

SMARTPHONE FOR ALL INITIATIVE

STANDARD TERMS & CONDITIONS OF PURCHASE

1 Definitions and interpretation

1.1 Definitions

In these terms and conditions ('the Terms') the following have the meanings set out below:

'Organization' means East African Communications Organization

'Contract' is defined in Clause 2.1

'Deducted Amount' is defined in Clause 11.1

'Deliverables' means goods, rights and services identified in the Purchase Order.

'Delivery Location' means the place identified in the Purchase Order in relation to the provision of the Deliverables or agreed by mutual consent

'Goods' means all goods, materials, equipment and parts provided by the Supplier to the Buyer as detailed in the Purchase Order.

'Laws' means the requirements of all statutes, rules, regulations, proclamations, awards, ordinances, by-laws or Rwanda Standards, present or future, and whether, local or otherwise.

'Material' means any material brought into existence as part of, or for the purpose of producing the Supply, and includes but is not limited to documents, equipment, information or data stored by any means.

'Party' means a party to the Contract.

'Personnel' means:

- (a) in relation to the Supplier, any of its employees, Subcontractors (including Subcontractors' Personnel), agents and representatives involved either directly or indirectly in the performance of the Supply; (b) in relation to the Buyer, any of its past or present officers, employees, agents or representatives; and
- (c) in relation to a Subcontractor, any of its employees, agents or representatives involved either directly or indirectly in the performance of the Supply.

'Price' is defined in Clause 8.1

'Purchase Order' means individual purchase orders as may be issued by the Buyer to the Supplier in respect of the Supply which shall be subject to the Contract.

'Services' means the work identified in the Purchase Order to be performed by the Supplier in accordance with the Contract.

'Site' means the Buyer's premises identified in the Purchase Order.

'Subcontractor' means any person engaged by the Supplier in accordance with Clause 19 to perform all or any part of the Supply on behalf of the Supplier.

'Supplier' means the Party (as identified in the Purchase Order) responsible for providing the Supply.

'Supplier Default Notice' is defined in Clause 17.2

'Supply' means the supply of Deliverables in accordance with the Purchase Order.

1.1 Interpretation

Unless the context requires otherwise, the singular includes the plural and vice versa, reference to a gender includes all genders, reference to a 'person' includes a natural person, Buyer, body corporate or other form of legal entity, and reference to 'including' and 'includes' is to read as if followed by 'without limitation'.

2 Evidence of Contract and precedence of documents

2.1 Contract

(a) The Contract consists of the following documents:

(i) The Purchase Order;

(ii) These Terms and Conditions ('the Terms');

and

(iii) Any express written agreement from the Buyer which is attached to, or incorporated by reference in, the Purchase Order or these Terms.

(b) The Buyer is not contractually bound until a formal Purchase Order is placed by the Buyer and then only to the extent of the issues specifically covered by that Purchase Order.

2.2 Precedence of documents

If any of the terms of the Contract conflict with or contradict each other, those terms will over-ride each other in the following order of priority: (1) any express written agreement from the Buyer; (2) our Purchase Order; (3) these Terms.

2.3 Entire agreement

(a) The Contract contains the entire agreement between the Buyer and the Supplier with respect to its subject matter and supersedes all prior communications and negotiations between the Buyer and the Supplier in this regard, unless those communications expressly form part of the Contract.

(b) No terms or conditions submitted by either Party that are in addition to, different from or inconsistent with those contained herein or in the Purchase Order, including, without limitation, the Supplier's printed terms and conditions, and any terms and conditions contained in any Supplier's quotation, invoice, Purchase Order acknowledgment, confirmation, acceptance, bill of lading or other instrument, shall be binding upon either Party unless specifically and expressly agreed to in a writing signed by duly authorised representatives of both parties.

3 Acceptance

(a) The Buyer only purchases Deliverables on these Terms.

(b) If the Supplier accepts the Buyer's Purchase Order it will be on these Terms and no other standard terms.

(c) The performance of any part of this Contract will be deemed to be acceptance of the conditions stated herein, regardless of any inconsistency in the Supplier's own small print

(d) These Terms can only be changed, or other terms agreed, in written correspondence signed by a director or other senior officer of the Buyer.

