

DELIVERY & INVOICING INSTRUCTIONS:

A. Instruction for SUPPLIER(S):

Applicable to the supply of the GOODS only:

1. The DELIVERY of DELIVERABLES must be supported with DELIVERY ORDER(S).
2. All DELIVERY ORDERS must be **signed and stamped** by the MCMC Project Manager on the date of the DELIVERY of the DELIVERABLES unless such DELIVERABLES are rejected by MCMC.
3. All INVOICES must be sent to the MCMC Project Manager by the 3rd working day from the date of the DELIVERY of the DELIVERABLES.
4. INVOICES must be supported by **signed and stamped** DELIVERY ORDERS and other relevant supporting documents as may be required by MCMC.
5. INVOICES and DELIVERY ORDERS must contain important information such as PURCHASE ORDER Number, name of the MCMC Project Managers and the PURCHASE REQUISITION Number (if applicable).
Please do not bill multiple PURCHASE ORDERS in a single INVOICE.
6. Non-compliance of the above requirements will result in delay in payments by MCMC.

Applicable to the provision of the SERVICES only:

1. The DELIVERY of DELIVERABLES must be supported with REPORT(S). There may be instances where more than one REPORT is required for one SERVICES procured via one PURCHASE ORDER.
2. All REPORTS must be **verified** against the VERIFICATION CRITERIA, **signed and stamped** by the MCMC Project Manager on the date of the DELIVERY of the DELIVERABLES unless such DELIVERABLES are rejected by MCMC.
3. All INVOICES must be sent to the MCMC Project Manager by the 3rd working day from the date of the DELIVERY of the DELIVERABLES.
4. INVOICES must be supported by **verified and accepted** REPORTS and other relevant supporting documents as may be required by MCMC.
5. INVOICES and REPORTS must contain important information such as PURCHASE ORDER Number, name of the MCMC Project Managers and the PURCHASE REQUISITION Number (if applicable).
Please do not bill multiple PURCHASE ORDERS in a single INVOICE.
6. Non-compliance of the above requirements will result in delay in payments by MCMC.

B. Instructions for the MCMC Project Manager

1. All INVOICES must be verified by the MCMC Project Manager.
2. All verified INVOICES must be sent to the **Procurement Sourcing Department** of MCMC by the 5th working day from the date of the DELIVERY of the DELIVERABLES.

TERMS OF PURCHASE

DEFINITIONS

'DELIVERY' in respect of GOODS, means the handing over of the DELIVERABLES to MCMC's authorized representative at the site specified in the PURCHASE ORDER, and in respect of SERVICES, means the complete and satisfactory performance of the SERVICES or any part thereof (if the provision of the SERVICES is done in stages or involves payment based on milestones), as verified by MCMC's authorized representative.

'DELIVERABLES' means the GOODS or the SERVICES (or any part thereof) as stated in the PURCHASE ORDER, and where applicable, as stated in the SUPPLIER's proposal or quotation, as the case may be. For SERVICES, the PURCHASE ORDER may be accompanied by an implementation schedule/plan if the provision of SERVICES is done in stages or involves payment based on milestones.

'DELIVERY DATE' means the scheduled date for the DELIVERY of the GOODS or SERVICES which is specified in the PURCHASE ORDER. In the event that the scheduled date is not expressly mentioned in the PURCHASE ORDER, the delivery of the GOODS or SERVICES (as the case may be) shall be within five (5) working days upon issuance of the PURCHASE ORDER.

'DELIVERY ORDER' in respect of GOODS, means a legal document issued by the SUPPLIER evidencing the release of the DELIVERABLES, or instructing any third party that holds the stock to release the DELIVERABLES, to MCMC as the named recipient in the order.

'FORCE MAJEURE' means an act, omission or circumstance relied on by one party as an event and over which that party, its agents, sub-contractors or suppliers could not reasonably have exercised control including acts of God, acts or omissions of government, riots, acts of war, strike or lockout, acts of terrorism, epidemics, earthquakes or other natural disasters.

'GOODS' means the physical products, materials, equipment, articles or items that have been purchased by MCMC via the issuance of the PURCHASE ORDER.

'INSOLVENCY EVENT' means any of the following events:

(a) the SUPPLIER is insolvent or is unable to pay its debts as they fall due or admits in writing its inability to pay its debts as they fall due or is deemed unable to pay its debts; (b) any notice is issued or any step is taken by any person, or any resolution is passed, or any petition is presented or any order or declaration is made, for the bankruptcy, insolvency or dissolution.

