

PURCHASE ORDER TERMS

1 Definitions and interpretation**1.1 Definitions**

In this Agreement:

ABC Laws means all applicable anti-bribery and corruption laws.

Acceptance Requirements has the meaning given to that term in clause 7(a).

Agreement means these purchase order terms.

Associated Bodies Corporate in relation to a body corporate means:

- (a) a subsidiary of that body corporate;
- (b) the ultimate holding company of that body corporate; or
- (c) a subsidiary of that holding company.

Cathay means Cathay Pacific Airways Limited.

Cathay Data means any data relating to any Cathay Group Entity's business, including its operations, facilities, customers, employees, assets, products, sales and transactions, in whatever form the data exists, and includes any:

- (a) database in which data or information is contained;
- (b) documentation or records related to data or information;
- (c) products resulting from the use or manipulation of data or information; and
- (d) copies of any of the above.

Cathay Group means the group constituted by the following entities:

- (a) Cathay;
- (b) all Associated Bodies Corporates of Cathay; and
- (c) all bodies corporate, trusts, unincorporated joint ventures, incorporated joint ventures or other business associations in which Cathay, or an Associated Body Corporate of Cathay, has a shareholding or participation interest of at least 50%.

Cathay Group Entity means an entity in the Cathay Group, other than Cathay.

Cathay Material means all Material owned by Cathay or licensed to Cathay by a third party, provided by or on behalf of Cathay to the Supplier (including to its Personnel) for the purposes of this Agreement.

Cathay Policies means Cathay's written policies, guidelines, procedures and standards, made available for review or otherwise notified by Cathay to the Supplier from time to time, including but not limited to the Cathay Code of Conduct, available at www.cathaypacific.com, which the Supplier hereby acknowledges and confirms it has read.

Cathay Representative means the Cathay contact person and their respective contact details for this Agreement as designated by Cathay.

Cathay System means any computer or other system owned or operated by Cathay.

Claim means, in relation to a party, a demand, claim, suit, action or proceeding made or brought against that party, however arising and whether present, unascertained, future or contingent.

Confidential Information means:

- (a) the terms of this Agreement; and
- (b) all information, material or data (regardless of the form of disclosure or the medium used to store or represent it, and whether or not any document has been marked as confidential, proprietary or otherwise), in any form, whether tangible or not, disclosed or communicated or made available, whether directly or indirectly, by the Disclosing Party to the Recipient Party, or learned or accessed by the Recipient Party, or to which the Recipient Party is exposed as a result of entering into this Agreement or otherwise through engagement with the Disclosing Party,

but does not include any information which:

- (c) is or becomes generally known to the public other than through a breach of this Agreement or any other confidentiality obligation relating to that information;
- (d) the Recipient Party can prove was already known to the Recipient Party at the time of disclosure, unless such knowledge arose from the disclosure of information in breach of any confidentiality obligation relating to that information;

(e) the Recipient Party develops independently of any disclosure in connection with this Agreement; or

(f) the Recipient Party obtains from a source other than the Disclosing Party, where such source is entitled to disclose it without breaching any confidentiality obligation.

To avoid doubt, information developed by the Supplier specifically for Cathay under or in connection with this Agreement is Confidential Information of Cathay and not of the Supplier.

Defect means:

- (a) any fault, failure, degradation, deficiency or error in, or partial supply or non-supply of, a Product or Supplier Material; or
- (b) any functionality or performance of a Product or Supplier Material not in accordance with the specification for that Product or Supplier Material.

Delay Notice has the meaning given to that term in clause 9(b).

Disclosing Party has the meaning given to that term in clause 15.1(a).

Export Controls means restrictions or prohibitions on the export, reexport, transfer, or provision of goods, technology, software, or services to a designated party, country or territory, or for a designated end use.

Fees means the fees for the Products, as more particularly described in the Purchase Order.

Force Majeure means, in relation to a party, any event outside the reasonable control of that party which prevents the performance of any obligation and which event:

- (a) was not caused or contributed to by that party or any of its Associated Bodies Corporate (in each case including their respective Personnel);
- (b) could not have been prevented by reasonable precautions or remedied by reasonable expenditure by that party; and
- (c) could not reasonably be circumvented through alternate sources, including through business continuity planning,

but does not include:

- (d) any strike, lock-out or other industrial dispute, whether involving the workforce of that party or any of its Associate Bodies Corporate (or their respective Personnel);
- (e) any accident, breakdown of plant or machine owned or operated by that party or any of its Associated Bodies Corporate (or their respective Personnel); or
- (f) non-performance by suppliers or subcontractors or the failure of hardware or software (if applicable) used in the provision of the Products.

Import Controls means laws and regulations that are applicable to the importation into a country or territory of goods, technology, software, or services.

Indirect Taxes mean any value-added tax, goods and services tax, sales and use tax, duties, levies or other similar taxes, imposed by any governmental authorities under the laws of an applicable jurisdiction.

