

**MISC MARITIME SERVICES SDN BHD GENERAL TERMS AND CONDITIONS OF PURCHASE  
ORDER FOR PROVISION OF SERVICES AND GOODS**

**1.0 DEFINITIONS**

- **ASSOCIATED PERSON** means a person associated with CONTRACTOR including, but not limited to any of its employees, subcontractors, consultants, representatives and agents of CONTRACTOR.
- **CONTRACTOR** shall mean any person or company having a contract under this PURCHASE ORDER for the provision of the SERVICES to MMS.
- **CUSTOM CHARGES** shall include but shall not be limited to any import duty, surtax and any other statutory imposts levied, which are imposed by or on behalf of the Customs Authority or any other relevant authorities but does not include any export duty, penalties, interest and fines levied by the Customs Authority or any other relevant authorities due to the negligence of the CONTRACTOR.
- **DELIVERY DATE** shall mean the date on which the GOODS as specified in this PURCHASE ORDER is scheduled to be delivered.
- **FORCE MAJEURE** means an event beyond the control of an affected party, (including, but not limited to) acts of God, acts of civil or military authority, civil commotions, fire, strikes, hijacking, lockouts or labour disputes (excluding strikes, lockouts, labour disputes or other action primarily by the act of employees or agents of the affected party), epidemics, pandemic, outbreaks of infectious disease or any other public health crisis, wars, riots, earthquakes, storms, sand storms, typhoons, perils of the sea, blockade, embargo, plague or other epidemics or similar events.
- **GOODS** shall mean the materials or products to be supplied by the CONTRACTOR as specified in this PURCHASE ORDER and/or any part thereof.
- **GUARANTEE PERIOD** shall have a meaning assigned to it in Item 7.2.
- **INCOTERMS** shall mean MISC Maritime Services Sdn Bhd, **TBA** ie. the INCOTERMS applicable on the date of this PURCHASE ORDER (if any), issued by the International Chamber of Commerce, Paris, France and any amendments made thereto.
- **MMS** shall mean MISC Maritime Services Sdn Bhd (Registration No. 199201010371 (241874-V)) or its successor-in-title or permitted assigns;
- **MMS GROUP** shall mean MMS, its holding company, subsidiary, affiliates, any other entity directly or indirectly controlled by MMS from time to time, consultants, agents or contractors;
- **PURCHASE ORDER** shall mean this PURCHASE ORDER Form and these terms and conditions, together with any exhibits attached hereto and made part hereof.
- **PARTY** shall mean either CONTRACTOR or MMS.
- **PARTIES** shall mean CONTRACTOR and MMS.
- **RELEVANT OBLIGATIONS** shall mean obligations equivalent to those imposed on CONTRACTOR in Item 20.2.
- **RELEVANT POLICIES** shall mean Part II A (Conflict of Interest) and II B (Fighting Corruption and Unethical Practices) of MMS Code of Conduct and Business Ethics and other related policies, procedures, guidelines and requirements as updated by MMS from time to time.
- **RELEVANT REQUIREMENTS** shall mean all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption.
- **RESPONSE TIME** shall mean timeline provided to CONTRACTOR to respond to MMS' request for the SERVICES which is ("TBA").
- **SERVICES** shall mean the services carried out by CONTRACTOR for MMS in accordance with this PURCHASE ORDER.
- **SITE(S)** shall mean any location(s) where CONTRACTOR is required to perform this PURCHASE ORDER.
- **TAXES** shall include but not limited to all income, profit, withholding, franchise, excess profits, royalty, other taxes, personal property taxes, employment taxes and contributions imposed or that maybe imposed by law, regulations or trade union which are imposed by or on behalf of any taxing authority and includes penalties, interest and fines in respect thereof.

## **2.0 PURCHASE ORDER**

The PURCHASE ORDER shall be effective on the date mentioned in the Purchase Order form.

## **3.0 SERVICES**

3.1 CONTRACTOR shall ensure that the SERVICES are performed at the SITE(S) in accordance with the timeline as stated in this PURCHASE ORDER.

3.2 In the event of failure by CONTRACTOR to perform the SERVICES contained in this PURCHASE ORDER other than as a result of FORCE MAJEURE or MMS' written request, MMS shall have the right to cancel all or any remaining part of this PURCHASE ORDER without payment of compensation, and obtain SERVICES from other sources. Any and all increased costs and expenses thereby incurred by MMS in obtaining such SERVICES shall be set off against any moneys due or to become due to CONTRACTOR or shall be recoverable as damages hereunder.

