

## **PHOENIX OVERSEAS LIMITED**

### **PROCUREMENT POLICY**

#### **STANDARD TERMS AND CONDITIONS**

This Purchase Order ("PO") and any attachments are the sole agreement between Phoenix Overseas Limited (POL) and/or its subsidiaries or affiliates who are issuing a PO pursuant to these terms and conditions ("POL") and the Seller identified on the face of this PO ("Seller") regarding the goods or services specified in this PO.

#### **1. Acceptance of Terms**

This PO is expressly conditioned on Seller's acceptance of all the terms and conditions set forth herein. POL expressly objects to any additions, deletions or differences in the terms or conditions contained in Seller's quotation, proposal, acknowledgment or other document, whether or not such additions, deletions or differences materially alter this PO. This PO may be issued in addition to other duly signed POL agreements, exhibits and schedules incorporated therein ("Agreement") made with respect to the subject matter of this PO. In the event of an inconsistency or conflict between the provisions of any Agreement and this PO, the inconsistency or conflict will be resolved by giving precedence in the

following order: (a) the Agreement; (b) the provisions appearing on the front and reverse side of this PO or the then-current terms and conditions located at <https://phxglobal.net/policies/> and (c) other provisions when attached and agreed to in writing by POL.

## **2. Performance**

Time is of the essence in the performance of this PO and if the goods are not delivered or the services not provided in the manner and at the times specified, POL reserves the right without liability and in addition to its other rights and remedies to take either or both of the following actions: (a) direct expedited delivery of the goods or performance of services, with any difference in cost caused by such change paid by Seller, and/or (b) purchase substitute goods and charge Seller with any loss or additional costs POL incurs. Seller will promptly advise POL of any delay in performance, including notice with regard to any goods placed under backorder. Seller's performance is not deemed completed until the goods or services have been accepted by POL. All goods shipped under this PO are to be shipped to the address mentioned in the PO.

## **3. Inspection**

All goods and services purchased hereunder are subject to inspection by POL through its authorized representative at all reasonable times and places notwithstanding the terms of payment, and in any event, prior to final acceptance. No inspection made prior to final acceptance will relieve Seller from

responsibility for failure to meet the requirements of this PO. In the event the goods or services do not meet the applicable specifications and instructions, Seller will promptly re-perform the nonconforming services or provide replacement goods satisfactory to POL at Seller's sole expense. If Seller is unable to accomplish the foregoing, POL may procure such goods or services from another source and charge to Seller's account all costs, expenses and damages associated therewith.

#### **4. Payment**

Invoices must contain the following information: PO number, part numbers, description of services, prices, extended totals and attach all supporting documentation, if any. To the extent applicable, all invoices must include any tax amounts, listed separately. Invoices submitted hereunder will be paid Net 45 days after receipt of a correct invoice or acceptance of goods or services by POL, whichever occurs later. Any adjustments in Seller's invoices due to late performance, rejections or other failure to comply with the requirements of this PO may be made by POL before payment. Payment does not constitute final acceptance. POL may offset against any payment hereunder any amount owed to POL by Seller or its affiliates.

#### **5. Changes**

POL may, by written notice to Seller make changes to any one or more of the following: (a) specifications for services or goods, (b) quantity, and (c) place

and/or time of performance. For any reason, POL may also direct Seller to suspend in whole or in part the provision of goods or the performance of services hereunder permanently or for such period of time as may be determined by POL to be necessary or desirable. If any such change or suspension causes an increase or decrease in the cost or time required for the performance of services or provision of goods hereunder, an adjustment may be made in the price or delivery schedule, or both, and the PO will be modified in accordance with Section 22. Any claim for adjustment by Seller will be deemed waived unless asserted in writing within ten (10) days from receipt by Seller of the notice of change.

