

# **BARUS GENERAL TERMS AND CONDITIONS OF PURCHASE**

BARUS General Terms and Conditions of Purchase - hereby referred to as "Terms" - apply to all Order of Materials. These Terms shall govern all purchasing transactions of the Buyer; that is, all variations to these Terms agreed at the time of placing the Order should be specified in the Order between the Supplier and the Buyer. In the event of inconsistency between these Terms and the Order, the Order shall prevail. In the event of any translation of this Agreement which is prepared for convenience, or any other purpose, the provisions of the English version shall prevail.

## **1. Definitions**

"Supplier" means the company who gives out the Materials under the Order.

"Buyer" means any company associated with BARUS of companies who places an Order to the Supplier.

"Delivery Date" means the date of delivery agreed and stated in the Order. "Document" means any writing and all documents including designs, calculations, analyses, samples, reports, records, plans, specifications, standards, manuals or any form of stored information or images forming part of the Order or created or provided to the Supplier by the Buyer.

"Materials" imply any resource, machinery, equipment, article, goods, raw materials, item, maintenance, construction and/ or services provided for and in relation to the Order.

"Nominated Inspector" means the inspector chosen by the Buyer for the purpose of conducting quality inspections and testing of the Materials, service of the Supplier.

"Order" means any authorized witting be it; electronic, email or fax order approved by both Parties in the form of a contract or purchase order including Terms and appendixes but not limited to specifications, delivery and schedule. In no case shall the Supplier's general conditions be applicable even in part, except if expressly mentioned and agreed in the Order.

## **2. Prices**

The Supplier certifies that the prices specified in the Order are fair and not higher than prices that the Buyer may have quoted or sold to any third-party customer for similar quantity and quality of Materials, unless expressly stated otherwise in the Order. Prices stated in the Order are (i) fixed, firm, and not subject to escalation (ii) exclusive of VAT (if any), but including all other costs: such as – but not limited to duties, levies, charges, expenses, (iii) inclusive of the costs of packaging, (iv) costs of shipping, as well as (v) cost of insurance.

## **3. Payment**

Unless otherwise agreed between both Parties, the payment terms shall be monthly plus sixty (60) days from the date of delivery at the Buyer premises or any other place stipulated in the Order provided that all inspection, test and conformity with specifications have been cleared. All invoices shall be made in English stating the Buyer's order number, the correct company details and buyers address. Invoices shall not be submitted to the Buyer more than three (3) months after the date of delivery of any Order and incomplete, incorrect or delayed invoices may lead to delayed payments by the Buyer.

#### **4. Revision**

Each Party may at any time may propose changes, additions, omissions, or alteration to the Order (“Revision”) provided that the other Party accepts in writing this Revision. Any agreed revision shall be reflected in a revised Order stating the appropriate adjustment in price, schedule and scope of work.

#### **5. Tax, Duties and Fees**

The Supplier shall comply with the requirement of any applicable law including but not limited to tax law, and assumes full and exclusive liability for the timely filing of all returns, any potential tax costs (including but not limited to tax, tax sanction, and interest for late payment) and promptly pay when due all taxes, levies, fees, duties or charges imposed with respect to the performance of the supply.

#### **6. Acceptance**

The Materials shall be deemed accepted after full delivery, inspection at the Buyer’s premises or any other site previously agreed between both Parties, completion of full test, conformity with the Buyer’s specification or any agreed specification, supply of all document and other information, including issuance of the acceptance form (if any). Under no circumstance shall tolerance of a defect in any part of the Materials be considered as an approval of such Materials or a waiver of recourse to claim compensation or indemnity.

#### **7. Delivery**

Unless otherwise agreed between the Parties in the Order, the delivery should be considered on DDP Incoterms 2010 basis at the Buyer’s premises or any other place specified by the Buyer in the order. The delivery shall be considered completely performed when the Materials have been delivered at the Delivery Point in full and not in part.