## **4.0 PAYMENT TERMS**

MMS shall make payment within thirty (30) days upon the receipt of verified invoices accepted as correct by MMS and all supporting documents provided that all CONTRACTOR's obligations according to this PURCHASE ORDER have been fulfilled, completed and/or delivered to MMS' satisfaction.

## **5.0 PRICE**

The prices stated in this PURCHASE ORDER are not subject to any alteration, adjustment or variation unless expressly agreed in writing by MMS.

## **6.0 TAXES AND DUTIES**

6.1 This PURCHASE ORDER PRICE shall exclude any TAXES and expenses to be incurred by the CONTRACTOR arising from this PURCHASE ORDER. The CONTRACTOR is responsible for its own TAX compliance and payment of any TAXES that are imposed on him. MMS shall withhold any taxes on payments to the CONTRACTOR when so required by law.

6.2 This PURCHASE ORDER PRICE must be segregated based on the following, where applicable:

- (a) SERVICES performed inside Malaysia;
- (b) SERVICES performed outside Malaysia;
- (c) Reimbursements / disbursements inside Malaysia arising from the performance of the SERVICES;
- (d) Reimbursement / disbursements outside Malaysia arising from the performance of the SERVICES; and/or
- (e) Hotel accommodation charges during travels in Malaysia arising from the performance of the SERVICES.

6.3 The CONTRACTOR agrees that MMS shall at its sole discretion, may not affect any payment unless proper documents are submitted. MMS shall have the right to withhold TAXES from payments due to the CONTRACTOR under this PURCHASE ORDER to the extent that such withholding may be

required by the Inland Revenue Board (“IRB”) or any other tax relevant authorities, and payment by MMS to the IRB of the amount of money so withheld shall relieve MMS from any further obligation to the CONTRACTOR with respect to the amount so withheld.

6.4 Where the CONTRACTOR is of the opinion that withholding tax are not applicable, it is the sole responsibility of the CONTRACTOR to secure the written direction from the IRB enabling MMS to make payments for the services without any deduction of TAX.

6.5 The CONTRACTOR and his personnel rendering the SERVICES under this PURCHASE ORDER are independent parties and are not authorized to act as the agent or representative of MMS. The CONTRACTOR and MMS agree that no employment relationship shall exist between MMS or any of its affiliates and the CONTRACTOR’s personnel by virtue of the SERVICES rendered under this PURCHASE ORDER. The CONTRACTOR further undertakes that:

(a) The CONTRACTOR shall be responsible for ensuring that all wages, fees, contributions, social security, charges and TAXES required to be paid by the CONTRACTOR and/or its personnel are paid as required by the relevant applicable law; and

(b) The CONTRACTOR shall ensure that all appropriate deductions are made from the wages of personnel in respect of TAXES, employee social security and other contributions including where required workmen compensation insurance contributions.

6.6 The CONTRACTOR agrees that MMS, at its sole discretion, may not effect any payment unless proper documents are submitted. The CONTRACTOR shall indemnify and hold MMS harmless from any liability resulting from failure by the CONTRACTOR or its subcontractors or suppliers to make timely payments of, or to pay any of, all such taxes and duties.

6.7 Service tax clause

(a) Where Service Tax is applicable to any services rendered by the CONTRACTOR under the CONTRACT, MMS shall be responsible for and pay the Service Tax when invoiced by the CONTRACTOR for any taxable services rendered, provided that CONTRACTOR shall provide MMS a copy of valid Service Tax notification letter issued by the Royal Malaysian Customs Department (“Customs Authority”) confirming that CONTRACTOR is registered under the applicable Act as a taxable person providing taxable services.

(b) Service Tax amount shall be separately stated from the prices and/or rates, and shall be separately itemized in the invoice.

(c) For avoidance of doubt, “Service Tax” as mentioned above refers to the tax imposed on taxable services provided by taxable person in Malaysia effective 1 September 2018 as set out in the Service Tax Act 2018.

