

## TERMS AND CONDITIONS OF PURCHASE ORDER

### 1. Definitions

- 1.1. Acceptance Conditions means:
- 1.1.1. the Goods have been delivered to the delivery address in the Contract and/or Purchase Order;
- 1.1.2. the Company has notified the Supplier in writing that the Goods are in compliance with the provisions and specifications of the Contract and/or Purchase Order.
- 1.2. Act means the Malaysian Arbitration Act 2005.
- 1.3. Best Practice means the best practice within the industry, profession or trade of the Supplier.
- 1.4. Charges means all taxes, duties, levies, charges and payment including but not limited to goods and services tax, value added tax and import duties.
- 1.5. Company means the company named in the Purchase Order as the customer or client.
- 1.6. Completion Date means the completion date of the performance of the Services.
- 1.7. Confidential Information means any information relating to the Services, the Company, Guinness Anchor Berhad, their business, trade secrets, customers, suppliers, the database compiled for the Company or any other information of whatever nature which Guinness Anchor Berhad and the Company may deem to be confidential and which the Supplier has or shall hereafter become possessed of.
- 1.8. Contract means the contract for sale of goods between the Company and the Supplier, if any.
- 1.9. Data Processor,  
Data Subject,  
Data User,  
Personal Data and  
Process shall each have the same meaning as set out in the Malaysian Personal Data Protection Act 2010.
- 1.10. Data Protection Legislation means the Malaysian Personal Data Protection Act 2010 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice registered with or issued by the Personal Data Protection Commissioner of Malaysia.
- 1.11. Deductible Tax means withholding taxes, duties, levies or any other such tax collectively.
- 1.12. Force Majeure Event means any present or future law, regulation or order, act of God, earthquake, flood, fire epidemic, accident, explosion, casualty, riot, civil disturbance, act or threat of terrorism, war or armed conflict or by reason of any other cause or causes of any similar nature.)
- 1.13. The Goods means the goods specified in the Purchase Order and all parts and components of them and or all work and services to be done by the Supplier as specified in the Purchase Order or under the terms contained herein.
- 1.14. GST means goods and services tax.
- 1.15. GST Act means the Goods and Services Tax Act 2014.

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- 1.16. Incoterms means the 2010 Edition of Incoterms published by the International Chamber of Commerce. Expressions used in the Contract and/or Purchase Order shall have the meaning ascribed to them by the 2010 Edition of Incoterms as modified by these Terms and Conditions.
- 1.17. Intellectual Property means all registered and unregistered rights in trademarks, trade names, logos, distinctive signs, trade dress, design rights, inventions, copyrights, patents, pending applications, domain names, URL's and any other addresses for use on the internet, websites, software (including reports, scripts, source code, computer systems and other technical documentation related thereto), data and database rights, rights in confidential information, customer lists, "know-how" and any other intellectual property or any similar, corresponding or equivalent rights to any of the foregoing, and including any right to apply for registration of these rights relating to all material, processes, data, drawings, information, reports, know-how, inventions, trade secrets, improvements or techniques.
- 1.18. KLRCA means Kuala Lumpur Regional Centre of Arbitration.
- 1.19. Materials mean all correspondences, manuals, information, works, materials, documents, papers, information, data and disks (in whatever form or medium or format).
- 1.20. Named Consultants mean the names of the Supplier's employees and/or agents who are to provide the Services.
- 1.21. Performance Bond means performance bond for the timely, faithful and complete performance of the Supplier's obligations under the Contract and/or Purchase Order and the observance by the Supplier of all its obligations and restrictions in the Contract and/or Purchase Order.
- 1.22. Purchase Order means the Company's order(s) in respect of the Goods issued by the Company to the Supplier strictly based on the terms and conditions herein.
- 1.23. Reports means all reports, documentation, presentations, software or drawing in whatever format that the Supplier shall or may create or deliver to the company as part of the Services.
- 1.24. The Services means the services specified in the Purchase Order and all parts and components of them or under the terms contained herein.
- 1.25. Specification Document means a specification for the Services to be provided and such specification shall specify the Services to be undertaken, the timings for the provision of the Services, and the Completion Date and the fees payable.
- 1.26. Supplier means the supplier to whom the Purchase Order is issued i.e. the vendor named in the Purchase Order.
- 1.27. Worldwide means the whole world.

## **2. Existence of Contract**

- 2.1. The Company shall be bound by its Purchase Order only if it is issued on the Company's form of purchase order.

- 2.2. These conditions shall be incorporated into the Contract and/or Purchase Order to the entire exclusion of any terms or conditions stipulated or referred to by the Supplier and no acknowledgement or other document executed by the Supplier or forwarded by the Supplier to the Company (including but not limited to, quotations, estimates, conformations of order, delivery notes or similar documents) containing terms or conditions other than specified herein or in the Contract and/or Purchase Order shall be binding on the Company unless such terms and conditions are expressly agreed to, in writing, by the Company and the Company's agreement therewith is notified to the Supplier.
- 2.3. A purchase order for the Goods or Services shall be deemed to be an offer by the Company to purchase Goods or Services pursuant and subject to the terms and conditions herein.
- 2.4. Any act to fulfill the order for the Goods or Services by the Supplier shall be deemed conclusive evidence of the Supplier's acceptance of the Contract and/or Purchase Order.

### **3. Variation**

- 3.1. The Company shall inform the Supplier of any variation or addition to the terms and conditions herein by serving a notice of 30 days such change on the Supplier.

### **4. Price and Payment**

- 4.1. The Supplier shall be responsible for all Charges imposed in respect of the supply of the Goods or Services including but not limited to the Materials and the procuring of the Materials, and safe delivery of Goods by the Supplier to the Company. The price of the Goods or the fees payable in respect of the Services shall be that stated in the Contract and/or Purchase Order and it is inclusive of any Charges.
- 4.2. For the avoidance of doubt, the Company shall not pay for any work outside the scope of the Services unless such work and the fees in respect thereof have been agreed to in writing by the Company.
- 4.3. The Supplier shall not mark up any fees charged by third party suppliers or charge the Company any third party commission in respect of work done by third party suppliers.
- 4.4. Save as specified in the Contract and/or Purchase Order, the Supplier shall not invoice the Company for the Goods or Services prior to complete delivery of the Goods or fulfilment of Services in accordance with the Purchase Order. The due date and payment period shall not start prior to the complete delivery and/or fulfilment and the Company's receipt of invoice and all supporting documents as may be reasonably requested by the Company. The invoice shall be issued in duplicate indicating the Purchase Order number failure which the invoices shall not be payable. The Company shall pay for the price of the Goods or the fee payable in respect of the Services as per the Purchase Order provided always that such payment need not be made if the Company has rejected the Goods and/or the delivery of Goods or fulfilment of Services is not rendered in accordance with the Purchase Order. Upon the Company's request, the Supplier shall provide the Company with relevant documentation such as copies of invoices of third parties.
- 4.5. Payments by the Company do not constitute acknowledgement that the Goods and deliveries of Goods or provision of Services are as stipulated in the Purchase Order. Further, any waiver or forbearance of failure of the Company in insisting in any one or more instances upon the performance of any provisions of the Purchase Order shall not be construed as a waiver or relinquishment and the Supplier's obligation in respect of such future performance shall continue in full force and effect.

