

PRIVATE & CONFIDENTIAL

PURCHASE ORDER: TERMS & CONDITIONS
(GOODS & SERVICES)



(JANUARY 2017)

PURCHASE ORDER TERMS & CONDITIONS

1. DEFINITIONS

The defined terms used in this Agreement shall have the following meaning:

- 1.1. **"Affiliate"** means any entity that is Controlled by a Party or under common Control of that Party;
- 1.2. **"Agreement"** means the executed PO; and these T&Cs;
- 1.3. **"Agreement Date"** means the date stated as such in the PO;
- 1.4. **"Anti-Bribery & Corruption Policy"** means the anti-bribery and corruption policy of the Customer as may be communicated to the Supplier and amended from time to time by the Customer;
- 1.5. **"Applicable Law"** means all national, state, local, municipal legislation, regulations, statutes, by-laws, consents and other laws and any other instrument having the force of law now or in the future (and any amendment or subordinate provisions) relating to or connected with the activities contemplated under this Agreement, wherever located or performed;
- 1.6. **"Authorized Representative"** means the duly authorised representative(s) of the Parties for the purpose of entering into and/or varying the terms and conditions of this Agreement;
- 1.7. **"Best Industry Practice"** means the exercise of that degree of skill, diligence and prudence which would reasonably and ordinarily be expected from time to time from a skilled and experienced person carrying out the same type of activity, and applying the best industry practices under the same or equivalent circumstances, acting generally in accordance with all Applicable Laws;
- 1.8. **"Business Day"** a day other than a weekend, official public holiday or a day upon which banks are otherwise generally closed for business in the United Arab Emirates;
- 1.9. **"Charges"** means the amount payable by the Customer to the Supplier for the proper provision and performance of the Deliverables;
- 1.10. **"Claim"** means any allegation, debt, judgment, cause of action, action, claim, proceeding, suit or demand of any nature howsoever arising and whether present or future, fixed or unascertained, actual or contingent, whether at law, in equity, under statute or otherwise asserted by any person at any time;
- 1.11. **"Confidential Information"** means this Agreement and all information of any nature which a Party may have or acquire before or after the Agreement Date, however conveyed (whether in writing, verbally, in a machine-readable format, or by any other means, and whether directly or indirectly), which relates to the business, products, price lists, developments, Personnel, suppliers and customers of a Party and its Affiliates (whether or not designated as Confidential Information by the disclosing Party), and all information designated as confidential or which ought reasonably to be considered confidential;
- 1.12. **"Control"** means: (1) ownership or control (whether directly or indirectly) of more than 50% of the voting share capital of the relevant entity; or (2) ability to direct the casting of more than 50% of the votes exercisable at general meetings of the relevant entity on all, or substantially all, matters; or (3) right to appoint or remove directors of the relevant entity holding a majority of the voting rights at meetings of the board on all, or substantially all, matters, and the terms "Controls", "Controlled" or "Controlling" shall have the equivalent grammatical meaning;
- 1.13. **"Customer"** means the Party described as such in the PO;
- 1.14. **"Customer Policies"** means any and all policies maintained by the Customer in connection with its business that it may notify to the Supplier;
- 1.15. **"Defect"** means any defective design, materials, workmanship, un-merchantable quality, or unfitness for intended purpose in any Deliverable, and/or any Deliverable which does not conform to the requirements of this Agreement;
- 1.16. **"Defect Liability Period"** means a period of 1 year from date of acceptance of the relevant Deliverable(s), or such period as the Parties may agree;
- 1.17. **"Delay Damages"** means the liquidated damages payable by the Supplier to the Customer in the event of delayed provision and/or performance of Deliverables, but only to the extent agreed in the Other Applicable Etihad Terms & Conditions, if any;
- 1.18. **"Deliverables"** means the Goods and Services that are the subject matter of this Agreement;
- 1.19. **"Delivery Date"** means the date(s) specified for the provision and/or performance of the Deliverables;
- 1.20. **"Force Majeure Event"** means any event or occurrence which prevents or delays a Party from performing any or all of its obligations under this Agreement and which arises directly from, or is directly attributable to acts, events, omissions or accidents which are unforeseeable and beyond the reasonable control of the Party so prevented or affected and may include acts of God, governmental act, war, fire, flood, explosion or civil commotion but does not include (a) any labour or trade dispute, strikes, industrial action or lockouts;

