

# Purchase order terms and conditions

March 2019

## Definitions:

In these purchase order terms and conditions ("Conditions") unless the contrary intention appears:

**"Affiliate"** means an entity that (a) controls a Party; (b) is controlled by a Party; or (c) is controlled by an entity that also controls a Party; where "control" means possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of an entity, whether through the ownership of voting securities, by contract or otherwise.

**"Anti-Corruption laws"** means the US Foreign Corrupt Practices Act, the UK Bribery Act, and any other anti-corruption laws and regulations relevant to the performance of the Contract.

**"Confidential Information"** means all information disclosed in connection with this Contract (whether before, on or after the date of this Contract, whether verbally, in writing, electronically or by any other means, whether directly or indirectly and whether or not marked "Confidential") by UBS or any of its Affiliates or any person on UBS' behalf, including but not limited to information relating to UBS' or any of its Affiliates' business affairs, operations, processes, intentions, projections, market opportunities, suppliers, clients, potential clients, marketing activities, sales, software, computer and telecommunications systems and personnel.

**"Contract"** means the Purchase Order and these Conditions.

**"Contract Sum"** means the price and rates for the Goods and/or Works as specified in the Purchase Order.

**"Goods"** means any goods, materials or products supplied by the Supplier to UBS as stated in the Purchase Order (refer to Description).

**"Intellectual Property Rights"** means, to the extent that any of the following are recognised in any jurisdiction, any intellectual property and/or proprietary rights whether registered or unregistered, legal or beneficial, including copyrights, patent rights (including applications for patent productions), publicity rights, trade secret rights, registered or otherwise protected trademarks, trade names and service marks and protections from trademark dilution.

**"Marks"** means all trademarks, trade names, trade symbols and slogans used or capable of being used or adapted in connection with UBS' business.

**"Party or Parties"** means either UBS or the Supplier or both.

**"Purchase Order"** means the purchase order from UBS to the Supplier that is specified to be subject to these Conditions or the Principal Agreement, whether issued in writing or electronically and which in the latter case shall be valid without signature.

**"Principal Agreement"** means the agreement between UBS and the Supplier (or their respective Affiliates) for the supply of the Goods and/or Works under which such Goods and/or Works shall be ordered (if any).

**"Supplier"** means the supplier which is supplying the Goods and/or Works, as named in the Purchase Order.

**"UBS"** means the UBS entity which is buying the Goods and/or Works, as named in the Purchase Order (refer to Invoice To).

**"Works"** means all the works and services to be performed by the Supplier, whether in connection with the Goods (including delivery of the Goods, installation, support, maintenance, and any other scope of works which may be described on any sketches, drawings, specifications as instructed by UBS) or unconnected to the Goods.

Other defined terms (if any) are set out in the Purchase Order.

## 1. Application

- (1) These Conditions shall only apply in the absence of any Principal Agreement in place for the supply of the relevant Goods and/or Works set out in the Purchase Order. In such event, these Conditions are legally binding between the Parties. Performance, in whole or in part, by the Supplier of the Works shall be deemed to be conclusive evidence of the Supplier's acceptance of these Conditions. This Contract may not be varied, withdrawn, cancelled or deferred by the Supplier. UBS may vary, withdraw, cancel or defer this Contract upon seven (7) days' written notice to the Supplier.
- (2) Subject to Clause 1(3) these Conditions override and take the place of any other terms or conditions emanating from or referred to by the Supplier, including but not limited to any terms and conditions contained in any quotation, delivery note, invoice or other document issued by the Supplier.
- (3) In the event that the Purchase Order specifies or provides for a Principal Agreement, the Principal Agreement shall continue to govern the supply of the relevant Goods and/or Works set out in the Purchase Order instead of these Conditions.

## 2. Contract Sum

The Contract Sum is fixed and shall be deemed to include performance, manufacture, supply, installation, delivery and off-loading, packaging, labelling, carriage, insurance, royalties, license fees, overtime, testing and commissioning, manpower charges, and all other charges, taxes, du-

ties and impositions, and is not subject to alteration, unless otherwise agreed in writing by the Parties. If under any applicable law UBS is required to make any payment under this Purchase Order subject to a tax deduction or withholding tax, then UBS shall be entitled to deduct such amount from the amount payable to the Supplier.

