



TOCO General Conditions of Contract - Minor Purchase Order

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A. GENERAL

A1. Definitions

"AFFILIATE" shall mean any subsidiary or parent or holding company of any company or any other subsidiary of such parent or holding company.

"CLIENT" shall mean the party to which the COMPANY has entered into a separate contractual relationship for which the requirements of the PO are destined.

"COMPANY" shall mean the person, persons, firm or company named in the PO to purchase GOODS hereinafter defined and shall include the COMPANY's legal personal representatives, successors and assigns.

"COMPANY GROUP" shall mean the COMPANY, its AFFILIATES and its and their respective directors, officers and employees (including agency personnel), but shall not include any member of the CONTRACTOR GROUP.

"DELIVERY DATE" shall mean the date(s) upon which the GOODS shall be delivered as specified in the PO.

"GOODS" shall mean the goods to be provided in accordance with the PURCHASE ORDER.

"LOCAL LAW" means the laws of the country in which the COMPANY is located as derived from the COMPANY address in the PURCHASE ORDER.

"PO" shall mean the Purchase Order and the contract formed by the acceptance of the PO shall incorporate these Terms & Conditions, or as may be amended by any additional conditions referenced in the PO or attached to it.

"SUPPLIER" shall mean the person, persons, firm or company named in the PO to supply GOODS hereinafter defined and shall include the CONTRACTOR's legal personal representatives, successors and assigns.

"SUPPLIER GROUP" shall mean the SUPPLIER, its subcontractors, its and their AFFILIATES, its and their respective directors, officers and employees (including agency personnel), but shall not include any member of the COMPANY GROUP.

A2. Interpretation

All instructions, notices, agreements, authorisations, approvals and acknowledgements shall be in writing. All such documentation together with all correspondence and other documents shall be in the English language.

Nevertheless, if for any reason, it is considered necessary by the COMPANY to give an instruction to the SUPPLIER orally in the first instance, the SUPPLIER shall comply with such instruction.

Any reference to statute, statutory provision or statutory instrument shall include any re-enactment or amendment thereof for the time being in force.

Unless the context otherwise requires, words importing the singular shall include the plural, and words importing the masculine gender shall include the feminine and neuter genders, and vice versa.

Where so indicated in the PO quantities are merely estimates and do not indicate a firm commitment by the COMPANY for the supply of these quantities.

A3. Invalidity and Severability

If any provision of the PO shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, the invalidity or unenforceability shall not affect the other provisions of the PO and all provisions not affected by such invalidity or unenforceability shall remain in full force and effect. The COMPANY and the SUPPLIER agree to attempt to substitute, for any invalid or unenforceable provision, a valid or enforceable provision which achieves to the greatest possible extent, the economic, legal and commercial objectives of the invalid or unenforceable provision.

B. THE SUPPLIERS COMMITMENT TO THE COMPANY

B1. Terms

The SUPPLIER will sell the GOODS to the COMPANY on the terms set out in the PO.

B2. Delivery

The SUPPLIER will deliver or make the GOODS available to the COMPANY at the place specified in the PO, on the DELIVERY DATE.



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If the SUPPLIER is unable to deliver the GOODS on the DELIVERY DATE the SUPPLIER shall notify the COMPANY at the earliest possible opportunity. The COMPANY and the SUPPLIER shall endeavour to agree a mutually acceptable revised DELIVERY DATE. However, if the COMPANY and the SUPPLIER cannot agree, the COMPANY shall have the right to terminate the PO and recover from the SUPPLIER the direct losses sustained as a result of the delay up to an amount not to exceed the value of the PO.

When making delivery of the GOODS to COMPANY premises, the SUPPLIER shall do so in a safe, prudent and responsible manner consistent with its duty of care to its personnel, or those of its delivery agent, and shall obey all COMPANY site safety instructions without exception.

B3. Inclusive Price

The price which the COMPANY has agreed to pay for the GOODS is set out in the PO and is exclusive of VAT (but subject to it as applicable) but includes all other taxes, duties, fees or any other fiscal charges as may be applicable.