These Terms & Conditions are available EACO website.

4 Third Party Supplier

EACO acts only as a facilitator in behalf of the Buyer in ordering goods from the actual Supplier and as such accepts no responsibility on behalf of the Supplier.

4.1 Performance by Supplier

The Supplier must perform the Supply in accordance with the terms of the Contract and in consideration of the payment of the Price by the Buyer.

5 Specifications

5.1 If the Buyer orders Goods, then, unless otherwise stated, the Contract is deemed to include the supply of all relevant documentation and certification, and of any commissioning of those Goods, necessary to enable the Buyer to use them for their intended purposes.

5.2 If the Buyer orders Goods or Services then, unless otherwise stated, the Contract includes any legal rights necessary to use those Goods or Services for their intended purposes.

5.3 The quantity, quality and description of Deliverables will be as specified in the Buyer's Purchase Order or as agreed by the Buyer in writing, subject to which then in full accordance with Clause 6.

5.4 The Supplier has sole responsibility for complying with all applicable regulations and other legal and regulatory requirements concerning the performance of the Supply, and for ensuring that the Buyer can, in compliance likewise, fully utilise the Deliverables for their intended purposes.

5.5 If, before Supply has occurred, the Buyer notifies the Supplier in writing of any change in the desired specification (including as to quality and time frame) the Supplier will respond as follows:

- (a) If the change would reduce the Supplier's costs, the Price will reduce to fairly reflect that saving;
 - (b) If the change would increase the Supplier's costs, the Supplier may notify the Buyer promptly, in writing, of a proposed revision of the Price fairly and proportionately reflecting any such unavoidable increased cost;
 - (c) If the change would for any reason be unachievable the Supplier may notify the Buyer of that promptly and in writing. Both parties will then use reasonable efforts to reach a mutually acceptable Contract variation;
 - (d) Failing notice by the Supplier the change proposed by the Buyer will be deemed to have been accepted, and the Contract will be deemed to have been varied with immediate effect to reflect the requested specification change with no increase of the Price; and
 - (e) In no event, agreed or not, will the Buyer be liable to the Supplier in respect of any contract variation for more than a reasonable and proportionate reflection of such
- 5.8 The Supplier will comply with any reasonable requirements the Buyer may have as process.

6 Warranties and liability

6.1 The Supplier warrants that:

- (a) The quantity and quality for the Deliverables will be those set out in the Purchase Order and in accordance with the Buyer's specifications, apart from which then of the highest standard reasonably to be expected in the market for that kind of Deliverable;
 - (b) Any Goods will be new and free from defects in materials and workmanship;
Any Deliverables will comply with all statutory
 - (c) Requirements and regulations, and with all normally applicable quality standards, relating to their sale or supply;
 - (d) All claims made by the Supplier about any Deliverables, and all apparently serious claims in the Supplier's advertising and promotional material, are correct and can be relied upon
 - (e) Neither the sale and supply of any Deliverable, nor its proper use by the Buyer for an intended purpose, will breach any rights in or about that Deliverable, including intellectual property rights, of any other person.
- 6.2 All warranties, conditions and other terms implied by statute or common law in the Buyer's favour will apply to any Deliverables purchased from the Supplier.
- 6.3 The Supplier will indemnify and keep indemnified the Buyer immediately upon the Buyer's written demand against any cost, claim, expense or liability arising from any risk for which the Supplier is responsible under this Contract.
- 6.4 If the Supplier fails to comply with any obligation under the Contract the Buyer will be entitled, at its discretion, to reject any Deliverable and the Supplier will not be entitled to receive payment for that Deliverable.
- 6.5 If any Deliverables were bought or obtained by the Supplier from a third party then any benefits or indemnities that the Supplier holds from that other party, in respect of those items, will be transferred automatically to the Buyer upon purchase