### **3. Payment**

- (1) Unless specified otherwise in the Purchase Order, UBS shall pay the Contract Sum within thirty (30) days after receipt of an appropriate invoice, subject to the satisfactory delivery, condition and quality of the Goods and/or completion of the Works by the Supplier, in each case without prejudice to any early payment discount or other benefit that may be agreed.
- (2) Invoices must bear the official UBS Purchase Order number and date of issue. The Supplier shall not include any information in its invoices which allows the conclusion that a certain individual or legal entity is a client of UBS. The Supplier shall send invoices to the address specified on the Purchase Order (refer to Invoice To).
- (3) Notwithstanding anything else contained in this Purchase Order, payment of any Contract Sum to the Supplier shall be suspended upon written notice by UBS to the Supplier if any investigation, claim, proceeding or litigation is brought or threatened to be brought against UBS (or any UBS Affiliate) by any third party (including any governmental or regulatory authority) in connection with or in relation to the Goods and/or Works provided by the Supplier.

### **4. Supplier's Performance of the Works**

- (1) The Supplier warrants that it shall carry out the Works in a professional and timely manner with the skill, care and diligence reasonably to be expected of a professional firm experienced in the execution of like works with an adequate number of competent personnel who have the necessary technical skills, qualifications, experience, certifications and training to execute and complete the Works. The Supplier further represents and warrants that it has obtained and/or shall make available to UBS all licenses, clearances, consents, registrations and authorizations necessary for its performance of the Works.
- (2) The Supplier shall carry out the Works to suit the requirements of UBS and shall not cause any delay or inconvenience to UBS.
- (3) The Supplier shall co-ordinate the performance of the Works and co-operate with any of UBS' other consultants, contractors or suppliers in accordance with instructions given by UBS. The Supplier acknowledges that UBS and its Affiliates may use third party contractors (who shall be subject to appropriate obligations of confidentiality) to assist it in managing its supply and procurement activities and the Supplier consents to the processing by such contractors of such information relating to the Supplier, this Contract or as UBS may from time to time deem necessary.

- (4) The Supplier shall carry out the Works in a clean and orderly manner. The Supplier shall remove all debris, rubbish and other waste material upon completion of the Works (or where the Works are to be carried out over a period of time, such removal to take place daily). The Supplier shall thoroughly clean the relevant premises upon completion so that it is fit for occupation and use by UBS or its Affiliates.
- (5) The Supplier shall comply with the provisions of any relevant laws, regulations, rules, ordinances, codes and trade practices relating to the performance of the Works. The Supplier shall also adhere to other instructions relating to the Works as may be notified by UBS.

### **5. Delivery, Inspection and Packaging of Goods**

- (1) The Supplier shall deliver the Goods to the place of delivery specified in the Purchase Order (refer to Ship To) on or before the delivery date specified in the Purchase Order. Delivery to any carrier (which shall act as agent for the Supplier) shall not constitute delivery to UBS. UBS is not bound to accept delivery of any Goods in part or by instalments. UBS may, at its option and without prejudice to its other rights, reject any Goods delivered either in excess of or deficient in quantity, defective or inferior in quality or not conforming with the description of Goods specified in the Purchase Order or other instructions as notified by UBS. The Supplier shall have the option to (a) require UBS to return the Goods to the Supplier at the Supplier's risk and expense or (b) collect the Goods at the Supplier's risk and expense. The Supplier shall reimburse any payment already made to the Supplier or reimburse UBS in full for the cost of repair and/or replacement carried out by UBS or any third party at the direction of UBS.
- (2) Time shall be of the essence.
- (3) UBS may, at any time before or after delivery, inspect the Goods. The Supplier shall remain fully responsible for the Goods and the Works and such inspection shall not relieve the Supplier of any of its obligations or prejudice UBS' rights, including but not limited to the right of rejection.
- (4) All Goods must be adequately protected for transport. The Supplier shall bear all packing and transport costs and expenses.
- (5) The Supplier shall send to UBS written notification of the dispatch of Goods, including the date of dispatch.
- (6) Where the Works include installation of the Goods, the Supplier shall follow all instructions given by UBS. Such installation shall take place and be completed on or before the delivery date (as stated in the Purchase Order) or such other date as agreed between the parties in writing.

