

2 BK SP SUP General Terms and Conditions of Purchase Order - Indonesia

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Authorised by: Chief Procurement Officer



1. Definitions

- 1.1 "Bradken" means PT Bradken Indonesia (NPWP 03.036.096.0-063.000), a wholly owned subsidiary of Bradken Pty Limited.
- 1.2 "Deliverables" means the goods or services to be supplied by the Supplier to Bradken as identified in the Purchase Order.
- 1.3 "Goods" means all goods, materials, equipment, parts and any other ancillary activity provided by the Supplier to Bradken identified in the Purchase Order.
- 1.4 "VAT" means the Value Added Tax as defined in the Law of Republic of Indonesia Number 42 Year 2009.
- 1.5 "Withholding Tax" means withholding taxes as defined in Income Tax Article (PPH) 23 and Income Tax Article (PPH) 26.
- 1.6 "Services" means the services to be provided by the Supplier to Bradken identified in the Purchase Order.
- 1.7 "Supplier" means the person supplying the goods or performing the services as identified in the Purchase Order.

2. Entire Agreement

- 2.1 The Purchase Order, incorporating these terms and conditions, comprises the entire agreement between Bradken and the Supplier and supersedes all prior agreements, representations, warranties or arrangements.

3. Acceptance of Terms and Conditions

- 3.1 Supplier accepts this Purchase Order and any amendments by signing the acceptance copy of the Purchase Order and returning it to Bradken promptly. Even without such written acknowledgment, the Supplier's full or partial performance under this Purchase Order will constitute acceptance of these Terms. By acceptance of this Purchase Order, Supplier agrees to be bound by, and to comply with all these Terms, which include any supplements to it, and all specifications and other documents referred to in this Purchase Order. These Terms apply to everything listed in this Purchase Order and constitute Bradken's offer to Supplier, which Bradken may revoke at any time prior to Suppliers' acceptance. This Purchase Order is not an acceptance by Bradken of any offer to sell, any quotation, or any proposal. Reference in this Purchase Order to any such offer to sell, quotation, or proposal will not constitute a modification of any of these Terms. Terms and conditions different from or in addition to these Terms, whether contained in any acknowledgment of this Purchase Order, or with delivery of any goods or services under this Purchase Order, or otherwise, will not be binding on Bradken, whether or not they would materially alter this Purchase Order, and Bradken hereby rejects them. These Terms may be modified only by a written document signed by duly authorized representatives of Bradken and Supplier.

4. Precedence of Documents

- 4.1 Unless otherwise stated, the order of precedence of the following documents shall apply:
 - a) the Purchase Order;
 - b) these General Terms and Conditions; and
 - c) any other attached drawings and/or documents.

5. Alterations/ Variations

- 5.1 Alterations or variations to the Purchase Order, these Terms and Conditions or any other attached drawings or documents shall not be legally binding upon Bradken or the Supplier unless agreed in writing by the parties.

6. Price

- 6.1 The price of the Deliverables shall be specified in the Purchase Order and cannot be varied without written agreement of Bradken and the Supplier. Unless otherwise stated in the Purchase Order, the price is fixed and not subject to variation and includes all expenses incurred by the Supplier in relation to provision of the Deliverables. The price is exclusive of any applicable VAT and/or Withholding Tax.
- 6.2 This Purchase Order must not be filled at a price higher than shown on the face of the Purchase Order. If no price is set forth on the front of the Purchase Order, the goods or services will be billed at the price last quoted or at the prevailing market price, whichever is lower, and, in any event, goods and services ordered under this Purchase Order will not be billed at a higher price than last quoted or charged without Bradken's specific written authorization. Bradken will be entitled at all times to set off any amount owed at any time by Supplier or any of its affiliates to Bradken or any of its affiliates against any amount payable at any time by Bradken in connection with this Payment Order. No extra charges of any kind will be allowed unless specifically agreed to in writing by Bradken. All applicable taxes arising out of transactions contemplated by the Purchase Order will be borne by Supplier except as otherwise specified by the parties in writing. If Supplier reduces its prices for such goods and/or services during the term of this Purchase Order, the Supplier shall correspondingly reduce the prices of goods and/or services sold thereafter to Bradken under this Purchase Order.

7. Payment

- 7.1 Unless otherwise stated in the Purchase Order, the terms of payment are 45 days from the end of month of receipt of a correctly rendered Supplier's invoice by Bradken and receipt and acceptance of the Deliverables by Bradken.
- 7.2 A correctly rendered invoice includes, as a minimum, the Purchase Order number and is a tax invoice for the purposes of VAT and/or Withholding Tax.
- 7.3 Bradken reserves the right to return to the Supplier any invoices not deemed to be correctly rendered and retains the right to offset against any moneys payable to the Supplier against any sums owed by the Supplier to Bradken.

