



## 1. DEFINITIONS & INTERPRETATION

In this Agreement as hereinafter defined, the following words shall have meanings herein assigned to them unless stated otherwise:

**“Acceptance”** refers to acceptance of the Works by SPTSSB in accordance with Clause 5.

**“Agreement”** refers to this Terms and Conditions for Purchase Order together with any other documents in connection therewith including request for quotation, any variation, amendments, substitution and/or modification;

**“Applicable Taxes”** refers to tax charged and levied by the Government and/or Taxation Authority including without limitation to income tax, value added tax, duty and charge, sales tax, service tax, consumption tax or any tax, duty, charge or imposition of a similar or equivalent nature by whatever name called which may from time to time be imposed under the Malaysian law.

**“Appropriate Authorities”** refers to any governmental, semi or quasi-government and/ or statutory departments, agencies or bodies having jurisdiction from time to time and at any time over the relevant matter;

**“Business Days”** refers to any day (other than a Saturday, Sunday or public holiday in Malaysia) on which clearing banks in Kuala Lumpur and Johor Bahru, are generally open for business;

**“Deliver”** or **“Delivery”** refers to the process of packaging, marking, loading, transporting and unloading the goods and/or services at the Delivery Address.

**“Delivery Address”** refers to the place as stated in the Purchase Order;

**“Delivery Date”** refers to the date of delivery as stated in the Purchase Order.

**“Delivery Order”** refers to the document accompanying the delivery of the Works which stated among others the Purchase Order number, description, specifications and quantity;

**“Force Majeure”** refers to an act, omission or circumstance relied on by one of the Parties to this Agreement as a Force Majeure event and over which that party could not reasonably have exercised control (including but not be limited to any prohibitive government action, riots, lockouts, strikes, acts of God, war, insurrection, fire, earthquakes and other natural disaster):

**“Intellectual Property”** refers to all inventions, discoveries, trademarks, patents, trade names, copyrights, jingles, know-how, intellectual property, software, shop rights, licenses, developments, research data, designs, technology, trade secrets, test procedures, processes, route lists, computer programs, computer disks, computer tapes, literature, reports and other



confidential information, intellectual and similar intangible property rights, whether or not patentable or copyrightable (or otherwise subject to legally enforceable restrictions or protections against third party usage), and any and all applications for registrations of and extensions, divisions, renewals and re-issuance of, any of the foregoing, and rights therein, unique to the Services including without limitation (a) rights under any royalty or licensing agreements, and (b) programming and programming rights, rights to materials whether on film, tape or any other medium as contained in the Copyright Act 1987 (Act 332) or any other intellectual property laws or by-laws or regulations in force, as well as any other intellectual property Conventions of which Malaysia is a party;

**"Invoice"** refers to a bill issued by the Supplier stating the Price of the Works that shall be paid by SPTSSB;

**"LD"** refers to Liquidated Damages as maybe imposed to under Clause 17;

**"Legislative Requirements"** refers to any:

(a) federal, state or local act, ordinance, regulation, by-law, order, award, proclamation; and

(b) certificate, licence, consent, permit, approval and requirement of organisation having jurisdiction in connection with the supply of the Works.

**"Party"** or **"Parties"** refers to in singular either SPTSSB or the Supplier, as appropriate, and in the plural both SPTSSB and the Supplier;

**"Purchase Order"** refers to the document issued by SPTSSB to the Supplier for the Works, subject to the terms and conditions of this Agreement;

**"SPJ"** refers to Solid Product Jetty

**"Specification"** refers to the description of the Works stated in the Purchase Order;

**"SPTSSB"** refers to SPT Services Sdn.Bhd.

**"Supplier"** refers to the successful supplier for the Works subject to the terms and conditions of this Agreement;

**"PIC"** refers to Pengerang Integrated Complex.

**"Warranty"** refers to the maintenance, adjustment, modification and/or replacement against the defective material, design, workmanship, equipment and performance of the Works at the cost and expense of the Supplier.

**"Works"** refers to the goods, services and/or works to be supplied and/or delivered by the Supplier to SPTSSB as specified in the Purchase Order.