### **6. Property and Risk**

The Goods shall remain at the Supplier's risk (including, without limitation, the risk of deterioration in transit) until they have been safely delivered to UBS. If UBS rejects any Goods pursuant to its right to do so under Clause 5(1), the property and risk therein shall remain with or thereupon revert to the Supplier.

## **7. Title, Quality and Rejection**

- (1) The Supplier represents and warrants that (a) the Supplier has the right to sell the Goods (which shall remain the absolute property of the Supplier until title therein passes to UBS) free of any charge, lien or other encumbrance; (b) UBS will enjoy quiet possession of the Goods; and (c) the Supplier has obtained and/or shall make available to UBS all licenses, clearances, consents, registrations and authorizations necessary for the purchase of the Goods by UBS.
- (2) The Supplier shall ensure that the Goods and/or Works correspond strictly with the description of Goods and/or Works as specified in the Purchase Order, representations, descriptions, advertisements, brochures, drawings, specifications and samples made or given by the Supplier and/or stipulated by UBS and are in every respect fit for any purpose which UBS has expressly or by implication made known that it required, are of merchantable quality (if applicable), and are in compliance with any applicable national or international standards, applicable safety and technical requirements and regulations and other applicable legal requirements.
- (3) The Supplier shall, when delivering the Goods and/or Works, provide such operating and other instructions and information about the risk to life, health or safety arising out of the handling, storage and use of the Goods and/or Works.

## **8. Confidentiality**

- (1) The Supplier shall keep strictly confidential the Confidential Information unless such information:
  - (i) is or becomes generally available in the public domain otherwise than as a result of a breach of this Contract;
  - (ii) becomes lawfully available to the Supplier from a third party free from any confidentiality restrictions;
  - (iii) is known to or is in the Supplier's possession prior to disclosure under this Contract other than arising out of any confidentiality restriction;
  - (iv) is disclosed by the Supplier pursuant to an order of court of competent jurisdiction or in compliance with the provisions of any law or regulation in force from time to time, provided that UBS shall be given as much notice as is practicable so that a protective order may be sought by UBS, and provided further that the Supplier shall not disclose more information than what was required under the circumstances and no more; or
  - (v) is disclosed to a third party pursuant to UBS' prior written authorization.
- (2) Without limiting the generality of the foregoing, the Supplier undertakes and agrees:
  - (i) to protect and safeguard the Confidential Information against unauthorized use, publication or disclosure;
  - (ii) not to use any of the Confidential Information except for the purposes in accordance with this Contract; and

- (iii) not to, directly or indirectly, in any way, reveal, report, publish, disclose, transfer or otherwise use any of the Confidential Information except as specifically authorized in writing by UBS.
- (3) The Supplier understands and agrees that the Confidential Information is or may be protected by applicable law and hereby irrevocably commits that it will comply with all applicable confidentiality laws, regulations and obligations.
- (4) The Supplier shall inform its staff of the Supplier's confidentiality obligations under this Contract and shall, on UBS' request, have its staff sign specific confidentiality agreements as may from time to time be required by UBS. Further, the Supplier shall only disclose Confidential Information to its staff on a "need-to-know" basis and used only in accordance with and for the purposes of this Contract.
- (5) The Supplier understands and agrees that payment of monetary damages may not be sufficient pursuant to applicable laws and that UBS or any of its Affiliates shall be entitled to seek injunctive and other appropriate equitable remedies in the event of a breach or threatened breach of this Clause.
- (6) All records, documents, drawings and other items containing such Confidential Information and all copies and extracts made or required by the Supplier from UBS shall remain the property of UBS and be returned to UBS on demand upon expiry/termination of this Contract.
- (7) This Clause 8 shall survive the expiry/termination of this Contract.

## **9. Damage or Loss in Transit**

- (1) The Supplier undertakes at its own expense to repair or replace Goods lost or damaged in transit and delivery will not be deemed to have taken place until the defective part of the Goods have been remedied and/or made good to the satisfaction of UBS.
- (2) If the Supplier is evidently unable to supply the Goods and/or Works, or, after considering all relevant facts, UBS reasonably anticipates the Supplier may not deliver the Goods and/or Works on or before the delivery date (as stated in the Purchase Order), UBS may purchase those Goods and/or Works from third parties and require the quantity ordered from the Supplier to be reduced or cancelled. The Contract Sum shall be reduced proportionately and UBS shall not be liable for any additional penalty, forfeitures or charges in relation to the reduction in quantities ordered.