##### **❖ Acceleration**

The Buyer may instruct the Supplier to accelerate the work and delivery under the Order. In such case, the Supplier shall provide to the Buyer a proposal to accelerate stating details of (a) the measures the Supplier considers necessary to overcome or reduce the delivery time and (b) the eventual additional cost to carry out those measures. The Buyer may also propose its own action plan for such acceleration for the Supplier’s consideration. Any cost of acceleration shall have to be agreed upon by both parties and confirmed in writing by the Buyer.

##### **❖ Early Delivery**

If the Supplier intends to make a delivery earlier than the anticipated Delivery Date, it shall be subject to prior acceptance by the Buyer in writing. In the case of refusal, the Supplier shall be responsible, for all cost and risk, including the safe storage of the Materials until the planned Delivery Date. The Buyer shall be entitled to request an early delivery, at no extra charges, subject to the Supplier’s approval on the date.

##### **❖ Postponed Delivery**

The Buyer reserves its right to request the Supplier to postpone partially or totally the delivery of the Materials up to a maximum of ninety (90) calendar days from the original Delivery Date. In such an event, the Supplier shall arrange proper storage and insurance for the Materials at no cost

to the Buyer for the full period.

## **8. Delay**

The Supplier acknowledges the importance of the Delivery Date for the Buyer, the Supplier should at its best efforts avoid any delay in the delivery of Materials. If the Supplier has reasons to believe that it will not be able to deliver the Materials at the agreed time of delivery, the Supplier shall immediately notify the Buyer thereof in writing. To clear out any doubt, it should be outlined that such notification shall not relieve the Supplier of its responsibilities and liability to deliver on time. Should the delivery of the Materials be delayed beyond the agreed Delivery Date(s) as specified in the Order, the Buyer may, without prejudice to any other rights, and at its sole discretion either (a) accept a new Delivery Date: in such case, the Supplier shall reimburse the Buyer for all and any costs and expenses that the Buyer may have reasonably incurred as a consequence of such postponing; and/or (b) apply a delay penalty charge at a rate of 0.25% per day of delay of the aggregate value of the Order; and/or (c) terminate the Order in case of delays beyond thirty (30) days from the agreed delivery date as described in clause 22. The Supplier's payment of liquidated damages in relation to a delay does not exclude the right of the Buyer to claim compensation for any direct or indirect loss or damage in excess of the liquidated damaged amount. This obligation on the Supplier to compensate the Buyer's loss shall exist irrespective of whether the Buyer chooses to terminate the Order or not. In the event of delays of Materials, the Buyer may request the Supplier to deliver the Materials by the fastest means of transport and the Supplier shall comply with such request. Any additional delivery charges in excess of those that would apply for the usual means of delivery shall be borne by the Supplier.

## **9. Packing, Marking and Labelling**

Unless otherwise agreed, the Supplier warrants that the Materials are new, properly and sufficiently prepared, and effectively protected from moisture, rain, rust, corrosion, shock and other damages according to the Materials properties. The Materials shall be fit for cargo transportation with seaworthy packing, stowed, labeled and/or marked, and that the preparation, packing, stowage, labeling and marking are appropriate to any operations or transactions affecting the Materials and in particular to withstand the ordinary risks of handling, storage and carriage. A packing list/slip indicating each item (quantity, nature, and weight) shipped shall accompany every shipment and make clear reference to the relevant Order. The Materials shall be deemed "ready for carriage" for any transport.

## **10. Audit, Inspection, and Testing**

The Supplier shall fully cooperate as well as give free access to the Materials, documentation and its facilities as maybe required by the Buyer in order for him or its Nominated Inspector to audit, inspect and test the Materials, documentation, and/or the Supplier's facilities. The cost of these processes shall be borne by the Supplier. The Buyer and/or Nominated Inspector shall be entitled to: (1) Audit Upon request. That is the Supplier shall promptly provide corporate and commercial documents, accurate records and accounts of all transactions which are to be audited upon request. (2) Inspect and Test the Materials supplied in relation to any Order which shall conform in all aspects to the specification provided or accepted by the Buyer for this Order. The Buyer shall have the right to inspect any Materials or any revision, at any time, either directly or through its Nominated Inspector, to ensure its conformity with the Order. The absence of such inspection shall in no case mean acceptance or conformity of the Materials. (2.1) Inspection of prior shipment: The