'PURCHASE REQUISITION' means a document generated by the MCMC Project Manager to notify the purchasing department of the GOODS or SERVICES that he needs to purchase or procure, the quantity, and/or specifications, and the relevant time frame for completing the purchase or procurement. It may also contain the authorization to proceed with the purchase.

'INVOICE' means a document issued by the SUPPLIER to MCMC listing the goods or services supplied and stating the sum of money due and other descriptions including taxation.

'MCMC' means the Malaysian Communications and Multimedia Commission, the entity issuing the PURCHASE ORDER and procuring the DELIVERABLES.

'PURCHASE ORDER' means a commercial document and first official offer issued by MCMC to the SUPPLIER, indicating types, quantities, and/or specifications of the DELIVERABLES (as the case may be) and the agreed prices for the DELIVERABLES.

'QUOTATION' means SUPPLIER's quotation responding to MCMC request for quotation.

'REPORT' in respect of SERVICES, means the written document(s) required to be prepared by the SUPPLIER as may be determined by MCMC, evidencing the completion of the SERVICES. For avoidance of doubt, depending on the type of SERVICES, more than one REPORT may be required to signify the completion of the SERVICES if the provision of the SERVICES is done in stages or involves payment based on milestones. In this context, more than one INVOICE may be issued by the SUPPLIER.

'SERVICES' means the provision of services by the SUPPLIER in accordance with the PURCHASE ORDER that are distinct from the provision of the GOODS.

'SUPPLIER' means the supplier of the GOODS or the SERVICES, as the case may be.

'VERIFICATION CRITERIA' means the specific requirements required to be provided by the SUPPLIER under the provision of the scope of SERVICES as specified in the QUOTATION and any other scope of SERVICES as agreed by MCMC and the SUPPLIER.

'WARRANTY PERIOD' means a period of twelve (12) months from the date mutually agreed by both the SUPPLIER and MCMC as the effective date for the WARRANTY PERIOD.

This Order is subject to the Terms of Purchase stipulated at the end of this PURCHASE ORDER.

1. SPECIFICATIONS

- 1.1 The DELIVERABLES delivered by the SUPPLIER to MCMC shall comply strictly with MCMC's specifications and/or requirements stated in the PURCHASE ORDER or attached thereto. In the absence of such specifications and in all cases other than the supply of SERVICES, the DELIVERABLES shall meet the manufacturer's prevailing published specifications.
- 1.2 The DELIVERABLES, in respect of GOODS, shall be free from any faults and defects, failing which MCMC may elect to either reject any such DELIVERABLES without any liability whatsoever to the SUPPLIER, or, to require the SUPPLIER to replace, repair or make good any faults, defects or non-conformance with stated specifications and/or requirements, at its own cost, within a specified timeline specified by MCMC.
- 1.3 In respect of SERVICES, MCMC shall be entitled to reject the DELIVERABLES or any part thereof in the event that the DELIVERABLES or any part thereof are not in accordance with the stated specifications and/or requirements. In the event of such rejection, the SUPPLIER shall make good of the non-conformance with the stated specifications and/or requirements, at its own cost, within a specified timeline specified by MCMC.

2. DELIVERY

- 2.1 The SUPPLIER agrees that time is of the essence in the performance of its obligations under the PURCHASE ORDER and shall adhere strictly to the DELIVERY DATES or the attached implementation schedule/plan, as the case may be.
- 2.2 In respect of GOODS, where the DELIVERABLES are changed due to obsolescence, substitution or other reasons, the SUPPLIER shall notify MCMC of such change before DELIVERY. The SUPPLIER will be responsible for supplying all labour, tools, equipment and materials to DELIVER the DELIVERABLES without any additional charge to MCMC.
- 2.3 Unless otherwise specified, the SUPPLIER must DELIVER the DELIVERABLES in full, and to MCMC's satisfaction before any payment shall become due from MCMC. In the event of partial DELIVERY (except where it is following the DELIVERY of part of SERVICES based on an implementation schedule/plan), MCMC reserves the right to reject the partial DELIVERABLES and the SUPPLIER shall indemnify and hold harmless MCMC from all costs and expenses which may be incurred by MCMC including without limitation, taxes, duties, freight and warehousing charges.

3. WARRANTY

- 3.1 In respect of GOODS, the SUPPLIER warrants that the DELIVERABLES shall:
 - (i) be free from defects in materials and workmanship;
 - (ii) be of merchantable quality and fit for the purpose for which they are required;
 - (iii) meet the manufacturers published specifications or standards;
 - (iv) be new (not used or reconditioned); and

- (v) not originate from or be manufactured whether partly or wholly in countries with which trade relations by the Malaysian government and/or the relevant authorities is prohibited.