B4. Access

The SUPPLIER will allow the COMPANY to expedite, inspect and test the GOODS during manufacture at the SUPPLIERS premises on reasonable prior notice. Any expediting, inspection, testing or any failure to do so shall in no way relieve the SUPPLIER of its obligations as specified in the PO.

B5. Specifications

The SUPPLIER will ensure that the GOODS are of merchantable quality and will meet the COMPANY's requirements with regard to any quality, fitness for purpose, quantity or specifications, which are set out in the PO.

B6. Defects Correction

The SUPPLIER will repair, replace or rectify any of the GOODS (or any replacement) which are defective or of inferior quality at no additional cost to the COMPANY for a 12 month period following delivery. Title and risk in the GOODS or any part thereof which do not comply with the requirements of the PO and which are rejected by the COMPANY shall re-vest in the SUPPLIER on commencement of return to the SUPPLIER.

B7. Packing

The SUPPLIER will ensure that the GOODS are properly packed, secured and labelled in accordance with good industry practice to prevent damage during handling, transportation and storage and shall at all times meet any further COMPANY requirement as may be specified in the PO.

B8. Documentation

The SUPPLIER will provide to the COMPANY by any due date, all drawings, certificates or other documentation in the specified format and quantities as detailed in the PO.

B9. Hazardous Materials

The SUPPLIER will ensure that the GOODS will comply with the requirements of all applicable law and, to the extent that they contain toxic, corrosive or hazardous materials, the SUPPLIER will ensure that a notice to that effect accompanies each consignment, together with appropriate care and handling instructions.

GOODS supplied under the PO, which are contaminated, at the time of delivery, shall be regenerated or disposed of by the SUPPLIER. The title and risk of the contaminated GOODS will remain with the COMPANY, who will bear all expenses for the said processes.

B10. Title and Risk

Title and Risk in the GOODS will pass from the SUPPLIER to the COMPANY at delivery in accordance with the COMPANY's requirements under the PO.

B11. Patent Indemnity

The SUPPLIER shall save, indemnify, defend and hold harmless the COMPANY GROUP from all claims, losses, damages, costs (including legal costs), expenses, and liabilities of every kind and nature for, or arising out of, any alleged infringement of any patent or proprietary or protected right arising out of or in connection with the performance of the obligations of the SUPPLIER under the PO except where such infringement necessarily arises from the job specification and/or the COMPANY's instructions.



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B12. Spares

The SUPPLIER shall give sufficient notice to the COMPANY of its intention to cease supply of GOODS, component parts or replacements, to enable the COMPANY to purchase such GOODS, component parts or replacements.

C. THE COMPANY'S COMMITMENT TO THE SUPPLIER

C1. Terms

The COMPANY will buy the GOODS from the SUPPLIER on the terms set out in the PO.

C2. Acceptance

Acceptance shall be from the time when a duly authorised employee or representative of the COMPANY accepts the GOODS, delivered or collected, and where such GOODS are not defective or damaged in any way and comply with the PURCHASE ORDER. If a defect in or damage to the GOODS or any breach of the PO is identified by the COMPANY, it shall be deemed not to have accepted the GOODS until such defect, damage or breach is remedied by the SUPPLIER.

Such acceptance shall be within a reasonable time of delivery or collection or first use, but shall be without prejudice to the SUPPLIERS liability for any defect in or damage to the GOODS or any breach of the PO which is not identified by such duly authorised employee or representative of the COMPANY at the time of acceptance.

C3. Risk

The COMPANY will be responsible for risk of loss or damage to the GOODS with effect from delivery and acceptance.

C4. Price Payment

The COMPANY will pay for the GOODS against the SUPPLIERS invoice in the amounts specified in the PURCHASE ORDER within 90 days of receipt of the SUPPLIERS proper and correct invoice, the receipt not being earlier than the delivery unless otherwise stated in the PO.

If the COMPANY disputes any items on any invoice in whole or in part or if the invoice is prepared or submitted incorrectly in any respect, the COMPANY shall notify the SUPPLIER of the reasons and request the SUPPLIER to issue a credit note for the unaccepted part or whole of the invoice as applicable. Upon receipt of such credit note the COMPANY shall be obliged to pay the undisputed part of a disputed invoice.