## **2. AGREEMENT**

- a) This Agreement is hereby accepted by the Supplier upon returning the acknowledged receipt of the Purchase Order to SPTSSB.
- b) Upon acceptance of this Agreement, the Supplier shall observe and comply strictly with this Agreement.
- c) Subject to Clause 30, SPTSSB expressly rejects any variation, adjustment, deviation and/or different term, condition or new specification proposed and/or modified by the Supplier whether stated in acknowledged receipt of the Purchase Order or elsewhere, except as expressly agreed and accepted in writing by SPTSSB.

## **3. SUPPLY AND DELIVERY**

- a) The Supplier shall supply and deliver the Works to the Delivery Address by the Delivery Date specified in the Purchase Order and shall ensure that the Works:
  - i. are in accordance with this Agreement and the Specification including but not limited to conforming to the sample (if any), quantity, quality, model number, and description as stated in the Purchase Order or other document issued in connection therewith;
  - ii. fit for SPTSSB's purpose as intended in the Agreement and the Specification and/or of merchantable quality whether expressly or impliedly stated;
  - iii. in compliance with the Legislative Requirements; and
  - iv. do not infringe the Intellectual Property rights of any third party.
- b) The Works shall be properly delivered to the Delivery Address. The risk of loss or damage in respect of the Works during the transit (if any) shall be solely borne by the Supplier. SPTSSB at all time reserves its right to receive the Works in accordance with this Agreement and the Specification. In the event there is no specification provided, the Works shall be in a good working condition and in a workmanlike manner where it would ordinarily be used.
- c) The Works shall be accompanied by a delivery docket detailing the Works, all relevant manufacturer's or the Supplier's instructions concerning the use of the Works (if applicable) and all relevant manufacturer's or the Supplier's warranties in respect of the Works (if applicable).
- d) The Supplier shall provide its own labour and employee or may hire anyone that the Supplier deemed fit to supply and deliver the Works to SPTSSB at the Supplier's cost and expense.
- e) Whenever transport insurance is required, the Supplier shall subscribe and maintain the relevant insurance policy covering all risks and damages during the transportation of Works from the Supplier's warehouse (if applicable) to SPTSSB, including any activities of loading and unloading.



- f) Unless otherwise mutually agreed between the Parties in writing, the Supplier shall deliver the Works free of carriage, handling charge and any other charge to the Delivery Address. In the event there is any carriage, handling charge and any other charge, the said charge shall be borne solely by the Supplier.
- g) For the avoidance of doubt and unless stated otherwise in the Purchase Order, the Delivery Duty Paid (“**DDP**”) based on Incoterms 2020 rules shall always be applicable for the Works procured from any Supplier outside Malaysia.
- h) Delivery is not complete until the Works have been accepted by SPTSSB in accordance with Clause 5.

#### **4. HAZARDOUS MATERIALS AND DANGEROUS GOODS**

- a) If the Works are categorised as hazardous materials and/or dangerous goods under the Law of Malaysia or contain any hazardous materials and/or dangerous goods, the Supplier shall ensure that the said Works are delivered in accordance with all Legislative Requirements.
- b) The Supplier shall provide SPTSSB with the relevant Safety Data Sheet (“**SDS**”) for all chemicals, chemical substances and/or hazardous materials on the delivery of such Works.
- c) The delivery of the hazardous materials and/or dangerous goods is only completed upon the perusal and approval of the SDS by SPTSSB and subject to Clause 5.

#### **5. ACCEPTANCE OF WORKS**

- a) SPTSSB may within the time prescribed in the request, require the Supplier to provide evidence and/or supporting documents acceptable to SPTSSB, that the Works’ conditions are in accordance with this Agreement and the Specification. In the event there is no specification stated, the Works shall be in a good working condition and in a workmanlike manner where it would ordinarily be used.
- b) The Works shall subject to SPTSSB’s inspection and Acceptance. However, such inspection or Acceptance shall not relieve the Supplier from any obligation or liability under this Agreement.
- c) Acceptance of the Works by SPTSSB shall not be conclusive with respect to latent defect or misrepresentation and subject to Clause 6.