- 4.6. The Company reserves the right to withhold any disputed portion of invoiced amount if there is a valid reason to do so and shall pay the invoiced amount net of the disputed portion. The Company also reserves the right to withhold and pay a portion of the moneys due to the Supplier under the Contract and/or Purchase Order in compliance with the requirements of the Inland Revenue Board of Malaysia and/or other relevant authorities.
- 4.7. For Suppliers outside of Malaysia providing Services to the Company, the Supplier is required to indicate in its invoice and in any other documents as may be required by the Company, the location(s) where the Services is being performed for the purpose of withholding tax computation.

## **5. Quality and Description of the Goods**

- 5.1. In the event the Supplier requires volume estimates, the volume estimates given by the Company are intended only for planning purposes by the Supplier and do not obligate the Company to purchase such volumes. Volume estimates, forecasts or any other advance notices shall not obligate the Company in any way to purchase any Goods.
- 5.2. The Supplier warrants, represents, undertakes and guarantees that the Goods supplied under the Contract and/or Purchase Order will:–
  - 5.2.1. be free from defects (manifest or latent), in materials and workmanship;
  - 5.2.2. be free from design defects;
  - 5.2.3. conform as to quality, quantity and description with the specifications and particulars as stated in quotations, estimates, brochures, sales, marketing and technical literature or material (in whatever format made available by the Supplier) and/or the Purchase Order supplied by, or on behalf of, the Supplier;
  - 5.2.4. conform and be equal in all respects to the samples, patterns or specifications provided or given by either party;
  - 5.2.5. be capable of any standard of performance specified in the Purchase Order or which can reasonably be expected of it;
  - 5.2.6. if the purpose for which the Goods are required is made known to the Supplier either expressly or by implication, be fit for that purpose in every aspect. The Supplier acknowledges and agrees that the approval of the Company of any designs provided by the Supplier will not relieve the Supplier of any of its obligations under this Clause 5.2.6; and
  - 5.2.7. be unused and of good material.

## **6. Inspection and Test**

- 6.1. The Company's representative shall be entitled on the Company's authority to inspect or test the Goods (at any stage of the production of the Goods) at any reasonable time at the premises of the Supplier or any other premises where the Goods are being manufactured or stored prior to the delivery of the Goods to the Company.
- 6.2. The Supplier agrees to cooperate fully with the Company's representative in order to facilitate the inspection, most particularly by granting the Company's representative access to any location, installation, documentation or information requested and by answering all questions of the Company's representative. The resources required for the inspection shall be provided by the party on whose premises the inspection takes place and at the Supplier's cost.

- 6.3. The Supplier shall undertake all measures agreed by the parties at the end of the inspection within the time limits and under the conditions so agreed. Most particularly, the Supplier undertakes to make all necessary quality improvements to the Goods in order to achieve the quality standards set forth in the Contract and/or Purchase Order, should the inspection establish that such quality standards are not met.
- 6.4. No inspection or test or failure to inspect or test shall (a) constitute acceptance by the Company and the Company shall have the right to reject the Goods after the Company has had a reasonable opportunity of inspecting the Goods further to actual delivery and receipt of the Goods by the Company or (b) affect any liability of the Supplier under the Contract and/or this terms and conditions.

## **7. Packing**

- 7.1. The Supplier shall be responsible for the packing of the Goods and shall ensure that the packing in respect of the Goods shall be packaged as is customary and reasonable in the situation and the packing shall conform with:-
- 7.1.1. the requirements of the Company set out in the Contract and/or Purchase Order or otherwise to be specified at any time prior to delivery including but not limited to duly specified packing note and all the associated documentation. The Company is entitled to use this documentation in its sole discretion, including duplication thereof for its own use or for use by Heineken group companies;
- 7.1.2. the best industrial practices due regard being given to the manner mode and length of transportation and the name of the Goods;
- 7.1.3. all relevant and applicable laws and regulations, including but not limited to that port of origin and port of destination; and
- 7.1.4. all safety requirements and practices.
- 7.2. Packaging material shall be used by the Supplier, and supplied without charge to the Company. [The Supplier shall collect and dispose of packaging material free of charge at the Company's request. The Company can also choose to return the packaging material to the Supplier at the Supplier's expense and risk to a destination to be stated by the Supplier. It shall not be returned to the Supplier (unless parties agree otherwise in writing prior to the delivery date of the Goods).]
- 7.3. The Supplier shall provide the Company with copies of all applicable licences, documents, information, specifications and instructions necessary for safe and proper transport, use, treatment, process and storage of the Goods and with all certificates of analysis/conformity as supplied by customs clearance in a timely manner.

## **8. The Services**

- 8.1. The Supplier shall provide the Services to the Company for the price stipulated in the Contract and/or Purchase Order subject to the provisions of the Contract and/or Purchase Order.
- 8.2. If required by the Company, at the commencement of the Services to the Company, the Supplier shall submit to the Company a Specification Document.
- 8.3. On receipt of the Specification Document, the Company will sign a copy and return the copy to the Supplier to signify the Company's agreement as to the Services to be provided and the fees payable to the Supplier. The Supplier acknowledges and agrees that the obligation to carry out the Services shall commence on the date the Company signs the Specification Document.

8.4. The Specification Document may be varied, or added to, from time to time, in writing and signed by both parties. The changes shall be clearly identified together with the additional or different level of fees to be paid by the Company.