8. Packaging, Preservation and Hazardous Goods

- 8.1 All Goods supplied by the Supplier shall be packed as specified in the Purchase Order and if not specified shall be packed so as to avoid being damaged during transportation, loading, unloading and storage.
- 8.2 The Supplier shall ensure that the Goods shall comply with the requirements of all applicable law and, to the extent that if they contain toxic, corrosive or hazardous materials, the Supplier shall ensure that a notice to that effect accompanies each consignment, together with appropriate care, handling and storage instructions.

9. Quality, Inspection and Testing

- 9.1 The Supplier shall operate and maintain an effective quality management system appropriate to the type of goods and services offered and/or in accordance with that specified in the Order. The Supplier shall provide Bradken, its principal or authorised representatives, access to the Supplier's premises or working area for the purpose of quality surveillance and audit.
- 9.2 Bradken is entitled to expedite, inspect and witness tests on the Goods at the Supplier's and any subcontractor's premises. The Supplier must allow Bradken access at any time to the Supplier's and any subcontractor's premises for this purpose. The Supplier must make this a condition of any subcontract.

10. Default

- 10.1 Time is of the essence of this Purchase Order. Bradken may by written notice of default to Supplier (a) terminate all or any part of this Purchase Order if Supplier fails to perform, or so fails to make progress as to endanger performance of this Purchase Order in accordance with its terms, and does not cure such failure within a period of ten (10) days (or such longer period as Bradken may authorize in writing) after receipt of notice from Bradken specifying such failure; and (b) procure, on such terms as it will deem appropriate, goods or services similar to those so terminated. Supplier will continue performance of this Purchase Order to the extent not terminated and will be liable to Bradken for any excess costs for such similar goods or services. As an alternate remedy, and in lieu of termination for default, Bradken, at its sole discretion, may elect to extend the delivery schedule and/or waive other deficiencies in the Suppliers' performance, in which case an equitable reduction in the Purchase Order price will be negotiated. If Supplier for any reason anticipates difficulty in complying with the required delivery date, or in meeting any of the other requirements of this Purchase Order, Supplier will promptly notify Bradken in writing. If the Supplier does not comply with Bradken's delivery schedule, Bradken may require delivery by fastest way and charges resulting from the premium transportation must be fully prepaid and absorbed by Supplier. The rights and remedies of Bradken provided in this Clause will not be exclusive and are in addition to any other rights and remedies provided by the Indonesian Civil Code and the Indonesian Code of Commerce.

11. Delivery, Risk and Title

- 11.1 The Supplier is responsible for the delivery and all costs associated with the delivery of the Goods to Bradken's premises or such other location that is specified in the Purchase Order.
- 11.2 The Supplier warrants that the Goods shall be free from any security interest or other lien or encumbrance.
- 11.3 Title to and property in the Goods immediately passes to Bradken upon payment or delivery, whichever occurs first, and the Goods must be appropriately marked and identified as the property of Bradken.
- 11.4 Risk in the Goods remains with the Supplier until delivery to Bradken unless otherwise stated in the Purchase Order.
- 11.5 The Supplier acknowledges:
 - a) the Goods delivered to Bradken are accepted subject to Bradken's inspection and the signing of a delivery docket as evidence of receipt of the Goods or payment in part or in full does not constitute acceptance of the Goods by Bradken
 - b) the Goods shall, notwithstanding payment or part payment or confirmation of receipt, be subject to rejection by Bradken and may be rejected by Bradken after inspection if they do not strictly comply with the Order.
 - c) Goods returned to the Supplier as defective or otherwise outside the Order for rework, replacement or credit are at the risk of the Supplier and all handling, insurance and transportation costs (including Bradken's costs of inspection) both from the initial point of delivery of the Goods and return will be borne by the Supplier and the Supplier shall forthwith pay to Bradken any such costs and refund any payment or part payment made by Bradken in respect of the Goods.

12. Delays

- 12.1 Time is of the essence in the Supplier's performance of the Purchase Order. If it ever appears that the provision of Deliverables will not be met within the time specified, the Supplier must immediately notify Bradken of any anticipated delay, with complete information regarding the cause and the earliest possible delivery date. In such event, Bradken may (without prejudice to any other rights) do whatever is necessary to expedite the provision of the Deliverables at the Supplier's expense, including terminating the Purchase Order.