## **6. REJECTION & RETURN OF WORKS**

- a) SPTSSB may, at any time and despite the Acceptance, reject and return the Works if it reasonably determines that:
  - i. the Works do not comply with Clause 3 (a);
  - ii. the Supplier has breached any term of this Agreement;
  - iii. there is over-supply of the Works;
  - iv. there is a defect or default revealed from findings of inspection, analysis or subsequent manufacturing operation; or
  - v. there is latent defect or misrepresentation of the Works.
- b) In the event SPTSSB reject the Works, SPTSSB shall ask the Supplier to collect the said goods at the Supplier's cost and expense. In the event the Supplier fails to collect such rejected goods within thirty (30) days of being notified, SPTSSB reserves its right to either keep, use, sell, transfer and/or dispose the rejected goods at the Supplier's cost and expense without any liability to SPTSSB.

## **7. DISPATCH, ROUTING OF GOODS AND CUSTOMS CLEARANCE**

- a) The Supplier shall strictly follow the instructions from Appropriate Authorities based on Legislative Requirements for the dispatch, routing and Customs clearance of the Works attached to the Purchase Order for the supply of the Works and the Supplier shall be solely responsible for the consequences if the said instructions are not being complied with.
- b) The Supplier shall always be responsible for the routing of the Works to SPTSSB and for providing proper mode of transport for the said delivery. All charges related to it shall be solely borne by the Supplier.

## **8. PRICE**

- a) SPTSSB shall pay the Price to the Supplier subject to Clauses 16 and 19 without any additional charge.

## **9. APPOINTMENT AND PAYMENT**

- a) The Supplier hereby agrees to provide the Works to SPTSSB, and SPTSSB hereby agrees to accept the Works at the Price as per Clause 8, and upon the terms and conditions of this Agreement.
- b) The Parties hereto hereby agree that the Work(s) shall remain the property of the Supplier until the Delivery Order is accepted and signed by SPTSSB's representative.



- c) All payments to the Supplier will be made after the Acceptance of the Works with complete documents submitted by the Supplier and verified Invoice by SPTSSB. The Supplier shall state the Purchase Order number in the respective invoice.
- d) Payment will be made by SPTSSB to the Supplier within sixty (60) days upon receipt of undisputed Invoice.
- e) Payment of the Invoice will not be construed as an evidence or admission that the Works have been delivered in accordance with this Agreement.
- f) SPTSSB shall not pay for the Works which are:
  - i. noncompliance with Clause 3(a); or
  - ii. not delivered due to, including but not limited to, shortages, theft, etc. or otherwise.
- g) The Delivery Order shall be attached to the Invoice and submitted to Finance Section, Corporate Service Department of SPTSSB after the delivery of the Works. For avoidance of doubt, SPTSSB will pay only for the Works delivered and accepted in accordance with this Agreement.

## **10. NON-EXCLUSIVITY**

- a) This Agreement is not evidence nor does it create an exclusive relationship between SPTSSB and the Supplier in respect of the supply of the Works.
- b) The Supplier acknowledges that SPTSSB may purchase goods or services similar to the Works from any supplier at all times during the term of this Agreement.

## **11. WARRANTY**

- a) The Supplier agrees to provide the Warranty for the Works at any time during the term of this Agreement and the Warranty Period. SPTSSB may notify the Supplier if SPTSSB determines that the Works are defective or noncompliant with this Agreement or the Specification.
- b) Upon receipt of notice from SPTSSB pursuant to Clause 11(a), the Supplier shall remedy such defect at its own cost and expense by either repairing, altering, modifying or replacing the Works. If the Supplier fails to remedy the defect, SPTSSB reserves its right to engage any third party to remedy such defect at the Supplier's cost and expense.
- c) Where it is provided in the Specification or in any part of this Agreement, the Supplier shall obtain the benefit of any manufacturer's warranty in respect of the Works for or on behalf of SPTSSB. In the event where the Supplier fails to obtain such warranty, the Supplier shall bear all damages, costs and expenses incurred by SPTSSB in the sense that such damages, costs and expenses will be covered under the manufacturer's warranty.



