



## STANDARD TERMS AND CONDITIONS OF PURCHASE

MSP 302 F1 (ASIA)

### 1. Definitions and Interpretation

In these Conditions and elsewhere in the Contract, unless a contrary intention appears the following shall mean:

**Anti-Bribery and Anti-Corruption Legislation** includes any statute, law, code, regulation or similar instrument in connection with the prohibition of bribery and corruption (including by virtue of the place of domicile or operations of RCR and the Supplier) including but not limited to the Criminal Code Act 1995(Cth), the Crimes Act 1914(Cth), the Financial Management and Accountability Act 1997(Cth), the Commonwealth Authorities and Companies Act 1997(Cth), the Corporations Act 2001(Cth), the Malaysian Anti-Corruption Commission Act 2009 (MACC Act) and the Bribery Act 2010(UK).

**Goods** means the goods, products, materials or equipment supplied by the Supplier and specified in Item 3a of the Contract Particulars and otherwise in the Contract.

**Completion Date** means the date specified in Item 7 of the Contract Particulars or any extension thereof agreed in writing between the parties, on which the Supplier must complete the Services or deliver the Goods.

**Conditions** mean these standard RCR terms and conditions.

**Contract** means the agreement between the Supplier and RCR evidenced by the Conditions, the Contract Particulars and all other documents which are listed in Item 9 of the Contract Particulars or incorporated by written reference into the Contract by RCR. The Conditions take precedence over all other documents including those listed in Item 9 and any other documents provided by the Supplier.

**Contract Price** means the price or fees submitted by the Supplier either as a lump sum fixed price, hourly rate, schedule of fees, cost plus including disbursements or a combination of these as detailed in the Contract and in Item 4 of the Contract Particulars.

**Delivery Place** means the place the Goods are to be delivered as specified in Item 8 of the Contract Particulars.

**Intellectual Property** means any intellectual property whether protected by statute, at common law or in equity, including any patent, invention, copyright, or design right (whether or not registrable), in any design, specification, process, technique, software, know-how, trade secret, technical information, financial information, business method and confidential information.

**PPSA** means the Personal Property Securities Act 1999

**RCR** means the subsidiary of RCR Tomlinson Ltd (ABN 81 008 898 486) described in Item 1 of the Contract Particulars or, if no description has been provided, the entity to which the Supplier is providing the Services or supplying the Goods.

**Services** means all the services the Supplier has agreed to perform for RCR under its offer and specified in Item 3 of the Contract Particulars.

**Site** means the location where the Services are to be performed.

**Supplier** means the party described in Item 2 of the Contract Particulars or, if no description has been provided, the entity providing the Goods or Services to RCR.

**Warranty Period** means the period described in clause 8.1 of these Conditions.

**Works** means the scope of works being tendered for as detailed in the Supplier's offer and the Contract, which is inclusive of any Goods and/or Services.

1.1 These Conditions become valid and binding on the parties when a Purchase Order from RCR containing details of the Supplier and the Works is accepted by the Supplier, in response to an offer made by the Supplier.

1.2 If the Supplier fails to acknowledge the Purchase Order in accordance with clause 1.1 of these Conditions within 10 days from receipt and proceeds with the Works, then these Conditions, the Purchase Order and all documents which are either attached to the Purchase Order or incorporated therein by reference by RCR shall be deemed the entire agreement between the parties.

### 2. Contract Price, Payment and GST

2.1 The Contract Price is in Malaysian Ringgit (unless otherwise stated) and is the agreed Contract Price for the whole of the Works offered, inclusive of testing, packing, documenting and freight to the Delivery Place. The Contract Price is inclusive of all taxes and charges whatsoever and howsoever incurred including SST and GST (unless otherwise stated).

2.2 The Contract Price cannot be varied unless agreed by the parties in writing.

2.3 To the extent that rates for variations are specified, they shall be used by the Supplier to calculate the cost of a variation, but otherwise the cost of the variation shall be estimated by the Supplier at the lowest reasonable cost.

2.4 Unless otherwise stated in Item 4 of the Contract Particulars, the Supplier shall invoice RCR at the end of each month for the Works duly completed in that month. Invoices received earlier than the end of the month, will be deemed as received at the end of the month. RCR will (subject to the Works having been satisfactorily received, or completed and accepted by RCR) pay the amount properly invoiced by the Supplier (except to the extent that the invoice is in dispute). RCR will pay to the Supplier all undisputed amounts. The amount payable by RCR will be paid 45 days from month end in which the Supplier's tax invoice is received by RCR.