## **9. Performance of the Services**

- 9.1. The Services shall be performed at the location stipulated in the Contract and/or Purchase Order. The parties shall agree on the time (if not specified in the Specification Document, Contract and/or Purchase Order) of the performance of the Services by the Supplier.
- 9.2. The Supplier shall complete the Services by the Completion Date or such other dates as agreed by the parties.
- 9.3. The Company, at its sole discretion, may require that any employee or agent of the Supplier have their involvement in the performance of the Services terminated. The Company shall provide written notice of such requirement to the Supplier, which shall take effect on the giving of the notice. The Supplier shall supply a replacement which is acceptable to the Company. In the event the Supplier's employee or agent is replaced, a reasonable period will be regarded as a working-in period for which no remuneration will be due.
- 9.4. The Company is not liable for any costs relating to the replacement or induction of the Supplier employee or agent.
- 9.5. In case of illness, disability, absence, suspension or dismissal of Supplier's employee or agent, the Supplier shall notify the Company without delay and will arrange for adequate replacements if such replacements are necessary for the Supplier to perform the Services in accordance with the Contract and/or Purchase Order and/or the Purchase Order. If the progress of the project makes earlier replacement necessary, the Supplier shall be responsible for arranging such replacement if so requested by the Company.
- 9.6. The Supplier's employee or agent shall not in any way be considered an employee of the Company nor shall Supplier's employee or agent be entitled to participate in any benefits or privileges granted by the Company to its employees.
- 9.7. If required by the Company, the Supplier may only carry out the Services in the presence of at least one representative of the Company within 2 working days..
- 9.8. Where the Supplier fails to complete the Services by the Completion Date, the Company shall be entitled to either:-
- 9.5.1. terminate the Contract and/or Purchase Order;
  - 9.5.2. source for the same or similar Services from another supplier; and/or
  - 9.5.3. recover the cost of engaging another supplier to perform the Services which exceeds the price of the Services in the Specification Document, Contract and/or Purchase Order.
- 9.9. If required by the Company, the Services shall be carried out by the Named Consultants.
- 9.10. The Supplier shall not make changes to the Named Consultants except with the prior written approval of the Company.
- 9.11. If the Supplier wishes to change any of the Named Consultants, the Supplier shall supply such details as the Company may require (including but not limited to, full details of the professional and other qualifications, experience and work history of the replacement).
- 9.12. If the Named Consultants are not available or become unavailable to provide the Services, and there are no satisfactory replacements in the opinion of the Company, then the Contract and/or Purchase Order may be terminated by the Company.

## **10. Reporting requirements in respect of the Services**

- 10.1. If required by the Company, the Specification Document, Contract and/or Purchase Order shall specify the Reports that are to be produced during or on completion of the Services.
- 10.2. The Supplier shall provide regular progress reports (including reports of time taken against the timing given in the Specification Document, Contract and/or Purchase Order) at the frequency and in the report requested by the Company.
- 10.3. The Supplier shall supply such number of copies of the Reports to the Company as the Company reasonably requests, at the cost of the Supplier.

## **11. Cancellation**

- 11.1. The Company shall have the right to cancel the order for the Goods or Services (or any part of the Goods or Services). The cancellation shall be made in writing. Unless otherwise agreed by the parties in writing, the Company shall not be liable to pay for any orders which are cancelled in accordance with this Clause 11.

## **12. Delivery**

- 12.1. The Supplier shall deliver the Goods not earlier or later than the time or time specified in the Purchase Order at the delivery point or points specified in the Purchase Order or as the Company directs. The delivery date or any other date and time agreed for delivery of the Goods shall be of the essence of the Contract and/or Purchase Order.
- 12.2. The Supplier shall furnish such programmes of delivery as the Company requires and shall promptly advise the Company in writing if such programmes are or are likely to be delayed.
- 12.3. The Supplier shall at its own expense redeliver any incorrectly delivered Goods to the correct delivery point, return any items delivered in excess to the quantity specified in the Order or replace any defective Goods delivered to the Company at the Company's request.
- 12.4. The Supplier shall give notice to the Company as soon as practicable if delivery of the Goods is likely to be delayed. The Company without prejudice to any other right shall have the right to cancel the Order or any part thereof and to impose a late penalty, if the delivery cannot in the opinion of the Company be made within the time specified in the Order or if an extension of time for delivery of the Goods has been given by the Company within that time
- 12.5. Unless otherwise provided, all Goods shall be delivered between the hours 8.00 am and 12.00 pm and between the hours of 1.00 pm and 4.00 pm on Mondays to Fridays and between the hours of 8.00 am (12.00 noon on Saturdays at the Company's warehouse and engineering store).
- 12.6. The Supplier shall comply with all delivery and carriage instructions stipulated in the Contract and/or Purchase Order or in any communication by the Company to the Supplier and all Goods supplied pursuant to the Contract and/or Purchaser Order shall be delivered at the Supplier's sole expense.
- 12.7. The Supplier shall provide to the Company a delivery note and/or any other document as may be required by the Company and/or under the law confirming the delivery of the goods and/or services and such document shall contain reference(s) to the Purchase Order(s) number, description and any other information as may be required by the Company.

- 12.8. In the event that the parties have agreed upon partial deliveries, each partial delivery shall be deemed to be a separate transaction and complaints regarding a partial delivery do not influence the further processing of an order.
- 12.9. Where the Supplier fails to deliver the Goods by the delivery date stipulated in the Contract and/or Purchase Order, the Company shall be entitled to either:-
- 12.9.1. terminate the Contract and/or Purchase Order;
  - 12.9.2. buy the same or similar Goods from another supplier; and/or
  - 12.9.3. recover the cost of buying the Goods from another supplier which exceeds the price of the Goods in the Contract and/or Purchase Order.
- 12.10. The Company is entitled to postpone the delivery of the Goods. In such instance, the Supplier shall ensure that the Goods are properly packaged, stored, preserved, kept separately, insured (irrespective of what the Supplier's obligation is pursuant to the relevant Incoterm, if any) and designated in such a way that the Goods are readily recognisable as being the Goods designated for the Company.
- 12.11. Inspection, testing or acceptance of the Goods by or on behalf of the Company does not release the Supplier from its obligations and guarantees.

### **13. Packaging**

- 13.1. The Supplier shall adequately pack and protect the Goods against damage and deterioration for delivery to the Company and the Supplier must take all precaution necessary to ensure that the condition of the Goods are maintained and not adversely affected throughout the transit period including any storage period between the place of first despatch of the Goods to the designated place of delivery.
- 13.2. All packages must be clearly marked with the address of the place of delivery and packing notes.

### **14. Passing of Risk**

- 14.1. Risk of damage to or loss of the Goods shall pass to the Company subject to the applicable Incoterms defined in the Contract and/or Purchase Order as per the 2010 Edition of Incoterms.

### **15. Passing of Title**

- 15.1. Notwithstanding delivery and the passing of risk in the Goods, the title in the Goods shall pass to the Company when the Goods are unconditionally accepted in accordance with the terms under the Contract and/or the Purchase Order by the Company.
- 15.2. If the Company provides the Supplier with materials including, but not limited to, raw materials, tools, drawings or specifications in order for the Supplier to be able to perform its obligations under the Contract and/or Purchase Order, any and all such materials shall remain the property of the Company. The Supplier shall store such materials separately from any objects belonging either to itself or third parties. The Supplier shall designate these materials as the property of the Company.
- 15.3. The Supplier hereby waives all its rights of retention and/or recovery in respect of the Goods or the materials referred to in Clause 15.2.