## **6. Warranty**

Seller expressly warrants that the goods or services provided under this PO will be performed in accordance with POL's specifications and instructions. Seller further warrants that the goods and services will be merchantable, non-infringing, free from defects and fit and sufficient for the purpose intended. Further, the services will be performed with the highest degree of skill and judgment exercised by recognized professionals performing the same or similar services. These warranties are in addition to all other warranties, express, implied or statutory. Payment for, inspection of, or receipt of the goods or services does not constitute a waiver of any breach of foregoing warranties. In the event of any breach of the foregoing warranty, Seller will, at its own expense and at POL's option either: (a) provide replacement goods satisfactory to

POL, (b) re-perform the nonconforming services to the satisfaction of POL, or (c) refund to POL the total amount paid for such goods or services. Seller will extend all warranties it receives from its suppliers to POL and to POL's customers.

#### **7. Confidential Information**

POL and Seller acknowledge that in their course of dealings, Seller may acquire from POL confidential and proprietary information about POL, its business activities and operations, its employees, trade secrets or any other information which by its sense or nature should reasonably be considered confidential (the "Confidential Information"). The confidential information of POL will only be disclosed to Seller's employees, agents or consultants with a need to know and who are under a written obligation to keep the information confidential. Seller will not disclose the Confidential Information to any third parties. Seller will use the same degree of care but no less than a reasonable degree of care that it uses with regard to its own confidential information to prevent the disclosure of POL Confidential Information.

#### **8. Termination For Convenience**

POL may terminate this PO in whole or in part at any time and without cause. Upon notice of termination, Seller will inform POL of the extent to which it has completed its performance under this PO as of the date of the notice and collect and deliver to POL any goods or Work Product, as defined in Section 11, which

then exists. POL will pay Seller for goods or services accepted and performed through the effective date of termination provided that POL will not be obligated to pay more than the payment that would have been due had Seller completed or provided the goods or services. POL will have no further payment obligation in connection with any termination.

#### **9. Indemnification**

Seller will indemnify, defend and hold POL, its officers, directors, resellers, employees, agents and customers harmless from and against any and all losses, liabilities, costs, claims, damages and expenses (including attorneys' fees and costs) arising out of or related to this PO including but not limited to the provision of goods or services under this PO or Seller's breach of any term or provision of this PO, including any claims that any such goods or services infringe any patent, copyright, trademark, trade secret or any other proprietary right of any third party.

#### **10. Limitation on Liability**

To the fullest extent permitted by applicable law, in no event will POL's aggregate liability arising out of or related to this PO exceed the total amount actually paid or payable by POL to Seller for the applicable goods or services provided under this PO nor will POL or its related legal entities be liable for any lost revenues, lost profits, incidental, direct, indirect, consequential, special or punitive damages, even if advised of the possibility thereof.

## **11. Patents and Data**

All records, software, files, data, reports, information, work product, notes, plans, strategies, intellectual property and other information provided by POL or prepared or developed by or for POL pursuant to this PO (“Work Product”) is the property of POL and constitutes works made for hire under applicable law. Seller assigns all intellectual property rights in the Work Product to POL and agrees to complete any documents requested by POL to perfect its ownership in the Work Product. Seller waives all moral rights related to the Work Product. Seller grants to POL an unlimited, nonexclusive license to use, copy, modify or create derivative works of any materials delivered to POL which are developed prior to or outside of this PO. All materials, equipment and other information supplied to Seller by POL will remain the property of POL and be returned to POL when no longer needed by Seller in the provision of services or goods and in any event upon the expiration or earlier termination of this PO.

## **12. Relationship of the Parties**

Seller is an independent contractor and nothing contained in this PO will be deemed or construed to create a partnership, joint venture, agency or other relationship other than that of supplier and customer. Seller is solely responsible for payment of all compensation owed to its employees as well as employment related taxes. Any agreements or commitments entered into by Seller are not

binding on POL and further POL assumes no liability with respect to any agreements or commitments entered into by Seller with its employees, agents, suppliers and the like.