## **12. INSURANCE**

- a) The Supplier shall affect and maintain all relevant insurance policies in relation to the Works.
- b) The Supplier shall name SPTSSB as additional insured party under such policies (to the extent permitted by law) without any right of subrogation against SPTSSB in respect of any claim that may be made against SPTSSB arising out of this Agreement. For avoidance of doubt, all costs and deductibles from such claims shall be solely borne by the Supplier.
- c) The Supplier shall submit to SPTSSB a copy of the said insurance policies and proof of premium payment for verification prior to the delivery of the Works.

## **13. SUPPLIER'S WARRANTIES**

- a) The Supplier warrants that:
  - i. it has the right to sell and supply the Works to SPTSSB;
  - ii. the Works shall be in accordance with Clause 3 (a), new and free from defect when delivered to SPTSSB;
  - iii. the Works shall be in a good working condition and in a workmanlike manner where it would ordinarily be used;
  - iv. the Works comply with all relevant Legislative Requirements;
  - v. it will pay all Applicable Taxes in connection with the Works under this Agreement;
  - vi. it will affect and maintain all relevant insurances during the term of this Agreement in relation to the supply of the Works; and
  - vii. it does not go into liquidation, becomes insolvent or commits any act of bankruptcy.
- b) The Supplier acknowledges that SPTSSB has relied upon such warranties in entering into this Agreement.

## **14. SUPPLIER'S COVENANTS**

- a) The Supplier shall carry out and complete the Work in accordance with the terms and conditions of this Agreement and to the reasonable satisfaction of SPTSSB.
- b) The Supplier shall exercise all reasonable care in the use of any equipment, fixtures and facilities on the premises of SPTSSB.
- c) The Supplier shall not make or allow to be made any additions or alterations or cause any damage to the premises of SPTSSB and the equipment, fixtures and facilities thereon.



## **15. INDEMNITY**

- a) To the maximum extent permitted by law, the Supplier shall indemnify SPTSSB against any action, claim, cost, charge, expense, liability, loss or damage (including legal cost on a solicitor-client basis) incurred by or awarded against SPTSSB arising out of or in relation to the Supplier's incompliance, performance or non- performance of its obligations under this Agreement.
- b) The Supplier shall indemnify SPTSSB against any claim of infringement of Intellectual Property rights which may arise as a result of the breach from the Supplier in connection to the supply of the Works.

## **16. WITHOLDING FOR PAYMENT AND TAXES**

- a) SPTSSB may, in relation to the Price to be paid to the Supplier, withhold any amount as it is required as the Applicable Taxes under the Legislative Requirements.
- b) If the Price paid is free of withholding Applicable Taxes, and at any time after such payment, SPTSSB becomes aware (either by notification from the Taxation Authority or otherwise), that an amount of Applicable Taxes should have been withheld from such payment, SPTSSB shall recover from the Supplier that amount of Applicable Taxes and any subsequent amount SPTSSB may be required to pay to the Taxation Authority for failing to withhold. Such amount shall be paid to SPTSSB by the Supplier within thirty (30) days from the date of notice from SPTSSB.

## **17. LIQUIDATED DAMAGES (LD)**

- a) If the Supplier fails to supply the Works within the stipulated period as sets out in this Agreement, SPTSSB shall impose LD without prior notice to the Supplier.
- b) In addition, SPTSSB shall impose the LD on the Supplier in the event that:
  - i. the Works are return to the Supplier for reparation, alteration, modification and/or replacement during the term of the Warranty Period; and
  - ii. there is a delay on the Supplier's part in returning the repaired, altered, modified and/or replaced Works to SPTSSB.

Notwithstanding this provision, in the event the Supplier has foreseen that the reparation, alteration, modification and/or replacement of the Works are unable to be completed within the timeline as required by SPTSSB, the Supplier shall notify SPTSSB of the same and subject to SPTSSB's consent, the timeline may be extended. However, SPTSSB reserves its right to impose LD for the period taken for the reparation, alteration, modification and/or replacement of the Works.



