

## TERMS AND CONDITIONS OF PURCHASE (GENERAL PURCHASING)

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**YOU ARE ADVISED TO READ THESE TERMS & CONDITIONS CAREFULLY AS SUCH TERMS WILL GOVERN THE TERMS OF YOUR ENGAGEMENT BY EMIRATES FLIGHT CATERING UNTIL WE SPECIFICALLY AGREE TO THE CONTRARY**

#### **1 DEFINITIONS**

- 1.1 "Buyer" shall mean Emirates Flight Catering, or any other of its business divisions specified in the RFQ (as the case may be), their servants or agents.
- 1.2 "Seller" shall mean the person, firm or company issued with the Order and any permitted sub-contractors or agents of such person, firm or company.
- 1.3 "Conditions" shall mean these terms and conditions of purchase.
- 1.4 "Intellectual Property Rights" shall mean all copyright, all other rights in relation to inventions, registered and unregistered trademarks (including service marks), registered and unregistered designs, circuit layouts and all other rights resulting from intellectual activity in the industrial, scientific, literary and artistic fields.
- 1.5 "Order" shall mean a purchase order as may be varied by Change Orders.
- 1.6 "Change Order" shall mean an Order issued pursuant to Clause 9 hereof.
- 1.7 "Work" shall mean any goods, services and/or equipment or part thereof to be provided under the Order.
- 1.8 "RFQ", "RFI", "RFP", "RFT" or "Spot Buy" shall mean the various tender processes issued by the Buyer in respect of the Work.
- 1.9 "Price" shall mean all sums payable to the Seller for performance of the Work as specified in the Order including any applicable value added tax.
- 1.10 In these Conditions, unless a contrary intention appears :
- (a) a reference to the singular includes a reference to the plural and vice versa;
  - (b) a reference to a gender includes a reference to the opposite gender;
  - (c) a reference to a party includes a reference to its authorised employees and agents ;
  - (d) headings are inserted for the purpose of convenient reference only and do not form part of these Conditions.

#### **2 ACCEPTANCE OF ORDER**

- 2.1 The Seller shall acknowledge receipt of the Order and any Change Order.
- 2.2 The Seller's acknowledgement under Clause 2.1 shall constitute Seller's acceptance of and agreement to comply with these Conditions. If Seller fails to acknowledge receipt of the Order under Clause 2.1 commencement of performance of the Work shall constitute the Seller's implied acceptance of and agreement to comply with these Conditions.

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2.3 Any other terms and conditions of purchase to which the Seller may refer and any acknowledgement other than the Buyer's returnable acknowledgement form are expressly excluded.

2.4 To the extent that they do not conflict with these Conditions, Incoterms (latest edition) shall apply to the Order.

### **3 WARRANTIES**

3.1 The Seller warrants that the Work shall:

(a) conform strictly as to quality and description with particulars stated in the RFQ, RFI, RFP, RFT and/or Spot Buy (as applicable) and the Order.

(b) be of completely new and high quality sound materials.

(c) be in strict compliance with samples, patents, drawings or specifications.

(d) meet the standard of performance specified in the RFQ, RFI, RFP, RFT and/or Spot Buy (as applicable) and the Order.

(e) be free from defects in design and workmanship.

(f) be fit for the purpose for which it is supplied under the RFQ, RFI, RFP, RFT and/or Spot Buy (as applicable) and the Order.

3.2 The Seller warrants that the Work shall be performed by suitably qualified and competent personnel and all equipment provided hereunder shall at all times be maintained in a satisfactory and safe operating condition by the Seller. the Buyer reserves the right to require the replacement of any such personnel or equipment that does not comply with the foregoing provisions at the Seller's sole cost.

3.3 The Seller warrants that it is the legal and beneficial owner of the Work or any materials used in respect of the Work immediately before :

(a) delivery of the Work to the Buyer; and

(b) any acceptance of the Work by the Buyer

3.4 The Seller warrants that the Work will at no time infringe the Intellectual Property Rights of any third person.

### **4 PAYMENTS**

4.1 In consideration of the satisfactory performance of the Work and subject always to the Buyer's right of contractual set off for such failure of satisfactory performance, the Buyer shall pay the Seller the Price in the manner hereinafter provided which shall be without prejudice to the Buyer's rights hereunder expressed or implied and shall not be deemed to be acceptance of any defective work.

4.2 The Seller shall send, in accordance with the Buyer's instructions, a detailed invoice or invoices as instructed on the Order clearly stating the Seller Name, Address, Tax Registration Number, Order number, the item numbers, including a breakdown of any value added tax payable on the Order.