Infringement Claim means any Claim:

- (a) affecting the Supplier's ownership of the Intellectual Property Rights in the Products, or any inputs into the Products; or
- (b) that the supply or other use of the Products or Supplier Materials infringes or may infringe the Intellectual Property Rights of a third party.

Insolvency Event means the happening of any one or more of the following events:

- (a) the Supplier suspends, or threatens to suspend, payment of its debts or is unable, or admits inability, to pay its debts as they fall due;
- (b) the Supplier commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors;
- (c) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Supplier;
- (d) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Supplier;

PURCHASE ORDER TERMS

- (e) the holder of a charge or security over the assets of the Supplier has become entitled to appoint or has appointed an administrative receiver or person of similar capacity;
- (f) a receiver is appointed, or a person becomes entitled to appoint a receiver, over all or any of the assets of the Supplier;
- (g) a creditor or encumbrancer of the Supplier attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Supplier's assets; and
- (h) any event occurs, or proceeding is taken, with respect to the Supplier in any jurisdiction that has an effect equivalent or similar to any of the events mentioned in paragraphs (a) to (g) above.

Intellectual Property Rights means all industrial and / or intellectual property rights, and includes any patents, registered designs, copyright (including future copyright), trade or service marks (whether registered or unregistered), trade secrets, moral rights, know-how, rights in relation to circuit layouts, or other proprietary right, and applications for, and rights to apply for, registration of any of these things.

Liability means all liability, loss, damage, cost, expense, charge, outgoing or payment, including reasonable legal fees and disbursements, for which a party is liable, whether or not yet paid or met by that party.

Material means all property, information, documentation and other materials, including reports, specifications, user manuals, operations manuals, training manuals and instructions, and the subject matter of any Intellectual Property Rights.

Payee has the meaning set out in clause 11.3(c).

Personnel, in relation to a party, means that party's officers, employees, contractors or agents, including employees or independent contractors of such contractors or agents.

Personal Data means any information relating to an identified or identifiable natural person, being a person who can be identified, directly or indirectly, including by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.

Pre-existing Intellectual Property Right means a party's Intellectual Property Rights existing prior to the commencement of this Agreement or subsequently brought into existence other than in the course of supply Products under this Agreement.

Privacy Laws means the privacy laws of the place of Cathay's incorporation, the privacy notice issued by Cathay from time to time (available at: https://www.cathaypacific.com/cx/en_HK/legal-and-privacy/data-privacy-and-security-notice.html), and any other applicable legislation, principles, industry codes and policies relating to the handling of personal information.

Product means a product or deliverable supplied by the Supplier to Cathay under this Agreement, as more particularly described in the Purchase Order.

Purchase Order means the purchase order raised by Cathay on its SAP system or such other Cathay System.

Recipient Party has the meaning given to that term in clause 15.1(a).

Regulatory Authority means any public body having regulatory or supervisory authority over any part of the business of affairs of the Cathay Group.

Representative, in relation to a party, means any person acting for or on behalf of the party and includes any Personnel, professional adviser or broker (including insurer or insurance broker, if applicable) of the party.

Required Date has the meaning set out in clause 9(a).

Sanctions means all applicable economic and trade sanctions laws and regulations.

Supplier means the supplier entity set out in the Purchase Order.

Supplier Engagement Requirement means the Supplier engagement requirement as set out in clause 4.5.

Supplier Material means any Material owned by the Supplier or licensed to the Supplier by a third party before the Commencement Date, or developed by the Supplier or licensed to the Supplier outside the scope of this Agreement, and provided to Cathay in connection with the Products, excluding Cathay Material.

Taxes means taxes, levies, imposts, duties, excise and charges, deductions or withholdings, however described, imposed by law or

government authority or agency, including any related interest, penalties, fines, or other charges or other expenses, but excluding Indirect Taxes.

Warranty Period means, in relation to a Product, the period specified in warranty terms of the Product or as separately agreed between Cathay and the Supplier.

1.2 Interpretation

In this Agreement, headings are only for convenience and do not affect interpretation and, unless the context requires otherwise:

- (a) words in the singular include the plural and the plural include the singular;
- (b) words of one gender include any gender;
- (c) words following the terms including, include or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms;
- (d) an expression indicating a person includes an individual, a company, partnership, joint venture, association, corporation or other body corporate;
- (e) a reference to a party to this Agreement includes that party's successors and permitted assigns;
- (f) a reference to a clause or a party, is a reference to a clause of, and a party to, this Agreement;
- (g) a reference to a document includes all amendments or supplements to, or replacements or novations of, that document;
- (h) no rule of construction applies to the disadvantage of a party merely because that party was responsible for the preparation of this Agreement or any part of it; and
- (i) any obligation on a party includes an obligation to procure compliance by that party's Personnel.