**7.0 WARRANTIES AND GUARANTEES**

7.1 CONTRACTOR warrants and guarantees to MMS that:

(a) CONTRACTOR has the experience, capability and all necessary registrations and licenses to perform the SERVICES under this PURCHASE ORDER;

(b) the SERVICES shall be of good quality, good workmanship, fit for purpose for which it is generally intended and/or for which MMS has informed CONTRACTOR or CONTRACTOR has represented it is intended and shall be completed without any omission; and

(c) the SERVICES performed under this PURCHASE ORDER shall be in accordance with good principles and accepted professional standards and meeting the intents and objectives of this PURCHASE ORDER.

7.2 CONTRACTOR's warranty and guarantee under Item 7.1(b) shall commence from the completion of the SERVICES to the satisfaction of MMS and shall expire on the expiry date of this PURCHASE ORDER or any extension thereof.

7.3 CONTRACTOR shall be responsible for making good, with all possible speed, any failure or omission and defects in the SERVICES or any portion thereof which may appear or occur during the GUARANTEE PERIOD. Remedied SERVICES shall be at CONTRACTOR's cost and shall carry an additional guarantee period as mutually agreed by both MMS and CONTRACTOR from the period the SERVICES are remedied.

7.4 CONTRACTOR's liability hereunder shall extend to all damages proximately caused by the omissions or defects, including incidental damages such as removal, inspection, costs of return or storage.

## **8.0 LICENSE AND PERMIT**

Subject to the relevant provisions of applicable law, CONTRACTOR shall obtain any license or permit which is required in the country of implementation of this PURCHASE ORDER. This PURCHASE ORDER is conditional upon such license or permit being made available in good time to MMS..

## **9.0 INSPECTION**

9.1 CONTRACTOR shall be responsible for ensuring that all inspections and testing required under this PURCHASE ORDER are carried out in accordance with generally accepted industry standards applicable to an international contractor and shall provide such inspection and testing plan to MMS.

9.2 MMS or any third party appointed by MMS shall have the right at all reasonable times to inspect or witness any test of any part of this PURCHASE ORDER at any place where it is being performed. Inspection, witnessing or the lack of both by MMS shall not be construed as acceptance of any part of this PURCHASE ORDER nor as relieving CONTRACTOR of its obligation to fulfil all requirements of this PURCHASE ORDER.

9.3 Any inspection made by MMS shall not prejudice MMS' right of rejection.

## **10.0 LIABILITY AND INDEMNITY**

10.1 Each PARTY shall be responsible for and shall hold harmless and indemnify each other from and against any loss or expense by reason of all claims, proceedings, demands and causes of action in respect of any damage to or loss of property or injury (including death) to any person of either PARTY, howsoever caused.

10.2 CONTRACTOR shall further indemnify and hold MMS safe and harmless from and against all injuries to, including death of third parties, and loss of damage to property of third parties arising out of or in connection with the performance of this PURCHASE ORDER.

## **11.0 CONSEQUENTIAL LOSS**

MMS shall not be liable for any incidental, indirect, consequential damages whatsoever (which shall include but not limited to damages for loss of earnings, loss of anticipated profits, income or savings, goodwill, anticipated savings or interruption of business) that may be suffered or incurred by CONTRACTOR, even if advised of the possibility of such damage arising out of or in connection with this PURCHASE ORDER and/or termination and/or cancellation of this PURCHASE ORDER.

## **12.0 INSURANCE**

12.1 CONTRACTOR shall at its own cost and expense, procure and maintain reasonable and adequate insurance to cover against the exposures for the performance of this PURCHASE ORDER and as required by law, including but not limited to property damage insurance, employee benefits/social security payments and comprehensive general liability insurance with minimum limit of RM200,000 covering legal liability to third parties for incidents arising from performance of this PURCHASE ORDER and resulting in property damage, bodily injuries, including death, sustained by any person.

12.2 Whenever requested, CONTRACTOR shall within fourteen (14) days from such request, furnish to MMS certified copies of the certificates of insurances provided for in Item 12.1 hereof, accompanied by certified copies of official receipts evidencing payment of the full premiums thereof. Policies and/or extension certificates or documents shall be furnished to MMS as and when requested by MMS. The furnishing of certificates of insurances shall not be interpreted as implying that MMS assumes responsibility for the correctness of such documents or that CONTRACTOR has complied with its other obligations contained in this PURCHASE ORDER.

## **13.0 LIQUIDATED DAMAGES**

13.1 In the event the timeline under this PURCHASE ORDER and/or RESPONSE TIME and/or DELIVERY DATE is not met by CONTRACTOR, CONTRACTOR shall pay MMS liquidated damages (which CONTRACTOR and MMS hereby agree shall not be considered as penalty).