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- 4.3 Unless otherwise specified on the Order, payment will be made ninety (90) days from month end of receipt by appropriate representatives of the Buyer of both the Work and the Seller's accurate invoice at the Buyer's invoicing address as notified to the Seller from time to time.
- 4.4 Purchase Orders prefixed with the letters CP are generated from the Buyer's Procure to Pay system (Coupa) and the Seller shall submit invoices electronically via 'PO Flip' or directly through the Coupa Supplier Portal (CSP) as directed by the Buyer. The Seller hereby acknowledges and agrees that failure to comply such requests and to use the Procure to Pay system correctly will result in delays in payment by the Buyer.
- 4.5 The Seller shall be responsible for all taxes, imposts, fees, duties and the like related to the performance of the Work (save for any value added tax properly due and invoiced correctly in accordance with the provisions of Clause 4.2) and shall indemnify the Buyer against all liabilities, costs and expenses incurred in connection therewith, falling within the Seller's jurisdiction.

### **5 ACCESS FOR EXPEDITING, INSPECTION AND TESTING**

- 5.1 The Buyer shall be allowed to inspect and test the Work at any time prior to acceptance or delivery, whichever shall be the later.
- 5.2 The Buyer may reject any Work that is defective or not in compliance with Clause 3. Any Work so rejected shall immediately be replaced or corrected as required by the Buyer at the Seller's expense. The Seller shall then re-submit the re-performed Work for re-inspection and re-testing.
- 5.3 The Seller shall give the Buyer not less than fourteen (14) days notice that the Work is ready for inspection and/or testing.
- 5.4 Inspection, testing or acceptance of any Work or any waiver of any rights in respect thereof by the Buyer shall not relieve the Seller from any obligations under the Order or otherwise, including without limitation, responsibility for any defects subsequently found in materials and/or workmanship.

### **6 COMPLETION AND DELIVERY**

- 6.1 The Work shall be completed and delivered by the date specified in the Order.
- 6.2 If the Seller fails to commence performance of the Work on receipt of the Order or if it appears to the Buyer that the Seller may not be able to complete the Work by the required date the Buyer may terminate the Order or any part thereof in accordance with the provisions of Clause 12.
- 6.3 Delivery of the Work shall be effected in the manner(s) and at time(s) specified by the Buyer. If the Work is not delivered in accordance with the Buyer's requirements, the Seller shall be responsible for any additional risk and expense arising therefrom. Unless otherwise provided, the Seller shall be responsible for and bear the cost of packing, loading and/or carriage of the Work.

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### 7 DEFECTS

- 7.1 The warranty period, unless otherwise agreed between the parties, is 12 (twelve) months from the date that the Work is put into service by the Seller for its specified use (the "**Warranty Period**").
- 7.2 The Seller shall be responsible for remedying at its expense any defects that may arise in the Work during the Warranty Period. The Seller shall guarantee for a further period of twelve (12) months all remedial work carried out under this warranty. Where a defect arises within the Warranty Period but does not become apparent until the Warranty Period has expired, the Seller's liability shall not cease merely because Buyer has been unable to give notice of the defect to the Seller within the said Warranty Period. Such Warranty Period shall run from the date which the defect becomes apparent to the Buyer. If any defects which the Seller is obliged to remedy under this Clause are not remedied within a reasonable time or circumstances render it impracticable for the Seller to do the same, the Buyer may do so himself or authorise others to do the same, and the Seller shall reimburse the Buyer for all costs arising therefrom.
- 7.3 The Buyer is at all times relying on the skill and knowledge of the Seller. If the Work fails to attain the performance specified by the Buyer in the Order, such failure shall be a defect within the meaning of Clause 7.2.
- 7.4 This warranty and the Buyer's remedies hereunder are in addition to the Buyer's other rights and remedies existing under the Order or at law.

### 8 INSURANCE

The Seller shall be responsible to procure and maintain at its own cost and expense necessary and adequate insurances, to cover its employees, vehicles, equipment and other properties. The Buyer assumes no responsibility or liability towards, or on behalf of the Seller for procurement and maintenance of such insurances or any costs associated thereof.

### 9 CHANGE ORDERS

- 9.1 The Seller shall perform any changes to the Work required by the Buyer which may include additions to, or reductions in, the quantity and quality of Work. The Buyer shall give notice of such changes to the Seller in writing who shall promptly advise the Buyer in writing of their reasonable effect on Price and delivery date. Subject to Clause 9.2, no change shall be accepted by the Buyer unless authorised by written instruction and confirmed by Change Order.
- 9.2 In the event that the parties are unable to agree on the reasonable effect on Price and delivery date, the Buyer shall nevertheless have the right to require the Seller to proceed with the change forthwith.