### **16. Deterioration in the Goods**



16.1. Without prejudice to the generality of the foregoing, the Supplier accepts the risk of deterioration of the Goods during the course of transit or delivery prior to acceptance of the Goods by the Company.

## **17. Acceptance of the Goods**

- 17.1. The Company shall not have accepted, or deemed to have accepted, the Goods until the Acceptance Conditions are fulfilled.
- 17.2. Although the Acceptance Conditions have been fulfilled, the Company may still reject the Goods and make a claim for damages where the Goods are not in complete compliance with the provisions and specifications of the Contract and/or Purchase Order within 14 working days of the notice given under Clause 1.1.2.

## **18. Acceptance of the Services**

- 18.1. The performance of the Services shall be deemed completed at the moment the Company has accepted the Services in writing.
- 18.2. Acceptance or payment by the Company does not release the Supplier from its obligations and guarantees.

## **19. Time**

- 19.1. If the Goods or any portion thereof are not delivered within the time or times specified in the Contract or any extension of such time or times, the Company shall be entitled to determine the Contract in respect of the Goods undelivered as aforesaid and of any other Goods already delivered under the Contract which cannot be effectively and commercially used by reason of the non-delivery of the Goods undelivered as aforesaid. On such determination the Company shall be entitled:
- 6.1.1. to return to the Supplier at the Supplier's risk and expense any of the Goods already delivered but which cannot be effectively and commercially used as aforesaid and to recover from the Supplier any monies paid by the Company in respect of such Goods.
- 6.1.2. to recover from the Supplier any additional expenditure reasonably incurred by the Company in obtaining other Goods in replacement of those in respect of which the Contract has been determined.

## **20. Rejection and Termination**

- 20.1. If any Goods do not conform to the Contract and/or the Purchase Order on any grounds at all including by reason of quality or being unfit for the purpose for which they are required the Company shall be entitled at its discretion without prejudice to any other remedy to exercise any one or more of the following rights:
- 20.1.1. reject the Goods in whole or in part;
- 20.1.2. permit the Supplier to replace, repair or reinstate the Goods so that they conform with the Goods stipulated in the Contract and/or Purchase Order; and
- 20.1.3. carry out or have carried out at the Supplier's expense such work as is necessary to conform the Goods to the Contract and/or Purchase Order.
- 20.2. Without prejudice to any other right or remedy the Company may have, the Company shall be entitled at its discretion to suspend the performance of or terminate the Contract and/or the Purchase Order at any time by notice in writing to the Supplier, such notice to take effect as specified in the notice:-

- 20.2.1. if the Supplier defaults in any of its obligations under the Contract and/or the Purchase Order and in the case of a breach capable of remedy within 30 days, the breach is not remedied within 30 days of the Supplier receiving notice specifying the breach and requiring it to be remedied;
  - 20.2.2. if the Supplier becomes insolvent, if an order is made or resolution is passed for the winding up of the Supplier, has a receiver appointed for its business or a significant part of its assets or is compulsory or voluntarily wound up or if the Company bona fide believes that any of such events may occur;
  - 20.2.3. if any conduct or omission by the Supplier and/or its employees, servants, staff, agents, or subcontractors is deemed, in the sole discretion of the Company, to be prejudicial to the Company's interests; or
  - 20.2.4. if the Supplier, in the Company's sole opinion, discharges its obligations hereunder, whether via a sub-contractor (where consented to by the Company) or otherwise, in a manner which results in, or causes any material impact or concern to, the Company in relation to: (a) government sanction; or (b) serious loss of business; or (c) serious loss of reputation;
  - 20.2.5. if the Supplier increases the prices agreed between the parties without the Company's prior written approval, regardless of whether the price increase was imposed on the Supplier by any contractual or statutory provision, European or national or international law or regulation, unless such price increase was agreed upon in the Contract and/or Purchase Order;
  - 20.2.6. if permits which are required for the performance of the Contract and/or Purchase Order are revoked;
  - 20.2.7. if the Supplier breaches the Company's Heineken Supplier Code;;
  - 20.2.8. in the event of a direct or indirect change of ownership of the Supplier's business or transfer of material portion of the share capital of the Supplier or the Supplier's parent company, if such change or transfer, in the Company's opinion, has or may have negative consequences for the Company;
  - 20.2.9. after an event of Force Majeure which has lasted for [thirty (30)] days or longer; or
  - 20.2.10. in the event of the Company has a reasonably held belief that any of the circumstances set out under sub-clauses 20.2.1 to 20.2.10 above is imminent.
- 20.3. In the event of termination:-
- 20.3.1. the Company shall be entitled to keep or take possession of any Goods or any items belonging to the Company and to enter any premises of the Supplier for that purpose; and
  - 20.3.2. the Supplier shall deliver and require that its employees and agents deliver to the Company:
    - (a) all Specification Documents and Reports, if any;
    - (b) all Materials wherever such Material is located or stored, and all copies of the Materials;
    - (c) any other property of the Company,which are in the possession or control of the Supplier or the Supplier's employees or agents at the date of termination;
  - 20.3.3. where the Supplier has been paid in advance, the Supplier shall refund the pro-rated amount for Services yet to be performed at the date of termination. Any such pro-rated amount shall be mutually determined by the parties hereto based on jointly agreed outstanding areas of work and the percentage of refund payable by the Supplier in respect of the same; and

- 20.3.4. where requested by the Company, the Supplier shall ensure a smooth transfer of responsibility or handover in respect of the Services to the Company or an appointed third party service provider in such manner as may be required by the Company.
- 20.4. If the Company terminates the Contract and/or Purchase Order the Supplier shall forthwith return to the Company all payments made and if the Company rejects any Goods the Supplier shall return all payments already made for the rejected Goods.
- 20.5. No failure or delay on the part of the Company to exercise any of its rights in respect of any default under the Contract and/or the Purchase Order by the Supplier shall prejudice its rights in connection with the same or any subsequent default.
- 20.6. Notwithstanding anything contained herein, the parties hereto agree that the Company may, without compensation, based on its business, or operational requirements, or needs (as may be determined at the Company's sole discretion), at any time terminate the Contract and/or Purchase Order upon giving a sixty (60) days (or such longer period as the Company may determine in its sole discretion) written notice to the Supplier.
- 20.7. All claims which the Company may have or come to have against the Supplier as a result of a suspension and/or termination pursuant to this Clause 20 shall be immediately due and payable in full.

## **21. Suspension**

- 21.1. Without prejudice to any other rights it may have, the Company may, in its absolute discretion, suspend the commencement of the Services where it reasonably believes that a delay in the commencement of the Services would be in the best interest of the Company. Should such suspension continue for a period of two (2) months or longer, the Company may elect to terminate the Contract and/or Purchase Order. In the event of such termination, the Supplier shall be entitled to payment for work already completed as of the date of termination subject to the provisions of Clause 4.

