



TERMS AND CONDITIONS OF PURCHASE ORDER

The following are the terms and conditions upon which the order on the front of this document is given by National Commercial Bank Jamaica Limited a company duly incorporated under the laws of Jamaica with its registered office at 32 Trafalgar Road, Kingston 10 (hereinafter referred to as “NCB”) to the supplier named on the front of this document (“the Supplier”) for the supply of the goods and or services described on the front of this document (the goods and/or service).

1. ENTIRE CONTRACT

- a) This purchase order is subject to the terms and conditions set out below, at the front of this order and any document that is attached to or incorporated by reference into this order (collectively called the “Conditions”) which together constitute an offer to purchase the goods and/or services from the Supplier.
- b) Where there is any inconsistency between the terms and conditions set out below and the terms and conditions set out on the front of this order or in any document that is attached or incorporated by reference into this order then the terms and conditions in the latter will take precedence over the terms and condition set out below and can be constituted as varying them to the extent of any such inconsistencies.
- c) If the Supplier who purports to accept this order does so subject to the Conditions, he shall be deemed to have waived any conditions which are inconsistent with these Conditions.

2. PRICES

- a) Any prices specified in the order are fixed, firm and not subject to escalation and include all extras (for example and not limited to, freight, cartage, insurance, packing, use of supply of pallets and containers, etc.). Unless otherwise specified in these Conditions no increase in prices will be allowed unless approved by NCB in writing.

3. PAYMENTS AND INVOICES

- a) Subject to paragraph (b) of this section, unless otherwise specified on the front of this order or agreed in writing with the Supplier, all invoices for the goods and/or services will be paid within thirty (30) days of the end of the month in which delivery of the goods and/or performance of the services is completed or the invoice for the same is received by NCB, whichever is later.

- b) In the event that NCB agrees that delivery of the goods may be made by installments or that progress payments may be claimed by the Supplier in respect of the goods and/or services:
 - i) the Supplier may submit an invoice for each installment or progress payment separately and each invoice will be paid within thirty (30) days of the end of the month in which delivery of the relevant goods and/or performance of the relevant services is completed, or the relevant invoice is received by NCB, whichever is later; and
 - ii) a failure by the Supplier to deliver one installment or to complete any stage or part of the supply of the goods and/or performance of the services on time shall entitle NCB to terminate this order (either as to the whole or only as to the undelivered or unperformed part).
- c) Unless otherwise specified in these Conditions or requested by NCB, all invoices must be sent to the NCB address on the front of this order.

4. DELIVERY

- a) The goods and /or services shall be delivered and/or performed in the manner and by the date specified in these Conditions. Time shall be of the essence with respect to the delivery and or performance of the goods and/or services.
- b) Unless otherwise specified in these Conditions or agreed in writing by NCB, the goods may not be delivered by installments and the Supplier will not be entitled to progress payments in respect or on account of the supply of the goods and/or performance of the services.
- c) All invoices, packing slips, delivery dockets and correspondence must show the order number and NCB's Stock Number(s), where applicable, shown on the front of this document. Failure to do so may result in delays in processing such documents, in inspection and acceptance of goods and payments and shall entitle NCB in such circumstances to claim an extension of time for attending to the same.
- d) The goods the subject of this order shall be delivered free on board at the destination indicated on the front of this document, unless otherwise specified in these Conditions.
- e) NCB reserves the right to refuse to accept liability for any goods delivered in excess of the quantity ordered or not in accordance with any delivery schedule referred to in these Conditions.
- f) No quantity over and above that stated on the order will be paid for without written authority having been obtained from NCB beforehand to supply same. Any unauthorized and unaccepted excess is liable to be rejected. The Supplier agrees that NCB will not be held liable for payment or safe return of any quantity of goods shipped in excess of amount stated on the order.

- g) All deliveries must be accompanied by a delivery docket and receipt of goods must be acknowledged in writing by an authorized representative of NCB.

