable than those currently extended to any other customer for the same or similar services, in similar quantities, during the term hereof. No additional charges or rates of any type shall be added without Carrier's prior written consent.

Any payment(s) otherwise due to the Supplier for any item related to the Goods and/or the Services in dispute may be withheld by Carrier, in whole or part, upon evidence of default by the Supplier in the provision of such Goods and/or Services. In no event shall payment be made for any Goods and/or Services by the Supplier if such item is not stated in or is not otherwise within the scope of the Goods and/or Services.

#### 16. WARRANTIES IN RELATION TO SERVICES

The Supplier represents and warrants that:

- (a) the Supplier shall perform the Services in a manner consistent with the terms and conditions contained herein and in accordance with applicable law, and current, sound and generally accepted industry practices by appropriately licensed personnel who are experienced in the appropriate fields. In additions, in performing the Services, the Supplier will use a degree of care and diligence that is not materially less than the care and diligence exercised by the Supplier when engaged in similar services or activities prior to the date hereof, and will use commercially reasonable effort to deliver the Services in a manner consistent with the Supplier's past practices;
- (b) the Supplier shall procure all necessary permits and licenses for the Services required by applicable law, pay all fees in connection therewith, and abide by all applicable regulations, ordinances, directives, codes and other rules; and
- (c) the Supplier shall provide a high standard of professional service and shall exert its best efforts to achieve satisfactory results within the time and funds available. If the Supplier fails to perform the Services in accordance with this Purchase Order and/or is otherwise responsible for any unexcused delays, the Supplier shall pay Carrier for all costs and damages suffered by Carrier as a result of such delays.

#### 17. WARRANTIES IN RELATION TO GOODS

- (a) The Supplier represents and warrants to Carrier and its affiliates, its successors, assigns, customers, and users of the Goods sold by Carrier that all Goods provided hereunder shall be merchantable, new, free from defects in material and workmanship, with regard to Goods designed by Supplier, free from defects in design, in compliance with all applicable specifications, drawings, and performance requirements, fit for the purpose intended, and free from liens, encumbrances on title and infringement of third-party intellectual property.
- (b) If Services or technical data are to be provided by the Supplier hereunder, the Supplier warrants to Carrier that such Services and/or technical data have been performed or prepared in a professional and workmanlike manner and in compliance with Carrier's instructions or other requirements.
- (c) The Supplier further warrants that it has the requisite power, authority and ability to execute, deliver and perform its obligations hereunder. Upon request by Carrier, the Supplier shall provide Carrier with financial data demonstrating that the Supplier is financially stable and capable of performing hereunder, provided that the Supplier shall not provide any information to Carrier in violation of any applicable law.



- (d) The Supplier represents that the material or articles supplied shall be of the best quality and in every way fit for the purpose for which they are supplied and that the performance of services covered by this Purchase Order shall be duly and properly carried out with first class workmanship. The Supplier warrants that it will comply with all statutes and regulations which are applicable.

**18. DEFECTS**

Delivery, inspection, test, acceptance or use of or payment for the Goods furnished hereunder shall not affect the Supplier's obligation under this warranty, and such warranties, and all other warranties, express or implied, shall survive delivery, inspection, test, acceptance, payment, and use. If defects are identified before shipment to Carrier's customer, and provided Carrier elects to provide the Supplier with the opportunity to make the repair or provide the replacement, the Supplier agrees, at Carrier's option, to correct defects in or replace any Goods not confirming to the foregoing warranty promptly, but in no event, will repair or replacement and delivery be completed more than ten (10) days from notice of such non-conformity by Carrier. A written notice specifying that such Goods are corrected or replaced shall accompany deliveries of the corrected or replaced Goods. In the event that the Supplier fails to correct defects in or replace non-confirming Goods promptly, Carrier, after reasonable notice to the Supplier, shall have the right to correct or replace such Goods and charge the Supplier for the cost incurred by Carrier in doing so. Such right includes without limitation, Carrier's right to deduct or offset the Fees. If defects are identified after shipment to Carrier's customer, Goods may be scrapped, retained, or held for the Supplier's disposition, at the discretion of Carrier's customer. The Supplier shall promptly reimburse Carrier for any expenses or damages incurred by Carrier regardless of the nature of such expenses or damages as a result of or relating to the Supplier's failure to comply with **Clause 17(a)** above, including but not limited to repair, replacement, rework, removal and reinstallation costs, shipping costs, the Goods and/or Services described in the ordering delays, payment withholds, field service costs, recall costs of filing and complying with legal and regulatory requirements.