Buyer and/or the Nominated Inspector shall have, during normal working hours, free access to any premises or facilities of the Supplier, or its sub-suppliers, or subcontractors. Reasonable assistance shall be given by the Supplier to facilitate the inspection of the Materials or any part, or material used in its manufacture, including any documents, or information in relation therewith. Upon successful completion of this inspection, testing, and satisfaction of the Buyer, a form duly signed by the Buyer shall be issued which allows the Supplier to proceed with the Delivery. Should the Buyer not have sufficient time or resources to inspect the Materials, the Buyer may issue and sign an Urgent Materials Release Form to the Supplier. Such a form will allow the Supplier to deliver the Materials to the delivery point. No shipment shall take place until a form duly signed by the Buyer has been received. Otherwise, the Materials may be automatically rejected at the Buyer's sole discretion and at the Supplier's sole expenses. (2.2) Post-Delivery Inspection. The Buyer is entitled to inspect the Materials or any revision within thirty (30) calendar days following the delivery. Should the Materials fail to meet the specifications, the Materials shall be considered as nonconforming and rejected in full or part as described in clause 11.

#### **11. Rejection**

The Buyer shall have the right to reject full or part of the Materials or any proposed revision that do not comply with the specifications set out in the Order. Upon receiving any notice of non-conformity, the Supplier shall propose to the Buyer an immediate remedial action plan (replacement, repair, etc) and confirm the effect on the Delivery Date. The Buyer shall have the right to accept or refuse such proposal from the Supplier and in case of refusal, may cancel part or the entire Order; in such case the Buyer shall be entitled to immediate and full refund of any and all nonconforming Materials that may have already been paid/advanced by the Buyer as well as all expenses, losses and damages in relation to this rejection. The Supplier shall bear all costs and expenses of any recall or rejected Materials, including without limitation to the cost and expenses, advanced payment and payment borne by the Buyer, shipment and insurance costs, costs of notifying customers, customer refunds, costs of returning Materials, lost profits and other expenses incurred preventing the Buyer to meet its obligations to any concerned third parties. Any inspection shall not in any way relieve the Supplier of its obligation of warranty and other obligations under the Order.

#### **12. Acceptance of Defective Materials**

The Buyer may decide to accept in writing part or full defective Materials. A Revision shall be carried out by the Parties in order to reduce the aggregate value of the Order.

#### **13. Title**

The Supplier's title in the Materials shall be passed unto the Buyer upon delivery.

#### **14. Cancellation and Suspension**

The Buyer may cancel all or part of the Order should there be a cancellation of a project pertaining to this Order. In such event, the Buyer shall immediately inform the Supplier in writing and the Supplier shall forthwith stop the execution (production / delivery) of the affected Materials. The said cancellation shall immediately take effect on the date of receipt by a written notice sent by registered mail or express courier to the Supplier, with acknowledgment of a receipt. The Buyer shall, however, pay for the conforming Materials already shipped by the Supplier as well as the conforming Materials already produced by the Supplier, upon provision of supporting evidence by

the Supplier. Such evidence shall be accepted by the Buyer at its sole discretion. The Buyer in its absolute and sole discretion shall be entitled to suspend the Order for any reason, by giving notice thereof to the Supplier. The notice shall specify the date of suspension and the estimated duration of the suspension, which shall not exceed six (6) months. Upon receiving such notice, the Supplier shall cease to perform the supply, or part of the supply in accordance with the notice.

#### **15. Indemnification**

The Supplier agrees to defend, indemnify and hold harmless the Buyer, successors, assignees, employees, directors, agents, customers and users of the Materials or Services with respect to all claims, liability, damage, loss and expenses, including legal and defense costs, incurred, relating to or caused by, and including but not limited to: (1) Actual or alleged logical property and confidential information infringement, or violation of any other rational property right arising out of the purchase, sale or use of the Materials described in the Order; (2) Actual or alleged defect in the material or in the design manufactured; (3) Actual or alleged breach of warranty; (4) Failure to deliver the Materials or Services at the agreed time and place; (5) Failure of the Materials or Services to comply with applicable laws and regulations; (6) Act of omission or negligence of the Supplier, its agents, employees or contractors; (7) Any encumbrance over the Materials; and/or (8) Any incidental or consequential loss howsoever arising.