13.2 Liquidated damages payable by CONTRACTOR to MMS is calculated at 0.1% of the PURCHASE ORDER price per day for each day of delay (pro-rated), up to the maximum of 10% of such PURCHASE ORDER price.

13.3 The liquidated damages stated in this Item 13.0 is deemed to be the actual loss which MMS will suffer in the event that CONTRACTOR fails to comply with the timeline under this PURCHASE ORDER and/or RESPONSE TIME and/or DELIVERY DATE. CONTRACTOR by entering into this PURCHASE ORDER agrees to pay to MMS the said amount(s) if the same becomes due without the need for MMS to prove actual damage or loss.

13.4 In the event the delay continues and CONTRACTOR is unable to comply with the timeline under this PURCHASE ORDER and/or RESPONSE TIME and/or DELIVERY DATE and accumulates the maximum amount of liquidated damages payable by CONTRACTOR to MMS pursuant to Item 13.2 above, MMS shall have the right to terminate this PURCHASE ORDER immediately under Item 14.1 hereof.

## **14.0 TERMINATION/CANCELLATION**

14.1 In the event of any material breach of any of the terms and conditions of this PURCHASE ORDER, MMS may, without prejudice to any other right under this PURCHASE ORDER or at law, terminate/cancel this PURCHASE ORDER with immediate effect and CONTRACTOR shall immediately cease performance of this PURCHASE ORDER.

14.2 MMS may also terminate/cancel this PURCHASE ORDER with immediate effect if:

- (a) CONTRACTOR generally suspends payment of its debts as they become due; or
- (b) a petition is filed or an order is filed or an order is made or entered (and is not stayed within thirty (30) days of service thereof) against CONTRACTOR; or

(c) a resolution is passed or an involuntary petition is filed for the winding up, receivership, bankruptcy or reorganisation of CONTRACTOR; or

(d) CONTRACTOR makes an assignment for benefit of all or substantially all its creditors or a receiver or administrator is appointed to all or substantially all of its assets; or

(e) the ownership or control of CONTRACTOR has been materially altered.

14.3 This PURCHASE ORDER may also be terminated/cancelled with immediate effect at any time by MMS by giving thirty (30) days to CONTRACTOR, without providing any reason whatsoever. After such notice has been given, CONTRACTOR shall not perform this PURCHASE ORDER further, and shall make an attempt to cancel contracts already entered into with subcontractors, pursuant to this PURCHASE ORDER without cost or liability to MMS.

## **15.0 FORCE MAJEURE**

15.1 Neither party shall be liable for any failure to fulfill any term of this PURCHASE ORDER if fulfillment has been delayed, interfered with or prevented by FORCE MAJEURE provided the party is not already in default of those obligations under this PURCHASE ORDER whose performance is delayed, interfered with or prevented by FORCE MAJEURE.

15.2 For the avoidance of doubt, labour disputes or riot involving the CONTRACTOR and labour disputes, fire, flood, war or riot involving the CONTRACTOR's subcontractors shall not be considered to be a FORCE MAJEURE event.

15.3 The affected party is obligated to notify the other party as soon as reasonably practicable after it becomes aware of a FORCE MAJEURE. MMS and CONTRACTOR shall concur as to the actions to be taken, if any, to mitigate the effects of the FORCE MAJEURE.

## **16.0 WAIVER AND VALIDITY**

16.1 Failure by MMS to enforce the performance of any of the provision of this PURCHASE ORDER against CONTRACTOR shall neither be deemed to be a waiver of its rights hereunder nor shall it affect the validity of this PURCHASE ORDER in any way.

16.2 Any waiver by MMS to any breach of this PURCHASE ORDER by CONTRACTOR shall not constitute a precedent and shall not be deemed a waiver of any succeeding breach of the same provision or any other provision of this PURCHASE ORDER.

16.3 Any provision herein which is or becomes illegal or unenforceable shall be severed from this PURCHASE ORDER and shall not affect the validity of the remaining provisions hereof.

## **17.0 HEALTH, SAFETY AND ENVIRONMENT ("HSE")**

The CONTRACTOR shall ensure that its personnel, its agents or subcontractors, shall comply with all rules, regulations, standard requirements, PETRONAS/MMS' Personal Protective Equipment; and other policies (including those related to security, administrative and safety arrangements) applicable for the provision of the SERVICES. A copy of the relevant HSE policies and documents can be obtained from MMS upon request.