## **22. Warranty and Undertaking**

- 22.1. The Supplier warrants, represents and undertakes that:
- 22.1.1. it has full capacity and authority to enter into the Contract and/or accept the Purchase Order;
- 22.1.2. it has obtained and maintains all necessary and required licences, consents and permits to supply and deliver the Goods or perform the Services;
- 22.1.3. the use, possession, dealing with, disposal of all Goods delivered, or performance of the Services, or Specification Document or Reports, if any, hereunder do not infringe any Intellectual Property rights including but not limited to copyrights, trademarks, patents, and licenses or other restrictive agreements enforceable Worldwide. In the event of such infringement, the Supplier shall indemnify and hold the Company harmless from all claims asserted against the Company by any third party and reimburse the Company for all necessary expenses incurred in connection with said claims;
- 22.1.4. the Contract and/or Purchase Order constitutes valid, binding and enforceable obligations of the Supplier in accordance with their terms;

- 22.1.5. the execution and delivery and/or acceptance of the Contract and/or Purchase Order and the performance by the Supplier of its obligations hereunder shall not: (I) result in a breach of any provision of the memorandum or articles of association of the Supplier; (II) result in a breach of, or constitute a default under, any instrument agreement or arrangement to which Supplier is a party or by which the Supplier is bound; or (III) result in a breach of any order, judgment or decree of any court or governmental agency to which the Supplier is a party or by which the Supplier is bound; and
- 22.1.6. its employees, subcontractors and agents shall not do or omit to do anything which may cause the Company to lose any license, authority, consent or permission which it uses for the purpose of conducting its business.
- 22.2. The Supplier warrants, represents and undertakes that, in respect of the Goods:
  - 22.2.1. it has full clear and unencumbered title to all the Goods;
  - 22.2.2. at the date of delivery of any of the Goods, it shall hold such title in the Goods;
  - 22.2.3. at the date of delivery of any of the Goods, it will have full and unrestricted right, power and authority to sell, transfer and deliver all of the Goods to the Company. From that date, the Company shall acquire a valid and unencumbered title to the Goods;
  - 22.2.4. the Goods delivered are compliant with all relevant and applicable statutes, European and national and international laws, regulations and/or self-regulatory rules, inter alia with regard to quality, health, safety, environment and hygiene, both in the country of delivery as in the country for which the Goods are destined; and
  - 22.2.5. the Goods delivered are compliant with all relevant and applicable policies, standards procedures and corporate social responsibility the Company has enacted including the changes made from time to time.
- 22.3. The Supplier warrants, represents and undertakes that, in respect of the Services:
  - 22.3.1. it will carry out the Services by the Completion Date;
  - 22.3.2. it will carry out the Services with all due skill, care and diligence and in a good and workmanlike manner, and in accordance with the Best Practice;
  - 22.3.3. sufficient number of employees and agents possessing the necessary skills, professional qualifications and experience to perform the Services in accordance with the Specification Document, Contract and/or Purchase Order and Best Practice. The Supplier shall be responsible for all costs, fees, expenses and charges for raining necessary or required for the Supplier's employee and agents to perform the Services;
  - 22.3.4. the Services are rendered in conformity with the Company's conditions, drawings, samples, business needs and/or other data provided by the Company;
  - 22.3.5. the Services rendered meets or exceeds the market standard service levels for the type of Services for which service levels are set; and
  - 22.3.6. If the fulfilment by the Supplier of its obligations under the Contract and/or Purchase Order includes installation, construction, assembly, commissioning or other work to be carried out by the Supplier, such work shall be in accordance with good workmanship. The Supplier shall perform such work using an adequate or previously agreed number of persons and materials, components, tools, and equipment of appropriate or agreed specification or quality. The personnel used for this work shall be in possession of the appropriate or previously agreed qualifications. The Supplier guarantees that the work shall be

performed in accordance with agreed and legal requirements and that the intended results shall be achieved in accordance with the Contract and/or Purchase Order.

- 22.4. The Goods or Services performed shall comply in all respects with the description, requirements and specifications stated in the Contract and/or Purchase Order.
- 22.5. The Company shall be entitled at any time prior to delivery of the Goods to the Company or the performance of the Services to notify the Supplier of any modifications or amendments which the Company requires to be made in respect of any prior agreed specifications, provided that the modifications or amendments is communicated [7 days] prior to delivery of the Goods or the performance of the Services.
- 22.6. Without prejudice to the other rights of the Company, the Supplier undertakes at its own expense to make good any defects, replace or refund the purchase price of the Goods or any part thereof which are found to be defective or which do not comply with the specifications in the Purchase Order within the period stipulated by the Company in the Purchase Order.
- 22.7. The Supplier undertakes that the Goods are safe and without risk to health when properly used and comply in all respects with all relevant statues, regulations, bylaws and standard in force at the date of delivery including without prejudice to the generality of the foregoing the Food Act 1983.
- 22.8. The Supplier undertakes to provide to the Company all relevant information about potential risks of the Goods including but not limited to the composition of the Goods (e.g. material safety data sheet), that the Supplier is to supply to the Company.
- 22.9. The Supplier shall ensure, and instruct their employees and agents accordingly, that the Supplier's employees and agents take all reasonable steps to safeguard their safety and the safety of other persons who may be affected by their actions or omissions.
- 22.10. The Supplier further undertakes that it shall not, while the Contract and/or Purchase Order is in force and for a period of [two (2) years] thereafter, directly or indirectly, enter into any arrangement, venture, or agreement of any kind which will conflict with the best interest (whether of a commercial nature or otherwise) of the Heineken Malaysia Berhad, Heineken Marketing Malaysia Sdn Bhd, and/or any of their related companies. This obligation shall apply to the activities of the employees, servants, staff, agents, and sub-contractors of the Supplier arising from the Contract and/or Purchase Order. Without prejudice to the generality of the foregoing, the Supplier shall not whether as principal, employee, consultant, contractor, or otherwise, while the Contract and/or Purchase Order is in force and for a period of two (2) years thereafter, directly or indirectly, either for itself or on behalf of any other person, firm, or company, advise or undertake any work or enter into employment or consultancy with a competitor of the Company in Malaysia. The Supplier shall prevent any action from being taken or conditions from arising which conflict with the foregoing undertakings. The Supplier acknowledges that a breach of by the Supplier of the foregoing undertakings shall constitute a material and serious breach of the Contract and/or Purchase Order and in such an event, the Company shall, without prejudice to its rights under the law, have the right to forthwith terminate the Contract and/or Purchase Order (in the event that the Contract and/or Purchase Order is still in force at the time of the said breach).