#### **16. Assignment and Set-off**

The Supplier shall not assign any right or obligation under the Order without prior written consent from the Buyer. The Buyer has the right to withhold, compensate or reduce any payment or to set-off existing and future claims, charges, expenses, fees or other payment of any kind whatsoever under any circumstance, including but not limited to, any liability which may arise due to any breach or alleged breach of any agreement, quotation or offer.

#### **17. Insurance**

The Supplier shall maintain power throughout the terms of the Order and relationship with the Buyer proper insurance policies covering, but not limited to General Public Liability, Contractor's Liability, Product Liability Professional Liability, Workmen's Compensation Policy, with sufficient coverage and amount in line with its obligation under the Order. Furthermore, it is the Supplier's duties and obligations to subscribe a General Cargo Insurances in relation to the delivery of the Materials which shall cover 110% of the cargo value.

#### **18. Supplier's General Obligations**

Without limitation of the Supplier's obligations hereunder, the Supplier shall: - provide all management, supervision, personnel, materials and equipment, plant, facilities in relation to the performance of the Order; - without forgetting to supervise, control and inspect all phases of the supply; - provide training (when applicable) and all documentation regarding the Materials in English language; - promptly notify the Buyer of any possible Delay and/or request for Revision; - ensure completion of deliveries within the agreed Delivery Date for the full Materials ordered; and - communicate with the Buyer in English language.

#### **19. Warranty**

The Supplier warrants that all the Materials executed and delivered are new in all respects, unless

otherwise specified in the Order, and that they are free from any defects in design, workmanship, structure, manufacture or installation and comply in all respects with the requirements and specification of the Order and with all legal requirements and standards enforced in the country where they are to be delivered or as per Order provisions.

All Materials shall be merchantable and shall fit expectation and suitable for operation and for the purpose and use intended by the Buyer. The Supplier agrees and warrants that these Materials shall be accepted. No exclusion or limitation of this warranty shall be binding upon the Buyer. This warranty shall apply for a minimum period of twenty-four (24) months from the delivery date, unless otherwise stated in the Order. For equipment and Materials, the Supplier warrants to keep at its premises a sufficient inventory of replacement parts for a period of ten (10) years after warranty expiration, so as not to hinder the Buyer business and be efficient in case of urgent order made by the Buyer.

## **20. Notice Of Default**

If the Supplier or its agents, employees or contractors breaches any provision of the Order, the Buyer shall have the right (without limiting any other rights or remedies which it may have hereunder or by operation of law) to terminate this Order upon written notice stating a period of time within which the Supplier shall take care of its breach. Promptly to this notice, the Supplier shall inform the Buyer concerning the action plan to prevent and correct such default within five (5) calendar days. The Supplier shall be deemed in default in the event of, including but not limited to, obvious and/or prolonged failure, delay in the implementation of the Order leading to an unreasonable delay, the non-implementation of the Order in whole or in part, refusal to perform, failure to substantially comply with its material obligation and failure to extend and/or modify the bank guarantee or behave without due diligence or without competent mannerism. Upon expiration of the period indicated in the notice, the Buyer is allowed to terminate the Order and that shall not release the Supplier from its obligations or responsibilities. Subsequently, the Buyer may request a third party to remedy the default or remedy itself at the Supplier's expense. All cost borne by the Buyer as a result of the Supplier's default shall be charged to the Supplier, without prejudice to any other recovery available under the Order.

## **21. Early Termination**

Without prejudice to the other provisions, the Buyer shall be entitled to terminate the Order in whole or in part by a notice of termination mentioning the cause, with immediate effect in the following cases: - Supplier's persistent failure to perform the supply; if the Supplier transfers, assigns or charges the Order to a third party without the Buyer prior consent; if the Supplier suspends the performance of the supply; if the Supplier makes a Revision without the Buyer's prior written authorization; if the Supplier fails to remedy its breach within a reasonable period; or if the Supplier fails to comply with any and all of its obligations set out in the Order.