On settlement of any dispute, the SUPPLIER shall submit an invoice for sums due and the COMPANY shall make the appropriate payment in accordance herewith.

C5. Termination for Convenience

The COMPANY may at any time give written notice to the SUPPLIER to terminate the PO forthwith and in such event the COMPANY shall pay, and the SUPPLIER shall accept in settlement of all claims under the PO, such verifiable sums as shall reasonably compensate it for all work done and obligations assumed by it in performance of the PO prior to its termination. The value of any material, payment for which has been made by the COMPANY but which is left with, and can be used by, the SUPPLIER, shall be taken into account when calculating such losses but such sum shall in no event exceed the price set out in the PO unless otherwise previously agreed.

D. OUR COMMITMENTS TO EACH OTHER

D1. Indemnity Arrangements

- (a) The SUPPLIER shall be responsible for and shall save, indemnify, defend and hold harmless the COMPANY GROUP from and against all claims, losses, damages, costs (including legal costs) expenses and liabilities in respect of:
 - (i) loss of or damage to property of the SUPPLIER GROUP whether owned, hired, leased or otherwise provided by the SUPPLIER GROUP arising from, relating to or in connection with the performance or non-performance of the PO; and
 - (ii) personal injury including death or disease to any person employed by the SUPPLIER GROUP arising from, relating to or in connection with the performance or non-performance of the PO; and



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- (iii) subject to any other express provisions of the PO, personal injury including death or disease or loss of or damage to the property of any third party to the extent that any such injury, loss or damage is caused by the negligence or breach of duty (whether statutory or otherwise) of the SUPPLIER GROUP. For the purposes of this Clause "third party" shall mean any party, which is not a member of the COMPANY GROUP or the SUPPLIER GROUP.
- (b) The COMPANY shall be responsible for and shall save, indemnify, defend and hold harmless the SUPPLIER GROUP from and against all claims, losses, damages, costs (including legal costs) expenses and liabilities in respect of:
 - (i) loss of or damage to property of the COMPANY GROUP whether owned by the COMPANY GROUP, or leased or otherwise obtained under arrangements with financial institutions by the COMPANY GROUP arising from, relating to or in connection with the performance or non-performance of the PO, but excluding the GOODS prior to delivery; and
 - (ii) personal injury including death or disease to any person employed by the COMPANY GROUP arising from, relating to or in connection with the performance or non-performance of the PO; and (c) subject to any other express provisions of the PO, personal injury including death or disease or loss of or damage to the property of any third party to the extent that any such injury, loss or damage is caused by the negligence or breach of duty (whether statutory or otherwise) of the COMPANY GROUP. For the purposes of this Clause "third party" shall mean any party which is not a member of the SUPPLIER GROUP or the COMPANY GROUP.
- (c) All exclusions and indemnities given under this Clause D1 (save for those under Clauses D1.(a).(iii), D1.(b).(iii) and Clause D2 shall apply irrespective of cause and notwithstanding the negligence or breach of duty (whether statutory or otherwise) of the indemnified party or any other entity or party and shall apply irrespective of any claim in tort, under contract or otherwise at law.
- (d) If either party becomes aware of any incident likely to give rise to a claim under the above indemnities it shall notify the other and both parties shall co-operate fully in investigating the incident.

D2. Consequential Loss

For the purposes of this Clause the expression "Consequential Loss" shall mean loss and/or deferral of production, loss of product, loss of use, loss of revenue, profit or anticipated profit (if any), in any case whether direct or indirect and whether or not are foreseeable at the date of the PO.

Notwithstanding any provision to the contrary elsewhere in the PO and except to the extent of any agreed liquidated damages (including without limitation any predetermined termination fees) provided for in the PO, the COMPANY shall save, indemnify, defend and hold harmless the SUPPLIER GROUP from the COMPANY GROUP's own Consequential Loss and the SUPPLIER shall save, indemnify, defend and hold harmless the COMPANY GROUP from the SUPPLIER GROUP's own Consequential Loss, arising from, relating to or in connection with the performance or non-performance of the PO.

D3. Insurance

The COMPANY and the SUPPLIER shall maintain levels of insurance sufficient to cover their respective liabilities and obligations under the PO and at law.