**19. INDEMNITIES AND LIMITATION OF LIABILITIES IN RELATION TO SERVICES**

The Supplier shall indemnify, defend and hold harmless Carrier and its employees, directors, officers, affiliates and agents (the "**Carrier Indemnitees**") from and against any and all losses, liabilities, settlement sums, costs (including, without limitation, legal costs and costs of other professionals), charges, expenses, actions, proceedings, claims and demands, whether foreseeable or not ("**Losses**") which may be sustained, instituted, made or alleged against, or suffered or incurred by the Carrier Indemnitees, and which arise (whether directly or indirectly) out of, in the course of or in connection with one or more of the following:

- (a) any breach or non-performance by the Supplier of any of the Supplier's undertakings, warranties or obligations under this Purchase Order;
- (b) any action, claim or demand brought or threatened against the Carrier Indemnitees that alleges or is based on a claim that the provision of Services by the Supplier or the use, access or receipt of Services by the Carrier Indemnitees infringes any Intellectual Property Rights (defined below) and/or any other rights of whatever nature of any third party or violates any agreement to which the Supplier is presently a party;
- (c) any personal injury, death, loss of or damage to property arising from any act or omission of the Supplier and/or Supplier Representatives;
- (d) any negligent act or omission or wilful default, misconduct or fraud of the Supplier or the Supplier Representatives;
- (e) any claims by a Supplier Representative for any personal injury and/or death suffered in connection with the performance of this Purchase Order;
- (f) any defect in the Services supplied by the Supplier;
- (g) Carrier's use of the Services supplied by the Supplier;
- (h) any breach of any applicable law by the Supplier; and
- (i) any claim by any third party, including Carrier's customers, against the Carrier Indemnitees arising from the circumstances specified in this **Clause 19**.

Without prejudice to any other indemnities in this Purchase Order, the Supplier shall indemnify, defend and hold harmless the Carrier Indemnitees against any claims by the Supplier Representatives against Carrier arising out of or in connection with the performance of this Purchase Order. Save with the prior written consent of Carrier, the Supplier shall not:

- (a) settle or compromise any cause of action, suit or other proceeding if the settlement or compromise obliges Carrier to make any payment or bear any liability or be subject to any injunction or other interim measures by reason of such settlement or compromise;
- (b) assume any obligation or grant any rights or licences on behalf of Carrier; or
- (c) make any statement at any time admitting liability for or on behalf of Carrier.

In no event will Carrier be liable for any of the Supplier's loss of profit, savings, third party, contracts, revenue, interest or goodwill (unless specifically covered under an indemnity) or for any consequential, indirect, incidental or special loss, damage or expenses even if it has been advised of their possible existence and even if such loss damage or expense is caused by the negligence of Carrier, its employees, directors, officers, affiliates, agents or subcontractors. To the fullest extent permitted by law, and notwithstanding any other provision of this Purchase Order, the total liability, in the aggregate, of Carrier to the Supplier, for any and all claims, losses, costs or damages, and costs or claims expenses resulting from or in any way related the Purchase Order or from any cause or causes shall not exceed the total payment payable to the Supplier in this Purchase Order.

**20. INDEMNITIES AND LIMITATION OF LIABILITIES IN RELATION TO GOODS**

The Supplier shall indemnify, defend and hold harmless the Carrier Indemnities from and against any and Losses which may be sustained, instituted, made or alleged against, or suffered or incurred by the Carrier Indemnitees, and which arise (whether directly or indirectly) out of, in the course of or in connection with one or more of the following:

- (a) any breach or non-performance by the Supplier of any of the Supplier's undertakings, warranties or obligations under this Purchase Order;
- (b) any action, claim or demand brought or threatened against the Carrier Indemnitees that alleges or is based on a claim that the provision of Goods by the Supplier or the use, access or receipt of Goods by the Carrier Indemnitees infringes any Intellectual Property Rights (defined below) and/or any other rights of whatever nature of any third party or violates any agreement to which the Supplier is presently a party;
- (c) any personal injury, death, loss of or damage to property arising from any act or omission of the Supplier and/or Supplier Representatives (howsoever arising, including without limitation, by reason of negligence, breach of warranty, defect in design, material or workmanship or otherwise, and even though strict liability be claimed);
- (d) any negligent act or omission or wilful default, misconduct or fraud of the Supplier or the Supplier Representatives;



- (e) any claims by a Supplier Representative for any personal injury and/or death suffered in connection with the performance of this Purchase Order;
- (f) any defect in the design, manufacture, or materials used in the Goods supplied by the Supplier;
- (g) Carrier's use of the Goods provided by the Supplier;
- (h) any breach of any applicable law by the Supplier; and
- (i) any claim by any third party, including Carrier's customers, against the Carrier Indemnitees arising from the circumstances specified in this **Clause 20**.

If directed by Carrier, the Supplier shall take upon itself the defence and/or settlement of all such claims and the defence of any suit, suits or legal proceedings of any kind brought to enforce such claim or claims, and to pay all judgments entered in such suit, suits or legal proceedings, and all attorneys' fees and other expenses. The Supplier agrees that in any instance where such claims in any way affect Carrier's interest under this Purchase Order or otherwise, the Supplier shall not consummate any settlement without Carrier's prior written consent.