13. Warranties

- Supplier represents and warrants that:
- (a) All goods and services are free of any claim of any nature by any third person and that Supplier will convey clear title to Bradken
 - (b) All services are performed in a manner acceptable in the industry and in accordance with generally accepted standards, are free from all defects, are fit for the particular purposes for which they are acquired, and are provided in strict accordance with the specifications or other requirements (including performance specifications) approved or adopted by Bradken.
 - (c) All goods sold will be of merchantable quality, free from all defects in design, workmanship and materials, and fit for the particular purposes for which they are purchased and that the goods and services are provided in strict accordance with the specifications, samples, drawings, designs or other requirements (including performance specifications) approved or adopted by Bradken
 - (d) The prices for the goods or services sold to Bradken under this Purchase Order are not less favourable than those currently extended to any other customer for the same or similar goods and/or services in equal or lesser quantities and
 - (e) Supplier shall not act in any fashion or take any action that will render Bradken liable for a violation of any applicable anti-bribery legislation (including without limitation the U.S. Foreign Corrupt Practices Act and the Indonesian Corruption Act), which prohibits the offering, giving or promising to offer or give or receiving, directly or indirectly, money or anything of value to any third party to assist it, them or Bradken in retaining or obtaining business or in procuring the goods or services. Bradken's inspection, test, acceptance, or use of the goods shall not affect Supplier's obligations under these warranties. The Supplier shall replace or correct, at Bradken's option and at Supplier's costs defects of any goods not conforming to these warranties. If Supplier fails to correct defects in or replace nonconforming goods within ten (10) days from the date Bradken notifies Supplier of the defect or defects, Bradken may, on ten (10) days prior written notice to Supplier, either (i) make such corrections or replace such goods and charge Supplier for all costs incurred by Bradken or (ii) revoke its acceptance of the goods in which event Supplier shall be obligated to refund the purchase price and make all necessary arrangements, at the Supplier's cost, for the return of the goods to Supplier. All warranties of the Supplier herein or that are implied by law shall survive any inspection, delivery, acceptance, or payment by Bradken. Any attempt by Supplier to limit, disclaim, or restrict these warranties or any remedies of Bradken, by acknowledgment or otherwise, in accepting or performing this Purchase Order, will be null, void, and ineffective without Bradken's written consent.

14. Liability and Indemnity

- 14.1 Supplier shall indemnify and hold Bradken and its affiliates harmless and, on Bradken's request shall defend each of them from and against any or all third party claims, demands, litigation, or proceedings of whatever kind, whether based upon negligence, breach of express or implied