2 Agreement structure

- (a) The purpose of this Agreement is to set out the terms governing the supply of Products to Cathay by the Supplier.
- (b) This Agreement will not apply to any Purchase Order if a separate written contract for the supply and purchase of the relevant Products has been duly executed, in which case the terms of that written contract will apply to such Purchase Order.
- (c) The Supplier's appointment under this Agreement is non-exclusive and nothing:
 - (i) restricts Cathay from acquiring products from any third party which are the same as or similar to the Products; or
 - (ii) obliges Cathay to purchase any product, or any minimum volume or value of products, from the Supplier.

3 Group Entities

- (a) At Cathay's discretion, a Cathay Group Entity may benefit from Products supplied to Cathay without executing its own agreement.
- (b) In this regard:
 - (i) Products are supplied to Cathay for the benefit of the Cathay Group Entities;
 - (ii) each Cathay Group Entity may make use of and enjoy the Products under the terms of this Agreement;
 - (iii) Cathay Group Entities will benefit from each warranty, indemnity, undertaking and other obligations of the Supplier under this Agreement as though references to Cathay were references to the Cathay Group Entities; and
 - (iv) all Liability suffered or incurred by the Cathay Group Entities under or in connection with this Agreement are deemed to be suffered or incurred by Cathay directly for the purposes of this Agreement.

4 Obligations of the Supplier

4.1 Key supply obligations

The Supplier must at all times:

- (a) comply with the terms and conditions of this Agreement;
- (b) supply the Products with due care and skill, with appropriately skilled and qualified Personnel, in a timely and professional manner;

PURCHASE ORDER TERMS

- (c) comply with all applicable laws, Cathay Policies and all reasonable directions given by Cathay, and must not perform its obligations in a manner that causes Cathay to breach any applicable laws (including any Sanctions, Export Controls, Import Controls or ABC Laws) or Cathay Policies, or in a manner inconsistent with Cathay's reasonable directions;
- (d) notify Cathay of any failure to comply with clauses 21, 22 and 23; and
- (e) ensure that the Products are not interfered with or delayed or hindered by any other work the Supplier may be doing under any contract or arrangement with any other person;
- (f) provide all necessary facilities, tools, equipment, software and other materials necessary for the Supplier to supply the Products under this Agreement;
- (g) obtain, keep current and provide to Cathay, on request, evidence of any consents, licences, approvals, permits, registrations, authorisations, insurances and exemptions required under this Agreement or at law to supply the Products;
- (h) not be a party to any act or omission prejudicial to the goodwill, commercial reputation or overall public image of the Cathay Group; and
- (i) control, co-ordinate, supervise, direct and complete all activities necessary to supply the Products.

4.2 Access to premises and systems

- (a) The Supplier may only access Cathay premises, facilities and / or Cathay Systems for the purposes, and on the conditions, as notified by Cathay to the Supplier from time to time, and Cathay may revoke, suspend or limit the access granted under this clause 4.2 at any time immediately upon direction.
- (b) The Supplier indemnifies Cathay against any Liability incurred by Cathay or its Personnel to the extent caused or contributed by the Supplier or its Personnel while accessing any Cathay premises, facility or Cathay System.
- (c) The Supplier must ensure that those of its Personnel that have access to any Cathay premises, facility or Cathay System comply with the requirements, policies, standards and directions of Cathay, including as to conduct, behaviour, health, safety, environment and security.

4.3 Supplier must work with third parties

The Supplier must work with, and provide all reasonable information and assistance to, any third party engaged by Cathay in connection with activities relating to or associated with the supply of the Products.

4.4 Supplier obligation to notify Cathay

The Supplier must immediately notify Cathay, and provide all relevant details of, any:

- (a) actual or suspected unauthorised access to the Supplier's sites or systems from which it produces or supplies the Products;
- (b) proposed or actual Insolvency Event;
- (c) activity or obtaining any interest which will or is likely to compromise or restrict the Supplier from performing its obligations under this Agreement fairly and independently; or
- (d) complaint or Claim relating to the breach of any applicable laws, to the extent applicable to the supply of Products.

4.5 Supplier Engagement Requirement

The Supplier agrees and undertakes that any discussions that may result in variations and amendments to this Agreement and agreements related to the subject matter of this Agreement shall be directed through the Cathay Representative (**Supplier Engagement Requirement**).

If the Supplier has not complied with the Supplier Engagement Requirement, the relevant variation, amendment or agreement will not be binding on Cathay and Cathay may terminate such on notice to the Supplier.

5 Subcontracting

The Supplier must not subcontract any of its obligations under this Agreement without Cathay's prior written consent. The Supplier remains liable for the acts and omissions of its subcontractors in connection with this Agreement as if they were the acts and omissions of the Supplier.

6 Personnel

- (a) The Supplier must ensure its Personnel;
 - (i) are of good character, suitably skilled, experienced and qualified; and
 - (ii) hold all necessary authorisations, visas, licences, approvals and permits,
 to perform the responsibilities assigned to them.
- (b) The Supplier remains liable for the acts and omissions of its Personnel in connection with this Agreement as if they were the acts and omissions of the Supplier.