### 10 ASSIGNMENT AND SUB-CONTRACTING

- 10.1 The Seller shall not assign or sub-contract the Order without the Buyer's prior written consent. No assignment or sub-contract shall relieve the Seller of any of its obligations under the Order. These Conditions shall be applied in all sub-contracts entered into by the Seller.

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### **11 STATUTORY AND SAFETY OBLIGATIONS**

- 11.1 The Seller shall in performing the Order comply with all applicable laws, regulations, customs and good practice and where appropriate shall comply with the Buyer's Safety Requirements for Contractors.
- 11.2 The Seller shall provide the Buyer in writing with such information as is necessary relating to the use of any goods and/or equipment supplied and/or used and its design, testing and use, relating to any conditions necessary to ensure it will be safe and without risk to health when properly handled, stored, transported and used.

### **12 SUSPENSION AND TERMINATION**

- 12.1 The Buyer shall be entitled to terminate or suspend the Order in respect of the Work by giving notice in writing to the Seller at any time prior to delivery of the Work, in which event the Buyer's sole liability shall be to pay the Seller for all Work satisfactorily performed up to the date of termination or suspension specified in such notice and reasonable and substantiated cancellation charges on sub-contracts placed by the Seller in accordance with Clause 10.
- 12.2 The Buyer is not liable for any consequential loss or loss of profits suffered by the Seller as a result of termination or suspension of the Order by the Buyer pursuant to Clause 12.1
- 12.3 The Buyer shall be entitled to terminate or suspend the Order by giving notice to the Seller at any time if -
- (a) the Seller is in default of any obligations hereunder, including without limitation compliance with any delivery date; or
  - (b) the Seller becomes insolvent, makes any voluntary arrangement with its creditors, (being an individual or firm) becomes bankrupt, (being a company) becomes subject to an administration order, goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction), or a receiver is appointed over any of the property or assets of the Seller.
- 12.4 Without prejudice to the Buyer's other rights on suspension or termination, the Buyer shall be entitled to enter the Seller's premises or any place where the Work is situated and take possession of the whole or any part of the Work and remove the same, and title thereto (insofar as the same shall not already be vested in the Buyer) shall forthwith vest in the Buyer.

### **13 TITLE AND RISK**

- 13.1 Title in the Work shall pass to the Buyer on either :
- (a) payment for the Work (when title shall pass in proportion to the payments made therefor); or
  - (b) acceptance of the Work by the Buyer at the specified delivery point, whichever occurs first.
- 13.2 Notwithstanding passage of title (in whole or in part) on the occurrence of Clause 13.1(a) above, risk shall remain with the Seller until delivery or until acceptance of the Work by the Buyer in accordance with the provisions of the Order whichever shall be the later.
- 13.3 All materials or equipment to be incorporated in the Work the title of which has passed to the Buyer shall be clearly marked as the Buyer's property and shall be stored separately from the Seller's property.

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### 14 INDEMNITIES

- 14.1 The Seller shall indemnify, defend and hold harmless the Buyer against any action, liability, cost, or expense whatsoever arising by reason of:
- (a) the breach of any applicable provision of these Conditions;
  - (b) any infringement or alleged infringement of the Intellectual Property Rights of any person other than the Buyer relating to the Work;
  - (c) injury to, or death of, any persons caused or contributed to be the negligence or breach of contract or other legal duty of the Seller or, irrespective of the negligence or breach of duty of the Buyer, loss or damage to any property; and
  - (d) all consequential or indirect losses (whether foreseeable or not) incurred by the Seller, irrespective of the negligence or breach of duty of the Buyer.
- 14.2 The Seller shall maintain such insurance cover
- (a) against the liabilities referred to in Clause 14.1(c); or
  - (b) otherwise required in relation to the supply of the Work;

and shall provide to the Buyer on demand valid certificates of insurance in respect thereof.

### 15 FORCE MAJEURE

- 15.1 If either party is unable to perform an obligation under these Conditions, by reason of circumstances beyond its reasonable control and which could not have been avoided or overcome by the use of reasonable diligence and foresight, the party concerned shall immediately notify the other party in writing, provide an estimate of how long such circumstances are likely to continue and shall be entitled to a reasonable extension of time for performance.