## **18.0 CONFIDENTIAL INFORMATION**

CONTRACTOR shall keep confidential any technical information, data, and information concerning the business and research plans or activities of MMS, its affiliates or third parties which is made available to CONTRACTOR by MMS or its affiliates or which results from the provision of this PURCHASE ORDER.

## **19.0 BUSINESS CONDUCT**

19.1 CONTRACTOR must comply with the relevant parts of MMS Code of Conduct and Business Ethics, Country Supplement, other applicable rules, regulations, policies, procedures, guidelines and requirements as updated by MMS from time to time.

19.2 A copy of the MMS Code of Conduct and Business Ethics and Country Supplement can be obtained from MMS upon request.

19.3 CONTRACTOR must ensure that all ASSOCIATED PERSONS who provide perform SERVICES in connection with this PURCHASE ORDER comply with all relevant parts of PETRONAS Code of Conduct and Business Ethics, Country Supplement, other applicable rules, regulations, policies, procedures, guidelines and requirements as updated by MMS from time to time.

19.4 From time-to-time, at the reasonable request of MMS, CONTRACTOR shall confirm in writing that CONTRACTOR and the ASSOCIATED PERSONS have complied with the obligations imposed upon in this Item 19.0 and provide any information reasonably requested by MMS in support of the compliance obligations.

19.5 In the event that CONTRACTOR and the ASSOCIATED PERSONS refuse, fail and/or is negligent in complying with the provisions as stated in this Item 19.0, MMS may take any such action as deemed necessary including termination of this PURCHASE ORDER in accordance with the terms stated in Item 14.0 without any payment of compensation to CONTRACTOR.

## **20.0 CONFLICT OF INTEREST, CORRUPT GIFTS AND PAYMENTS OF COMMISSION**

20.1 CONTRACTOR shall not offer or give or agree to give to any employee of MMS, any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any act in relation to the procurement or performance of this PURCHASE ORDER or for showing or forbearing to show favor or disfavor to any person relating to this PURCHASE ORDER.

20.2 CONTRACTOR must:

- (a) comply with all RELEVANT REQUIREMENTS and RELEVANT POLICIES;
- (b) have in place and maintain throughout the term of this PURCHASE ORDER, RELEVANT POLICIES and procedures to ensure compliance with the RELEVANT REQUIREMENTS and RELEVANT POLICIES;
- (c) with respect to any matter arising out of this PURCHASE ORDER, maintain adequate internal controls and accurately record all transactions in its books and records;
- (d) enforce the policies and procedures referred to in Item 20.1 (b) where appropriate;
- (e) promptly report to MMS any breach of this Item 20.1 arising in connection with this PURCHASE ORDER and take such steps as MMS may reasonably require in order to rectify any such breach;
- (f) promptly report any request or demand for any undue financial or other advantage of any kind received by CONTRACTOR in connection with the performance of this PURCHASE ORDER and take such steps in response to any such request as MMS may reasonably require;
- (g) immediately notify MMS in writing if a foreign public official becomes an officer or employee of CONTRACTOR or acquires a direct or indirect interest in CONTRACTOR and CONTRACTOR warrants that no foreign public officials are officers or employees of CONTRACTOR or have direct or indirect interests in CONTRACTOR at the date of this PURCHASE ORDER;

20.3 CONTRACTOR must ensure that all ASSOCIATED PERSONS who perform SERVICES in connection with this PURCHASE ORDER comply with the RELEVANT OBLIGATIONS.

20.4 CONTRACTOR shall be responsible for the observance and performance by ASSOCIATED PERSONS of the RELEVANT OBLIGATIONS and shall be directly liable to MMS for any breach of the RELEVANT OBLIGATIONS by an ASSOCIATED PERSON.

20.5 Breach of this Item 20.0 shall be deemed a material breach and MMS may terminate this PURCHASE ORDER in accordance with the terms stated in Item 14.0 without any payment of compensation to CONTRACTOR.

#### 20.6 Anti-Bribery and Corruption

20.6.1 CONTRACTOR has not indulged and shall not indulge in act of corruption, fraud or money laundering and shall indemnify MMS for any pre-acquisition acts of corruption, fraud or money-laundering. In the event of breach, MMS shall be entitled to claim for indemnity from CONTRACTOR and thereafter, terminate this PURCHASE ORDER forthwith.