## 21. UNDERTAKING AND COMPLIANCE

In providing the Services and in carrying on the Supplier's business, the Supplier shall ensure that it and the Supplier Representatives comply with its, his or her obligations under the law, including without limitation:

- (a) not making any untrue or misleading statement relating to Carrier, its products including its business or its practices;
- (b) not violating any anti-bribery or anti-corruption law of any jurisdiction including the Constitution of the Kingdom of Thailand, the Organic Act on Counter Corruption B.E. 2542 (1999), as amended by No. 5 B.E. 2561 (A.D. 2018), the United States of America's Foreign Corrupt Practices Act and any country which is or will become a signatory to the OCED Convention on Combating Bribery of Foreign public officials and in particular;
- (c) not paying, offering or promising to pay, or authorising the payment of, any monies or anything of value, directly or indirectly, to any political party or official thereof, any candidate for political office, or any officer, employee, or agent of any government or state-run or state-owned or controlled enterprise or entity, or any other person (including non-government employees, and firms or persons retained by a customer/end user such as design, engineering or architect or any other consultants) for the purposes of influencing any act or decision of such party, official, candidate, officer, employee, agent or person in his or its official capacity or the capacity as representative of another or inducing him or it to use his or its influence to affect or influence any act or decision of a government or of his employer or to do or omit to do any act in violation of his or its lawful duty, in order to promote sales of Carrier's products, or otherwise to assist Carrier in any aspect of its business, or for any other improper advantage or purpose;
- (d) that as at the date of this Purchase Order, neither the Supplier nor the Supplier Representative or any immediate family member of such persons, is presently (or has been recently) an official or employee of any government, state-run or state-owned or controlled enterprise or entity, or political party, or a candidate for political or public office. The Supplier must provide written notification to Carrier within ten (10) days of any of the above persons becoming such official, employee or candidate;
- (e) fully complying with Carrier's compliance and ethical conduct policies including the Carrier Code of Ethics, Carrier Supplier Code of Conducts and programmes on anti-bribery, collusion and conflicts of interest and attend all training sessions as and when requested, and execute truthful annual compliance certificates (or whenever requested); and
- (f) not violating any health, safety or environmental protection law, regulation, order or safety standard affecting the conduct of its business or its practices. In the event the Supplier or the Supplier Representative breaches its, his or her obligations under this clause, or Carrier learns of or has a reasonable suspicion that the Supplier or the Supplier Representative has breached this clause or caused Carrier to violate the provisions of any law, notwithstanding any other provision to the contrary, Carrier may immediately terminate this Purchase Order.

## 22. Corporate Due Diligence Obligations

Carrier recognizes that different countries have established laws requiring certain due diligence, disclosure and other actions to ensure the protection of certain fundamental human rights and the environment including, without limitation, the German Act on Corporate Due Diligence Obligations in Supply Chains (*Lieferkettensorgfaltspflichtengesetz*). Those laws are referenced in this document along with those provisions each specific law requires be made part of the Seller's applicable contract with Carrier as a supplier to Carrier.

### A. German Act on Corporate Due Diligence Obligations in Supply Chains (*Lieferkettensorgfaltspflichtengesetz*)

To the extent the Act on Corporate Due Diligence Obligations in Supply Chains applies to Carrier and/or Seller as its supplier, the following provisions are incorporated into Carrier's Standard Terms & Conditions of Purchase hereto. All capitalized terms used in this policy but not defined shall have the same meaning given to them in the Terms. This Attachment does not affect Seller's obligations under the Terms, in particular under Section 17 (Code of Conduct) or Section 20 (Compliance), but stipulates additional obligations for Seller.

#### 1. HUMAN RIGHTS INSTRUMENTS

Seller commits itself to respect and observe and make best efforts to have its direct suppliers respect and observe the rights and fundamental principles articulated and protected by the following human rights instruments (the "**Human Rights Instruments**") as listed in the Annex to section 2 (1), section 7 (3) sentence 2 to the Act on Corporate Due Diligence Obligations in Supply Chains (available at [https://www.csr-indeutschland.de/SharedDocs/Downloads/EN/act-corporate-due-diligence-obligations-supplychains.pdf?\\_\\_blob=publicationFile#linkicon](https://www.csr-indeutschland.de/SharedDocs/Downloads/EN/act-corporate-due-diligence-obligations-supplychains.pdf?__blob=publicationFile#linkicon))

Convention No. 29 of the International Labour Organization of 28 June 1930 concerning Forced or Compulsory Labour (ILO Convention No. 29; available at: [Convention C029 - Forced Labour Convention, 1930 \(No. 29\) \(ilo.org\)](#));

Protocol of 11 June 2014 to Convention No. 29 of the International Labour Organization of 29 June 1930 of the International Labour Organization (available at: [Protocol P029 - Protocol of 2014 to the Forced Labour Convention, 1930 \(ilo.org\)](#));