- (b) non-performance by suppliers or sub-contractors;
- 1.21. **“Goods”** means the goods (including documentation) described in the PO;
- 1.22. **“IPR”** means patents, inventions (whether patentable or not), copyrights, moral rights, design rights, trade-marks, trade names, business names, service marks, brands, logos, service names, trade secrets, know-how, domain names, database rights and any other intellectual property or proprietary rights (whether registered or unregistered, and whether in electronic form or otherwise) including rights in computer software, and all registrations and applications to register any of the aforesaid items, rights in the nature of the aforesaid items in any country or jurisdiction, any rights in the nature of unfair competition rights, and rights to sue for passing off;
- 1.23. **“Material Breach”** means (i) a breach of this Agreement that is not remedied by the breaching Party within thirty (30) days of being notified of the breach and expressly mentions the breached Clause(s); or (ii) a persistent pattern of minor breaches which, when taken as a whole, constitute a material breach;
- 1.24. **“Other Applicable Etihad Terms & Conditions”** means any other terms and conditions that are necessary by reference to the unique nature of the Deliverables and which have been agreed by the Parties;
- 1.25. **“Personnel”** means all employees, agents and subcontractors of a Party who are assigned, engaged or otherwise employed from time to time to work in connection with the performance or discharge of a Party’s obligations under this Agreement;
- 1.26. **“PO”** means the attached purchase order requesting the provision and/or performance of the relevant Deliverables, and **“Purchase Order”** shall be construed accordingly;
- 1.27. **“Service Levels”** means any performance service level(s) associated with any Deliverables, but only to the extent agreed in the Other Applicable Etihad Terms & Conditions, if any;
- 1.28. **“Services”** means the services described in the PO;
- 1.29. **“Site”** means the site specified in the PO or any site(s) upon which the Deliverables (or any part thereof) are to be provided and/or performed in connection with this Agreement;
- 1.30. **“Specifications”** means any technical and/or functional specifications for the Deliverables as set out in the PO;
- 1.31. **“Supplier”** means the Party described as such in the PO;
- 1.32. **“T&Cs”** means the standard terms and conditions in this physical document; and
- 1.33. **“Warranty Obligation”** means the redesigning, repairing, replacing or re-supply (as appropriate) of a Deliverable (by the Supplier) which has experienced a Defect during the Defect Liability Period, or where no such time frame is specified, then within such time frame as may be set out in the defects notice.
- 2. PURCHASE ORDER AND DELIVERABLES**
- 2.1. The PO sets out the Deliverables that the Supplier shall provide in accordance with the Specifications, Service Levels, Applicable Law, Best Industry Practice, the Delivery Date(s) and otherwise strictly in accordance with this Agreement.
- 2.2. The Supplier shall do all things as are necessary so as to ensure that the performance of its obligations under this Agreement does not breach, nor cause the Customer to be in breach of, the Customer Policies or Applicable Law.
- 2.3. If there is any inconsistency between the PO and these T&Cs, then the order of precedence shall be: (a) the Other Applicable Etihad Terms & Conditions; (b) the provisions of the PO; and (c) these T&Cs.
- 3. DELIVERY, INSPECTION, REJECTION**
- 3.1. The Deliverables shall be provided and/or performed by the Delivery Date(s). All Goods shall be delivered pursuant to the INCOTERM advised by the Customer.
- 3.2. The Customer shall be entitled to reject any Deliverables that have not been provided and/or performed by the Supplier strictly in accordance with this Agreement.
- 3.3. Where the Customer rejects a Deliverable (in whole or part) in accordance with Clause 3.2, then the Supplier shall promptly do all things as are necessary to re-perform and/or re-provide the Deliverables in strict compliance with this Agreement.
- 4. DELAY DAMAGES**
- 4.1. The Supplier shall pay Delay Damages to the Customer for any delayed, incorrect or incomplete provision of a Deliverable (or part thereof) beyond the Delivery Date until the actual date on which provision and/or performance is fully achieved.
- 4.2. Delay Damages are a genuine pre-estimate of the loss likely to be suffered by the Customer due to the Supplier’s failure to meet the relevant Delivery Date(s); and the Supplier may deduct such amounts from any amount it owes to the Supplier.