7 Delivery, title and risk

7.1 Delivery

- (a) The Supplier agrees to provide the Deliverables nominated on the Purchase Order within the time(s) quoted, any failure of which will entitle the Buyer, in addition to other rights and remedies, to cancel the order and be relieved of all liabilities for any undelivered portion. A waiver of the Buyer's right to cancel the acceptance of any items after the nominated delivery date shall not constitute a waiver of such rights as to future deliveries.
- (b) Time is of the essence when Goods are supplied to the Buyer.
- (c) A packing note quoting the number of the Purchase Order must accompany each delivery of Goods.
- (d) Where Goods are supplied in instalments, the Purchase Order is to be treated as a single order.
- (f) The Buyer may accept or reject any Deliverables which are not fully in accordance with the Contract within 2 days after the Supply and, in the case of latent defect, within a reasonable time after the defect becomes apparent.
- (g) If any of the Goods do not comply with all order requirements the Buyer can demand that the Supplier repair them or supply replacement goods within seven days or, at the Buyer's sole discretion, the Buyer can reject the goods and demand the repayment of any sum already paid for them.

(h) The Buyer will not be bound to return to the Supplier any packaging or packing material,

7.2 Title

Full unencumbered title to each Good will pass to the Buyer upon the earlier of:

- (a) The Buyer making payment in full to the Supplier for that Good; or
- (b) The Good being delivered to the Delivery Location and accepted by the Buyer.

7.3 Risk

Risk in each Good will remain with the Supplier until its delivery and acceptance by the Buyer.

8 Price

8.1 The Price means the aggregate amount payable by the Buyer to the Supplier in relation to the Supply.

8.2 The Price will be as specified in the Buyer's Purchase Order and, unless otherwise stated, will be:

- (a) Inclusive of all expenses incurred by the Supplier in relation to the provision of the Supply, including, without limitation, travel expenses and subsistence expenses, and of any duties or levies; and
- (c) Payable in Rwanda Francs

9 Commercial in Confidence

(iii) The Supplier must provide a valid invoice to the Buyer.

10 Payment

10.1

(a) The Supplier must render an invoice ('the Invoice') to the Buyer in relation to the provision of the Supply on or after the provision of the Supply, calculated by reference to the prices, fees or other amounts specified in the Purchase Order;

(b) The Invoice must be in a form acceptable to the Buyer and must contain the following information:

- (i) The number of the Purchase Order to which the Invoice relates;
- (ii) A brief description of the Supply provided in the period covered by the Invoice; and
- (iii) Any further verification or documentation in relation to the Invoice as is reasonably required by the Buyer.

10.2 The Buyer will pay to the Supplier the amount shown on the Invoice within 48 hours from the receipt of the Invoice.

10.3 If the Buyer disputes any amount shown on the Invoice, it must notify the Supplier within 14 days from receipt of the Invoice and must pay any amounts not in dispute in accordance with Clause 10.2, provided that the payment by the Buyer of any amount the subject of a disputed Invoice is not to be considered as an acceptance of the amount in dispute or of the Buyer's liability to make that payment.

11 No minimum purchase

11.1 No minimum purchase

Nothing in the Contract obliges the Buyer to request or acquire any minimum level of Supply from the Supplier.

12 Assignment

The Supplier must not assign any of its rights or obligations without the prior written consent of the Buyer, which consent the Buyer may grant or withhold in its absolute discretion.

13 Severability

If any provision of the Contract is held unenforceable, then such provision will be modified to reflect the parties' intention. All remaining provisions of the Contract shall remain in full force and effect.

14 Waiver

Any waiver by the Buyer of any rights under this Contract will not constitute a general waiver of those or other rights.

15 Notices

Any written notice under these Terms will be deemed to have been sufficiently served if posted by pre-paid official postal service, or if sent by e-mail (but in this case only on evidence of successful transmission and only if the parties have regularly communicated on contract matters by that e-mail route).

16 Anti-corruption and bribery

Both parties represent and affirm that they will comply with all applicable country laws relating to anti-bribery and anti-corruption.

17 Dispute resolution

(a) If any dispute arises under these Terms, such dispute shall be notified by the aggrieved Party to the other Party and first attempted to be settled amicably for the interest of the parties. Any resolution made shall be recorded in writing, signed and shall be final and binding for the parties.

(b) Failing settlement within 60 business days, either the Buyer or the Supplier may commence legal proceedings.

18 Compliance with Laws

The Supplier must ensure that it complies with all relevant laws in connection with the Supply and all its obligations.

19 Governing Law

This Contract is governed by the Laws of Rwanda and each Party irrevocably submits to the non-exclusive jurisdiction of the courts of that country.