Convention No. 87 of the International Labour Organization of 9 July 1948 concerning Freedom of Association and Protection of the Right to Organise, as amended by the Convention of 26 June 1961 (ILO Convention No. 87; available at: [Convention C087 - Freedom of Association and Protection of the Right to Organise Convention, 1948 \(No. 87\) \(ilo.org\)](#));

Convention No. 98 of the International Labour Organization of 1 July 1949 concerning the Application of the Principles of the Right to Organise and to Bargain Collectively, as amended by the Convention of 26 June 1961 (ILO Convention No. 98; available at: [Convention C098 - Right to Organise and Collective Bargaining Convention, 1949 \(No. 98\) \(ilo.org\)](#));

Convention No. 100 of the International Labour Organization of 29 June 1951 concerning Equal Remuneration for Men and Women Workers for Work of Equal Value (ILO Convention No. 100; available at: [Convention C100 - Equal Remuneration Convention, 1951 \(No. 100\) \(ilo.org\)](#));

Convention No. 105 of the International Labour Organization of 25 June 1957 concerning the Abolition of Forced Labour (ILO Convention No. 105; available at: [Convention C105 - Abolition of Forced Labour Convention, 1957 \(No. 105\) \(ilo.org\)](#));





Convention No. 111 of the International Labour Organization of 25 June 1958 concerning Discrimination in Respect of Employment and Occupation (ILO Convention No. 111; available at: [Convention C111 - Discrimination \(Employment and Occupation\) Convention, 1958 \(No. 111\) \(ilo.org\)](#));  
Convention No. 138 of the International Labour Organization of 26 June 1973 concerning the Minimum Age for Admission to Employment (ILO Convention No. 138; available at: [Convention C138 – Minimum Age Convention, 1973 \(No. 138\) \(ilo.org\)](#));  
Convention No. 182 of the International Labour Organization of 17 June 1999 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (ILO Convention No. 182; available at: [Convention C182 - Worst Forms of Child Labour Convention, 1999 \(No. 182\) \(ilo.org\)](#));  
International Covenant of 19 December 1966 on Civil and Political Rights (available at: [volume-999-i14668-english.pdf \(un.org\)](#));  
International Covenant of 19 December 1966 on Economic Social and Cultural Rights (available at: [ch\\_iv\\_03.pdf \(un.org\)](#));  
Minamata Convention on Mercury of 13 October 2013 (available at: [Minamata Convention on Mercury \(Text and Annexes\) | Minamata Convention on Mercury](#));  
Stockholm Convention on Persistent Organic Pollutants of 22 May 2001 (available at: [Text of the Convention \(pops.int\)](#));  
Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal (available at: [Basel Convention > The Convention > Overview > Text of the Convention](#)).

## 2. INFORMATION REQUESTS

Seller shall promptly provide any reasonable information requested by Buyer or its duly authorized representative from time to time in connection with Buyer's compliance in relation to the Human Rights Instruments.

## 3. HUMAN RIGHTS DUE DILIGENCE OBLIGATIONS

- (a) Seller shall establish and maintain a human rights due diligence process appropriate to its size and circumstances to identify, prevent, and end or at least mitigate any violation of the rights and principles articulated and protected by the Human Rights Instruments within its supply chain.
- (b) Seller shall use best efforts that its suppliers and subcontractors provide the Seller with timely and accurate information on all matters relevant to the human rights due diligence process (if existent).
- (c) Seller shall develop and implement an action plan to prevent, end or minimize any violation of a human-rights related or environment-related obligation (as defined under the German Supply Chain Act in section 2 (4) in connection with section 2 (2) no. 1 to 12 and section 2 (3) No. 1 to 8) that has occurred or is imminent at the Seller or the Seller's suppliers, and make best efforts that its suppliers implement the action plan. Buyer will assist in developing and implementing the action plan, where necessary and appropriate.
- (d) Seller shall develop and implement adequate compliance training measures in which the Seller's managers and responsible employees will be provided with an adequate level of knowledge and understanding of the rights and principles articulated by the Human Rights Instruments and this Attachment. Seller must ensure that its responsible personnel participate in any training offered by Buyer. The foregoing does not constitute an obligation for Buyer to offer training.
- (e) Seller shall make best efforts to negotiate and include contractual requirements corresponding to those prescribed in this Attachment vis-à-vis its direct suppliers and to oblige them to pass on to their direct suppliers the obligation to comply with the rights and fundamental principles set forth in the Human Rights Instruments.