In respect of SERVICES, the SUPPLIER warrants that the SERVICES shall be performed in a professional workmanlike manner with the degree of skill and care that is required by current, good and sound professional procedures and meet the satisfaction of MCMC. The SUPPLIER further warrants that it has the right to grant and hereby grants (as the case may be) to MCMC a non-exclusive, perpetual, royalty-free license to use the intellectual property rights of the SUPPLIER contained in any documents supplied to MCMC as part of the SERVICES.

- 3.2 These warranties in respect of the DELIVERABLES under the supply of GOODS shall survive inspection, acceptance and payment. If any defect occurs within the WARRANTY PERIOD, the SUPPLIER shall, at its own cost promptly investigate, repair or replace or re-perform the DELIVERABLES, failing which BUYER may rectify or replace or re-perform them and take remedial action to ensure the DELIVERABLES meet the specifications and requirements of MCMC.
- 3.3 The SUPPLIER shall reimburse MCMC all costs including, without limitation, transportation and reinstallation costs, taxes and customs duties incurred by MCMC. The warranty on repaired or replaced or re-performed DELIVERABLES shall continue for the WARRANTY PERIOD, from the date of successful rectification, or replacement or re-performance, as the case may be.

4. PAYMENT

- 4.1 Unless otherwise stated in the PURCHASE ORDER, payment shall be remitted thirty (30) days from receipt of the undisputed original INVOICE containing itemized description of all expenses, charges, costs, description and appropriate supporting documents evidencing receipt of the DELIVERABLES by MCMC. Charges for services, equipment/materials, software license fees and royalties, if applicable, shall be separately itemized.
- 4.2 All INVOICES shall be submitted after receipt by MCMC of the DELIVERABLES in good order at the DELIVERY point specified in the PURCHASE ORDER or satisfactory performance of the DELIVERABLES, as the case may be, or such other time as may be agreed by the parties and specified in the PURCHASE ORDER. If the thirtieth (30th) day falls on a gazetted public holiday in Selangor then the next working day shall be deemed to be the due date for payment.
- 4.3 The SUPPLIER must invoice MCMC and MCMC will not be obligated to pay, for any DELIVERABLES that are not invoiced in accordance with these Terms of Purchase within three (3) months after the date the INVOICE was due to be submitted.
- 4.4 MCMC shall have the right at all times to set-off from any amount due or payable to the SUPPLIER hereunder, all costs, damages, expenses, claims or charges for which the SUPPLIER is liable to MCMC. Payment shall not constitute acceptance or approval of the DELIVERABLES or waiver by MCMC of any right.

5. PRICE

- 5.1 Unless otherwise stated in the PURCHASE ORDER, prices shall be firm and shall include the use of any and all intellectual property rights including third party licenses (if any) and all applicable taxes, levies, duties, and fiscal charges imposed by any government authority except for customs duties and sales taxes imposed by the Malaysian authorities (if any). If the prices are quoted in Ringgit Malaysia, no variation to the prices shall be made as a consequence of fluctuations in exchange rates.
- 5.2 Notwithstanding clause 5.1 above, if any goods and services tax ('GST') is imposed on any DELIVERABLES by the relevant Malaysian authorities, MCMC shall pay the appropriate GST under each INVOICE **PROVIDED THAT** the SUPPLIER has complied with the following:
- (a) the SUPPLIER is duly registered by the relevant Malaysian authorities to collect GST;
 - (b) the appropriate GST for each INVOICE is included under the relevant invoice at the time of the issuance of the INVOICE; and
 - (c) all invoices provided by the SUPPLIER to MCMC comply with the relevant GST law enforced by the Malaysian authorities.

The parties agree to use reasonable efforts to do everything required by the relevant GST law to enable or assist the other party to claim or verify any input tax credit, set off, rebate or refund in respect of any GST paid or payable in connection with such DELIVERABLES.

6. TAXES AND DUTIES

- 6.1. MCMC reserves the right to withhold taxes on payment due to the SUPPLIER if such withholdings are required by law. The payment by MCMC to the relevant government authority of the amount of money withheld shall relieve MCMC from any further obligations to the SUPPLIER with respect to any amount so withheld. The SUPPLIER shall not dispose or otherwise deal in the DELIVERABLES including without limitation, any scrap or damaged materials, without the prior written consent of MCMC in the event the DELIVERABLES are imported under MCMC's customs' duty exemption.

