

GENERAL TERMS & CONDITIONS OF PURCHASE

These terms and conditions shall apply to all contracts for the purchase of goods and/or services (including any instalment of the same or any part thereof) (“Goods”) by KS Distribution Pte Ltd and its group of companies (“Buyer”), and shall take precedence over the supplier’s or seller’s (“Seller”) supplemental or conflicting terms and conditions to which notice of objection is hereby given. Despatch or delivery of Goods by the Seller to the Buyer shall be deemed conclusive evidence of the Seller’s acceptance of these terms and conditions.

1. Delivery

Seller acknowledges that the date(s) of delivery specified in the purchase order(s) are critical and time is of the essence of the contract. Failure to meet any delivery date constitutes a material breach of the contract. In the event of delay, or if in the opinion of the Buyer, the Goods will not be delivered by the delivery date(s), Buyer may at its option and sole discretion, direct the Seller to expedite delivery of the Goods by air-freight, or procure the delivery of the Goods by itself, with all costs associated therewith for Seller’s account. Further, in the event of delay, Buyer shall be entitled to claim from Seller by way of liquidated damages, at a rate of five percent (5%) of the contract price, for each week of delay, up to a maximum of twenty percent (20%) of the contract price. The right to liquidated damages shall be without prejudice to all other rights of the Buyer available to it under contract, law or otherwise.

2. Price and Payment

Price shall be all-inclusive and shall remain firm and fixed for the duration of the contract. Unless otherwise specified in the purchase order(s), Buyer shall pay the contract price within sixty (60) days after the end of the month of receipt of invoice(s) and delivery of the Goods. Buyer shall be entitled to set off against the contract price any sums owed to the Buyer whether under the applicable contract of sale or otherwise.

3. Title, Risk and Property

Seller warrants clear title to the Goods, free from any and all liens and encumbrances until delivery. Seller shall ensure that the Goods are properly packed for multi-modal transportation, loading and unloading until delivery to the Buyer. Risk of loss of or damage to the Goods shall pass to the Buyer upon delivery in accordance with the contract, while property in the Goods shall pass to the Buyer upon delivery, unless payment for the Goods is made prior to delivery, in which case property shall pass to the Buyer once payment has been made and the Goods shall be marked as such accordingly.

4. Inspection

The Seller shall not unreasonably refuse any request by the Buyer to inspect and test the Goods during manufacture, processing or storage at the premises of the Seller or any third party prior to despatch, and the Seller shall provide the Buyer (or Buyer’s sub-buyer) with all facilities reasonably required for inspection and testing. If as a result of inspection or testing the Buyer is not satisfied that the Goods will comply in all respects with the contract, the Seller shall take such steps as are necessary to ensure due compliance before delivery.

All Goods delivered hereunder shall be subject to final inspection and acceptance by the Buyer at its facility notwithstanding prior payment or inspection at Seller’s facility. Neither the inspection as provided herein nor the failure of the Buyer to carry out such inspection shall relieve the Seller of its obligations, responsibilities and liabilities under the contract.

5. Warranties

Seller warrants that the quantity, quality and description of the Goods shall be as specified in the purchase order, and/or in any applicable specification supplied in the purchase order and/or any applicable specification supplied by the Buyer to the Seller or agreed in writing by the Buyer if there are no specific descriptions, plans, specifications or samples, and to the extent that they are not explicit, all Goods shall be new, of the latest design or model conforming to the Buyer's requirements and of the best quality unless otherwise stated.

Seller further warrants that the Goods shall be of merchantable quality and fit for any purpose held out by the Seller or made known to the Seller in writing at the time the order is placed; free from defects in design, material and workmanship for a period of one (1) year after being placed in service in the plant or structure of the Buyer or its sub-buyers; and comply with all applicable statutory requirements and regulations relating to the sale of the Goods.

Without prejudice to any other remedy, if the Goods supplied are not in accordance with the contract, the Buyer shall be entitled, at its sole option, to require the Seller to rectify or replace the Goods in accordance with the contract at no cost to the Buyer within a period to be specified by the Buyer.

If the Buyer believes that a timely and/or proper rectification or replacement of the Goods by the Seller is not possible, the Buyer may (in addition to any other remedies available to it under contract, law or otherwise) immediately terminate the purchase order in whole or in part and/or remedy the deficiency itself (or use a third party to do so) with all costs associated therewith for Seller's account.