## 4. COMPLIANCE

- (a) Upon reasonable notice, Buyer or its duly authorized representative shall have the right to audit Seller's compliance with its obligations under this Attachment at Seller's facility (including the review of associated books, records and other documentation). Seller shall timely reply to requests during such audit and shall provide reasonable support to Buyer and its duly authorized representative to complete the audit within Buyer's established timeline. Where Buyer discovers material noncompliance with the terms of this Attachment, or where Seller delays increase the cost of the audit, Seller shall reimburse Buyer for costs of the audit.
- (b) Seller shall make best efforts that its suppliers also permit such audits by Buyer.
- (c) Any audit shall be conducted in compliance with applicable laws (including, but not limited to, data privacy and antitrust laws) and taking into account the auditee's reasonable interests (e.g. trade secrets).
- (d) Seller must take appropriate action to end or minimize any non-conformances identified during assessments and make best efforts that its direct suppliers end or minimize any non-conformances identified taking into account the obligations set forth under Section 3 of this Attachment.

## 5. MISCELLANEOUS

Seller shall review and take into account any amendment to this Attachment that Buyer must request due to the results of the risk analysis required by the German Supply Chain Due Diligence Act.

## 23. SECURITY AND COMPLIANCE WITH HEALTH, SAFETY AND ENVIRONMENT REQUIREMENTS

Carrier shall provide security passes or name tag for each Supplier Representative enabling them to enter Carrier's premises. The Supplier Representatives must clock in when entering Carrier's premises and clock out before leaving Carrier's premises, in accordance with Carrier's system for control of attendance, identification and traceability. In the event of any Supplier Representative failing to comply with the aforesaid clock in or clock out procedure or the required service hours set out in the System of Control, the Supplier shall contact Carrier's Human Resource Department within 48 hours to provide an explanation and the Human Resource Department will update the system accordingly. Penalties as set out in the System of Control may be imposed on and payable by the Supplier for any breach of or non-compliance with the aforesaid updating requirement. If the Supplier or any of the Supplier Representative involved in providing the Services does not comply with the Carrier Health, Safety and Environment Policy directions or any applicable law or regulations, Carrier shall be entitled to impose the penalties stated in the System of Control which shall be payable by the Supplier. Any security violations by or misconduct of the Supplier Representative, such as theft shall entitle Carrier to reject the Supplier Representative immediately and the Supplier shall supply a replacement Supplier Representative according to **Clause 7(e)** above. The Supplier shall ensure that it and the Supplier Representatives take all care and effort, in the course of performing the Services, to maintain a safe working environment in Carrier's premises and to assure the safety and well-being of itself and of the Supplier Representatives as well as of Carrier's employees, agents and visitors who are at Carrier's premises. The Supplier shall indemnify and hold harmless Carrier from all claims, liabilities, losses, damages, costs and expenses (including legal costs and expenses on a full indemnity basis) suffered by Carrier arising any death or personal injury or property damage caused by the negligence, default or acts or omission of the Supplier or the Supplier Representatives.

## 24. PERSONAL DATA PROTECTION



The Supplier represents, warrants and undertakes that the Supplier shall:

- (a) fully comply with the provisions of the Personal Data Protection Act 2019 ("PDPA") and only deal with the Personal Data to fulfil its obligations under this Purchase Order. The Supplier shall indemnify Carrier for any breach of the PDPA that renders Carrier liable for any costs, claims or expenses;
- (b) only process, disclose or use the Personal Data strictly in accordance with, and to the extent required for, the purposes of this Purchase Order or pursuant to Carrier's written instructions;
- (c) put in place adequate measures to ensure that the Personal Data is accurate and complete, and take steps to correct the Personal Data in the Supplier's control or possession, as soon as practicable upon Carrier's written request;
- (d) provide Carrier with details of the Personal Data that the Supplier has in its possession or control upon Carrier's written request;
- (e) maintain complete and accurate records of the ways in which the Personal Data has been used or disclosed by the Supplier, including, without limitation, the identities and names of the parties who have been provided with access to such Personal Data, and provide Carrier with such information upon Carrier's written request;
- (f) only process the Personal Data in Thailand, or such other country or territory as may be approved by Carrier in writing. Any approval may be subject to such conditions as Carrier deems necessary to protect the Personal Data;
- (g) not transfer the Personal Data to any third party, whether in Thailand or otherwise, without Carrier's prior written consent;
- (h) keep all the Personal Data private and confidential, and not disclose the Personal Data to any person unless permitted under the terms of this Purchase Order or authorised by Carrier in writing;
- (i) only permit its employees to access the Personal Data on a need-to-know basis, where they need to access the Personal Data to enable the Supplier to provide services to Carrier pursuant to this Purchase Order;
- (j) protect the Personal Data in the Supplier's control or possession by making appropriate security arrangements to prevent unauthorised or accidental access, collection, use, disclosure, copying, modification, disposal or destruction of the Personal Data, or other similar risks;
- (k) not retain the Personal Data, or any documents or records containing the Personal Data, electronic or otherwise, for any period of time longer than is necessary to serve the purposes of this Purchase Order, or for a period of time longer than is necessary to serve the Supplier's legitimate legal or business purposes;
- (l) upon the request of Carrier, notwithstanding any other provisions in this Purchase Order, immediately return to Carrier, all the Personal Data, delete all the Personal Data in its possession, and/or instruct all third parties to whom it has disclosed the Personal Data to return or delete the Personal Data, regardless of the form in which the Personal Data is in, and/or the media in which it is contained; and
- (m) take all reasonable steps to ensure that the Supplier Representatives comply with this **Clause 24** where the Supplier Representatives process any Personal Data on behalf of Carrier.