5. SUPPLIER PERSONNEL AND SITE ACCESS RIGHTS

5.1. The Supplier shall ensure that all its Personnel engaged in connection with this Agreement:

5.1.1. are suitably skilled, qualified and experienced to work always in accordance with Best Industry Practice; and

5.1.2. strictly comply with, and in no way cause the Supplier to be in breach of this Agreement and/or any of the Customer Policies.

5.2. The Supplier's entry to each Site is at its own risk and it shall ensure that its Personnel are aware that their entry onto any Site is entirely at their own risk

6. DEFECT LIABILITY PERIOD

6.1. The Supplier warrants and represents that each item of Goods shall be free from any and all Defects during the Defect Liability Period.

6.2. The Customer may issue a defects notice to the Supplier where it detects and/or suspects that a Defect may exist. The Supplier shall fully perform the Warranty Obligation during the Defect Liability Period.

7. WARRANTIES

The Supplier warrants and represents to the Customer that:

7.1. this Agreement shall constitute valid and binding obligations on the Supplier;

7.2. the Goods shall be free from Defects during the Defect Liability Period and fit for their intended purpose;

7.3. the Deliverables shall be provided and/or performed by appropriately experienced, qualified and trained Personnel with all due skill, care and diligence;

7.4. it has full unencumbered title to the Goods and has the right to sell the Goods, and the Customer will receive the Goods free of any lien or impediment to its enjoyment of full legal and beneficial title;

7.5. it shall at all times comply with Applicable Law and the Customer Policies;

7.6. it shall, where requested by the Customer, obtain and assign (at its sole cost and expense) the benefit of any manufacturers' warranties to Customer not later than the date of acceptance for the relevant Deliverable; and

7.7. the Customer's receipt, utilisation (including that of its Affiliates), and/or exploitation of any Deliverable shall not breach any third party IPR.

8. PAYMENT TERMS

8.1. Subject to the Supplier's proper performance of its obligations under this Agreement, the Customer will pay the Supplier the Charges as per the payment schedule set out in the PO, subject to the provisions of this Clause 8.

8.2. The Customer shall only pay invoices that conform to the requirements that have been made known to the Supplier by the Customer.

8.3. An invoice (if correct and approved) shall be payable by the Customer within a period of 60 days from actual receipt.

8.4. The Customer shall not be required to pay any disputed amount or invoice until such dispute has been resolved and the Parties agree that the amount is valid and properly due to the Supplier.

8.5. The Customer shall pay undisputed amounts in accordance with Clause 8.3.

8.6. Any monies owed by the Supplier to the Customer, including those owed pursuant to any indemnity given by the Supplier under this Agreement, shall be payable on demand.

8.7. The Supplier shall give all notices and pay all taxes (including withholding tax), duties and fees that are required of it by Applicable Laws in connection with its provision and/or performance of the Deliverables.

8.8. All amounts specified in this Agreement shall be inclusive of all taxes including VAT.

9. TITLE AND RISK

9.1. Title to each item of Goods shall pass and title shall vest in and become the absolute unencumbered property of the Customer upon delivery.

9.2. The Supplier bears all risk of loss and/or damage to the Goods (or any part thereof) until delivery at the Site and the Customer is under no liability to insure the Goods prior to title in the Goods passing to it.