Seller represents and warrants that the Goods delivered to the Buyer do not directly or indirectly infringe upon or otherwise violate any intellectual or proprietary rights of any third party and that it has all the necessary rights to perform and fulfill its obligations under the contract. Without prejudice to the indemnity provision herein, in case the Goods or any part thereof supplied by the Seller is found to constitute an infringement or unlawful use of any intellectual property, and the use or sale of the Goods or any part thereof is enjoined, Seller shall, at its expense, either procure for Buyer (and its sub-buyers) the right to continue using the Goods, replace the infringing Goods with a non-infringing equivalent acceptable by the Buyer, or modify the Goods so that it is no longer infringing.

6. Compliance with Laws

Seller shall comply with all applicable regulations or other legal requirements concerning the manufacture, processing, storing, testing, packaging, packing and delivery of the Goods.

7. Indemnities

Seller shall indemnify the Buyer in full against any and all liability, loss, damages, costs and expenses (including legal expenses) awarded against or incurred or paid by the Buyer as a result of or in connection with a breach of any warranty given by the Seller in relation to the Goods; any claim that the goods or their importation, use or resale thereof, infringes the intellectual or proprietary rights of any other person, except to the extent that the claim arises from compliance with any specifications supplied by the Buyer; and any act or omission of the Seller in supplying, delivering and installing the Goods.

8. Business Ethics and Conflict of Interest

Seller represents and warrants that neither it nor its parent or subsidiary companies, affiliates or any of their shareholders, subcontractors, members, managers, directors, officers, employees or agents has given, offered or promised, or will give, offer or promise any gratification to any third party,

including but not limited to a government official, political party, party official, family member or representative of a state-owned enterprise for the purpose of influencing business decision or obtaining an improper business advantage.

Seller shall comply with the highest professional and ethical standards, and in particular, shall observe and comply with all applicable anti-bribery or anti-corruption laws.

Seller shall not offer any gifts, entertainment or any other gratification to the Buyer's employees, other than nominal value.

Seller shall keep accurate, detailed and proper accounting records, and shall cause its agents and subcontractors to do the same, and retain such records for a period of five (5) years after all obligations of the contract have been fully discharged. Such records shall be made available to the Buyer (or its auditors) by prior notice and at all reasonable times, for inspection and audit.

9. Termination

Buyer shall be entitled to terminate the contract without liability to the Seller by giving notice to the Seller in the event of an actual or anticipated breach by the Seller, or if the Seller makes any voluntary arrangement with its creditors or becomes subject to an administration order or goes into liquidation (otherwise than for the purpose of amalgamation or reconstruction), or an encumbrancer takes possession or a receiver is appointed over a substantial part of the assets of the Seller, or Seller ceases, or threatens to cease to carry on its business. Termination shall be without prejudice to all other rights of the Buyer available to it under contract, law or otherwise.

10. Assignment and Subcontracting

Seller shall not assign or transfer or purport to assign or transfer to any other person any of its rights or obligations without the prior written consent of the Buyer. Where consent is given by the Buyer, Seller shall remain responsible for the full and proper performance of all obligations of the contract.

11. No Waiver

Failure or delay on the part of the Buyer or any omission to exercise any right of the Buyer shall not impair such right nor shall it be construed as a waiver or acquiescence of any default of the Seller.

12. Governing Law and Arbitration

The purchase order and contract shall be governed by the laws of the Republic of Singapore to the exclusion of the UN Convention on Contracts for the International Sale of Goods. Any dispute arising out of or in connection with this sale, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration in Singapore in accordance with the Arbitration Rules of the Singapore International Arbitration Centre ("SIAC Rules") for the time being in force, which rules are deemed to be incorporated by reference to this clause. The Tribunal shall consist of three (3) arbitrators to be appointed in accordance with the SIAC Rules. The language of arbitration shall be English.

13. Exclusion of Rights of Third Parties

The application of the Contracts (Rights of Third Parties) Act (No. 39 of 2001) and its subsequent amendment, revision or replacement thereof is expressly excluded in so far as these terms and conditions are concerned.