



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

Revision: 1.0

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Authorised by: Chief Procurement Officer

1. Definitions

- 1.1 "Bradken" means Bradken Casting (Malaysia) SDN. BHD. (888552-D), a company incorporated in Malaysia with its registered address at No 60-1 Jalan Lagenda 5, Taman 1 Lagenda, 75400 Melaka, Malaysia and place of business at Lot 19 & 20 Merlimau Industrial Estate, Merlimau 77300 Melaka, Malaysia. Bradken is 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 as identified in the Purchase Order.
- 1.4 "SST" means the Sales and Services Tax as defined in Sales Tax Act 2018 and Service Tax Act 2018 ("the SST Law").
- 1.5 "Services" means the services to be provided by the Supplier to Bradken as identified in the Purchase Order.
- 1.6 "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, whether written or oral.

3. Precedence of Documents

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

4. Alterations/ Variations

- 4.1 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.

5. Price

- 5.1 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 SST.

6. Payment

- 6.1 Unless otherwise stated in the Purchase Order, the terms of payment are 45 days from the end of the month in which i) Bradken receives a correctly rendered Supplier's invoice or ii) Bradken accepts the Deliverables, whichever is later.
- 6.2 A correctly rendered invoice shall be in the form of a tax invoice which shall state, as a minimum, the Purchase Order number.
- 6.3 Bradken reserves the right to return to the Supplier any invoices that it deems to be incorrectly rendered and retains the right to offset against any moneys payable to the Supplier against any sums owed by the Supplier to Bradken.

7. Packaging, Preservation and Hazardous Goods

- 7.1 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.
- 7.2 The Supplier shall ensure that the Goods comply with the requirements of all applicable law and, in the event 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.

8. Quality, Inspection and Testing

- 8.1 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 Purchase 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.
- 8.2 Bradken is entitled to expedite, inspect and witness tests on the Goods at the Supplier's and/or its subcontractor's premises. The Supplier must allow or cause to allow Bradken access at any time to the Supplier's and/or its subcontractor's premises for this purpose. The Supplier must make this a condition of any subcontract.
- 8.3 The Supplier of the Goods is solely responsible for controlling the quality of the Goods and shall only supply to Bradken those Goods which conform to the requirements of the Purchase Order. The Supplier shall make complete tests on the Goods where required by Bradken, and make those inspection test records available to Bradken upon request. Where the Purchase Order contains particular specification requirements for the Goods, the Supplier shall deliver a Certificate of Conformance with the Goods evidencing that the specification requirements of the Purchase Order have been satisfied.

9. Delivery, Risk and Title

- 9.1 The Supplier is responsible for the delivery and all costs associated with the delivery of the Goods and/or Services to Bradken's premises or such other location that is specified in the Purchase Order.
- 9.2 The Supplier warrants that the Goods shall be free from any security interest or other lien or encumbrance.
- 9.3 Title to and property in the Goods immediately passes to Bradken upon payment or acceptance, whichever occurs first, and the Goods must be appropriately marked and identified as the property of Bradken.

- 9.4 Risk in the Goods remains with the Supplier until Bradken's acceptance of the same unless otherwise stated in the Purchase Order.

9.5 The Supplier acknowledges:

- 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. For the avoidance of doubt, payment in part or in full does not constitute acceptance of the Goods by Bradken;
- 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 Purchase Order; and
- Goods returned to the Supplier as defective or otherwise outside the Purchase 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.

- 9.6 If Bradken provides to the Supplier any parts or components to be incorporated by the Supplier in the Goods, the parts or components supplied shall at all times after delivery thereof to the Supplier until acceptance of the Goods by Bradken be at the risk of the Supplier who shall pay and bear the actual cost incurred by Bradken in replacing or repairing the parts or components where such loss or damage arose whilst the parts or components were in the possession of the Supplier.

10. Delays

- 10.1 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 alternative delivery date possible. 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 cost and expense, including terminating the Purchase Order.

11. Warranty

- 11.1 The Supplier warrants that the Deliverables shall be free from faulty design, defects and workmanship, suitable for the purpose intended and conform to the Purchase Order requirements and any applicable laws and regulations. The Supplier further warrants that the Goods are new and are of the specified quality.
- 11.2 These warranties are in addition to any statutory warranties applicable to the Deliverables.
- 11.3 If any part or aspect of the Goods fails or becomes defective within 12 months (unless otherwise specified in the Purchase Order) from the date the Goods were accepted by Bradken, the Supplier must without delay and at no cost to Bradken do all things necessary to remedy the defect or failure in the Goods. This can be by way of repair, replacement, modification or other means acceptable to Bradken. If the Supplier does not do so within a reasonable period following notice of the defect from Bradken (the reasonableness of which is to be decided upon Bradken's sole and absolute discretion), then Bradken will have the right to remedy the defect and recover costs so incurred from the Supplier. The aforesaid costs shall be reimbursed to Bradken by the Supplier forthwith.
- 11.4 If, during the term of the Purchase Order and/or a further term of 12 months following completion of Services (whichever is later), Bradken is of the view that the Services do not comply with the requirements of the Purchase Order then Bradken may require the Supplier to re-perform the Services at the Supplier's cost within such time as Bradken reasonably may request.