7 Acceptance of Products

- (a) If a Product fails to meet any acceptance requirements as notified by Cathay from time to time (**Acceptance Requirements**), Cathay may:
 - (i) require the Supplier to rectify any Defect or replace the Product (at its own cost);
 - (ii) provide an acceptance certificate subject to the Supplier rectifying any Defect or replacing the Product (at its own cost) within a period specified by Cathay; and / or
 - (iii) provide an acceptance certificate in relation to the Product, subject to a reduction in Fees.
- (b) Cathay may cancel any Purchase Order (in part or in whole) for cause by written notice to the Supplier if, in Cathay's reasonable opinion, the Supplier fails to meet the Acceptance Requirements after multiple attempts or on a systemic basis.

8 Warranty period

- (a) The Supplier must rectify any Defect in a Product that becomes apparent during the Warranty Period as soon as reasonably possible.
- (b) If the Supplier fails to rectify a Defect in accordance with clause 8(a), the Supplier must refund to Cathay the Fees paid by Cathay for that Product.

9 Delays

- (a) The Supplier must meet each delivery date, milestone and / or due date for the Products as notified by Cathay from time to time (**Required Date**).
- (b) If the Supplier becomes aware of any delay (or likely delay) which will (or is likely to) impact the Supplier's ability to meet a Required Date, the Supplier must notify Cathay in writing as soon as practicable (**Delay Notice**). The Delay Notice must contain:
 - (i) the reason for the delay;
 - (ii) its best estimate of the date it will supply the Products;
 - (iii) the steps that have been, and are being, or will be taken to manage the delay and its causes; and
 - (iv) any anticipated impact on any Cathay or other dependencies.
- (c) Cathay may, at its discretion, consider any Delay Notice which complies with clause 9(b) in good faith and, at its discretion, may extend any Required Date (and all dependent Required Dates) by the amount of time Cathay considers to be justified having regard to the extent:
 - (i) the delay was caused by a person other than the Supplier;
 - (ii) the Supplier has complied with its obligation to manage the other person effectively (if applicable); and
 - (iii) the Supplier has taken all steps to minimise the delay.
- (d) If the Supplier fails to meet a Required Date, the Supplier must (at no additional cost to Cathay) take all steps reasonably necessary to remedy the failure as soon as possible, minimise the effect of the delay and accelerate work to ensure that future Required Dates are not missed.

10 Fees and invoices

10.1 Invoices

- (a) The Supplier must ensure that all invoices:
 - (i) specify a payment amount that is correctly calculated and due for payment;

PURCHASE ORDER TERMS

- (ii) are set out in a manner that enables Cathay to ascertain the particular Products to which the invoice relates and the amount payable in respect of each Product; and
 - (iii) are accompanied (where necessary or where reasonably requested by Cathay) by substantiating documentation.
- (b) The Supplier may only submit an invoice in respect of Products:
- (i) after the Products have been supplied to Cathay; and
 - (ii) after Cathay has issued an acceptance certificate for that Product (if applicable).
- (c) Unless otherwise agreed with Cathay in writing, the Fees will be fully inclusive of (and Cathay will not be required to pay) any travel, accommodation and other incidental costs and expenses incurred by the Supplier in performing its obligations under this Agreement.

10.2 Payment of Fees

- (a) In consideration of the Supplier supplying the Products under this Agreement, Cathay will pay the Supplier the invoiced Fees.
- (b) Cathay will pay correctly invoiced Fees within 45 days, or as otherwise agreed, after receipt of the invoice by Cathay.
- (c) Cathay may dispute an invoice if Cathay believes that:
- (i) the invoice is not properly or correctly rendered;
 - (ii) the Products to which the invoice relates have not been properly provided or are otherwise the subject of a dispute; or
 - (iii) the Supplier has not complied with the terms of this Agreement in supplying the Products to which the invoice relates.
- (d) If Cathay disputes an invoice:
- (i) that has not yet been paid, Cathay may withhold payment of all or part of that invoice until the dispute is resolved; and
 - (ii) that has been paid, Cathay may set off the disputed amount in accordance with clause 10.2(e) or require the Supplier to refund the disputed amount.
- (e) Cathay may set off against the Fees payable to the Supplier, any amount payable by the Supplier to Cathay, under this Agreement.

10.3 Effect of payment

The Supplier acknowledges that any payment made to it by Cathay does not imply or constitute an admission on the part of Cathay that any Products have been accepted by Cathay or a waiver of Cathay's rights or release of the Supplier's obligations under this Agreement.

10.4 Ordering and Invoicing Process via Ariba Network

To ensure a smooth and timely ordering and invoicing process, the Supplier is required to commit resources at its own cost (if any) to support the following:

- (a) the Supplier shall be registered on Ariba Network, meaning the Supplier shall have either a 'Standard' or 'Enterprise' account with Ariba;
- (b) the Supplier shall collaborate with the Ariba Supplier Enablement team to complete the onboarding process in the Guided Buying Platform;
- (c) the Supplier shall be able to receive and process purchase orders via Ariba Network;
- (d) the Supplier shall provide follow up on the order status. This includes the sending of purchase order confirmation to confirm the receipt of such order, and Advanced Shipment Notice (ASN) to confirm the delivery to Cathay;
- (e) the Supplier shall post invoices through Ariba Network instead of sending hardcopy or softcopy invoices to Cathay;
- (f) the Supplier shall follow Cathay's refund policy and issue a credit note or credit memo respectively (as the case may be); and
- (g) the Supplier acknowledges that Ariba Network does not support the collection of additional fees, such as delivery fees, MOQ and/or subscription fees.