7. DELAYS

- 7.1. Without prejudice to MCMC's other rights stated in the PURCHASE ORDER or at law, if the SUPPLIER fails to DELIVER or complete the DELIVERABLES by the DELIVERY DATE, the SUPPLIER shall pay as liquidated damages calculated commencing from the DELIVERY DATE up to such time of the actual DELIVERY in accordance with the PURCHASE ORDER, at the rate of one percent (1%) per week or part thereof of the total value of the PURCHASE ORDER provided that the total liquidated damages shall not exceed twenty percent (20%) of the total value. Payment of such liquidated damages shall not relieve the SUPPLIER from its obligation to DELIVER the DELIVERABLES or from any other liability or obligation under these Terms of Purchase and shall be without prejudice to MCMC's other rights under these Terms of Purchase, the PURCHASE ORDER or at law.

8. INDEMNITY

- 8.1. The SUPPLIER shall indemnify MCMC, its officers, directors, employees, agents and representatives, and hold them harmless against and/or from any and all claims, proceedings, demands, costs, expenses and liabilities (including legal fees) brought against MCMC in respect of any matters that is caused by the SUPPLIER or its employees, agents or subcontractors, including in respect of the following matters:
- (a) breach of these Terms of Purchase;
 - (b) damage or loss arising from a claim that MCMC's use of the DELIVERABLES infringes the intellectual property rights of any third parties including without limitation, the patent, copyright, trade secret or other proprietary rights of third parties; and
 - (c) damage, loss, injury, including death, to any person or property (whether negligent or otherwise).

9. COMPLIANCE WITH LAW

- 9.1. The SUPPLIER shall, at its own expense, obtain all permits and licences, pay all fees and comply and ensure compliance by its employees, agents or sub-contractors with all applicable laws which include any rules, regulations, ordinances, by-laws and directions of any government authority and shall indemnify and hold MCMC safe and harmless against and/or from, all claims, demands, losses, fines and penalties which in any way result from the SUPPLIER's failure to comply with such applicable laws.

10. CONFLICT OF INTEREST

- 10.1 The SUPPLIER shall exercise reasonable care and diligence to prevent any action from being taken or condition from arising which conflicts with MCMC's best interest. This obligation shall apply to the activities of the employees, agents and sub-contractors of the SUPPLIER arising from the PURCHASE ORDER. The SUPPLIER's effort shall include, but not be limited to, establishing precautions to prevent its employees or agents or sub-contractors from making, receiving, providing or offering gifts, entertainment, payments, loans or other considerations for the purpose of influencing individuals to act contrary to MCMC's interest.
- 10.2 The SUPPLIER warrants that it has not offered or given, and will not offer or give to any employee, agent or authorized representative of MCMC, a payment or gratuity for obtaining or rewarding favorable treatment by MCMC with respect to the terms, conditions, price, performance, or award of the PURCHASE ORDER. Breach of this undertaking may result in immediate termination of the PURCHASE ORDER by MCMC without any liability whatsoever to the SUPPLIER.

12. PROPRIETARY RIGHTS

- 12.1. All items in any medium prepared for or originated from the SUPPLIER, for MCMC at request in connection with the DELIVERABLES shall be the exclusive property of MCMC. The SUPPLIER hereby assigns and transfers to MCMC by way of present assignment and transfer all present and future rights, title and interest in and to such items including without limitation, intellectual property rights.

13. FORCE MAJEURE

- 13.1. Neither party shall be liable to the other for any failure to perform its obligations under these Terms of Purchase due to FORCE MAJEURE. The party experiencing the FORCE MAJEURE event shall notify the other party as soon as reasonably possible, and shall cooperate in minimizing the impact of such FORCE MAJEURE. If the FORCE MAJEURE event continues for a period of thirty (30) days or if the FORCE MAJEURE event, once having ceased, shall recur so that the condition of FORCE MAJEURE continues for an aggregate of sixty (60) days in any six (6) month period, the injured party may elect to terminate the PURCHASE ORDER, in whole or in part upon written notice. An event or act shall not be excused or delayed by FORCE MAJEURE if it could reasonably be circumvented through use of alternative sources, work around plans or other means within the control of such party experiencing the FORCE MAJEURE event.

