



# **Acteus Pte Ltd**

General Conditions of Purchase

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## GENERAL CONDITIONS OF PURCHASE

Acceptance of these Conditions (and each Agreement) by the Seller shall be effective upon acknowledging receipt of the Purchase Order submitted by **ACTEUS PTE LTD** (Company Registration Number 201538812W), a company incorporated in Singapore and having its registered office at 362 Upper Paya Lebar Road, Da Jin Factory Building #06-11, Singapore, 534963 (the “**Buyer**”), pursuant to Clause 2.1, unless otherwise agreed in writing by both the Buyer and the Seller.

### 1. Definitions

1.1 Whenever the following terms appear in these Conditions, they shall have the respective meanings specified below unless the context otherwise requires:

1.1.1 “**Affiliate**” in respect of one of the Parties, refers to any entity which currently or at a later date, directly or indirectly, controls, is controlled by, or is under the same control of such Party.

1.1.2 “**Agreement**” means these Conditions, the Purchase Order and any other documents agreed in writing between the Buyer and the Seller in relation to the Purchase Order.

1.1.3 “**Conditions**” means the present General Purchase Conditions.

1.1.4 “**Control**” in relation to any person means either of the following:

(i) the power to set or determine the management of the affairs of that person or to select, appoint or determine the composition of a majority of the board of directors of that person; or

(ii) the ownership of not more than fifty per cent (50%) of the total issued voting shares or stock in that person,

and “**Controlled**” shall be construed accordingly.

1.1.5 “**Delivery Location**” shall have the meaning ascribed to it in Clause 4.1.

1.1.6 “**Delivery Quantity**” shall have the meaning ascribed to it in Clause 4.1.

1.1.7 “**Delivery Time**” shall have the meaning ascribed to it in Clause 2.2.

1.1.8 “**Good**” means the type of good stated against its name in the Purchase Order, and “**Goods**” means all of them.

1.1.9 “**Parties**” means the Buyer and the Seller and their successors and assigns and “**Party**” means either of them.

1.1.10 “**Price**” in relation to any Good, means the price of that Good stated against its name in the Purchase Order.

1.1.11 “**Purchase Order**” means the order in writing issued to the Seller by the Buyer covering details for the supply of the Goods specified therein.

- 1.1.12 “**Seller**” means such person whose name is provided in the Purchase Order issued by the Buyer.
  - 1.1.13 “**Specifications**” in relation to any Good, means the specifications of that Good described in the Purchase Order, including particulars as to the brand, technical specifications, packing and country of origin of that Good.
  - 1.1.14 “**Specified Currency**” means the currency specified in the Purchase Order.
  - 1.2 The headings and sub-headings of the provisions of these Conditions are to facilitate reference only and do not form a part of these Conditions, and shall not in any way affect the construction or interpretation thereof.
  - 1.3 Unless the context otherwise requires, in these Conditions:
    - 1.3.1 words using the singular or plural number also include the plural or singular number, respectively; words denoting any gender shall include all genders;
    - 1.3.2 the terms “**hereof**”, “**herein**”, “**hereby**”, “**hereto**” and similar words refer to these conditions and not any particular Clause, or any other subdivision of these Conditions;
    - 1.3.3 the words “**include**” or “**including**” shall be deemed to be followed by “**without limitation**” or “**but not limited to**”, whether or not they are followed by such phrases or words of like import;
    - 1.3.4 references to any “**person**” include any natural person, corporation, judicial entity, association, statutory body, partnership, limited liability company, joint venture, trust, estate, unincorporated organisation or government, state or any political subdivision, instrumentality, agency or authority; and
    - 1.3.5 references to “**Clause**” or any other agreement or document in these Conditions shall be construed as references to the clauses of these Conditions, or such other agreement or document, as may be amended, modified or supplemented from time to time, and shall include a reference to any document which amends, modifies or supplements it, or is entered into, made or given pursuant to or in accordance with its terms.
  - 1.4 Notwithstanding anything to the contrary herein, in the event of any conflict between any of these Conditions and the terms of any Purchase Order, the terms of such Purchase Order shall prevail.
  - 2. **Sale and Purchase of the Goods**
    - 2.1 The Seller shall acknowledge receipt by fax or email of the Purchase Order within five (5) working days from receipt, which shall constitute acceptance of the Purchase Order and of these Conditions.
    - 2.2 The Buyer shall be entitled to revise the Purchase Order, by written notice to the Seller given no less than **seven (7)** days prior to the date and time for the delivery of the Goods (“**Delivery Time**”) specified in a Purchase Order.
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**2.3** In addition to any Seller and/or manufacturer warranties given in relation to the Goods, the Seller warrants that all of the Goods supplied to the Buyer pursuant to these Conditions shall:

- a. conform in all respects to the Specifications defined in the Purchase Order;
- b. shall be free of any defect or flaw and be fit for the purpose(s) for which the Goods are intended to be used;
- c. conform with all representations, statements or warranties made or given by the Seller, its servants and/or agents regarding the quality of the Goods; and
- d. comply with all applicable international laws, regulations and directives relating to but not limited to the manufacture, place of origin and processing of the Goods.

**2.4** The Seller shall ensure that:

- a. the Seller has obtained all licences, approvals and permits required by applicable law for the supply of the Goods;
- b. the Goods are packed using adequate and appropriate packing to protect the Goods against dust, moisture and all the usual risks incidental to the transportation of the Goods; and
- c. the Goods and the packing of the Goods are marked in accordance with the Buyer's instructions from time to time and all legal requirements (if any) concerning the manufacture, processing, storage and testing of the Goods.

**2.5** The Seller shall not substitute the brand, packing and/or country of origin of any of the Goods without the prior written consent of the Buyer, which consent shall be subject to such terms and conditions as the Buyer may prescribe (including a reduction in the Price).

### **3. Time of the Essence**

**3.1** Time shall be of the essence in these Conditions, both as regards any time, date or period originally fixed or any time, date or period which may be extended by agreement between the Parties.

### **4. Delivery**

**4.1** The Seller shall, in respect of any Purchase Order, deliver at the location to which the Goods are to be delivered ("**Delivery Location**"), the quantity of Goods to be delivered ("**Delivery Quantity**"), in each case, as stated in that Purchase Order (as may be revised in accordance with Clause 2.2) no later than the Delivery Time specified therein.

**4.2** The Buyer shall not be deemed to have accepted any Goods:

**4.2.1** until and after the Buyer has had a reasonable time to inspect the Goods; or

**4.2.2** until and within a reasonable time after any latent defect in the Goods has become apparent.

**4.3** The Seller shall:

- 4.3.1 if so requested by the Buyer, provide the Buyer with the particulars, including the name, address, nationality, passport number, work permit number, of the Seller's personnel who will enter any Delivery Location;
- 4.3.2 conform in every respect with such safety and security rules and regulations as the Buyer may prescribe in connection with entering onto or remaining at any Delivery Location;
- 4.3.3 allow the Buyer or its agents to inspect at any time the Goods, any vehicles, plant, machinery, equipment, materials, belongings and effects sought to be brought onto any Delivery Location;
- 4.3.4 clear away and remove from the Delivery Location all material, debris, rubbish, waste materials of every kind arising out of the Seller's activities on the Delivery Location;
- 4.3.5 remain at the Delivery Location only for so long as is reasonably necessary to effect the delivery of the Goods and to fulfil its obligations under this Clause 4; and
- 4.3.6 make every effort to avoid or minimise any disturbance or inconvenience to the Buyer or its operations.

## **5. Title and Risk**

- 5.1 Title to and risk of loss or damage to the Goods delivered to the Buyer in accordance with each Purchase Order shall pass to the Buyer upon the Buyer's deemed acceptance of the Goods under Clause 4.2, subject to the Buyer's right to reject the Goods under Clause 7.
- 5.2 Notwithstanding delivery of the Goods, the Seller shall be responsible for any damage to any Goods during shipment or transportation arising out of inadequate packing or any reason whatsoever caused by the Seller.

## **6. Failure to Deliver**

- 6.1 In the event that the Seller fails to deliver the Delivery Quantity at the Delivery Location and at the Delivery Time in accordance with any Purchase Order, the Buyer may by written notice to the Seller elect as follows:
  - 6.1.1 if no Goods are delivered at the Delivery Location at the Delivery Time:
    - (i) the Buyer may cancel the Purchase Order with respect to such Goods and the Seller shall pay the Buyer on demand a sum equal to the incremental costs incurred by the Buyer in purchasing the same or similar goods from another supplier; or
    - (ii) the Buyer may recover, and the Seller shall pay on demand, liquidated damages calculated at the daily rate of 1.5 per cent of the Price for each unit of Goods not delivered from the Delivery Time until such date that the Delivery Quantity is delivered at the Delivery Location, provided that the total amount of liquidated damages payable by the Seller shall be no more than 10 per cent of the Price for each such unit of Goods that is not delivered at the Delivery Time.