20.6.2 CONTRACTOR shall ensure its personnel comply with the requirements under this Article 20.6. In the event of breach, MMS shall be entitled to claim for indemnity from CONTRACTOR and thereafter, terminate its personnel and this PURCHASE ORDER forthwith.

### 21.0 USE OF TRADEMARKS

CONTRACTOR shall not, without the prior written consent of MMS, use the name or any trade name or trademark of MMS or MMS GROUP in any advertising or communications to the public in any format whatsoever.

### 22.0 ILLEGAL INFORMATION BROKERING

CONTRACTOR warrants and represents that it has not and will not utilize confidential information of others or illicit influence such as illegal information brokering in connection with this PURCHASE ORDER.

### 23.0 SUBCONTRACTING

CONTRACTOR shall not subcontract all or any part of its obligations under this PURCHASE ORDER without MMS' prior written approval. CONTRACTOR shall bind every subcontractor to the terms of this PURCHASE ORDER.

### 24.0 ASSIGNMENT AND NOVATION

CONTRACTOR shall not novate or assign this PURCHASE ORDER in whole or in part without the prior written approval of MMS, which approval shall not be unreasonably withheld.

### 25.0 AMENDMENT

No amendment or variation of the provisions of this PURCHASE ORDER shall be binding upon any party unless it is mutually agreed in writing by both PARTIES.

### 26.0 TIME

Time shall be of essence to the terms stipulated in this PURCHASE ORDER.



## **27.0 APPLICABLE LAW**

This PURCHASE ORDER shall be governed by and construed in all respects in accordance with the Laws of Malaysia and subject to the jurisdiction of Malaysian Courts.

## **28.0 ENTIRE AGREEMENT**

The terms and conditions set out on this PURCHASE ORDER together with any subsequent amendments made in writing by MMS and CONTRACTOR represent the entire terms and conditions of this PURCHASE ORDER between MMS and CONTRACTOR and shall supersede the inquiry, bid offer, clarification and other agreements or documents previously made between MMS and CONTRACTOR.

## **29.0 COST OF PREPARING**

29.1 Each PARTY shall bear its own costs and expenses incurred in connection with the preparation of this PURCHASE ORDER.

29.2 Any stamp duty payable in respect of this PURCHASE ORDER shall be borne by the CONTRACTOR.

## **30.0 CONTRACT**

In existence of a valid contract between MMS and CONTRACTOR, the terms of this PURCHASE ORDER shall not be applicable.

# **ANNEXURE 1**

## **TERMS AND CONDITIONS FOR SUPPLY OF GOODS**

### **1.0 DELIVERY DATE**

1.1 The CONTRACTOR shall ensure that the GOODS are delivered to the SITE(S) on the scheduled DELIVERY DATE in accordance with INCOTERMS and as stated in this PURCHASE ORDER.

1.2 The CONTRACTOR is responsible at its cost for packing and transporting the GOODS to the SITE(S).

1.3 In the event of failure by CONTRACTOR to deliver the GOODS contained in this PURCHASE ORDER, other than as a result of FORCE MAJEURE or MMS' written request, MMS in addition to the rights under Item 13, shall have the right to cancel all or any remaining part of this PURCHASE ORDER, without payment of compensation, and obtain delivery from other sources. Any and all increased costs and expenses thereby incurred by MMS in obtaining such delivery shall be set off against any moneys due or to become due to CONTRACTOR or shall be recoverable as damages hereunder.

### **2.0 TAXES AND DUTIES**

2.1 Applicable for PURCHASE ORDER for GOODS with INCOTERMS other than DDP ("Delivered Duty Paid")

(a) GOODS price shall exclude any TAXES and expenses to be incurred by CONTRACTOR arising from the supply of the GOODS. MMS shall withhold any taxes on payments to CONTRACTOR if required by law.

(b) GOODS price shall also exclude CUSTOM CHARGES payable under this PURCHASE ORDER.

2.1 Applicable for PURCHASE ORDER for GOODS with INCOTERMS of DDP

- (a) GOODS price shall exclude any TAXES and expenses to be incurred by CONTRACTOR arising from the supply of the GOODS. MMS shall withhold any taxes on payments to CONTRACTOR if required by law.
- (b) GOODS price shall include CUSTOM CHARGES payable under this PURCHASE ORDER.
- (c) GOODS detailed in this PURCHASE ORDER price must be segregated based on the following:
  - i. GOODS purchased locally and its applicable CUSTOM CHARGES; and/or
  - ii. Imported GOODS and its applicable CUSTOM CHARGES.