2.5 RCR may deduct from such amount due and payable by RCR pursuant to this Contract, any amounts payable by the Supplier to RCR on any account whatsoever.

### 3. Packaging

The Supplier, at its cost, shall properly and carefully pack and protect the Goods in accordance with industry best practice having regard to methods of carriage, handling and to climatic conditions on the way to the Delivery Place. The Supplier will provide all lifting and handling of Goods in transit.

### 4. Standard to Conform to Specifications

The Supplier shall supply the Goods and provide the Services in accordance with the specifications, drawings, samples or other description (if any) furnished by RCR and contained in the Contract.

### 5. Delivery

Time is of the essence as to the Supplier's performance under this Contract. The delivery of the Goods to the Delivery Place and/or the completion of the Services must be achieved by the



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### 6. Sub-Contract

- 6.1 The Supplier may not subcontract, assign or transfer any of its rights or obligations under this Contract without the prior consent of RCR, which consent may be conditional or withheld by RCR in its absolute discretion.
- 6.2 The Supplier must manage the performance of its subcontractor(s) to ensure that the quality and timeliness of its performance meets the requirements of this Contract.
- 6.3 The Supplier must ensure that its subcontractor(s) effect and maintain the insurances specified in Item 10 of the Contract Particulars.
- 6.4 The Supplier must ensure that its subcontractor(s) obtains and assigns to RCR all the usual customary trade warranties or has the ability to assign the benefit of such warranties to RCR upon completion of the Works.

### 7. Warranty

The Supplier warrants that:

- 7.1 it will exercise the skill, care and diligence to the standard acceptable to the trade, industry or profession of a similar nature;
- 7.2 it will perform the Works in a timely and professional manner using appropriately trained and experienced personnel;
- 7.3 all applicable standards will be applied to the Works;
- 7.4 the Works will be fit for purpose;
- 7.5 it will perform the Works in accordance with the Contract and the documents described in Item 9; and
- 7.6 further, in respect of any Goods supplied:
  - 7.6.1 the Goods are free of all liens and encumbrances and the Supplier has good and marketable title to the Goods;
  - 7.6.2 the Goods will be of merchantable quality and be free from substantial defect in workmanship;
  - 7.6.3 the Supplier has ensured that RCR and its client (if requested by RCR) has been assigned all the usual and customary trade warranties and/or has the benefit of such warranties upon completion of the Works and that copies of such warranties will be supplied to RCR with invoices for payment; and
  - 7.6.4 any Goods manufactured or fabricated or Services performed by the Supplier will be performed to the standard agreed by the parties and as set out in Items 3 and 9 of the Contract Particulars.

### 8. Warranty Period and Rectification of Defective Works

- 8.1 The Supplier warrants all Works and workmanship against any defect for the period stated in Item 6 of the Contract Particulars and where no period is stated, for a period of 18 months from the receipt of the Goods, 12 months from the completion of the Services or 12 months from the date in which the Goods were first put into service, whichever the later.
- 8.2 If any part of the Works are found by RCR to be defective and/or not in compliance with the Contract the Supplier

must immediately repair or replace the Works which are damaged, defective or found not to be in accordance with the Contract during the Warranty Period, to the satisfaction of RCR at the Supplier's costs

- 8.3 The Supplier shall be responsible for all incurred costs associated with the repair or replacement of the Works, including transportation costs.

### 9. Confidentiality

- 9.1 The Supplier may not, and must ensure that its subcontractors do not, divulge to third parties for use any information relating to the Works (including Intellectual Property), until such information is within the public domain or express written consent has been given by RCR.
- 9.2 The Supplier shall indemnify RCR and keep RCR indemnified from and against all liabilities, losses, damages, actions, suits, proceedings, claims, costs and expenses arising from any breach of this clause by the Supplier.

### 10. Intellectual Property

- 10.1 The specifications, drawings, technical instructions or any other documentation whatsoever issued to the Supplier by RCR during tendering and at the time of establishing this Contract will remain the property of RCR.
- 10.2 The Supplier hereby grants to RCR a perpetual, irrevocable, non-exclusive, royalty free, transferable licence to use all Intellectual Property which is used or developed by the Supplier in connection with the Works under the Contract.
- 10.3 The Supplier shall indemnify and hold harmless RCR against and from any claim alleging an infringement of all intellectual property rights, moral rights and ownership rights in any information provided by the Supplier to RCR.
- 10.4 The Supplier warrants that:
  - 10.4.1 the Works and licence granted by it to RCR do not infringe any intellectual property rights of any third party; and
  - 10.4.2 the Works are not subject to any intellectual property rights of any third party that in any way restrict the rights of RCR or its client's to use or sell the same.