## **22. Termination**

The Buyer and the Supplier may jointly decide to terminate the Order prior to its term with a written notice. Such early termination shall be without prejudice to both Parties, save under their respective material obligations under the Order. A Party shall be regarded as being in default if it shall become bankrupt, or make a general assignment for the benefit of creditors, suffer or permit the appointment of a receiver or be subject to any proceedings under any bankruptcy or insolvency

law or the reorganization or relief of debtors, or is wound up or liquidated, voluntary or otherwise or breach its obligation. Under such circumstances, the other Party may opt to terminate the Order by giving written notice to such Party, for which termination shall be effective immediately as described in clause 21. Notwithstanding the above-mentioned, the Order shall be binding and all the terms thereof and obligations of the Parties shall be binding on their successors and delegates.

### **23. Force Majeure**

Neither party shall be liable for any failure to perform or delay in performance of the Order to the extent that any such failures arise from acts of God, war, civil insurrection or disruption, riots, government act or regulation, strikes, lockouts, labor disruption, cyber or hostile network attacks. Should the force majeure sustain for more than thirty (30) calendar days, the Buyer shall be entitled to cancel and/or terminate full or part of the Order.

### **24. Intellectual Property Rights**

The Supplier shall not acquire any right or title to trademarks, design, copyright, patents or any other intellectual property rights upon acceptance of the Order. These rights remain with the Buyer. All written documents including but not limited to designs, calculations, analyses, reports, records, plans, business plan, diagrams, specifications, standards, codes, schedules, manuals, part lists, programs, standards, manuals, models and samples are and will remain the property of the Buyer. Other than the right to use the drawing or documents to perform the work under the Order, nothing in the Order shall be interpreted as conferring to the Supplier the right, title or interest in or any license under, any intellectual property contained in the document.

### **25. Confidentiality**

The Supplier understands that during work it may gain access to information and/or confidential information that is proprietary to the Buyer or to other parties and agrees not to use or propagate any such proprietary information without prior written approval of the Buyer. The Supplier agrees to use the confidential information only in connection with the Order, so as to take reasonable measures to prevent disclosure of the confidential information to third party.

### **26. Documents**

The Supplier shall not use or copy the document provided by the Buyer for another purpose than the one related to the Order. Any confidential information shall be returned or destroyed upon the Buyer's request within twenty-four (24) hours after acknowledgment of a receipt.

### **27. Code of Ethics**

The Supplier shall comply with Anti-Child Labor meaning all International Conventions of the United Nations ("Convention of UN") related to Child Labor included but not limited to the respect of the Convention No.138 on the Minimum Age for Admission to Employment 1973, and the Convention No.182 on the Worst Forms of Child Labor 1999. The Supplier acknowledges that a breach of this provision is considered a material breach of the Order and the Buyer shall be entitled to terminate the Order with immediate effect.

### **28. Anti-bribery**

Gifts, favors and entertainment to others, secret success fees or other commission to employees of

the Parties or any third party (or their family members or associates), whether or not qualified as a bribe or a payoff, are contrary to the Buyer's ethical policy. In no event, shall the Supplier be authorized to make any payment to any political party or organization, government or any third party or any officer or employee thereof, or to any public official or civil servant on behalf of the Buyer for any purpose. The Supplier acknowledges that a breach of this provision is considered a material breach of the Order and the Buyer shall be entitled to terminate the Order with immediate effect.

**29. Severability**

In the case of any word, sentence, clause, or other provision hereof that might infringe any applicable law, regulation or statute in any jurisdiction in which it is used, such infringement shall not invalidate any other part of the Order, but only the infringed part.

**30. Waiver**

Any waiver on the part of either party hereto of any right or interest shall not imply the waiver of any other right or interest, or any subsequent waiver.

**31. Governing Law**

The Order is governed by and interpreted in accordance with the laws of the country where the Buyer's entity is situated. All disputes arising out of or in connection with any Order shall first be attempted to be settled through consultation and negotiation in good faith and in a spirit of mutual cooperation. Any dispute which cannot be settled within a period of thirty (30) calendar days shall be submitted to the exclusive jurisdiction of the competent court of the country where the Buyer's entity is situated.