## 25. SUBCONTRACTING, ASSIGNMENT AND DELEGATION

The Supplier shall not subcontract, assign or delegate or otherwise arrange for a third party to perform any part of this Purchase Order or to discharge any of the Supplier's duties or obligations under any part of this Purchase Order without the prior written consent of Carrier. Where Carrier has approved a subcontract, assignment or delegation pursuant to this **Clause 25**, the Supplier shall be responsible for ensuring the suitability of all such persons for the Services (collectively referred to as the "**Subcontractors**" or individually referred to as a "**Subcontractor**"), and for ensuring that the work performed by such person meets the requirements of this Purchase Order. The Supplier shall ensure that such Subcontractor is made aware of and subject to all the terms of this Purchase Order relevant to the Subcontractor's part in the performance of this Purchase Order and that each contract between the Supplier and a Subcontractor:

- (a) includes key provisions equivalent to or no less stringent than those in this Purchase Order and any other material terms and conditions affecting or relating to the Subcontractor's provision of the Services;
  - (b) requires a Subcontractor to adhere to Carrier's and the Supplier's then effective standards, policies and procedures at the time; and
  - (c) requires a Subcontractor to agree to Carrier's rights under the provisions of this **Clause 25**.
- Carrier may, by notice to the Supplier, require the Supplier to cease using any Subcontractor where Carrier considers that:
- (a) a Subcontractor has or is likely to breach its confidentiality obligations with respect to Confidential Information;
  - (b) a Subcontractor fails to comply in a material respect with any of its obligations under this Purchase Order; or
  - (c) Carrier is not satisfied on reasonable grounds with the Subcontractor's ability to render future performance.

In the event Carrier consents to a subcontract, assignment or delegation pursuant to this **Clause 25**, the Supplier shall not be relieved of any of its liabilities or obligations under this Purchase Order. The Supplier shall be liable to Carrier for the acts, defaults and neglects of any Subcontractor or any employee or agent of the Subcontractor as if they were the acts, defaults or neglects of the Supplier. Neither this Purchase Order nor any interest hereunder shall be assignable by either Party unless such assignment is mutually agreed to in writing by the Parties hereto, provided however, that Carrier may assign this Purchase Order to any corporation with which Carrier may merge or consolidate or to which Carrier may assign substantially all of its assets or that portion of its business to which this Purchase Order pertains without obtaining the agreement of the Supplier.

## 26. AUDIT RIGHTS

Upon reasonable notice to the Supplier, Carrier or an authorised representative of Carrier is entitled to, during the term of this Purchase Order and for a period of seven (7) years after the expiry or termination of this Purchase Order, appoint its employees or external auditors to conduct an audit of the accounting, business practices, or business ethics relating to the Services under this Purchase Order and the Supplier's compliance with its obligations under this Purchase Order. The Supplier shall at its own cost provide Carrier or its employees or auditors with sufficient access to its office premises, personnel, information and document to enable Carrier to assess and verify the Supplier's compliance. Without limiting any other right or remedy available to Carrier, if an audit identifies any breach which may compromise Carrier or any of Carrier's assets, the Supplier must at its own cost, do all things necessary to remedy that breach.

## 27. INTELLECTUAL PROPERTY RIGHTS

All rights, including Intellectual Property Rights, interests and title in and/or associated with Carrier IPR shall belong to and vest in Carrier exclusively and the Supplier shall not during or at any time after the completion, expiry or termination of this Purchase Order in any way question or dispute Carrier's ownership of Carrier IPR. Save for the Supplier's or the relevant third party licensor's rights in any third party software, the Supplier agrees and confirms that it retains no other right, licence, title or interest in or to Carrier IPR and the Supplier shall only have a limited,



non-exclusive, revocable licence to use the same for the purposes of providing the Goods and/or Services and completing its obligations under this Purchase Order. The Supplier hereby assigns (including the present assignment of rights created in the future) to Carrier all rights, including Intellectual Property Rights, interests and title in Carrier IPR, whether now existing or in the future created, to which the Supplier is now or may at any time after the date of this Purchase Order be entitled by virtue of or pursuant to any of the law in force in any part of the world throughout the world including all renewals, reversions and extensions. The Supplier shall execute all further documents and deeds necessary to effect, perfect, record, or register such assignment. The Supplier shall, as soon as reasonably practicable upon the written demand of Carrier:

- (a) promptly disclose in writing to Carrier each instance of such Documentation; and
- (b) furnish to Carrier, all relevant materials, documents or computer softcopies and/or media containing, comprising or which are necessary for the use of such software, including the source code, executables and object code of such software.