## 23. Confidentiality

- 23.1. The Contract and/or Purchase Order and its subject matter including all designs, drawings, specifications and information which may be supplied in connection with the Contract and/or Purchase Order are confidential and shall not be disclosed or used for any unauthorized purpose.
- 23.2. The Supplier may not disclose, without the express written consent of the Company, that it is a supplier of the Company or inform third parties about the Contract and/or Purchase Order and shall only use for the purposes of the Contract and/or Purchase Order, the Confidential Information. The Supplier shall also ensure and in writing oblige its employees and agents that are working on the processing or the fulfillment of the Purchase Orders, to keep confidential; unless the employees have already by their employment contracts have been obliged to maintain confidentiality. The duty to maintain confidentiality shall also apply to all knowledge, obtained in the course of the co-operation, concerning the Company's organization, development and other structures and/or concerning the contents of the Contract and/or Purchase Orders, especially as to prices, amounts and conditions.
- 23.3. The Supplier is not to use and/or exploit such Confidential Information for its benefit or the benefit of a third party.
- 23.4. This Clause 23 shall survive termination of the Contract and/or Purchase Order for a period of 2 years.

**24. Liability and Indemnity**

- 24.1. The Supplier shall be liable for the acts or omissions of any of its employees, agents and/or sub-contractor and shall remain solely liable to the Company for the performance of the Supplier's obligations under the Contract and/or Purchase Order.
- 24.2. Without prejudice to Clause 12.9 and the other rights that the Company has, in addition, the Supplier shall be liable for all direct, indirect and consequential loss arising from any breach of the provision of the Contract and/or Purchase Order.
- 24.3. The Supplier shall indemnify the Company against any loss damage or injury to the Company, its employees and agents, any claim demand proceeding in respect of loss damage or injury made against the Company by third parties and any costs and expenses arising in connection with them which result from the Supplier's failure to comply with the Contract and/or Purchase Order or these terms and conditions (whether negligently or otherwise) and in particular resulting from any defect in the Goods or their materials, construction, workmanship or design (to the extent that the Supplier is responsible for design) or any claim that any Goods prepared or supplied under the Contract otherwise than exclusively in accordance with a design or instruction given by the Company infringe or are alleged to infringe the rights of any third party claimed under or in connection with any patent, registered design, copyright or breach of confidence. The indemnity shall apply regardless of whether title and/or risk to the Goods have passed to the Company. Such loss, cost, expense or damages may, at the Company's option, be set-off against any payment due to the Supplier hereunder.

**25. Non-Solicitation**

- 25.1. During the term of the Contract and/or Purchase Order and for [twelve (12) months] thereafter, the Supplier shall not, directly or indirectly, solicit, interfere with or endeavour to entice away from the Company any person who is an employee or ex-employee of the Company without the prior written consent of the Company provided that nothing herein shall prohibit the solicitation of any such employee who has responded to an advertisement by the Supplier in the media inviting applicants for job vacancies.

## **26. Performance Bond (Where Applicable)**

- 26.1. If requested by the Company, the Supplier shall, at its own cost, provide the Company with a Performance Bond. The Performance Bond shall be in the form of an irrevocable and unconditional on demand bank guarantee acceptable to the Company from an established bank or financial institution in Malaysia. The Performance Bond shall be for the amount specified in the Contract and/or Purchase Order and shall be valid from the commencement date until the expiry date specified in the Contract and/or Purchase Order. The Supplier shall renew the Performance Bond if the provision of the Services is still outstanding beyond the specified expiry date.

## **27. Intellectual Property Rights**

- 27.1. The Company and the Supplier each retain ownership of their respective pre-existing Intellectual Property rights developed or acquired before the Contract and/or Purchase Order. Nothing in the Contract and/or Purchase Order shall cause, or may be construed as causing, the transfer to the other Party of any such pre-existing Intellectual Property rights.
- 27.2. If in the context of the Contract and/or Purchase Order the Supplier has developed or designed specifically for the Company any Goods (including any accompanying documents) or if in the context of the Contract and/or Purchase Order the Supplier has provided specifically for the Company any Services (including any accompanying documents), the Intellectual Property and/or related rights which come into existence in connection with or as a result of such Contract and/or Purchase Order between the Company and the Supplier shall, if possible, automatically vest in the Company, and the Supplier shall execute any document or deed necessary to vest such Intellectual Property in the Company. To the extent that the Intellectual Property rights do not vest automatically in the Company, the Supplier undertakes that it shall transfer to the Company all Intellectual Property rights in materials developed or designed for the Company which transfer shall be accepted by the Company. For the purpose of this Clause, Goods developed or designed specifically for the Company and Services specifically provided for the Company shall be deemed to include any (elements of) Goods and Services provided under the Contract and/or Purchase Order which are bespoke and/or tailored or customized for the Company's specific needs and/or Goods and Services which are not off the shelf (ready to be used).
- 27.3. Subject to Clause 27.2 the Intellectual Property and/or related rights which come into existence in connection with or as a result of the Contract and/or Purchase Order between the Company and the Supplier shall vest in the Supplier, and the Company shall execute any document or deed necessary to vest such Intellectual Property in the Supplier. The Supplier shall grant the Company a royalty free, non-exclusive perpetual, worldwide and transferrable license and right of use with respect to such Intellectual Property rights as set out in Article 27.1 and 27.3 as necessary or conducive for the use of the Goods and/or Services.
- 27.4. If a third party owns the Intellectual Property and/or related rights as set out in Article 27.2, the Supplier shall provide the Company with all relevant information before entering into a binding agreement with such third party. Supplier hereby cedes any of its personal rights in connection with such Intellectual Property and to the Company, the Supplier shall grant the Company a non-exclusive, perpetual, worldwide and transferable licence and right of use with respect to such Intellectual Property rights for any purpose connected with the Company's business or activities, in which case the Company shall be allowed to provide sub-licenses to other Heineken group companies.

- 27.5. All drawings or materials provided to the Supplier by the Company or made or purchased by the Supplier at the expense of the Company, are the property of the Company and may at all times be claimed by the Company without notice. The Supplier shall administer all these drawings and materials and keep them in good condition at its own expense and risk. It shall not use them for, or nor allow them to be used by third parties except with the Company's prior written consent.
- 27.6. The Supplier is not entitled to make use of or refer to any of the Company's proprietary items, such as trade secrets, market reports, trademarks, trade names, domain name, patent, design, copyright, or other Intellectual Property right of the Company or any of the Heineken group companies for any other purpose than authorized in the Contract and/or Purchase Order, without having obtained the prior written consent of the Company. Any authorised use shall be strictly in accordance with the instructions and for the purposes specified. In particular, the Supplier shall not use such proprietary items in order to promote its own business on web sites, in flyers or brochures, trade fairs, etc.
- 27.7. The Supplier shall use those documents only for the purposes of the Contract and/or Purchase Order and shall return them carriage paid to the Company upon the Company's request at any time or if no request is made upon completion of the contract.
- 27.8. The Supplier shall be responsible for any errors or omissions in any drawings, calculations or particulars supplied by it whether or not such information has been approved by the Company.