### 16 LIENS AND CLAIMS

- 16.1 The Seller agrees to pay, discharge and hold the Buyer harmless from all liens, claims (including legal fees and other expenses incidental thereto), judgements and awards which may arise out of or in connection with this Order. The Seller shall at the Buyer's request, furnish proof satisfactory to the Buyer that all such liens, claims, suits, judgements and awards have been satisfied or released. The Buyer shall also have the right to make payment direct to any holder of such lien or claimant such payments to be reimbursed by the Seller on demand.
- 16.2 The Seller agrees to waive any right to exercise a lien, to make a claim or seek enforcement of a judgement or award against the Work at any time and acknowledges that its sole right in the event of any failure by the Buyer to perform any of its obligations under the Order is to seek financial relief in respect thereof.

### 17 INTELLECTUAL PROPERTY RIGHTS

- 17.1 The Seller irrevocably assigns its entire right, title and interest to any Intellectual Property Rights it may have at any time in the Work (the "**Seller Intellectual Property Rights**") to the

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Buyer, including the right to initiate court or other proceedings or to take any other action against any person for infringement of the Seller Intellectual Property Rights.

- 17.2 All patterns, tools, drawings or documents, whether in hard copy or otherwise, supplied by the Buyer shall remain the Buyer's property and shall not be used by the Seller in the service of any other company. All such items shall be returned to the Buyer upon completion of the Work or at the Buyer's instruction.
- 17.3 The Seller shall not use any brand names, logos, imagery or other intellectual property (whether registered or unregistered) of the Buyer without prior written consent of the Buyer.

### 18 ERRORS

- 18.1 The Seller shall immediately notify the Buyer in writing of any error, omission, deficiency, ambiguity or contradiction in the Order and shall not commence or continue with performance of the Work until written clarification from the Buyer has been obtained.

### 19 LAW AND LANGUAGE

- 19.1 The Order and these Conditions shall be governed and construed in all respects in conformity with English law.
- 19.2 Any dispute arising out of or in connection with the Order and these Conditions (a "**Dispute**"), including any question regarding its existence, validity or termination, or relating to any non-contractual or other obligation arising out of or in connection with the Order and these Conditions or the consequences of its nullity, shall be referred to and finally resolved by the courts of the Dubai International Financial Centre, Dubai, UAE which shall have exclusive jurisdiction to settle such Dispute.
- 19.3 All documentation provided by the Seller in connection with this Order shall be in the English language.
- 19.4 The United Nations Convention on Contracts for the International Sale of Goods will not apply to these Conditions.

### 20 NOTICES

- 20.1 Notices shall be validly given if sent by email, or couriered delivery to the respective addresses of the parties stated on the Order or to any address subsequently notified in writing by one party to the other.

### 21 ENTIRETY

- 21.1 Subject to Clause 21.2, the Order and these Conditions together constitute the entire agreement between the parties and supersedes all prior agreements and understandings (whether written or oral).
- 21.2 Where the Seller and the Buyer have entered into a written agreement in relation to the subject matter of an Order, that written agreement shall supercede these Conditions in relation to such an Order. These Conditions shall only govern other engagements between the Seller and the Buyer to the extent such written agreement does not already cater for such Orders.

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### 22 WAIVER

- 22.1 A failure or delay in exercise or partial exercise of a right arising from a breach of any provision of these Conditions is not to be regarded as or relied upon as a waiver of that right.

### 23 DISPUTE RESOLUTION

- 23.1 The parties acknowledge that in order to minimise any disruption which may result from a dispute or difference they will attempt to resolve such dispute or difference prior to taking any further action to resolve the dispute.
- 23.2 If a dispute arises out of or relates to these Conditions, or the breach, termination, validity or subject matter of these Conditions, the parties may agree in writing to submit the dispute to arbitration.
- 23.3 If a dispute is referred to arbitration in accordance with Clause 23.2, then the dispute will be referred to and finally resolved by arbitration under the Rules of Commercial Conciliation and Arbitration of the Dubai Chamber of Commerce and Industry (the "DCCI").
- 23.4 The tribunal established under the rules of the DCCI will consist of a sole arbitrator sitting in Dubai and proceedings under that tribunal will be held in the English language.
- 23.5 The parties agree to accept the determination of the DCCI as final and binding.

### 24 CONFIDENTIALITY

- 24.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as outlined below and it shall use the other party's confidential information only to perform its obligations under these terms and conditions.
- 24.2 Each party may disclose the other party's confidential information to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under these terms and conditions. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause and as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.