2.2 CONTRACTOR agrees that MMS, at its sole discretion, may not affect any payment unless proper documents are submitted, and MMS shall withhold any taxes on payments to CONTRACTOR when so required by law. CONTRACTOR shall indemnify and hold MMS harmless from any liability resulting from failure by CONTRACTOR or its subcontractors or suppliers to make timely payments of, or to pay any of, all such taxes and duties.

2.3 Sales tax clause

- (a) Where Sales Tax is applicable to any taxable goods manufactured and supplied in Malaysia by the CONTRACTOR under the CONTRACT, MMS shall be responsible for and pay the Sales Tax when invoiced by the CONTRACTOR for such taxable goods supplied, provided that CONTRACTOR shall provide MMS a copy of valid Sales Tax notification letter issued by the Customs Authority confirming that CONTRACTOR is licensed under the applicable Act as a taxable person supplying taxable goods.
- (b) Sales Tax amount shall be separately stated from the prices and/or rates, and shall be separately itemized in the invoice.
- (c) For avoidance of doubt, "Sales Tax" as mentioned above refers to the tax imposed on taxable goods provided by registered person in Malaysia effective from 1 September 2018 as set out in the Sales Tax Act 2018.

**3.0 PASSING OF PROPERTY AND RISK**

3.1 Title and risk in the GOODS shall remain with CONTRACTOR until they are delivered at the point specified in this PURCHASE ORDER or in accordance with the relevant provision of INCOTERMS, whichever is applicable. At such time, title and risk shall transfer to MMS. However, until such title is passed to MMS, MMS shall have a lien on all of CONTRACTOR's materials and supplies forming part of the GOODS arising from this PURCHASE ORDER and other payments made by MMS to CONTRACTOR.

3.2 Notwithstanding anything to the contrary, the passing of title and risk of GOODS shall not affect the right to reject the GOODS.

3.3 In the case of GOODS delivered by CONTRACTOR not conforming with this PURCHASE ORDER whether by reason of not being of the quality or in the quantity or measurement stipulated or being unfit for the purpose for which they are required, MMS shall have the right to reject such GOODS within a reasonable time of their delivery and inspection and to purchase elsewhere and to claim for any additional expense incurred without prejudice to any other right which MMS may have against CONTRACTOR.

#### **4.0 WARRANTIES**

4.1 The CONTRACTOR represents and warrants that GOODS furnished under this PURCHASE ORDER:

- (a) shall be new unless otherwise stated by MMS in this PURCHASE ORDER;
- (b) shall conform to the specification in this PURCHASE ORDER;
- (c) shall have clear title, free from all liens, taxes, and/or encumbrances;
- (d) may be used by MMS without infringing upon any patent relating to the GOODS; and
- (e) shall be free from apparent and hidden defects or deficiencies for a period mutually agreed by both PARTIES.

#### **5.0 DEFECTS LIABILITY**

5.1 The CONTRACTOR warrants all GOODS against any defect from the date of acceptance of the GOODS to the satisfaction of MMS until the expiry of this PURCHASE ORDER or any other duration that mutually agreed by MMS and the CONTRACTOR.

5.2 The CONTRACTOR shall ensure that all warranties provided by its subcontractors and manufacturers are assigned to MMS. The CONTRACTOR shall deliver a copy of each written warranty provided by its subcontractors and manufacturers to MMS. For the avoidance of doubt, this warranties and guarantees are in addition to the guarantees and warranties provided by CONTRACTOR under Item 5.1.

5.3 Upon receipt of a notice from MMS of any defect in any GOODS during the period under Item 5.1 due to defective design, materials, workmanship, unmerchantable quality or unfit for intended purpose, the affected items or parts must be redesigned, repaired or replaced as appropriate by CONTRACTOR at no cost to MMS prior to the expiration of the time specified in the notice.

5.4 If CONTRACTOR fails to rectify any defect in the GOODS identified by MMS pursuant to Item 5.3, MMS may rectify any defect in the GOODS at MMS' cost and such costs and expenses shall be recovered from CONTRACTOR as a debt due and payable or set-off against CONTRACTOR's invoices.