14. CONFIDENTIALITY

- 14.1 The SUPPLIER shall preserve in strict confidence all confidential, sensitive or proprietary information of MCMC received from MCMC ("Confidential Information"), whether or not marked "Proprietary" or "Confidential," and whether oral or written, using the same degree of care as it takes to preserve and safeguard its own confidential or proprietary information (but in no event less than a reasonable degree of care.)
- 14.2 Confidential Information shall not include information that the SUPPLIER can demonstrate by written evidence was publicly available at the time of disclosure or was independently developed by the SUPPLIER without reference to Confidential Information.
- 14.3 The SUPPLIER will not:
- (i) disclose or cause to be disclosed at any time any Confidential Information obtained from MCMC; or
 - (ii) use or cause to be used any of such Confidential Information for any purpose, except for the purpose of adhering to these Terms of Purchase or as required under the PURCHASE ORDER.
- 14.4 The SUPPLIER represents, warrants and covenants that it shall maintain physical, electronic and procedural safeguards designed to:
- (i) insure the security, integrity and confidentiality of all Confidential Information;

- (ii) protect against any anticipated threats or hazards to the security, integrity or confidentiality of the Confidential Information; and
- (iii) protect against unauthorized access to or use or disclosure of the Confidential Information.

14.5 The foregoing obligation of confidentiality shall survive the termination of the PURCHASE ORDER.

15. TERMINATION

15.1. MCMC may terminate the PURCHASE ORDER by written notice in whole or in part without any liability if:

- (i) the SUPPLIER is in material breach of any of its obligations under these Terms of Purchase or the PURCHASE ORDER, which breach is not capable of cure, or if capable of cure, the SUPPLIER does not cure such breach within thirty (30) days after written notice thereof from MCMC; or
- (ii) upon the occurrence of an INSOLVENCY EVENT.

16. CONFLICTING TERMS

16.1 The following descending order of precedence shall apply in the event of any conflict in the documents comprising the PURCHASE ORDER:

- (i) instructions or terms stated in the PURCHASE ORDER;
- (ii) attachments attached to the PURCHASE ORDER; and
- (iii) these Terms of Purchase.

16.2 In the event of any conflict in any of the documents comprised in the PURCHASE ORDER, the SUPPLIER shall immediately consult MCMC for a resolution before proceeding with the DELIVERY in respect of the DELIVERABLES.

17. CHANGES

17.1. Any changes to the PURCHASE ORDER or these Terms of Purchase, including any variation to the DELIVERY DATE shall be in writing and signed by an authorized representative of MCMC. None of the terms stated in the PURCHASE ORDER may be modified except by written instrument signed by an authorized representative of the party against which such modifications are sought to be enforced. Each DELIVERY received by MCMC from the SUPPLIER shall be deemed to be made pursuant to the terms in the PURCHASE ORDER, notwithstanding any terms that may be contained in any acknowledgment, receipt or INVOICE or other form of documentation issued by the SUPPLIER.

18. INSURANCE

- 18.1. The SUPPLIER shall take out and maintain at its own expense a professional indemnity insurance, workmen compensation, third-party liability insurance (as the case may be) and such other insurance as may be necessary or reasonable in the circumstances and for an appropriate amount for any single or series of claims arising out of an event in connection with its personnel and the services performed by the SUPPLIER pursuant to the PURCHASE ORDER.

19. RECORDS AND AUDITS

- 19.1. Upon reasonable notice, MCMC reserves the right to inspect or audit the SUPPLIER's and/or their authorized representatives' books and records, and to retain copies thereof, including on the operations and processes relating to the SERVICES and/or supply of GOODS. The SUPPLIER shall maintain complete and accurate records of all charges incurred by MCMC under the PURCHASE ORDER, in accordance with the generally accepted accounting principles, for a period of seven (7) years from the date of receipt of final payment by the SUPPLIER.

20. LIMITATION OF LIABILITY

- 20.1. Notwithstanding anything to the contrary in the PURCHASE ORDER or these Terms of Purchase, MCMC's liability to the SUPPLIER hereunder shall not, under any circumstances, be greater than the total amount of the PURCHASE ORDER indicated herein.

21. ASSIGNMENT

- 21.1. The SUPPLIER shall not assign, sub-contract or otherwise dispose of any of its obligations or rights under the PURCHASE ORDER to any other person without the previous consent in writing of MCMC. Any attempted or purported assignment/subcontracting of the DELIVERABLES without MCMC's prior written consent shall be void and MCMC may, in addition to and without prejudice to other rights and remedies available to MCMC, terminate the PURCHASE ORDER.

22. ENTIRE AGREEMENT

- 22.1. The PURCHASE ORDER and these Terms of Purchase constitute the entire agreement between the SUPPLIER and MCMC and supersede all prior oral or written communications of the parties with respect to the DELIVERABLES.

23. GOVERNING LAW AND JURISDICTION

- 23.1. The PURCHASE ORDER shall be construed in accordance with the laws of Malaysia. The parties submit to the non-exclusive jurisdiction of the Malaysian courts.