D4. Confidentiality

The COMPANY and the SUPPLIER shall keep the PO and any information, which either party learn about the other in strict confidence and will not disclose the same to any third party without the prior written consent of the other party.

D5. Variations

With reasonable prior notice, the COMPANY and the SUPPLIER shall discuss variations to the PO and agree with each other resulting changes to any of the details shown in the PO.

D6. Force Majeure

Neither the COMPANY nor the SUPPLIER shall be responsible for any failure to fulfil any term or condition of the PO if and to the extent that fulfilment has been delayed or temporarily prevented by a force majeure occurrence, as hereunder defined, which has been notified in accordance with this Clause D6 and which is beyond the control and without the fault or negligence of the party affected and which, by the exercise of reasonable diligence, the said party is unable to provide against.



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For the purposes of the PO only the following occurrences shall be force majeure:

- (a) Riot, war, invasion, act of foreign enemies, hostilities (whether war be declared or not), acts of terrorism, civil war, rebellion, revolution, insurrection of military or usurped power;
- (b) Ionising radiations or contamination by radio-activity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel or radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof;
- (c) Pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds;
- (d) Earthquake, flood, fire, explosion and/or other natural physical disaster, but excluding weather conditions as such, regardless of severity;
- (e) Strikes at a national or regional level or industrial disputes at a national or regional level, or strikes or industrial disputes by labour not employed by the affected party its sub-contractors or its suppliers and which affect a substantial or essential portion of the GOODS;
- (f) Maritime or aviation disasters;

D7. Transfer

Neither the COMPANY nor the SUPPLIER shall at any time sub-contract or assign any part of their respective rights or obligations under the PO to any other person, without first obtaining the other party's prior consent which shall not unreasonably be withheld or delayed.

D8. Dispute Resolution

If either party is dissatisfied with the performance of the other in relation to the GOODS or the PO, the parties shall meet as soon as possible in good faith with each other to try to resolve the matter in an amicable way.

If no agreement is reached the parties may attempt to settle the dispute by a form of Alternative Dispute Resolution to be agreed between the parties.

In the absence of any agreement being reached on a particular dispute either party may take appropriate action in the LOCAL LAW Courts to resolve the dispute at any time.

D9. Cancellation

The COMPANY may terminate the PO in the event that the SUPPLIER:

- (a) is in breach of a condition of the PO; or
- (b) becomes bankrupt or makes a composition or arrangement with its creditors or a winding-up order being made or (except for the purposes of amalgamation or reconstruction) a resolution for its voluntary winding-up being passed or a provisional Liquidator, Receiver, Administrator or Manager of its business or undertaking being appointed or presenting a petition or having a petition presented applying for an administration order to be made pursuant to insolvency, or possession being taken by or on behalf of the holders of any debenture secured by a Floating Charge of any property comprised in or subject to the Floating Charge, or any equivalent act or thing being done or suffered under any applicable law.

In such an event, the only remaining commitment will be for the COMPANY to pay for useable GOODS already delivered by the SUPPLIER but not yet paid for.

D10. Law and Language

The PO, and any non-contractual rights and obligations arising out of or in connection with it and its subject matter, shall be governed and construed in accordance with LOCAL LAW. The PO, and any non-contractual rights and obligations arising out of or in connection with it and its subject matter and subject to the provisions of Clause 36, shall be subject to the exclusive jurisdiction of LOCAL LAW Courts.

The ruling language of the PO shall be the English Language.

D11. Additional Conditions

- (a) The SUPPLIER and the COMPANY agree that any special or other conditions set out in or appended to the PO will be treated as an integral part of the PO and that any special or other conditions shall, in the event of any conflict or ambiguity arising, take precedence over any General Terms and Conditions.



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- (c) The SUPPLIER and the COMPANY also agree that the terms and conditions of any CLIENT contract referred to in the PO will also be treated as an integral part of the PO and that in the event of any conflict or ambiguity arising, shall take precedence over any applicable General or Special Terms and Conditions.
- (d) SUPPLIER hereby confirms its no-objection to any compliance, risk and/or sanction review which may be conducted by COMPANY from time to time, using a third party. Such review may also include SUPPLIER's principals and shall at all times remain confidential.