### **13. Subcontracts and Assignments**

Seller agrees to obtain POL's approval before subcontracting this PO or any portion thereof. This PO is not to be assigned or delegated by Seller without the prior written consent of POL.

### **14. Compliance with Laws**

Seller will comply with the applicable provisions of all statutory provisions and all orders, rules and regulations issued thereunder, including without limitation, any local law or regulations relating to the privacy, security, integrity and availability of personal data, or restrictions on the Processing, movement or transfer of such personal data ("Privacy Laws"). Seller agrees to: (a) comply with POL's Data Privacy Requirements, (b) enter into any additional agreements or adhere to any additional contractual terms and conditions relating to personal data as POL may instruct in writing that it deems necessary to address applicable Privacy Laws, including any required agreements for jurisdictions that have restrictions pertaining the Processing or transfer of personal data, and (c) where Seller provides any Personal Data to POL, Seller warrants that it has collected such Personal Data with the affirmative, written consent of the data subjects for Seller to disclose such Personal Data to POL and/or its affiliates.

Seller will indemnify, defend and hold POL and its officers, directors, resellers, employees, agents and customers harmless from and against any and all losses liabilities, costs, claims, damages and expenses (including attorneys' fees and costs) arising out of or related to its breach of its obligations under this Section.

**15. Anti-Corruption**

All Seller actions related directly or indirectly to the performance of this PO will comply with all applicable anti-corruption laws. Accordingly, Seller will not offer, promise, or provide any payments, loans, gifts of money, or anything of value to secure an improper advantage or for a corrupt purpose as described in applicable law.

**16. Insurance**

Seller will secure and maintain insurance providing sufficient coverage to comply with its obligations and duty to indemnify as required under this PO. Within five (5) days of receipt of a request from POL, Seller agrees to provide POL with a certificate of insurance evidencing Seller's insurance coverage.

**17. Publicity and Disclosure**

Without securing the prior written consent of POL in each instance, Seller will not use the name or logo of POL or POL's customer in any news release, public announcement, advertisement, or other form of publicity, or disclose any

of the terms or subject matter of this PO to any third party except as may be required to perform this PO.

**18. Non-Waiver of Rights**

The failure of POL to insist upon strict performance of any of the terms and conditions in this PO or to exercise any rights or remedies hereunder will not be construed as a waiver of its rights to assert any of the same or any other terms and conditions under this PO.

**19. Remedies**

Any rights and remedies specified under this PO are cumulative, non-exclusive and in addition to any other rights and remedies available at law or in equity.

**20. Severability**

If any term contained in this PO is held or finally determined to be invalid, illegal or unenforceable in any respect, in whole or in part, such term will be severed from this PO, and the remaining terms contained herein will continue in full force and effect.

**21. Interpretation**

The captions and headings used in this PO are solely for the convenience of the parties, and are not to be used in the interpretation of the text of this PO. Each

party has read and agreed to the specific language of this PO; no conflict, ambiguity, or doubtful interpretation will be construed against the drafter.

## **22. Governing Law**

This PO is governed by and construed in accordance with the laws of the Union of India. Seller agrees that the exclusive jurisdiction and venue overall/any dispute/claims arising out of or related to this PO, between parties to PO shall be subject to courts at Kolkata and no other courts will have jurisdiction in this regard and the shall be resolved through Arbitration in accordance to the India Arbitration and Conciliation Act, 1996 with latest amendments as applicable on the date of filing the claim.

## **23. Entire Agreement**

This PO, including all documents incorporated herein by reference, constitutes the entire agreement and understanding between the parties and supersedes and replaces any and all prior or contemporaneous representations, agreements or understandings of any kind, whether written or oral, relating to the subject matter hereof. Except as specified in Section 1 or 5 above, no change, modification or revision of this PO is valid unless agreed to in writing by POL.

## **24. Survival**

Both parties agree that any term or condition of this PO which by its sense or nature should be deemed to survive the expiration or termination of this PO will so survive.