11 Taxes

11.1 Responsibility for Taxes

- (a) The Supplier is responsible for any and all Taxes which may arise as a result of or in connection with this Agreement.
- (b) The Supplier agrees to indemnify Cathay in relation to any Claims or Liabilities (including penalties and interest) arising as a result of any Taxes for which the Supplier is responsible pursuant to clause 11.1(a).

11.2 Withholding tax

- (a) To the extent that an amount payable to the Supplier under this Agreement is subject to a withholding tax, levy or similar obligation under the laws of an applicable jurisdiction, Cathay may withhold the portion of that amount equal to that tax, levy or obligation, and remit it to the applicable revenue or taxation authority.
- (b) Cathay shall provide to the Supplier the appropriate certificate or evidence of payment from that authority confirming due payment of that tax, levy or obligation.

11.3 Indirect Taxes

- (a) All amounts payable by Cathay under this Agreement are exclusive of Indirect Taxes.
- (b) If any taxable supply for Indirect Taxes purposes is made under this Agreement, Cathay will, upon receipt of a valid Indirect Taxes invoice from the Supplier, and at the same time as payment is due for the supply of the Products, pay to the Supplier the additional amounts in respect of Indirect Taxes that are chargeable on the supply of the Products.
- (c) If one party is required to indemnify or reimburse another party (**Payee**) for any cost, loss or expense, the indemnity or reimbursement payable does not include any amount for which the Payee (or an entity grouped with the Payee for Indirect Taxes purposes) is entitled to an input tax credit on the costs, losses or expenses incurred, but will be increased in accordance with clause 11.3(b) if the amount payable is consideration for a taxable supply.

12 Intellectual property rights

12.1 Pre-existing Intellectual Property Rights

No Pre-existing Intellectual Property Rights of either party are assigned or transferred under this Agreement.

12.2 Supplier Material

- (a) Supplier Material remains the property of the Supplier (or the Supplier's licensors, if applicable).
- (b) The Supplier hereby grants to Cathay a royalty free, perpetual, irrevocable, worldwide, non-exclusive licence (including the right to sub-licence) to use, reproduce, modify, adapt, develop and otherwise exploit (either directly or through its Personnel) the Supplier Material for the purposes of acquiring, using and getting the full benefit of the Products.

12.3 Cathay Material

Cathay Material remains the property of Cathay (or Cathay's licensors, if applicable).

12.4 Intellectual Property Rights warranty

The Supplier warrants to Cathay that:

- (a) it has not received notice of, and is not otherwise aware of, any Infringement Claim anywhere in the world;
- (b) the Products and their supply or use do not infringe the Intellectual Property Rights of any person; and
- (c) the Supplier Material and / or Products do not infringe, and Cathay's (or any Cathay Group Entity) or the Supplier's use of any of such materials as contemplated under this Agreement do not infringe, the Intellectual Property Rights of any person.

12.5 Intellectual property indemnity

The Supplier indemnifies Cathay and its Personnel against any Liability directly or indirectly arising out of, or in connection with, any breach of clause 12.4 or Infringement Claim.

12.6 Use of infringing material by Cathay

- (a) The Supplier must immediately notify Cathay if the Supplier becomes aware of any potential Infringement Claim made or likely to be made against the Supplier, including any details of the alleged infringement.

PURCHASE ORDER TERMS

- (b) If any of the Supplier Material or Products supplied or provided under this Agreement infringes the Intellectual Property Rights of a third party, or Cathay is prevented from using the Supplier Material or Products (as applicable) or exercising any of its other rights under this Agreement, the Supplier must at its own cost and expense:
- (i) secure the rights to allow Cathay to continue using the Supplier Material or Products (as applicable) or exercising any of its other rights under this Agreement;
 - (ii) subject to Cathay's consent, replace or modify the Supplier Material or Products (as applicable) to make it non infringing but without adversely affecting performance or functionality; or
 - (iii) if the Supplier is unable to promptly accomplish either of clauses 12.6(b)(i) or 12.6(b)(ii), at the request of Cathay, accept return of the Supplier Material and Products (as applicable) and provide to Cathay a full refund of any Fees paid by Cathay.