## **10. Assignment and Sub-Contracting**

The Supplier may not assign, transfer, subcontract or otherwise dispose of any of its rights or obligations under this Contract without the prior written consent of UBS, but nothing in this Contract shall prevent or restrict UBS from assigning all or any of its rights or obligations hereunder to any Affiliate or to any legal entity which succeeds to all or part of the business or assets of UBS.

## 11. Default

- (1) The Supplier shall be deemed to be in default under this Contract if:
  - (i) the Supplier is in material or persistent breach of any condition of this Contract and, if the breach is capable of being remedied, has failed to remedy it within seven (7) days after service of a written notice requiring it to be remedied; or
  - (ii) the Supplier or any of its assets is subject to any form of winding up, administration, receivership, insolvency proceedings, arrangements with creditors generally, enforcement of security or legal process or repossession; or
  - (iii) the Supplier repudiates the Contract or wholly or partially suspends performance of the Works or fails to or expresses clearly or indicates through its actions or omissions not to proceed with the Works diligently, expeditiously or to the reasonable satisfaction of UBS; or
  - (iv) fails to observe the obligations placed on it by any statute, regulations, rules, codes or trade practices.
- (2) If Clause 11(1) applies, UBS may at any time (at its discretion and without prejudice to its other rights) provide the Supplier with three (3) days' written notice to:
  - (i) suspend any further performance of the Works under this Contract;
  - (ii) terminate, cancel or rescind this Contract;
  - (iii) recover from the Supplier any amounts already paid by UBS in relation to Works, the performance of which is suspended or is no longer to take place; and
  - (iv) set off any indebtedness of UBS to the Supplier against any indebtedness of the Supplier to UBS, in each case on any account whatsoever.
- (3) UBS is entitled to terminate this Contract at any time by giving not less than three (3) days' written notice to the Supplier.
- (4) In the event that UBS is located in Indonesia, the Parties agree to waive the provisions, procedures and operation of Article 1266 of the Indonesian Civil Code to the extent that court approval or a court order is required to terminate this Contract.
- (5) In the event that the Supplier fails to deliver the Goods and/or complete the Works by the applicable delivery date, the Supplier shall be liable to pay delay compensation of 1% of the Contract Sum for each day of delay to UBS in addition and without prejudice to UBS' rights to recover any other damages from the Supplier. The Parties confirm that these sums represent a genuine pre-estimate of UBS' loss.

## 12. Intellectual Property

- (1) The Supplier warrants that all Goods and/or the Works do not infringe any Intellectual Property Rights. The Supplier indemnifies UBS against any claims against UBS in respect of such Intellectual Property Rights.
- (2) All Intellectual Property Rights created by the Supplier under this Contract shall promptly be disclosed to UBS and shall vest in UBS upon creation. The Supplier shall do everything necessary (including without limitation as-

ignment) to ensure UBS' ownership of such Intellectual Property Rights.

- (3) For the avoidance of doubt, all Marks will remain the absolute property of UBS. The Supplier shall not use the Marks unless necessary for the proper performance of the Works and upon the prior written consent of UBS.
- (4) The Supplier shall not remove any material (including without limitation any document, disc or other medium) containing any of the Confidential Information or Intellectual Property Rights from UBS without the express written consent of UBS. In the event that such consent is granted, the Supplier undertakes not to duplicate, copy or assimilate any Confidential Information or Intellectual Property Rights into any other form except as necessary for the proper performance of the Works. The Supplier undertakes upon the completion and/or termination of the Works, whichever is the sooner, to return and/or at the request and instruction of UBS destroy all such materials. The Supplier acknowledges that the provisions relating to Confidential Information shall apply in full to all Intellectual Property Rights governed by this Contract.
- (5) This Clause 12 shall survive the expiry/termination of this Contract.