- c) SPTSSB shall be entitled to impose LD at the rate of one per centum (1%) of the Price per day up to maximum ten (10%) per cent of PO amount for each delay or part thereof. In the event the LD exceeds ten (10%) per cent of PO amount, SPTSSB reserves its right to terminate this Agreement.

## **18. TERMINATION**

- a) Notwithstanding anything herein contained to the contrary, SPTSSB may terminate this Agreement without prejudice to any antecedent rights or liabilities in this Agreement, upon the happening of the following events, namely:
  - i. if the Supplier commits any breach of any provision or obligation or covenant or undertaking on its part under this Agreement; or
  - ii. if the Supplier enters into any arrangement with or makes any assignment for the benefit of any of its creditors; or
  - iii. if the Supplier being a company passes a resolution for voluntary winding-up or has a petition for winding up presented against it or if a receiver be appointed of its undertaking; or
  - iv. if the Supplier fails to provide or execute the Works in accordance with this Agreement or persistently or flagrantly neglects to carry out its obligations under this Agreement; or
  - v. if the Supplier fails to deliver the Works on or before the Delivery Due Date.
- b) The termination of this Agreement shall not in any way operate to impair or destroy any of the rights or remedies of SPTSSB, or to the Supplier of its obligations to comply with any of the provisions of this Agreement, which shall have accrued prior to the effective date of termination.
- c) Upon the termination of this Agreement:
  - i. SPTSSB reserves its right to set-off or retain payment of the Price as defined in Clause 8;
  - ii. if SPTSSB has made full or part payment for the Works to be delivered by the Supplier, the Supplier shall within seven (7) days from the receipt of the termination notice, refund to SPTSSB whatever amount that have been paid by SPTSSB together with all costs and expenses that may be reasonably incurred by SPTSSB;
  - iii. SPTSSB may engage any third party to supply and complete the Works;
  - iv. If this Agreement is terminated pursuant to this Clause 18 (a) and breach of Supplier's Warranties and Covenant, SPTSSB reserves its right to engage any third party to remedy such defect at the Supplier's cost and expense;



- v. The Supplier shall return or destroy all of the confidential information (as defined in Clause 22 (a)) that are in the possession of the Supplier upon completion of Works; and
- vi. Neither Party shall have any further claim against each other except for antecedent breach.

## **19. CHANGE OF PURCHASE ORDER**

- a) SPTSSB reserves its right to make any change, addition, modification or alteration including but not limited to the item, quantity, destination, specification, drawing, design or delivery schedule to the Purchase Order in whole or in part at any time and for any reason upon notice to the Supplier and there shall be no additional charge imposed on SPTSSB for the said change.
- b) The Parties shall negotiate an appropriate adjustment for the price of the Works where the Supplier's direct cost is materially affected by such change provided that the Supplier provides documentary evidence to substantiate the material changes.
- c) In the event the Parties fail to mutually agree on the adjustment, SPTSSB reserves its right to terminate this Agreement.

## **20. ASSIGNMENT**

- a) The Supplier shall not assign this Agreement, the benefits, interests or liabilities therein or any part thereof without first obtaining the written consent from SPTSSB.

## **21. PURCHASE FROM ANOTHER SUPPLIER**

- a) In the event the Supplier is unable to supply the Works by the Delivery Date, the Works are rejected by SPTSSB or the Works do not fulfilled the Specification, SPTSSB shall have the option to purchase from another supplier and the difference of the buying price from another supplier against the selling price to the Supplier shall be charged upon the Supplier.

Notwithstanding Clause 21(a) above, any LD imposed and/or losses and damages incurred by SPTS shall be borne by the Supplier.

## **22. CONFIDENTIALITY**

- a) Each Party hereto shall, whilst this Agreement is in force and thereafter keep, procure and ensure that all of its employees, agents or its related corporations or affiliates keep in strict confidence any information that it has acquired or may acquire from the other Party hereto or has access to and it shall not without the prior written consent of the other



Party hereto use such information in any way or manner for any purposes other than for the benefit of the other Party hereto except for such information:

- i. which is already known to it at the time when such information is disclosed to it;
- ii. which is publicly known without any of its fault (or its related corporations or affiliates);
- iii. which is legally acquired by it from third parties; or
- iv. which is required to disclose by law, government, government department or governmental, statutory or regulatory body or court.

b) The provisions of this Clause 22 shall survive any termination of this Agreement.