13 Cathay Data

- (a) The Cathay Data remains the property of Cathay.
- (b) If the Supplier deals with any Cathay Data as a result of performance of its obligations under this Agreement, then the Supplier must:
- (i) only use the Cathay Data strictly as is necessary for the performance of its obligations under this Agreement;
 - (ii) comply with Cathay's directions with respect to the safeguarding and security of the Cathay Data and all applicable Cathay Policies; and
 - (iii) not make any Cathay Data available to a third party other than a subcontractor approved in accordance with clause 5 of this Agreement, and then only as is necessary, for that subcontractor to supply the Products.

14 Records and audit**14.1 Audit**

- (a) In order to enable Cathay to monitor the supply of Products, and compliance with this Agreement (including compliance with Sanctions, Export Controls, Import Controls and ABC Laws), Cathay (or its nominated Personnel) may, upon giving reasonable notice to the Supplier, conduct an audit or inspection under this clause 14.
- (b) As part of the audit or inspection, the Supplier must give Cathay (or its nominated Personnel) access to its (and its Personnel) sites, facilities, records, materials and resources relevant to this Agreement:
- (i) to verify the accuracy of any invoices issued under this Agreement;
 - (ii) to examine the supply of Products; or
 - (iii) to verify certification and regulatory compliance applicable to the performance of this Agreement.
- (c) The Supplier must provide all reasonable assistance required by Cathay and its nominated Personnel in conducting audits and inspections under clause 14.1(a), including by making appropriate Personnel available to answer questions and provide information.
- (d) If an audit or inspection reveals that the Supplier is not complying with this Agreement, the Supplier must, and must ensure that any relevant Personnel:
- (i) take such actions as are necessary to promptly remedy the non-compliance; and
 - (ii) comply with any reasonable directions or instructions from Cathay as to the manner (including timing) in which such non-compliance must be remedied.
- (e) Each party will bear its own costs associated with audits or inspections conducted under clause 14.1(a), unless such audit or inspection reveals that the Supplier has overcharged Cathay by two per cent (2%) or more in any invoice and / or breached this Agreement, in which case the Supplier must indemnify Cathay for the costs incurred in undertaking the audit or inspection. The Supplier shall immediately refund to Cathay the full amount of any overcharge.

14.2 Document maintenance and retention

- (a) The Supplier must keep and retain full and proper records required to demonstrate the Supplier's compliance with this Agreement.

- (b) For the purposes of clause 14.1(a), records must include those required to demonstrate that the Fees have been properly calculated.
- (c) The Supplier must retain records for at least 7 years after the cancellation or expiry of this Agreement.

14.3 Regulatory Authority audit or inspection

Despite the provisions set out in this clause 14, in order to enable Cathay to comply with its obligations at law or any request or requirement by any Regulatory Authority:

- (a) Cathay may conduct an audit or inspection at any time; and
- (b) the Supplier must give Cathay (or its nominated Personnel) access to audit and inspect its (and its Personnel) sites, facilities, records, materials and resources relevant to this Agreement.

15 Confidentiality and privacy**15.1 Confidentiality**

- (a) The parties acknowledge and agree that, in the course of, or in connection with, this Agreement, a party (**Disclosing Party**) may provide Confidential Information to the other party (**Recipient Party**).
- (b) The Recipient Party must:
- (i) not disclose the Disclosing Party's Confidential Information to any person except as permitted under clause 15.1(c);
 - (ii) use, copy or reproduce the Disclosing Party's Confidential Information only for the purposes of this Agreement;
 - (iii) not use the Disclosing Party's Confidential Information in any way which would be harmful to the Disclosing Party; and
 - (iv) take all steps reasonably necessary to secure the Disclosing Party's Confidential Information against loss or unauthorised disclosure.
- (c) The Recipient Party must not disclose the Disclosing Party's Confidential Information to any person except:
- (i) to its employees, lawyers, accountants and Personnel on a 'need to know' basis provided those persons first agree to observe the confidentiality of the information;
 - (ii) with the Disclosing Party's prior written consent;
 - (iii) if required by law, any Regulatory Authority or stock exchange; or
 - (iv) if it is in the public domain, other than by a breach of this clause 15.
- (d) The Supplier acknowledges that breach of this clause 15.1 may cause Cathay irreparable damage for which monetary damages may not be an adequate remedy. Accordingly, in addition to other remedies that may be available, Cathay shall be entitled to seek injunctive relief against such a breach or threatened breach.

15.2 Privacy

The Supplier must:

- (a) comply with all Privacy Laws in relation to Personal Data;
- (b) only use or disclose the Personal Data for the sole purpose of performing its obligations under this Agreement;
- (c) only collect, access, use, store, disclose or otherwise deal with Personal Data as directed by Cathay, except to the extent that compliance with the direction would cause the Supplier to breach a Privacy Law;
- (d) provide all reasonable assistance as required by Cathay to assist Cathay in complying with its obligations under any Privacy Law; and
- (e) immediately notify Cathay if it has reasonable grounds to believe that there has been a breach of this clause (d).

16 Warranties**16.1 Mutual warranties**

Each party represents and warrants to the other party that:

- (a) it has full corporate power and authority to enter into, and perform and observe its obligations under, this Agreement, which has been duly and validly authorised by all necessary corporate action; and
- (b) its obligations under this Agreement are valid, binding and enforceable.