## 13. Indemnity and Insurance

- (1) The Supplier shall be responsible for any liability, loss, expense, cost, damage or claim (unless occasioned solely by the wilful act or misconduct of UBS) in respect of (a) injuries (whether fatal or otherwise) to any person (whether employed by the Supplier or not) and (b) any real or personal property (whether belonging to UBS or otherwise) arising from the execution or performance of the Works and the Supplier shall indemnify fully and hold UBS harmless against the same.
- (2) Any plant, equipment or material brought to UBS' premises by the Supplier shall be entirely at the Supplier's risk. UBS shall not be responsible for any loss of or damage to such plant, equipment or material arising from any cause, unless occasioned solely by the negligence of UBS.
- (3) The Supplier shall make good entirely at its own cost and indemnify UBS against any loss or damage occasioned by any wilful act or omission, default, failure, misconduct, fraud or any negligence of the Supplier, its employees, agents or sub-contractors to any property (whether real or personal and whether belonging to UBS or otherwise).
- (4) The Supplier hereby undertakes to take out and maintain adequate insurance cover with a reputable insurance company approved by UBS against liability which the Supplier may incur under this Clause or otherwise under this Contract. The Supplier will disclose all applicable insurance policies and ensure that UBS and its successors and assignees are covered. Upon UBS' request, the Supplier shall provide UBS with documentary evidence including the details of such insurance policy, confirmation that all of the Supplier's liabilities under this Contract are covered by the policy, the receipts evidencing payment of premiums and the insurance certificate.

#### 14. Warranty

- (1) The Supplier undertakes to replace or rectify at its own cost any Goods and/or Works which fail to conform with the requirements set out in Clause 7(2) or are or become defective in design, material and workmanship and make good any damage or loss, within:
  - (i) the warranty period specified in the Purchase Order; or
  - (ii) if the Purchase Order does not provide for a warranty period - one (1) year or in respect of any Goods, the period stipulated in the product or manufacturer warranty, whichever is longer.

The Supplier shall bear all carriage charges for the return of faulty items.

- (2) The Supplier further warrants that if the Goods and/or Works have been procured by the Supplier through import, all necessary import procedures (including but not limited to obtaining all necessary permits, license, approvals and consents and going through all necessary registrations and filings) have been conducted by the Supplier for the purchase of the same by UBS.

#### 15. Miscellaneous

- (1) Neither Party's rights shall be prejudiced or restricted by any concession, indulgence or forbearance extended to the other Party.
- (2) No waiver by either Party of any breach by the other shall operate as a waiver of any other subsequent breach.
- (3) Each Party's rights under these Conditions are in addition to any other rights which that Party may have in law or equity.
- (4) If the Supplier comprises two (2) or more persons, their obligations are joint and several.
- (5) This Contract is entered into in English and English shall be the dominant version in the event of its translation into any other language. If it becomes necessary to translate this Contract in any other language, the Supplier agrees that such translation shall be prepared by a translator acceptable to UBS, and the Supplier shall not contest the provisions of such translation except for manifest error. In the event of any conflict between the English text and the translated text in any other language, the English version of this Contract shall prevail.

#### 16. Publicity

- (1) The Supplier shall not, without the prior written consent of UBS, advertise or publicly announce it is providing or has provided any products or services to UBS or otherwise use any name, logo, trade name, trademark, service mark or other information which identifies UBS in the Supplier's marketing and/or publicity activities or materials.
- (2) This Clause 16 shall survive the expiry/termination of this Contract.

#### 17. Severability

The invalidity, illegality or unenforceability in whole or in part of any of the provisions in the Contract shall not affect the validity, legality and enforceability of the remaining part or provisions of the Contract.

#### 18. Governing Law and Jurisdiction

- (1) The Contract is governed by and shall be construed in accordance with the laws of jurisdiction where UBS is located as set out in the Purchase Order under the heading "Invoice To" and any disputes arising out of or in connection with the Contract shall be subject to the exclusive jurisdiction of the courts where UBS is located as set out in the Purchase Order under the heading "Invoice To".
- (2) Notwithstanding Clause 18(1), in the case of Goods supplied or Works performed in the People's Republic of China ("PRC"), the Contract is governed by and shall be construed in accordance with the laws of PRC and any disputes arising out of or in connection with the Contract shall be referred to the China International Economic and Trade Arbitration Commission ("CIETAC") for arbitration by three (3) arbitrators in accordance with the then prevailing rules of CIETAC. Arbitration shall be conducted in English. The arbitral award shall be final and binding on the parties. The seat of arbitration shall be the city where UBS is located.