### 11. Indemnity

- 11.1 The Supplier will indemnify RCR and keep RCR indemnified from and against all liabilities, losses, damages, actions, suits, proceedings, claims, costs and expenses in respect of:
  - 11.1.1 injury to (including illness or disability), or death, of any person; and
  - 11.1.2 loss or destruction of or damage to or loss of use of any property,caused or contributed to by the act or omission of the Supplier or its directors, officers, employees, agents or contractors or by any breach of this Contract by the Supplier (including any breach of a warranty), except to the extent that it has been caused or contributed to by the wilful default or unlawful or negligent act or omission of RCR.



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### 12. Insurances

The Supplier shall effect and maintain the insurances in Item 10 of the Contract Particulars or equivalent insurances in the jurisdiction as per clause 21.

### 13. Termination

13.1 RCR may terminate the Contract by written notice to the Supplier:

13.1.1 in its absolute discretion, giving the Supplier 14 days notice; or

13.1.2 in the event the Supplier defaults on any of the terms of this Contract, for any reason (including insolvency), giving the Supplier 10 days notice.

13.2 In the event of termination due to default by the Supplier, RCR can appoint another supplier to complete the uncompleted portion of the Works at the Supplier's cost.

13.3 Termination of the Contract pursuant to this clause shall be without prejudice to the rights of RCR.

### 14. Reporting

The Supplier must report progress of the Works to RCR on a regular basis.

### 15. Inspection

RCR's nominated representative may inspect the Works from time to time during the progress of the Works, and on the Completion Date and will examine the documentation to ensure compliance to the Contract. Any technical or commercial questions or notices should be addressed to him/her and his/her written instructions in response to those questions or notices will become part of this Contract and should be accepted as lawful instructions for the execution of the Contract.

### 16. Access

RCR's nominated representative shall be afforded free access to the place nominated in Item 5 of the Contract Particulars or any other place where the Works are being carried out during the progress of the Contract for the purpose of expediting or inspection of the Works.

### 17. Title and Risk

17.1 Property and ownership of any Goods supplied will pass to RCR from the Supplier on the earlier of payment by RCR for those Goods or receipt of the Goods at the Delivery Place

17.2 Risk in the Works passes to RCR upon acceptance of the Works at the Delivery Place.

### 18. Dispute Resolution

If a difference or dispute between the parties arises in connection with the subject matter or interpretation of this Contract, including a dispute concerning a claim in tort, under statute or on any other basis in law or equity available under the law governing the Contract ('Dispute'), either party may by hand or registered post give the other party written notice of the dispute identifying and providing details of the dispute and titled Dispute Notice ('Dispute Notice').

Within seven (7) days of receipt of a Dispute Notice, representatives of the parties having authority to bind the parties shall confer to seek to resolve the Dispute or agree on a method of doing so and whether that method shall be binding. If a resolution or method of resolution has not been agreed within twenty one (21) days of the receipt of the Dispute Notice,

the General Manager of the parties shall confer for the same purpose as the parties' representatives. All aspects of such conference(s) shall be privileged.

Neither party may institute legal proceedings in respect of any Dispute unless a Dispute Notice in respect thereof has first been given and then only after a period of twenty eight (28) days from receipt of such Dispute Notice has elapsed.

### 19. General

19.1 RCR's liability to the Supplier is limited to its liability to pay the Contract Price, as amended from time to time, in accordance with this Contract.

19.2 If any provision of this Contract is unenforceable, such unenforceability shall not affect any other provision or any other part of the Contract.

19.3 Any waiver by RCR of strict compliance with any provision of this Contract shall not be effective unless in writing and signed by an authorised officer of RCR.

### 20. Place of Contract and Governing Jurisdiction

The Contract is governed by the law as stipulated in Item 11 of the Contract Particulars and the parties submit to the non-exclusive jurisdiction of those Courts. If no place is nominated in the Contract Particulars, the jurisdiction and place of contract is Malaysia.

### 21. Anti-Bribery and Corruption

21.1 RCR is committed to operating in a manner consistent with the laws of the jurisdiction in which it operates, including laws relating to anti-bribery and anti corruption.

21.2 The Supplier represents and warrants it complies with Anti-Bribery and Anti-Corruption Legislation and that it has and maintains reasonable and effective anti-bribery and anti-corruption policies and procedures, such policies and procedures to be made available to RCR for inspection on demand.