The Supplier acknowledges and agrees that the subject matter mentioned above is the property of Carrier. Notwithstanding the foregoing provisions, Carrier agrees that the Supplier is entitled to retain a reasonable number of copies of such subject matter for use solely in accordance with any ongoing obligations of the Supplier under this Purchase Order. The Supplier agrees not to use, disclose, market, sell or distribute any material or product incorporating Carrier IPR or any part thereof, save that the Supplier may use such material or product where expressly provided under this Purchase Order and provided that such use is for the sole purpose of providing the Goods and/or Services required of the Supplier under this Purchase Order during the term of this Purchase Order and upon such terms and restrictions of use as may be prescribed by Carrier. The Supplier agrees that the rights of Carrier under this **Clause 27** shall arise immediately and shall survive whether or not this Purchase Order is terminated, expired or otherwise.

## 28. CONFIDENTIALITY

The Supplier undertakes to treat as confidential and not to divulge or communicate to any person any Confidential Information or use any Confidential Information for any purpose other than to render the Services under this Purchase Order during the term of this Purchase Order. The Supplier may disclose the Confidential Information to its officers, employees, agents and subcontractors for the performance of obligations under this Purchase Order, only on a need-to-know and confidential basis, and provided that it shall ensure that all such persons having access to any Confidential Information are made aware of and subject to the obligations relating to confidentiality set out in this **Clause 28** by the incorporation of corresponding provisions of confidentiality in their employment or other applicable contract or by entering into and maintaining confidentiality agreements with such officer, employee, agent and subcontractor, which imposes on them, among other things, the obligations to treat Confidential Information as confidential. The Supplier expressly agrees that it shall be liable for each officer, employee, agent and subcontractor's breach or non-performance of this **Clause 28**, including any unauthorised use and unauthorised disclosure of Confidential Information, even after any of such parties or entities ceases to be a/an officer, employee, agent and subcontractor. Carrier does not warrant that the Confidential Information it is disclosing will meet the requirements of the Supplier or that such Confidential Information, when combined with other information or when used in a particular manner by the Supplier, will be sufficient or suitable for the Supplier's purposes. Carrier does not assume any responsibility or liability nor makes any representation or warranty whatsoever under this Purchase Order for any consequences of the use of the Confidential Information by the Supplier, its officers, employees, agents and subcontractors or for its accuracy, completeness or sufficiency thereof. Accordingly, Carrier shall not have any liability or responsibility whatsoever for any errors or omissions in or any decision made by the Supplier in reliance on the Confidential Information. This Purchase Order shall create no obligation whatsoever on Carrier to disclose any particular kind or quantity of information to the Supplier. The Supplier acknowledges that money damages may not be a sufficient remedy for any breach or non-performance of the terms of this **Clause 28** and that in addition to any other remedy available at law or in equity, Carrier shall be entitled to seek injunctive and other legal or equitable relief against the Supplier for its breach or non-performance or threatened breach or non-performance of the provisions of this **Clause 28**. The obligations of confidentiality in this **Clause 28** will not apply to information that:

- (a) the Supplier can prove by documentary evidence was developed independently by the Supplier prior to the date of this Purchase Order;
- (b) was known to the Supplier prior to receipt from Carrier provided such prior knowledge can be proved by documentary evidence and provided the Supplier has no obligation not to disclose such information;
- (c) is or becomes publicly available, otherwise than as a result of the Supplier's breach of this Purchase Order or other legal obligations, or the wilfulness or misconduct of the Supplier; or
- (d) is released for disclosure with the prior written consent of Carrier.

Upon the expiry or termination of this Purchase Order howsoever occasioned or the request of Carrier, the Supplier shall within 14 days of the effective date of expiry or termination or such request, return to Carrier or destroy, as Carrier may direct, at the Supplier's own cost and expense, all materials containing Confidential Information and copies thereof in the Supplier's custody, possession and control in a form acceptable to Carrier and shall certify to Carrier that no copies thereof have been made, reproduced, retained or distributed by the Supplier. The obligations of the Supplier under this **Clause 28** survive the termination of this Purchase Order.

## 29. INSURANCE

The Supplier upon entering into this Purchase Order shall immediately insure at the Supplier's expenses against any damage, loss or injury that may occur to any person or any property in connection with or in consequence of the performance of this Purchase Order. Such insurance shall include but not limited to Third Party or Public Liability Insurance and Workmen's Compensation Insurance. The Supplier shall pay all insurance premiums punctually and the Supplier shall produce on request the insurance policy and evidence of payment of insurance premium to prove that it has complied with the requirements under this **Clause 29**, provided that nothing herein shall render Carrier liable for the correctness or adequacy of such policies or for ensuring that they comply with the relevant legislation pertaining to insurance. The Supplier is to ensure the adequacy of the insurance coverage taken out to cover his workers and the contractual, common law and statutory liabilities in respect of the Goods and/or Services.