#### 19. Compliance with Anti-Bribery, Anti-Corruption laws and regulations, Fraud and Sanctions regime

- (1) Anti-bribery/corruption
  - (a) UBS does not tolerate any form of bribery in any of its business dealings. The Supplier represents and warrants that it is familiar with and in compliance with applicable Anti-corruption Laws. The Supplier shall not engage in any form of bribery, collusive practice or any other form of corruption and confirms that it has not and will not extort, solicit, receive, offer, promise or give any undue financial or other advantage, directly or indirectly, in connection with any dealings with UBS.
  - (b) Furthermore, neither the Supplier nor any person acting on its behalf (if applicable), shall authorize the giving of, offer, or give anything of value to any official or employee of the government or any state-owned entity, any agent or representative of the foregoing, or any other person (including any UBS employee, contractor or agent) to improperly obtain, retain, or direct business or any improper advantage for or to any person.
  - (c) If UBS determines Supplier is not in compliance with applicable Anti-corruption Laws, it has the right to terminate any agreement with the Supplier with immediate effect, and disqualify the Supplier for any future engagements.
- (2) Fraud
  - (a) If during the duration of an Agreement the Supplier or a person who is or was a member of the board of directors or executive committee of the Supplier is convicted or found guilty of a crime relating to fraud, corruption, money laundering or tax evasion by a competent local, state or federal court, or other relevant regulatory authority or government body for matters which are connected to the contractual obligations of the Supplier, the Supplier may be disqualified as a supplier (meaning that UBS has the right to reject any proposal, bid or offer from the Supplier in the future, and UBS has the right to terminate

any existing contract with the Supplier without notice and the Supplier agrees that UBS may treat such termination as occurring for material breach).

- (b) Should the Supplier or a person who is or was a member of the board of directors or executive committee of the Supplier be involved in an ongoing proceeding run by an official body mentioned and due to charges of a crime listed above, but not yet be convicted, UBS shall also have the right to disqualify the Supplier as a supplier. This right shall be limited to cases where the reputation of UBS is negatively affected.
- (3) Sanctions
  - (a) Supplier shall not directly or indirectly deal with (i) a Restricted Party; or (ii) a Sanctioned Country in connection with its dealings with UBS.
  - (b) Supplier represents and warrants that neither it nor its subsidiaries, or its or their respective directors, officers, agents, employees, are Restricted Parties.
  - (c) For the purpose of this clause:
    - "**Restricted Party**" means a person, entity, or any other party, including, without limitation, official or de facto authorities
      - (i) located, domiciled, resident, incorporated or operating in a Sanctioned Country; or
      - (ii) subject to any sanctions lists administrated by any Sanctioning Authority; or
      - (iii) owned or controlled by a person, entity or any other party as defined in (i) and (ii) herein;
    - "**Sanctioned Country**" means any country/region subject from time to time to any sanctions and/or trade embargoes administrated by any Sanctioning Authority, as well as any other country notified by UBS as a Sanctioned Country. Currently these are the Crimea Region, Cuba, Iran, North Korea and Syria; and
    - "**Sanctioning Authority**" means any authority responsible for the administration of sanctions and embargoes in the United Nations, the European Union, Switzerland, the United States of America (Office of Foreign Assets Control of the US Department of Treasury) and in any other applicable country notified from time to time by UBS for the purpose of this clause.

## 20. Responsible Supply Chain Standard

- (1) The Supplier shall access the UBS Responsible Supply Chain Standard, which incorporates standards on human rights, labor rights and environmental, sanctions and anti-corruption principles, on [www.ubs.com/responsiblesupplychainstandard](http://www.ubs.com/responsiblesupplychainstandard) and shall comply with the principles set forth therein, which are incorporated into the Contract by reference.
- (2) The Supplier shall promptly notify UBS of any circumstances affecting compliance with the UBS Responsible Supply Chain Standard.
- (3) UBS reserves the right to evaluate the Supplier's compliance with the UBS Responsible Supply Chain Standard and Supplier shall maintain written records of the agreed documentation necessary to demonstrate its compliance.