16.2 Supplier warranties to Cathay

PURCHASE ORDER TERMS

In addition to the representations and warranties set out in clause 16.1, the Supplier represents and warrants to Cathay that:

- (a) it has the right and power to grant to Cathay the licences and assignments granted under this Agreement;
- (b) Products comprising software will be free of software viruses, trojan horses, worms or other harmful code;
- (c) it, and each of its Personnel, has the level of skill, knowledge, experience and ability which may be expected of a professional organisation or individual, as applicable, experienced in supplying products of the type and complexity of the Products; and
- (d) all Products supplied by the Supplier to Cathay will be:
 - (i) free from Defects in design, material and workmanship;
 - (ii) in conformity with any specifications or requirements of Cathay referred to in this Agreement;
 - (iii) fit for the purpose communicated by Cathay; and
 - (iv) fit for any purpose for which they are commonly acquired.

17 Indemnities and Liability

- (a) The Supplier indemnifies Cathay and its Personnel against any Liability incurred or suffered by any of them arising out of:
 - (i) any wilful, unlawful or wrongful act or omission of the Supplier or its Personnel;
 - (ii) any breach of the confidentiality and privacy obligations under clause 15;
 - (iii) any breach by the Supplier of its obligations under clauses 21, 22 or 23;
 - (iv) any injury to, or death of a natural person and any loss of, or damage to, Cathay's or a third party's tangible property, real or personal, to the extent caused or contributed by the Supplier or its Personnel; and
 - (v) any Claim by a third party against Cathay or its Personnel to the extent caused by a breach of this Agreement, or any wilful, unlawful or wrongful act or omission of the Supplier or its Personnel.
- (b) It is not necessary for Cathay to incur any expense or make any payment before enforcing the indemnity conferred by this clause 17(a).

18 Insurance

- (a) The Supplier must, at its cost, take out and maintain sufficient insurance coverage required by law and in respect of Liability that may be incurred or suffered arising out of or in connection with this Agreement. All such insurance policies shall be taken out with reputable insurers with a financial strength rating of at least "A-" by Standard & Poor's and/or "A" by A.M. Best (or equivalent).
- (b) The Supplier must, on request by Cathay, promptly provide the current certificate of insurance and/or other evidence reasonably satisfactory to Cathay that the insurance requirements set out in this clause 18 are being complied with.

19 Cancellation

19.1 Cancellation by Cathay

Cathay may, without prejudice to any other rights and remedies it may have under this Agreement or at law, immediately cancel any Purchase Order (in whole or in part) by notice in writing to the Supplier, if:

- (a) the Supplier is in material breach of the Agreement, or commits multiple or recurring breaches, whether or not remedied;
- (b) the Supplier is in breach of its obligations under clauses 21, 22 or 23;
- (c) an Insolvency Event occurs in respect of the Supplier;
- (d) if the Supplier fails to meet the Acceptance Requirements;
- (e) if Cathay forms the reasonable opinion that, as a result of a breach of a warranty in clause 16, its association with the Supplier under this Agreement would have an adverse effect on Cathay's reputation or business; or
- (f) if an event of Force Majeure continues for more than 10 days.

19.2 Consequences of cancellation by Cathay

- (a) If Cathay cancels a Purchase Order under clause 19.1, then Cathay:

- (i) will not be required to make any payment in respect of Products not yet supplied on the effective date of such cancellation;
- (ii) may recover from the Supplier all money paid for any Product, or part of a Product, not yet supplied under this Agreement; and
- (iii) may apply any amount due from Cathay to the Supplier under this Agreement towards satisfaction of:
 - (A) any damages, costs and expenses recoverable by Cathay from the Supplier in consequence of the Supplier's breach of this Agreement; and
 - (B) any amounts payable by the Supplier to Cathay under this Agreement,
 and the Supplier authorises Cathay to do anything (including to execute documents) that is required for that purpose.
- (b) After exercising its rights under this clause 19.2, Cathay will pay the net amount outstanding to the Supplier.

19.3 Preservation of rights

Cancellation or expiry of a Purchase Order does not affect any rights of either party which arose prior to such cancellation or expiry, or which otherwise relate to or which may arise at any future time for any breach or non-observance of obligations occurring prior to the cancellation or expiry.

19.4 Survival

Cancellation or expiry of a Purchase Order does not affect those provisions and those obligations of a party which by their nature survive cancellation or expiry, including clauses 1, 12, 13, 15, 16, 17, 18, 19.2 and this clause 19.4.

20 Publicity and use of Cathay branding

- (a) The Supplier must not:
 - (i) make any press release, announcement or other public notification in relation to this Agreement; or
 - (ii) use or reproduce any Cathay trade mark or branding, without obtaining the prior written consent of Cathay, which consent may be withheld or provided in Cathay's discretion.
- (b) To the extent that Cathay provides consent under clause 20(a), the Supplier must comply with Cathay's brand guidelines, as they may apply from time to time.