21.3 The Supplier represents and warrants it has not and will not breach any Anti-Bribery and Anti-Corruption Legislation in connection with the Contract.

21.4 If the Supplier becomes aware of any breach or suspects a breach of Anti-Bribery and Anti-Corruption Legislation in connection with the Contract it must immediately notify RCR in writing and provide reasonable details of such breach or suspected breach and provide reasonable access to information, books and records relevant to such breach.

21.5 If RCR, acting reasonably, believes the Supplier has breached Anti-Bribery and Anti-Corruption Legislation in connection with the Contract, RCR must give the Supplier written notice of such. If the Supplier, within 30 days of that written notice, fails to show there is no reasonable basis to conclude a breach has occurred, RCR may terminate the Contract without further notice to the Supplier.

### 22. Security

22.1 Prior to the final payment and before completion of the Works, the Supplier must provide RCR with a security for the Warranty Period equal to 5% of the Contract Price ('Security').

22.2 The Supplier must provide the Security in the form of an unconditional, irrevocable, enforceable bankers



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undertaking in a form accepted by RCR, in its absolute discretion. The undertaking must:

22.2.1 have an expiry date not later than 24 months from the date of delivery to the Delivery Place;

22.2.2 be payable on demand; and

22.2.3 be given by a bank acceptable to RCR in its absolute discretion.

22.3 RCR will not be obliged to make further payment in accordance with these Conditions until the Supplier has complied with this clause.

22.4 RCR may have recourse to the Security if the Supplier fails to rectify or make good any defect in the Goods or Services within a reasonable time of being requested to do so by RCR or if RCR has any claim against the Supplier.

22.5 The Supplier agrees it will not take any steps to injunct or restrain:

22.5.1 RCR from using any sums received from the conversion of the Security or otherwise exercising its rights in relation to the Security; or

22.5.2 the issuer of the Security exercising its rights or performing its obligations under the Security.

22.5.3 RCR shall return the Security at the expiration of the Warranty Period.

### **23. Liquidated Damages**

23.1 The Supplier will pay to RCR the sum equivalent to 0.15% of the Contract Price for each and every day during which the delivery of the Goods or the completion of the Services is delayed after the Completion Date or any extension thereof up to a maximum of 5% of the Contract Price in aggregate.

23.2 The parties agree that the value of liquidated damages payable by the Supplier is a genuine and reasonable pre estimate of the loss to RCR for the Supplier's delay in delivering the Goods or completing the Services.



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### CONTRACT PARTICULARS

**Date:**

<b>Parties</b>	<b>1</b>	<b>RCR</b>	<i>[Insert name of RCR entity]</i>
		<b>RCR's Representative</b>	Attention: Address:  Phone: Fax: Mobile: Email:
	<b>2</b>	<b>Supplier</b>	<i>[insert name Supplier entity]</i>
		<b>Supplier's Representative</b>	Attention: Address:  Phone: Fax: Mobile: Email:
<b>Services</b>	<b>3</b>	<b>Services</b>	
	<b>3a</b>	<b>Goods</b>	
<b>Contract Price and Payment</b>	<b>4</b>	<b>Contract Price</b>	<i>(total hours sum plus any other costs)</i>
		<b>Hourly Rate and total sum</b>	<i>(hourly rate x number of hours = total sum)</i>
		<b>Time for Payment</b>	
	<b>5</b>	<b>Supplier's Site</b>	
	<b>6</b>	<b>Defects Liability Period</b>	[ X ] months from delivery
	<b>7</b>	<b>Completion Date</b>	
	<b>8</b>	<b>Delivery Place</b>	
	<b>9</b>	<b>Additional Documents</b>	List all documents including: <ul style="list-style-type: none"> <li>• schedules</li> <li>• specifications</li> <li>• annexures</li> <li>• drawings</li> </ul>
	<b>10</b>	<b>Insurances</b>	<input type="checkbox"/> workers compensation in accordance with the applicable legislation; <input type="checkbox"/> professional indemnity for an amount not less than \$500,000; <input type="checkbox"/> product liability of not less than \$20 million per occurrence; <input type="checkbox"/> public liability of not less than \$20 million per occurrence; <input type="checkbox"/> motor vehicle of not less than \$10 million per occurrence. <input type="checkbox"/> Transit insurance for the replacement value of the Goods
	<b>11</b>	<b>Jurisdiction</b>	<i>(fill in applicable Malaysia)</i>