10. INDEMNIFIED MATTERS

10.1. The Supplier shall fully indemnify and hold the Customer harmless against any and all losses of whatever nature arising out of or in connection with any one or more of the following:

10.1.1. any grossly negligent act, or omission, or wilful misconduct by the Supplier or its Personnel in connection with this Agreement;

10.1.2. any personal injury, loss or damage sustained by the Supplier's Personnel; or

10.1.3. any Claim brought by a third party for a breach of that third party's IPR as a result of its provision and/or use under or in connection with this Agreement;

- 10.1.4. any and all physical loss or damage caused by the Supplier's Personnel to any property belonging to the Customer or its Affiliates whether or not at any Site;
 - 10.1.5. any Claim by the Supplier's Subcontractor due to the Supplier's acts or omissions; or
 - 10.1.6. a breach by the Supplier of Clauses 15.1, 15.3 and 15.4.
- 10.2. Each indemnity in this Agreement is a continuing obligation separate and independent from the Supplier's other obligations and survives termination of this Agreement.

11. LIABILITY

- 11.1. Nothing in this Agreement shall exclude or limit either Party's liability to the other in connection with:
- 11.1.1. death or personal injury caused by negligence or wilful or reckless misconduct of that Party;
 - 11.1.2. any fraud or fraudulent misrepresentation of that Party;
 - 11.1.3. any liability which cannot be lawfully excluded by that Party; and
 - 11.1.4. in the case of the Supplier, a breach of Clauses 15.1, 15.3 and 15.4.
- 11.2. Subject to Clause 11.1, the Supplier's total liability for loss under this Agreement shall be limited to two hundred (200%) percent of the total Charges paid and payable under this Agreement.
- 11.3. The Supplier accepts liability for damage or loss to the Customer's physical property and/or equipment caused by it or its Personnel and shall replace on an "as new" basis.
- 11.4. The Supplier shall be solely responsible and liable for any injury, loss or damage sustained by the Supplier or its Personnel, of any nature whatsoever, in performing its obligations under this Agreement.
- 11.5. No Party shall be liable to the other for any delay or non-performance of its obligations under this Agreement arising as a direct result of an evidenced Force Majeure Event, provided it used reasonable efforts to mitigate the impact of the same.

12. INSURANCE

- 12.1. The Supplier shall keep itself insured (with a reputable insurer acceptable to the Customer) at all times as it performs its obligations under this Agreement (and for 1 year thereafter) against all insurable risks in connection with this Agreement.
- 12.2. Where requested by the Customer, the Supplier shall provide the Customer with certificates of insurance, receipts for the current year's premiums, and any other proof of insurance the Customer may reasonably require.

13. TERMINATION RIGHTS

- 13.1. The Customer may terminate this Agreement at any time and without cause by issuing a termination notice to the Supplier giving not less than 30 days' notice of such termination.
- 13.2. Either Party may serve a termination notice to terminate this Agreement with immediate effect if the other Party:
- 13.2.1. commits a Material Breach of this Agreement;
 - 13.2.2. is prevented from performing its obligations as a result of a Force Majeure Event for a period exceeding [15] Business Days;
 - 13.2.3. ceases to trade, or threatens to cease trading; or
 - 13.2.4. is in breach of Clauses 15.1, 15.3, or 15.4, but only where the Party in breach is the Supplier.
- 13.3. Upon receipt of a termination notice, the Parties shall immediately:
- 13.3.1. return all Confidential Information to the Party that disclosed it, or destroy such Confidential Information and provide evidence of destruction where requested; and
 - 13.3.2. cease performance of the obligations under this Agreement in accordance with, and to the extent specified in, the termination notice.
- 13.4. The termination or expiry of this Agreement shall be without prejudice to the rights and remedies that either Party may have accrued under this Agreement or Applicable Law up to the date of termination or expiry thereof.
- 13.5. The provisions of Clauses 10, 11, 14, 15.1, 15.3, 15.9, 15.17 and 15.18 shall survive the termination and/or expiry of this Agreement.