12. Liability and Indemnity

- 12.1 The Supplier must indemnify and keep indemnified, Bradken, and its officers, employees and agents against all claims, demands, proceedings, liabilities, costs, charges and expenses suffered by Bradken and its officers, employees and agents arising as a result from any act, neglect or fault of the Supplier, its officers, employees and agents related to its obligations under the Purchase Order.
- 12.2 Bradken will not be liable to the Supplier for any indirect or consequential loss or damage under the Purchase Order.
- 12.3 The maximum sum, for which Bradken may be liable to the Supplier under the Purchase Order, is limited to the price of the Goods and/or Services stated in the Purchase Order.

13. Insurances

- 13.1 In relation to Deliverables, the Supplier shall take out and maintain:
- comprehensive public and product liability insurance with a limit of not less than 30,000,000MYR 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 Goods or Services by Bradken; and
 - any additional insurance required by any applicable law or specified in the Purchase Order.
- 13.2 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.

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14. Force Majeure

14.1 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.

15. Disputes

15.1 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 in writing, 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 Asian International Arbitration Centre (AIAC).

- a) The Arbitration shall be conducted in a location agreed by both parties, or failing agreement nominated by Bradken, in accordance with Act 646 Arbitration Act 2005, Arbitration (Amendment) (No.2) Act 2018 and AIAC Arbitration Rules which are operating at the time the dispute is referred to AIAC and which terms are hereby deemed incorporated herein.
- b) This clause shall survive termination of this agreement.

15.2 In the event of any unresolved dispute the Supplier must ensure the continued progress of achieving Deliverables.

16. Termination

16.1 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.

16.2 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 the Supplier breaches its terms, or if the Supplier's business fails. The Supplier's business will be treated for this purpose as having failed if:

- a) (being an individual) the Supplier commits an act of bankruptcy;
- b) (bring an individual) the Supplier enters into any composition or arrangement with his creditors;
- c) (being a company) the Supplier enters into liquidation whether compulsorily or voluntarily;
- d) (being a company) the Supplier is unable to pay its debt within the meaning of Section 466 of the Companies Act 2016;
- e) (being a company) a petition is presented or an order made or resolution passed or legislation enacted for the winding up of the Supplier;
- f) any third party takes possession of, or enforces rights over, any of the Supplier's property or assets under any form of security;
- g) the Supplier stops or threatens to stop carrying on business;
- h) the Supplier suffers any process equivalent to any of these, in any jurisdiction; or
- i) Bradken reasonably believes that any of the events mentioned above is about to occur and Bradken notifies the Supplier accordingly.

16.3 Any right of cancellation or suspension under this section is additional to any rights available to Bradken under the law of any relevant jurisdiction.

17. Confidentiality

17.1 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.

18. Intellectual Property

18.1 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.

18.2 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 Purchase Order.

19. Waiver

19.1 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.

20. Governing Law

20.1 Unless otherwise specified, the Purchase Order will be governed and construed in accordance with the law of Malaysia and the parties submit to the exclusive jurisdiction of the courts of Malaysia.

21. Subcontracting and Assignment

21.1 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.

22. Compliance with Laws and Legislation

22.1 The Supplier, when providing the Deliverables, must have regard to and comply with all relevant and applicable laws, regulations and policies.

22.2 The Goods supplied must in addition to the above comply with all applicable health and safety legislation of Malaysia and meet or exceed the appropriate Malaysian or International Standard.

23. SST

23.1 SST is payable on certain supplies of goods and/or services.

23.2 Words defined in the SST Law have the same meaning in these terms and conditions unless specifically defined in this clause.

23.3 All prices payable by one party to another under the Purchase Order are stated exclusive of SST.

23.4 For each taxable supply under or in connection with the Purchase Order:

- a) Bradken is exempted for SST on the purchase of goods as we are a Licenced Manufacturing Warehouse (LMW) company classified as a Special Area (SA) under Sales Tax Act 2018.
- b) The Supplier will be entitled to charge Bradken for any Service Tax payable by the Supplier in respect of the taxable supply.
- c) Bradken must pay to the supplier the amount of the SST at the same time as the relevant charge applicable to the supply becomes payable under the Purchase Order.
- d) The Supplier must provide a valid tax invoice (or a valid adjustment note) to Bradken in respect of the taxable supply.

24. Non-exclusivity

24.1 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.

25. Independent Supplier

25.1 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.

26. Notices

26.1 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.

27. Severance

27.1 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.

28. Environment

28.1 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 its policies in that respect.

28.2 Goods supplied must comply with all applicable environmental legislation of Malaysia and meet or exceed the appropriate Malaysian or International Standard.

29. Anti-Corruption Compliance

29.1 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):

- a) Payment of monies; or
- b) A promise to pay monies; or
- c) Authorisation of any payment; or
- d) Giving of money; or
- e) Giving anything else of value; to
 - (i) Any person who engages in services for national or local governments;
 - (ii) Any person who engages in services for an agency or organization affiliated with a government entity;
 - (iii) Any person who engages in services for a public enterprise or state-owned entity;
 - (iv) Any person who engages in public services for an international public organization;
 - (v) Any political party, party official, or candidate for political office; or
 - (vi) 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.

29.2 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.

29.3 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.

29.4 Furthermore, the Supplier shall not participate in other forms of misconduct, including, but not limited to:

- a) Fraud;
- b) Collusion; and
- c) Coercion in connection with any transaction or matter associated with its relationship to Bradken.

29.5 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.