

## - Terms of Purchase -

### § 1 Sale and Delivery of Goods

- (1) The Supplier commits to the sale, delivery and transfer of the Goods in compliance with the regulations and provisions of this Terms of Purchase.
- (2) The Supplier commits to delivering Goods that meet the highest standards in terms of quality, safety and comfort at the time of their delivery to BEWUNDER.
- (3) The Supplier bears the procurement risk for its services. The Supplier commits to delivering Goods that are free of material and legal Defects (hereinafter "**Defects**"), and in particular that are free of such Defects that significantly reduce the value of the Goods, their assured suitability for use or the typical degree of usability for Goods of this kind.

### § 2 Delivery Schedule, Defaults in Performance, Liquidated Damages

- (1) On-time delivery is determined by the time of the actual handover of the Goods to BEWUNDER at the place of delivery. The Supplier is aware that compliance with the delivery schedule and the delivery dates and deadlines specified therein is of critical importance and that delays in delivery on the part of the Supplier could result in considerable damages to BEWUNDER.
- (2) If the Supplier fails to hand over the Goods or fails to make full delivery to BEWUNDER in accordance with these dates, the Supplier is liable for Liquidated Damages, which will be calculated at a rate amounting to 0.15% of the Purchase Order Price per completed calendar day, up to a total of no more than 10% of the net price of the Goods which are delivered late. BEWUNDER reserves the right to prove that greater damage has been incurred.
- (3) The Supplier is obliged to inform BEWUNDER promptly in writing if it is probable that the Delivery Schedule cannot be met, regardless of the reasons.
- (4) The Supplier is only permitted to make partial deliveries of the Goods after receiving the express consent of BEWUNDER in written form (e-mail or fax).

### § 3 Defects and Warranty

- (1) The Supplier shall rectify any defects in the material promptly after receiving notification of the defects from BEWUNDER at its own cost.

At the choice of BEWUNDER, remedy shall take either the form of repair or delivery of fault-free material.

### § 4 Liability of the Supplier

- (1) If the Supplier violates an obligation under this Purchase Order, BEWUNDER is entitled to demand compensation for any resulting damage if the Supplier is responsible for the breach of duty. The Supplier is responsible for its own intentional and negligent conduct as well as the intentional and negligent conduct of persons engaged by the Supplier to fulfil the Supplier's obligations.
- (2) In particular, a breach of duty by the Supplier is considered to occur if
  - (a) The Supplier delivers Goods to BEWUNDER that contain a material or legal Defect,
  - (b) The Supplier fails to hand over the Goods or fails to make full delivery to BEWUNDER by a deadline listed in the delivery schedule at the agreed place of delivery.
- (3) Insofar as the Supplier is obliged to compensate BEWUNDER for damages. In this regard, the Supplier shall compensate BEWUNDER for damages that are caused directly and indirectly by the breach of duty in question.

### § 5 Purchase Order Price

- (1) The Purchase Order Price is fixed and firm for the provision of the Goods. All Services and acts of the Supplier are considered to be included in the Purchase Order Price, including but not limited to the costs of loading, packing and other (potential) ancillary costs and expenses until the handover of the Goods to BEWUNDER are settled. Changes in rates will not be entertained for the duration of this Agreement.
- (2) BEWUNDER shall have the right to set off against any money due arising out of the Purchase Order or any other agreement with the Supplier.
- (3) The Supplier's entitlement to any rights, payments, benefits, reliefs and/or entitlements under the Subcontract is (i) to that proportion of the rights, payments, benefits, reliefs and/or entitlements which BEWUNDER is entitled under the "Main Contract" and (ii) conditional upon BEWUNDER being actually compensated/paid by the client before.

## **§ 6 Termination**

- (1) BEWUNDER is entitled to withdraw from and/or terminate this Purchase Order without the need of a court order if
  - (a) The Supplier violates its duties under this Purchase Order intentionally or gross negligently or to a considerable extent.
  - (b) The Supplier fails to hand over the Goods or fails to make full delivery to BEWUNDER by a deadline listed in the Delivery Schedule at the agreed place of delivery.
  - (c) For convenience.
- (2) In case of withdrawal, BEWUNDER may demand the reversal of services that have already been performed. If the Supplier has already delivered Goods to BEWUNDER, BEWUNDER may alternatively retain the previously delivered Goods in exchange for proportional payment of the part of remuneration associated with this part of the Goods, while otherwise demanding the cancellation of the Purchase Order and therefore its other payment obligations.

## **§ 7 Force Majeure**

- (1) For the purposes of this clause, Force Majeure means an unforeseeable event beyond the control of either Party which prevents or severely hinders a Party's ability to perform their obligations under this Purchase Order.
- (2) The Parties will continue their best endeavours to minimize the effects of such Force Majeure event and shall keep each other apprised of improving or worsening conditions as they occur.
- (3) If the event of Force Majeure continues beyond 60 calendar days, then BEWUNDER shall have the sole option to terminate or suspend the Purchase Order. In case of the termination of this Purchase Order due to Force Majeure, each party has to bear its own costs and expenses and the Supplier is not entitled to claim payment of the Purchase Order Price.

## **§ 8 CoVid-19**

The Parties have concluded this Agreement in full knowledge and awareness of the current pandemic of Coronavirus (CoVid-19) and the Parties agree as follows:

BEWUNDER may terminate the Agreement with immediate effect in case the Project is cancelled following an administrative order issued by a competent authority or any other decision made by an official body with statutory power. In case of such termination of this Purchase Order, each party has to bear its own costs and expenses and the Supplier is not entitled to claim any outstanding payment of

the Purchase Order Price and neither Party will be liable for any indirect costs or loss of profits.

## **§ 9 Dispute Resolution**

- (1) If, at any time, any difference or dispute shall arise between the Parties concerning the interpretation or the application of the Purchase Order, or anything therein contained, or any rights or liabilities thereunder, which cannot be resolved amicably within sixty (60) days, the same shall be referred to and finally resolved by Arbitration, under the rules of the Dubai International Arbitration Centre. The number of Arbitrators shall be one. The seat of the Arbitration shall be Dubai, United Arab Emirates and the Language shall be English. The fact that proceedings have been initiated shall not suspend or modify in any way the obligations of the Parties pending the making of the court award.

## **§ 10 Variations**

- (1) BEWUNDER shall have the right at any time to make changes in the scope and time and place of delivery. If any such changes cause an increase or decrease in the cost or the time of performance of the Purchase Order, an equitable adjustment shall be mutually agreed and authorized in writing by the BEWUNDER. Where applicable, the same or comparable unit prices shall apply to the same or comparable items.

## **§ 11 Final Provisions**

- (1) The present Purchase Order along with its Annexes contains the full and sole agreement between the Parties at the time of Purchase Order conclusion. Verbal or written ancillary agreements have not been made. Modifications and additions to this Purchase Order or any ancillary agreements shall be made as detailed in writing and signed by both Parties.
- (2) The Purchase Order is subject to the laws of the Country where the Purchase Order was issued and the English language.
- (3) Should one or more of the provisions in this Terms of Purchase be or become invalid or unenforceable, the rest of the Terms of Purchase shall remain effective in any case.