## 30. LIQUIDATED DAMAGES

If the Supplier fails to meet the Completion Date (subject to any extension of time granted by Carrier in writing) in relation to the supply of the Goods and/or Services hereunder, where applicable, the Supplier shall pay to Carrier a sum calculated at the rate mentioned in this Purchase Order for each week of delay, provided that Carrier notifies the Supplier of the delay. Where Carrier so notifies the Supplier within 15 days from the Completion Date, liquidated damages will run from the Completion Date.



**31. NON-SOLICITATION**

The Supplier acknowledges that in the course of performance of its duties and obligations pursuant to this Purchase Order, the Supplier may gain knowledge of Carrier's business affairs and customers, methods of Carrier's operation, and the sale of Carrier's products and services through the use of techniques, systems, forms and methods used and devised by Carrier, and Carrier would suffer irreparable harm if the Supplier were to use such knowledge other than in the proper performance of its duties hereunder. Accordingly, the Supplier agrees that it shall not, while any of its obligations under this Purchase Order is still in effect and for a period of one (1) year following the termination or expiration of its obligations under this Purchase Order, solicit or entice away, or attempted solicitation or enticement, from Carrier, any person, firm, company or organisation who at the material time of solicitation or enticement, has been a customer, client, agent or correspondent of Carrier or any of its associated companies or in the habit of dealing with Carrier or any of its associated companies at any time within the preceding twelve (12) months.

**32. NO WAIVER**

A failure by Carrier to exercise or enforce any rights conferred upon it by this Purchase Order shall not be deemed to be a waiver of any such rights or operate so as to bar the exercise or enforcement thereof at any subsequent time or times. Waiver of any right arising from a breach or non-performance of this Purchase Order or arising upon default under this Purchase Order shall be in writing and signed by the party granting the waiver. A Party is not entitled to rely on a delay in the exercise or non-exercise of a right arising from a breach or non-performance of this Purchase Order or on a default under this Purchase Order as constituting a waiver of that right.

**33. REMEDIES**

Unless otherwise expressly agreed by the Parties, or provided under this Purchase Order, the provisions of this Purchase Order, and the rights and remedies of the parties under this Purchase Order are cumulative and are without prejudice and in addition to any rights or remedies a party may have in law or in equity, and no exercise by a party of any one right or remedy under this Purchase Order, or at law or in equity, shall (save to the extent, if any, provided expressly in this Purchase Order or at law or in equity) operate so as to hinder or prevent the exercise by it of any other such right or remedy of a party as at law or in equity.

**34. FORCE MAJEURE**

Notwithstanding any provisions herein to the contrary, no Parties shall be liable to any other Parties for loss, injury, delay, or damages or other casualties suffered or incurred by such other Party due to strikes, riots, fire, acts of nature, government actions, terrorists actions, nationalisation, expropriation, currency restrictions, acts of war, insurrection, revolution, civil unrest, nuclear fusion, acts of God or any other cause which is beyond the reasonable control of the Party whose obligations is affected.

**35. INDEPENDENT CONTRACTOR**

This Purchase Order shall not create a principal and agent, employer and employee, partnership, joint venture or any other relationship except that of independent contractors between the Parties. Neither Party shall have any right, power or authority to create any obligations, expressed or implied, on behalf of the other in connection with the described Goods and/or Services.

**36. SUCCESSOR-IN-TITLE**

This Purchase Order shall be binding upon the successors-in-title and permitted assigns of Carrier and upon the successors-in-title and permitted assigns of the Supplier.

**37. TIME**

Time wherever mentioned in this Purchase Order shall be of the essence.

**38. VARIATION**

Any amendments and/or variations of this Purchase Order shall be effective only if made in writing and in the English or Thai language and signed by the authorised representative of both Parties hereunder.

**39. SEVERABILITY**

If at any time any provision of this Purchase Order shall be or shall become illegal, invalid or unenforceable in any respect, the legality, validity and enforceability of the remaining provisions of this Purchase Order shall not be affected or impaired thereby, and shall continue in force as if such illegal, invalid or unenforceable provision was severed from this Purchase Order.

**40. LANGUAGE**

All data, documents, descriptions, diagrams, books, catalogues, instructions, materials and correspondence supplied to Carrier under this Purchase Order shall be written in readily comprehensible English or Thai language.

**41. GOVERNING LAW AND JURISDICTION**

This Purchase Order and all orders made hereunder shall be governed by and construed in accordance with the law of Thailand and each of Carrier and the Supplier hereby submits to the non-exclusive jurisdiction of the courts of Thailand.