## **23. GOVERNING LAW**

This Agreement is governed by and construed according to the Malaysian law and each Party irrevocably and unconditionally submits to the exclusive jurisdiction of Malaysian courts.

## **24. FORCE MAJEURE**

- a) Neither Party shall be in breach of this Agreement and neither Party shall have any further claim against each other if it is unable to perform in whole or in part of its obligation as a result of the Force Majeure.
- b) In the occurrence of Force Majeure, the Party shall as soon as possible send a notice to notify the other Party. The Parties may choose to suspend or terminate the Agreement or any other solution that is to be mutually agreed between the Parties.

## **25. AMENDMENT**

No modification or amendment to the terms of this Agreement shall be effective unless made in writing, agreed and signed by the authorised representatives of SPTSSB.

## **26. NOTHING TO CONSTITUTE PARTNERSHIP**

Nothing in this Agreement shall be deemed to constitute a partnership between the Parties or constitute either Party as an agent for the other for any purpose.

## **27. TIME**

Time, whenever mentioned in this Agreement shall be of the essence of this Agreement.



## **28. NOTICES**

Unless otherwise provided herein, any notice, request or other communication with reference to this Agreement shall be in writing.

## **29. SEVERABILITY**

If any provision contained in this Agreement or in any other documents executed in connection herewith shall be invalid, illegal or unenforceable in any respect under the Legislative Requirements the validity legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired.

## **30. SPECIAL CONDITIONS**

- a) The terms and conditions in the Special Conditions shall be in addition to the terms and conditions herein and shall be read as inserted herein.
- b) Notwithstanding anything else stated herein, the Special Conditions shall, in so far as conflicts and differences are concerned, take precedence over the terms and conditions herein.
- c) Unless expressly stated, changed, amended or varied in the Special Conditions, the terms and conditions stated in this document shall remain unchanged, applicable and enforceable.

## **31. ANTI-BRIBERY**

Each Party represents, warrants and covenants that, in connection with this Agreement, it shall:

- (a) strictly comply with Malaysian laws and regulations including those related to anti-corruption and/or anti-bribery such as the Malaysian Anti-Corruption Commission Act 2009 and any amendments thereof, or anti-money laundering or any Applicable Law in relation to anti-corruption and/or anti-bribery
- (b) not engage in any action or omission which may violate the Relevant Laws throughout the Term; and
- (c) take all appropriate measures to prevent corrupt practices and illegal activities in relation to the Relevant Laws on its part at all times throughout the Term.

Any acts of each Party made in contravention of and failure to comply with this Clause 31 shall be deemed a material breach and constitute sufficient grounds for immediate termination of this Agreement by the other Party. If either Party is found guilty of this Clause, the breaching Party shall indemnify and hold the non-breaching Party harmless against any and all costs, claims, losses, expenses, damages and



inconvenience incurred or suffered by non-breaching party resulting from and arising out of the breach and termination.

### **32. QUALITY, HEALTH, SAFETY AND SECURITY REQUIREMENT**

Supplier working at SPJ in Pengerang Integrated Complex must strictly follow SPTSSB HSE Guidelines (<https://www.spts.com.my>) and Petronas's PIC Rules and Policies (<https://www.petronas.com/pic/pic-park-rules>). You are required to prioritize safety by wearing appropriate Personal Protective Equipment (PPE) and taking precautions to prevent accidents and protect lives.

Additionally, the Supplier must appoint a representative to oversee safety matters and coordinate with SPTSSB personnel in operational areas. It is crucial for supplier to appoint a certified and authorized Work Leader who plays a key role in ensuring overall safety, efficiency, and success in the work environment. The Work Leader is responsible for identifying risks, implementing necessary controls, and taking corrective actions to minimize potential hazards associated with permitted work.