**28. Anti-bribery**

- 28.1. The Supplier shall, and shall ensure that its employees, subsidiaries including their employees, affiliates, any third party engaged by it and/or any other person involved in providing Goods and/or Services to the Company under the Contract and/or Purchase Order shall:
  - 28.1.1. not demand, solicit, accept, agree to accept, offer, authorise, give or promise, directly or indirectly, any undue pecuniary or other advantage of any kind, to or from a person, in order to obtain and/or retain a business or other improper advantage; and
  - 28.1.2. adhere to all applicable national and international laws, statutes, regulations and generally accepted principles relating to anti-bribery or anti-corruption.
- 28.2. The Supplier, including its subsidiaries, shall have in place and shall maintain its own effective anti-bribery programme, including adequate internal controls to ensure that any and all transactions related to the Contract and/or Purchase Order are properly accounted for in accordance with generally accepted accounting principles.
- 28.3. The Supplier shall immediately inform the Company in writing of any request or demand or suspicion of any request or demand the Supplier receives, if compliance with such request or demand would, or could have been reasonably expected to, constitute bribery, and such request or demand or suspicion of any request or demand is in any way directly or indirectly related to the provision of the Goods and/or Services.
- 28.4. The Supplier shall immediately inform the Company in writing if the Supplier, or any of its subsidiaries, is subject of any investigation, inquiry, enforcement proceedings or conviction related to bribery if such investigation, inquiry, enforcement proceeding or conviction could impact the Company.

**29. Manufacturing changes**



29.1. The Company shall be advised and consulted on all changes of the specifications or method of construction of Goods before such changes are implemented and in the event that the charges proposed are unacceptable to the Company, the Company reserves the right to terminate the Purchase Order or to renegotiate the price of the Goods which the Supplier proposes to manufacture in accordance with such changes.

**30. Assignment and Sub-letting**

30.1. The Supplier shall not without the express consent of the Company assign, transfer, charge, sub-let or otherwise deal with the Contract and/or Purchase Order in whole or in part. Without prejudice to the foregoing, the Supplier shall not sub-contract the design, manufacture, production or supply of the Goods or any right, liability or obligation without the prior written consent of the Company. If the Company grants such consent, the Supplier shall at all times remain liable and responsible for the third party towards the Company to which the Supplier has subcontracted all or part of the Contract and/or Purchase Order.

30.2. The Company is entitled to assign the Contract and/or Purchase Order or any part thereof to any Heineken group company. The Supplier gives the Company its consent to any (future) transfer by the Company of its contractual position under the Contract and/or Purchase Order between the Supplier and the Company to any Heineken group company. As a result of such a transfer all rights and obligations that have arisen or will arise from the Contract and/or Purchase Order for the Company will pass to the respective entity of the Heineken group company, as far as parties have not agreed otherwise with regard to secondary (minor) or already due and demandable rights or obligations.

**31. Law and Construction**

31.1. The Contract, Purchase Order and these terms and conditions shall be governed and construed in all respects in accordance with the laws of Malaysia.

31.2. Where the Supplier is a company incorporated in Malaysia or a resident in Malaysia, the said Supplier agrees to submit to the non-exclusive jurisdiction of the courts of Malaysia.

31.3. Where the Supplier is a company incorporated outside of Malaysia or is not a resident in Malaysia, the said Supplier agrees to refer any unresolved dispute or differences between the parties to an arbitrator to be agreed upon between the parties or failing agreement to be nominated on the application of either party by the Director for the time being of the KLRCA and any such reference shall be deemed to be a submission to arbitration within the meaning of the Act or any other law amending or replacing this Act. The arbitration shall be held at the KLRCA using the facilities and assistance available and shall be conducted in English and shall be settled in accordance with the rules of arbitration of the KLRCA.

**32. Security Checks**

32.1. The Supplier agrees to allow their vehicles and personal possessions of their staff to be checked by Heineken Malaysia Berhad, Heineken Marketing Malaysia Sdn Bhd, and/or any of their related companies' security personnel at the entry exit point of the brewery.

**33. Trade mark**

33.1. It is a condition of this order that you do not at any time reproduce or display any of the trade marks belonging to the Company or licensed by the Company or any articles bearing such trademarks, without first obtaining the prior written consent of the Company.

#### **34. Taxes**

34.1. In the event that the Company is obliged under the laws of Malaysia to deduct any sum from any amount payable to the Supplier in respect of Deductible Tax), the Company shall pay the Deductible Tax imposed by the taxation authorities of Malaysia assessed on such amount payable to the Supplier and thereafter forward the balance of the amount payable to the Supplier.

34.2. All fees and charges payable by the Company to the Supplier hereunder are inclusive of GST. Where GST is chargeable on the supply by the Supplier to the Company for the supply of Goods and/or Services, the Supplier shall provide evidence that it is duly registered to collect GST and shall provide a tax invoice that complies with the requirements of the GST Act and regulations and shall promptly provide all other assistance, documents and information as may be requested by the Company from time to time to enable the Company to claim inter-alia all such applicable or available input credits.

34.3. Where the Supplier is currently not a registered person under the GST Act, the Supplier has submitted to the Company prior to the date of the Contract and/or Purchase Order a statutory declaration, in the form provided by the Company, declaring that amongst others, the Supplier is not a registered person under the GST Act. Further, the Supplier undertakes to submit the said statutory declaration to HMMSB on a yearly basis, in the event of any change in circumstances, or as otherwise directed by HMMSB, whichever is earlier. The Supplier expressly agrees that any misrepresentation or breach by the Supplier of the said statutory declaration shall constitute a serious breach of the Contract and/or Purchase Order and the Company shall be entitled to forthwith terminate the Contract and/or Purchase Order and all sums that may have been payable by the Company to the Supplier prior to or after such a breach shall cease to be payable.

34.4. The Supplier shall be required to adhere at all times to all tax legislation in Malaysia and shall indemnify the Company for any losses, costs or expenses or any actions or claims brought against the Company and/or the Company's officers by reason of the Supplier's default or breach of such tax legislation in particular any claims against the Company or the Company's officers under section 91 of the GST Act or under the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001.

#### **35. Compliance with Company's Heineken Supplier Code and laws**

35.1. The Supplier shall comply in all respects with the Company's Heineken Supplier Code [provided to the Supplier from time to time and at any time/which is available for download at [www.heinekenmalaysia.com](http://www.heinekenmalaysia.com)] and all applicable laws, regulations and/or policies at all times in its dealings with the Company.