5. INSPECTION AND TITLE

- a) All goods delivered to NCB are subject to their inspection by authorized NCB representatives and the signing of a delivery docket will not constitute acceptance of the goods by NCB.
- b) Notwithstanding the acceptance of delivery or the payment by NCB of the whole or any part of the purchase price therefore, all goods shall be subject to inspection and testing by NCB after arrival and unpacking at the ultimate destination. If goods are to be incorporated into any equipment or premises such inspection and testing may be carried out after installation or incorporation and under operating conditions. If the goods are found to be unsatisfactory, defective or of inferior quality or workmanship or not in accordance with these Conditions NCB may, without prejudice to any other right or remedy available to it in respect of the same, reject the goods and return the same to the Supplier at the Supplier's cost and expense whereupon the Supplier shall upon demand by NCB reimburse NCB for any amount paid by NCB to the Supplier and for the costs and expenses incurred by NCB in returning the goods.
- c) NCB also reserves the right to inspect and where practicable test the goods whilst they are in the course of being produced or installed and may for this purpose enter upon the premises of the Supplier from time to time. NCB may reject any work performed or being performed that does not conform to this order, whereupon the work rejected shall be redone at no additional cost or expense to NCB. Any such inspection shall not relieve the Supplier of any of its obligations under these Conditions.
- d) Save and except in respect of goods rejected by NCB, title to goods may pass after delivery and NCB after the goods have been properly delivered and inspected by NCB.
- e) In the event that any part payment has been made by NCB in respect of goods and the same has been accepted in writing by NCB (whether or not the goods have been delivered) title to the goods shall pass to NCB provided that the risk for the goods shall remain with the Supplier until the goods are properly delivered to NCB.
- f) Test Certificates must accompany shipment(s), where applicable.
- g) Any risk arising from damage to the goods will be borne by NCB only on actual delivery of said goods in compliance with the delivery instructions, or any other instructions given in writing by NCB. Any loss or damage prior to delivery prior to delivery will be borne by the Supplier.

6. WARRANTIES

The supplier warrants that:

- a) The goods and/or services shall comply with specifications and with any samples previously supplied by the Supplier and otherwise be in accordance with these Conditions.
- b) The goods shall be of merchantable quality and free of defects in material and workmanship.
- c) The goods shall be reasonably fit for the purpose or results for which they are required by NCB and shall be of such a nature and quality that they might reasonably be expected to achieve that result.
- d) Services shall be rendered with due care and skill and any materials supplied in connection with those services will be reasonably fit for the purpose for which they are supplied.
- e) Goods shall, unless otherwise specified in these conditions, be new and comply strictly with the specifications stated on the order.
- f) The Supplier has a right to sell the goods and the goods are sold free from all charges, liens or encumbrances whatsoever.
- g) All packages must be adequately packed for the specified mode delivery. The Supplier will be held responsible for any damage incurred due to poor or insufficient packing.

The foregoing warranties are in addition to any express warranties given by the Supplier and any warranties implied by law.

Warranty Certificates should accompany goods, where applicable.

7. CONFIDENTIAL INFORMATION

Any specifications, engineering and other data, software drawings, sketches, blueprints and other documents provided by NCB (or any third party at the request of NCB) to the Supplier for the purposes of or in the course of meeting this order or produced by the Supplier specifically for the purposes of or in the course of meeting this order belong to NCB and are confidential and thus the supplier shall:

- a) not use or copy them for any purpose other than the fulfillment of this order,
- b) not disclose them to any other person without the prior written consent of NCB, and
- c) return or hand the same (including if so demanded by NCB all copies) to NCB for completion of the delivery of the goods and/or performance of the services.

- d) The Supplier shall not, without the prior written consent of NCB advertise, announce or allow to be advertised or announced, that the goods have been supplied to NCB pursuant to any order.

8. PATENTS, ETC.

The Supplier warrants that the manufacture, supply or use of the goods and/or services will not infringe upon the rights of any third party (whether copyright, registered design, patent, trademark, confidential information or otherwise) or violate any applicable law. The Supplier shall indemnify and keep NCB indemnified against any loss, damage, liability, cost and expenses arising from any breach of this warranty.

9. NON ASSIGNMENT

This order and any contract resulting therefrom is personal to the Supplier and may not be assigned, mortgaged, charged or dealt with in any way. Without limiting the aforementioned, the Supplier may not, except with the prior agreement in writing of NCB, subcontract the whole or any part of its obligations under these Conditions.