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- warranty, strict liability, infringement of intellectual property rights, or any other theory, and from and against, all direct, indirect, special, exemplary, incidental or consequential damages of every kind whatsoever, arising out of, by reason of, or in any way connected with the good sand/or services, the design, manner of preparation, manufacture, construction, completion, or delivery or non-delivery of any goods and/or services by the Supplier, any breach by Supplier of any of its obligations hereunder, or any other act, omission or negligence of Supplier or any of Supplier's employees, workers, servants, agents, subcontractors, or suppliers. Supplier shall, on request, pay or reimburse Bradken or any other party entitled to indemnification hereunder for all costs and expenses, including attorney's fees, as incurred by Bradken or such other party in connection with any such claim, demand, litigation, proceeding, loss, or damage. In addition, for infringement claims, Supplier will, at its own expense and at Bradken's option, either procure for Bradken the right to continue using the allegedly infringing item, replace it with a non-infringing equivalent, or remove it and refund the purchase price and the transportation and installation costs thereof.
- 14.2 Bradken will not be liable to the Supplier for any indirect or consequential loss or damage under the Purchase Order.
- 14.3 Bradken's aggregate liability arising from or relating to this Purchase Order is limited to the amount paid by Bradken for the goods and/or services to the maximum extent allowable under applicable law, Bradken shall not be liable under this Purchase Order for any special, incidental, consequential, indirect, or punitive damages including without limitation, lost revenues even if Bradken has been advised of the possibility of such damages.
- 15. Insurances**
- 15.1 In relation to Deliverables, the Supplier shall take out and maintain:
- comprehensive public and product liability insurance with a limit of not less than \$10,000,000 per claim;
 - workers compensation insurance as required by law;
 - motor vehicle third party liability insurance as required by law (where Supplier Vehicles are taken onto Bradken sites);
 - insurance covering the Suppliers own property, equipment, materials owned, hired leased or used by the Supplier for the purpose of this Purchase Order;
 - where professional goods or services are provided, Professional Indemnity insurance cover for a minimum of ten [10] years following the date of acceptance of the equipment by Bradken; and
 - any additional insurance required by any applicable law or specified in the Purchase Order.
- 15.2 The Supplier will at the request of Bradken provide copies of all certificates of currency in respect of the insurances required to be taken out by Supplier.
- 16. Force Majeure**
- 16.1 Neither Bradken nor the Supplier shall be liable to the other for default or delay in performing its obligations in respect of this Purchase Order caused by any occurrence beyond its reasonable control including, without limitation, fire, strike, disturbance, riot, war, Act of God and government order or regulation, provided that the party affected by such occurrence notifies the other party in writing within seven (7) days of the commencement of that occurrence. When the party ceases to be affected by the force majeure event it must immediately recommence performing its obligations under the Purchase Order and notify the other party accordingly. However, if as a result of any such force majeure event, supply of all or part of the Deliverables is delayed more than 30 days after the delivery date specified in the Purchase Order Bradken may, without penalty, cancel this Purchase Order to the extent it relates to such delayed Deliverables.
- 17. Disputes**
- 17.1 Bradken and the Supplier agree to work together to quickly settle disputes or differences that may arise. In the event that any such disputes or differences cannot be negotiated and amicably resolved between the parties within 21 days after the dispute was first raised, then the parties agree that the dispute shall be resolved by mediation by a person and process agreed upon by the Supplier and Bradken or, failing such agreement or resolution by or through that process, shall be submitted to arbitration in accordance with and subject to Arbitration administered by the Badan Arbitrase Nasional Indonesia (BANI Arbitration Center).
- The Arbitration shall be conducted in a location agreed by both parties, or failing agreement nominated by Bradken, in accordance with the BANI Rules and Procedures for Arbitration which are operating at the time the dispute is referred to BANI and which terms are hereby deemed incorporated into this agreement.
 - This clause shall survive termination of this agreement.
- 17.2 In the event of any unresolved dispute the Supplier must ensure the continued progress of achieving Deliverables.
- 18. Termination**
- 18.1 If Goods have been offered by the Supplier as, or if they are, standard or stock items Bradken can, by notice to the Supplier, at any time up to delivery cancel the commitment to buy them. Any other commitment of Bradken to receive and pay for Deliverables may be cancelled by Bradken and in such instances Bradken will reimburse the Supplier for all demonstrable irrecoverable costs incurred, or unavoidably committed, by the Supplier up to the point of cancellation.
- 18.2 Bradken may suspend performance of, or cancel, or suspend and then at any subsequent time cancel, the Purchase Order without any liability to the Supplier if it breach its terms, or if the Supplier's business fails. The Supplier's business will be treated for this purpose as having failed if:
- the Supplier makes any voluntary arrangement with its creditors;
 - (being an individual or firm) the Supplier become bankrupt;
 - (being a company) the Supplier becomes subject to an administration order or goes into liquidation;
 - any third party takes possession of, or enforces rights over, any of the Supplier's property or assets under any form of security;
 - the Supplier stops or threatens to stop carrying on business;
 - the Supplier suffers any process equivalent to any of these, in any jurisdiction; or
 - Bradken reasonably believes that any of the events mentioned above is about to occur and Bradken notifies the Supplier accordingly.
- 18.3 Any right of cancellation or suspension under this section is additional to any rights available to Bradken under the law of any relevant jurisdiction.
- 19. Confidentiality**