**36. Insurance**

- 36.1. If required by the Company, the Supplier shall, at its own cost, procure and maintain insurance over the Goods prior to delivery or the Services to cover any liabilities that may arise from the Supplier, its employees or agents performing the Services. The Company may demand that the Supplier submits all relevant documentations relating to the procurement and maintenance of the said insurance.
- 36.2. The Supplier shall procure that any third party engaged by it or acting under its direction, its control or its behalf shall comply with the stipulations of Clause 36.1.

**37. Force Majeure**

- 37.1. If either party is prevented from or interfered with in any manner whatsoever in fully performing its duties hereunder by reason of any Force Majeure Event, then the party's obligations shall be suspended during any such Force Majeure Event and, during such occurrences, the party's non-performance will not be deemed a breach of the Contract and/or Purchase Order. The parties hereto will use their best endeavours to minimise and reduce any period of suspension due to a Force Majeure Event. If the Force Majeure Event continues for a period of [thirty (30)] days, the Company may terminate the Contract and/or Purchase Order forthwith and both parties shall be released from its obligations under the Contract and/or Purchase Order from the effective date of termination.

**38. No Agency**

- 38.1. Nothing in this Contract and/or Purchase Order shall create, or be deemed to create, a joint venture, partnership or the relationship of principal and agent between the parties. No party has any authority to act, make representations or bind or contract on behalf of the other party.

**39. Rights and Remedies Cumulative**

- 39.1. The rights and remedies provided under this Contract and/or Purchase Order are in addition to, and not exclusive of, any rights or remedies provided by law or equity. Any right or remedy may be enforced separately or concurrently with any other right or remedy.

**40. Waiver**

- 40.1. No failure or delay on the part of a party in exercising nor any omission to exercise any right or remedy accruing under the Contract and/or Purchase Order shall impair any such right or remedy or constitute a waiver thereof nor shall any action by a party in respect of any default or any acquiescence in any such default affect or impair any right or remedy of such party in respect of any other or subsequent default. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

**41. Entire Agreement**

- 41.1. The Contract and/or Purchase Order contain the whole agreement between the parties and supersedes and replaces any prior written or oral agreement, representations or understandings between them. The parties confirm that they have not entered into the Contract and/or Purchase Order on the basis of any representation that is not expressly incorporated in the Purchase Order. Nothing in this Contract and/or Purchase Order excludes liability for fraud.

#### **42. Further Assurances**

- 42.1. Each party agrees, at the request of the other party/parties, to do all things and execute such deeds, instruments, transfers or other documents as may be reasonably necessary to give full effect to the provisions of this Contract and/or Purchase Order.

#### **43. Severance**

- 43.1. If any provisions of the Contract and/or Purchase Order is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from the Contract and/or Purchase Order and rendered ineffective as far as possible without modifying the remaining provisions of the Contract and/or Purchase Order, and shall not in any way affect any other circumstances of or the validity or enforcement of the Contract and/or Purchase Order.

#### **44. Announcements**

- 44.1. No party shall issue or make any announcements, in particular to the consumer and trade press, or disclose any information regarding the Company, Contract and/or Purchase Order unless prior to such announcement or disclose it furnishes all parties with a copy of such announcement or information and obtains the approval of such persons to its terms. However, no party shall be prohibited from issuing or making any such public announcements or disclosing such information if it is necessary to do so to comply with any applicable law or the regulations of a recognized stock exchange.
- 44.2. If the Supplier breaches Clause 22 and/or Clause 42.1, a penalty of 10% of the total fees stated in Contract and /or Purchase Order per breach shall immediately be due, without notice of such breach being required, without prejudice to the right of the Company to claim the actual damages it sustained as a result of such a breach.

#### **45. Personal Data Protection Act 2010**

- 45.1. The Supplier hereby expressly agree that the Company shall keep the security of the Supplier's personal data during the continuance of the Contract and/or Purchase Order and shall authorize the Company to disclose the Supplier's personal data to any party and for the purpose mentioned in the Data Protection Legislation.
- 45.2. With respect to the parties' rights and obligations under the Contract and/or Purchase Order, the parties agree that the Company is the Data User and that the Supplier is the Data Processor.
- 45.3. The Supplier shall:
- 45.3.1. process the Personal Data only in accordance with instructions from the Company (which may be specific instructions or instructions of a general nature as set out in the Contract and/or Purchase Order or as otherwise notified by the Company to the Supplier during the term of the Contract and/or Purchase Order);
  - 45.3.2. process the Personal Data only to the extent, and in such manner, as is necessary for the provision of the Services or as is required by law or any regulatory bodies;
  - 45.3.3. take practical steps to protect the Personal Data from any loss, misuse, modification, unauthorised or accidental access or disclosure, alteration or destruction;

- 45.3.4. take all steps to ensure the reliability of any Supplier employees, servants, staff, agents or sub-contractors who have access to the Personal Data;
  - 45.3.5. obtain prior written consent from the Company in order to transfer the Personal Data to any of its sub-contractors or affiliates for the provision of the Services;
  - 45.3.6. ensure that all the Supplier's employees, servants, staff, agents or sub-contractors required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this clause;
  - 45.3.7. ensure that none of Supplier's employees, servants, staff, agents or sub-contractors publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Company;
  - 45.3.8. notify the Company within the next working day if it receives: (a) a request from a Data Subject to have access to that person's Personal Data; or (b) a complaint or request relating to the Company's obligations under the Data Protection Legislation;
  - 45.3.9. provide the Company with full cooperation and assistance in relation to any complaint or request made, including by: (a) providing the Company with full details of the complaint or request; (b) complying with a data access request within the relevant timescales set out in the Data Protection Legislation and in accordance with the Company's instructions; (c) providing the Company with any Personal Data it holds in relation to a Data Subject (within the timescales required by the Company); and (d) providing the Company with any information requested by the Company
  - 45.3.10. permit the Company or its representatives to inspect and audit the Supplier's data Processing activities (and/or those of its agents, subsidiaries and sub-contractors) and comply with all requests or directions by the Company to enable the Company to verify and/or procure that the Supplier is in full compliance with its obligations under the Contract and/or Purchase Order;
  - 45.3.11. provide a written description of the technical and organisational methods employed by the Supplier for processing Personal Data (within the timescales required by the Company); and
  - 45.3.12. not Process or otherwise transfer any Personal Data outside Malaysia.
- 45.4. Each party shall comply at all times with the Data Protection Legislation and shall not perform its obligations under the Contract and/or Purchase Order in such a way as to cause the other party to breach any of its applicable obligations under the Data Protection Legislation.