21 Anti-bribery and corruption

The Supplier represents, warrants and undertakes that:

- (a) it shall not, and shall ensure that its group entities and any of its or their respective Personnel, and anyone acting on its or their behalf in connection with this Agreement (collectively, the "Associates") do not, offer, give or agree to offer or give, directly or indirectly, any payment, gift or other advantage which would violate any applicable ABC Laws;
- (b) it and its Associates shall comply with ABC Laws;
- (c) it and its Associates shall not knowingly do, or omit to do, any act that may cause or lead Cathay or a Cathay Group Entity to be in breach of ABC Laws; and
- (d) it and its Associates shall adopt and maintain in place its own adequate policies and procedures to ensure compliance with ABC Laws.

22 Sanctions

The Supplier represents, warrants and undertakes that:

- (a) neither it, nor any entity or individual which Controls, is Controlled by, or is under common Control with it, is designated on any lists of sanctioned persons or entities as may be issued by any competent body in any jurisdiction;
- (b) it will conduct its business (including in connection with this Agreement) in compliance with Sanctions; and
- (c) it will not cause Cathay or a Cathay Group Entity to breach any Sanctions.

23 Import Controls and Export Controls

PURCHASE ORDER TERMS

The Supplier represents, warrants and undertakes that it shall conduct its business and supply the Products and/or Services:

- (a) in compliance with all Import Controls and Export Controls; and
- (b) in a manner which does not cause Cathay or a Cathay Group Entity to breach any Import Controls or Export Controls.

24 Force Majeure

24.1 No Liability

If a party is prevented from performing an obligation under this Agreement by reason of Force Majeure, subject to the remainder of this clause 21, that party will not be liable to the other for such failure to the extent that performance is delayed or prevented by the Force Majeure.

24.2 No relief

Force Majeure does not relieve a party from performing its obligations if the delay or failure in performance can be prevented by taking reasonable precautions or can be circumvented by implementing reasonable work-arounds.

24.3 Responsibilities of the affected party

A party affected by an event of Force Majeure must:

- (a) promptly notify the other party and describe in reasonable detail the event of Force Majeure and its likely effect on the ability of the affected party to perform its obligations and the recovery plan, alternative arrangements and mitigation measures it will implement;
- (b) resume performance and meet its obligations as soon as possible and, in any event, on, and from the time the event of Force Majeure no longer prevents that party performing its obligations;
- (c) take all reasonable steps to mitigate the effect of the event of Force Majeure and any Liability caused to the other party and itself; and
- (d) keep the other party informed as to the nature and extent of the event of Force Majeure and its impact on performance under this Agreement.

24.4 Cancellation

Cathay may cancel any Purchase Order immediately by written notice if the Supplier is prevented from performing any of its obligations by Force Majeure for more than 14 days and Cathay will only be liable for payment of undisputed and unpaid invoices in respect of Products provided before termination.

25 Miscellaneous

25.1 Severability

- (a) If a provision of this Agreement is void, unenforceable or illegal in a jurisdiction, it is severed from this Agreement for the purposes of enforcement in that jurisdiction.
- (b) The remainder of this Agreement has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected.

25.2 Amendment

This Agreement may only be varied by written agreement between the parties.

25.3 Waiver of conditions

- (a) Except as provided at law, or in equity, or elsewhere in this Agreement, none of the provisions of this Agreement may be waived, discharged or released, unless it is in writing and signed by the party granting the waiver, discharge or release.
- (b) A failure by a party to insist upon a strict performance of any of the terms and conditions of this Agreement is not deemed a waiver of any subsequent breach or default of the terms and conditions of this Agreement.

25.4 Rights, powers and remedies

The rights, powers, and remedies of Cathay provided in this Agreement are cumulative with, and not exclusive of, any right, power, or remedy provided by law.

25.5 Exercise of rights

- (a) Except as expressly provided to the contrary in this Agreement, a party may exercise a right, power or remedy at its discretion, and separately or concurrently with another right, power or remedy.

- (b) A single or partial exercise of a right, power or remedy by a party does not prevent a further exercise of that or of any other right, power or remedy.
- (c) Failure by a party to exercise or delay in exercising a right, power or remedy does not prevent its exercise.
- (d) No specified right or remedy available to Cathay under this Agreement or at law, limits or negates any other right or remedy for Cathay under this Agreement or at law.

25.6 Entire agreement

This Agreement and the Purchase Order supersedes all previous agreements, letters, offers, quotations and negotiations sent or received on the subject matter of this Agreement and contains the entire agreement between the parties.

25.7 Third party rights

Unless expressly stated otherwise, this Agreement does not give rise to any rights to a third party to enforce any term of the Agreement. The rights of the parties to rescind or vary this Agreement are not subject to the consent of any third party.

25.8 Governing law and submission to jurisdiction

This Agreement is governed by the laws of Hong Kong. Each party irrevocably submits to the non-exclusive jurisdiction of the courts of Hong Kong.