- 19.1 All information provided by Bradken to the Supplier must not be disclosed to any third party by the Supplier without the prior written consent of Bradken. The parties agree that this obligation shall survive termination or expiration of the Purchase Order.
- 20. Intellectual Property**
- 20.1 The title to all intellectual property rights in or in relation to providing the Services shall vest upon its creation with Bradken. Any intellectual property owned by the Supplier prior to execution of the Services will remain the property of the Supplier.
- 20.2 The Supplier indemnifies and holds harmless Bradken, its successors, administrators and assigns at all times after such acceptance from and against all costs including legal fees on a
- full indemnity basis, loss, damages, liability, claims, demands and suits at law or in equity for or in respect of the actual or alleged infringement of any patent, trade mark or corresponding intellectual property right to or in respect of materials used by the Supplier in the execution of the Order.
- 21. Waiver**
- 21.1 No failure or delay on the part of Bradken in exercising any of its rights under the Purchase Order shall be construed as constituting a waiver of any such rights.
- 22. Governing Law**
- 22.1 Unless otherwise specified, the Purchase Order will be governed and construed in accordance with the law of Indonesia and the parties submit to the exclusive jurisdiction of the courts of Indonesia.
- 23. Subcontracting and Assignment**
- 23.1 The Supplier is not permitted to assign or sub-contract all or any part of its obligations under the Purchase Order without the prior written consent of Bradken.
- 24. Compliance with Laws**
- 24.1 The Supplier, when providing the Deliverables, must have regard to and use best endeavours to ensure that it complies with all relevant and applicable laws, regulations and policies.
- 25. VAT and Withholding Tax**
- 25.1 VAT and Withholding Tax is payable on certain supplies of goods and/or services.
- 25.2 Words defined in the Law Number 42 of year 2009, Income Tax Article (PPH) 23 and Income Tax Article (PPH) 26 have the same meaning in these terms and conditions unless specifically defined in this clause.
- 25.3 All charges and amounts payable by one party to another under the Purchase Order are stated exclusive of VAT and Withholding Tax.
- 25.4 For each taxable supply under or in connection with the Purchase Order:
- The Supplier will be entitled to charge Bradken for any VAT payable by the Supplier in respect of the taxable supply.
 - Bradken must pay to the supplier the amount of the VAT at the same time as the relevant charge applicable to the supply becomes payable under the Purchase Order.
 - The Supplier must provide a valid tax invoice (or a valid adjustment note) to Bradken in respect of the taxable supply.
 - Where applicable under PPH 23 and PPH 26, the supplier authorises Bradken to reduce the payment amount by the withholding tax proportion and report and make payment of same to the Tax Office.
- 26. Non-exclusivity**
- 26.1 The Purchase Order, or these terms and conditions, do not confer on the Supplier any right to be a sole or exclusive supplier of the Deliverables.
- 27. Independent Supplier**
- 27.1 The Supplier is an independent contractor and must exercise independent control, management and supervision in the performance of the Purchase Order. The Supplier is not Bradken's agent in any way. The Suppliers' personnel will not under any circumstances be considered employees of Bradken for any purpose.
- 28. Notices**
- 28.1 A notice is treated as having been duly given and received when delivered, in writing, to the other party's address. The addresses of the parties are as stipulated in the Purchase Order.
- 29. Severance**
- 29.1 In the event that the whole or any part or parts of any clause in these terms and conditions is found to be unenforceable by a Court of competent jurisdiction then such clause or part thereof shall be to that extent severed from these terms and conditions without effect to the validity and enforceability of the remainder of these terms and conditions.
- 30. Environment**
- 30.1 Bradken maintains best practice standards for protection of the environment and occupational health and safety. The Supplier must also maintain best practice in those areas and will on Bradken's request disclose and demonstrate to Bradken your policies in that respect.
- 31. Anti-Corruption Compliance**
- 31.1 Neither the Supplier nor any of their affiliates shall take any actions in furtherance of an offer for example, by way of (but not limited to):
- Payment of monies; or
 - A promise to pay monies; or
 - Authorisation of any payment; or
 - Giving of money; or
 - Giving anything else of value; to
- Any person who engages in services for national or local governments;
 - Any person who engages in services for an agency or organization affiliated with a government entity;
 - Any person who engages in services for a public enterprise or state-owned entity;
 - Any person who engages in public services for an international public organization;
 - Any political party, party official, or candidate for political office; or
 - Any person authorized by a government entity to exercise a public function; (together "Public Officers") or to any person other than a Public Officer while knowing (or where the Supplier and/or its affiliates ought reasonably to know) that all or some portion of the money or value was or will be offered, given or promised to a Public Officer for the purposes of obtaining or retaining business or securing any improper advantage or influencing official action.
- 31.2 No part of the payments received by the Supplier from Bradken will be used for any purpose which would cause a violation of laws, including, without limitation, the anti-bribery laws of any country or jurisdiction, by the Supplier.
- 31.3 The Supplier agrees that they will conduct their business in compliance with laws, including, without limitation, the anti-bribery laws of any country or jurisdiction.
- 31.4 Furthermore, the Supplier shall not participate in other forms of misconduct, including, but not limited to:
- Fraud;
 - Collusion; and
 - Coercion in connection with any transaction or matter associated with its relationship to Bradken.
- 31.5 In addition to all other rights and remedies herein, if the Supplier is found or reasonably suspected to be in breach of any of the foregoing compliance provisions, Bradken shall have the right to cancel the purchase order immediately, unconditionally and without penalty, upon serving the Supplier a written notice of cancellation.