10. CANCELLATION

- a) NCB may at any time prior to delivery of the goods and/or full performance of the services cancel all or part of this order.
- b) Without limiting paragraph (a) of this section, should default be made by the Supplier in complying with these Conditions, or should the Supplier, be or become bankrupt, NCB may forthwith terminate any contract resulting from this Order by notice in writing to the Supplier, without prejudice to any other right or remedy of NCB under or in respect of these Conditions or such event. NCB shall not be obliged to make any payment to the Supplier in respect of such termination. In this paragraph “bankrupt” means and includes the situation where execution has been levied upon the whole or any part of the assets of the Supplier and, in respect of a Supplier who is an individual, the situation where the Supplier has committed an act of bankruptcy or is or becomes bankrupt or subject to any deed of assignment, arrangement, or composition with his creditors in accordance with the bankruptcy laws, and in respect of a supplier who is a corporation, the situation where the Supplier is wound up or is the subject of the presentation of a petition or the making of an order or the passing of a resolution, for its winding up, or is placed under official management, or causes a meeting of its creditors to be summoned for the purpose of placing it under official management, or has a receiver or receiver and manager appointed in respect of all or any part of its assets, or has an inspector appointed in respect to all or any part of its affairs or is subject to an application for any such appointment, or has a compromise or arrangement proposed between itself and its creditors or any class of them.

- c) Where a cancellation is not a termination or contract pursuant to paragraph (b) of this Condition NCB shall:
- i) give written notice to the Supplier whereupon the Supplier shall cease all work in relation to the goods and/or services;
 - ii) provided the Supplier is not in default under these Conditions be liable where goods are not yet completed for delivery or services not yet fully performed, only for:
 - (1) costs actually incurred by the supplier up to the date of cancellation,
 - (2) such winding down or receivership expenses as shall be agreed between NCB and the Supplier; and
 - iii) provided the Supplier is not in default under these Conditions be liable, where the goods are ready for delivery, for the cost thereof as specified in these Conditions only where the Supplier is not able readily to dispose of the goods elsewhere.
 - iv) in the In the event of any dispute regarding the amount of NCB's liability under this paragraph (c) such amount shall be determined by NCB's auditors for the time being, who shall act as experts and not as arbitrators, and whose decisions shall be final and binding on the parties. Upon payment of any such amounts, title to any materials or goods, whether completed or not intended for fulfillment of this Order shall pass to NCB.

11. INSURANCE AND SAFETY PRECAUTIONS

If any work necessary for the purposes of this order is to be performed on any NCB's premises:

- a) the Supplier shall indemnify and keep NCB fully indemnified from and against any loss, liability, claim, suit and costs which NCB may suffer or sustain or incur or have made against it (including legal costs) as a result of or contributed to by the fault of, the negligence of or the creation of some dangerous thing or state of affairs by the Supplier or its employees, agents or permitted sub-contractors. The Supplier or any permitted sub-contractor shall hold such insurance as NCB may deem satisfactory to cover the liability of the Supplier or permitted sub-contractor under this section. Prior to the commencement of any such work the supplier shall produce to NCB if required evidence that it and any permitted sub-contractor holds such satisfactory insurance. Without limiting the aforementioned, such insurance shall include workers compensation insurance or other equivalent cover or protection for or in respect of all employees or other persons for whom the Supplier, or any such sub-contractor as the case may be, is responsible in respect of such matters; and
- b) the Supplier shall at all times exercise all necessary precautions for the safety of persons who might be affected by such work, and without limiting the aforementioned, shall at all times duly comply with the requirements of any applicable statute, regulation, ordinance or by-law, and/or any authority or instrumentality having jurisdiction on the matter, and with any

direction that may from time to time be given by any duly authorized employee or representative or NCB.

- c) Where the Supplier is providing services to NCB the relationship between NCB and the Supplier is that of principal and independent contractor.

12. ENVIRONMENT

NCB requires our Suppliers of goods and services to adhere to all applicable local and international (if applicable) requirements.

13. PRESCRIBED PAYMENTS

NCB shall be entitled to deduct from payment for services provided against this order, such amount as is required by law unless, unless, prior to payment, the Supplier submits the satisfactory proof that he is the holder of the necessary deduction exemption certificate or deduction variation certificate.

14. WAIVER

The failure by NCB to enforce any of these Conditions or to take action in respect of any breach is continuing and habitual or repeated from time to time and no estoppel may be pleaded against NCB either at law or in equity in any circumstances whatsoever.

15. FORCE MAJEURE

NCB shall not be liable or considered in default under this Agreement when the delay of performance is caused by circumstances beyond its reasonable control and occurring without its fault or negligence such as, but not limited to, acts of God, war, strikes, fires, floods, power failures, governmental restrictions, provided that notice is given to the relevant party immediately.

16. GOVERNING LAW

These conditions shall be governed by and construed in accordance with the laws of Jamaica and the parties shall submit to the jurisdiction of the Jamaican Courts.