14. IPR

- 14.1. Subject to 14.2, the IPR owned by a Party prior to the Agreement Date and made available to the other Party in connection with this Agreement shall remain the absolute property of the granting Party.
- 14.2. Clause 14.1 shall not apply where title to that IPR is intended to pass to the other Party or that other Party is to be granted a licence or right to use that IPR post termination of this Agreement.
- 14.3. Unless otherwise agreed, the Supplier hereby grants to the Customer and its Affiliates a non-exclusive, perpetual, royalty-free licence to use its IPR, to the extent required to receive the full benefit of this Agreement.

15. GENERAL PROVISIONS

- 15.1. This Agreement and any information disclosed to the Supplier by the Customer in relation to the same is confidential and the Supplier will not divulge or disclose it to any third party without prior express consent in writing from the Customer.
- 15.2. The Supplier shall not use or permit the use of any IPR belonging to the Customer or any of its Affiliates for any purpose whatsoever, without the express prior written consent of the Customer.
- 15.3. The Supplier shall comply at all times with relevant data protection and privacy legislation as it is applied to the Customer and with the Customer's internal data protection policies as may be communicated to it.
- 15.4. The Supplier shall at all times comply with and shall procure that its Personnel comply with the Anti-Bribery & Corruption Policy as may be communicated to it and updated from time to time, the provisions of the UK Bribery Act 2010; the US Foreign Corrupt Practices Act 1977; and all anti-bribery and anti-corruption measures required by Applicable Law.
- 15.5. This Agreement constitutes the entire agreement of the Parties relating to the provision and/or performance of the Deliverables, to the exclusion of all other terms and conditions, and any prior written or oral agreement between them.
- 15.6. The Supplier shall not assign, novate, or otherwise transfer all or any of its rights, benefits or obligations under this Agreement without the prior written approval of the Customer.
- 15.7. The Supplier shall not sub-contract the performance of any of its obligations under this Agreement without the prior written approval of the Customer.
- 15.8. No variation of this Agreement shall be effective unless in writing and signed by or on behalf of each Party's Authorised Representative.
- 15.9. No failure to exercise, nor any delay in exercising, any right, power or remedy under this Agreement shall operate or be deemed a waiver of the same. Waivers must always be given in writing.
- 15.10. If any provision of this Agreement is determined to be invalid, illegal or void by any court or administrative body of competent jurisdiction then the rest of this Agreement shall still remain in full force and effect.
- 15.11. Nothing in this Agreement shall be construed to make either Party an agent, employee, franchisee, joint venturer or legal representative of the other Party.
- 15.12. The Supplier acknowledges and agrees it is not being appointed as an exclusive supplier of any Deliverable or similar items / services that the Customer may require.
- 15.13. Except in relation to the Customer's Affiliates, this Agreement does not create any rights which are enforceable by any person who is not a Party to this Agreement.
- 15.14. Any notice or other communication given under or in connection with this Agreement shall be in writing and shall be delivered by
- 15.14.1. hand to the Party due to receive it at the Party's address;
- 15.14.2. email to the Party due to receive it at the Party's email address; or
- 15.14.3. fax to the Party due to receive it at the Party's fax number.
- 15.15. This Agreement is drawn up in the English language and the English language version of this Agreement shall always prevail over any translation. This Agreement shall be construed, interpreted and administered in English.
- 15.16. Unless otherwise stated, the rights and remedies of a Party under this Agreement are cumulative and do not exclude any other right or remedy provided by Applicable Law.
- 15.17. This Agreement is governed by, and shall be construed in accordance with, the laws of the Emirate of Abu Dhabi and the Federal Laws of the United Arab Emirates applicable therein.
- 15.18. The Parties irrevocably submit to the exclusive jurisdiction of the courts of the Emirate of Abu Dhabi, United Arab Emirates in relation to any Disputes.