- 6.1.2 if Goods are delivered at the Delivery Location at the Delivery Time but such Goods delivered are less than the Delivery Quantity:
- (i) the Buyer may decline to take delivery of the Goods tendered by the Seller and the Seller shall pay the Buyer on demand a sum equal to the incremental costs incurred by the Buyer in purchasing the same or similar goods from another supplier; or
  - (ii) the Buyer may accept delivery of the Goods delivered, and in respect of the Goods not delivered, the Seller shall pay on a per unit per day demand, liquidated damages calculated in accordance with Clause 6.1.1(ii).

## **7. Right to Reject**

- 7.1 Upon the delivery of any Goods at the Delivery Location, the Buyer may, at its own expense, unpack and inspect the Goods to verify that the Goods comply with the Specifications and are free from defects.
- 7.2 Notwithstanding any acknowledgement of acceptance signed by the Buyer's personnel or representative or any verbal indication of acceptance, the Buyer shall be entitled to reject any Goods that appear to the Buyer to be defective or inferior in quality or in the event that the Seller breaches any of its warranties under these Conditions:
- 7.2.1 upon delivery of the Goods at the Delivery Location;
  - 7.2.2 when preparing the Goods for sale to the Buyer's client(s) or any other use; or
  - 7.2.3 at such other time when such inferior quality or non-conformity of the Goods or Seller's breach of warranty is detected by the Buyer.
- 7.3 In the event that the Buyer is entitled to reject any Goods in accordance with Clause 7.2:
- 7.3.1 the Buyer shall notify the Seller in writing, stating the reason for such rejection;
  - 7.3.2 the Seller shall promptly remove the Goods in question from such location as may be notified by the Buyer (failing which the Buyer shall be entitled to impose storage charges thereof); and
  - 7.3.3 the Seller shall:
    - (i) promptly replace such Goods at the Seller's expense; or
    - (ii) credit the Buyer with the Price of such Goods, as the Buyer may elect, and shall reimburse the Buyer on demand any and all costs and expenses incurred by the Buyer in returning the Goods to the Seller.
- 7.4 Title to and the risk of loss or damage to the Goods shall revert to the Seller on the date that notice is given by the Buyer under Clause 7.3, notwithstanding that the Goods may be in the custody or control of the Buyer.

## **8. Payment Terms**

- 8.1 The Seller shall render an invoice to the Buyer upon delivery of the Goods, and each invoice shall contain such detail and be accompanied by such supporting documentation or certifications as the Buyer may require.

- 8.2** The Buyer shall, subject to the terms of these Conditions, make payment of the sum due to the Seller within the payment period specified in the Purchase Order, or if such payment period is not stated, within **thirty (30)** days of receipt of the Seller's invoice, whichever is the later, by telegraphic transfer to such account with such bank as the Seller may designate from time to time.
- 8.3** Any sum due to the Seller under these Conditions and any Agreement (whether in respect of fees or otherwise) shall be paid in the Specified Currency to the bank account which details shall be provided by the Seller.
- 8.4** Save as otherwise expressly provided in this Clause 8, the Seller shall not be entitled to any fee, remuneration, payment, reimbursement, indemnity or compensation from the Buyer in connection with the performance and discharge by the Buyer of its obligations under these Conditions.
- 8.5** The Buyer may, to the extent permitted by law, deduct from or set-off any amount due and payable to the Seller from the Buyer against any payment or sum due and payable to the Buyer and/or any of its Affiliates from the Seller, whether under these Conditions or otherwise and whether as damages or otherwise.

## **9. Liability and Indemnity**

- 9.1** The Buyer shall not be liable to the Seller or any third party for any special, punitive, consequential, incidental or exemplary damages (including lost or anticipated revenues or profits relating to the same) arising from any claim relating to these Conditions or any Agreement, whether such claim is based on warranty, contract, tort (including negligence or strict liability) or otherwise, even if the Buyer is advised of the possibility or likelihood of the same.
- 9.2** The Seller shall indemnify the Buyer and its Affiliates against all loss, actions, costs, claims, demands, expenses and liabilities whatsoever (if any) (including legal costs on a full indemnity basis incurred by the Buyer) brought against, suffered or incurred by the Buyer (either at common law or by statute) arising out of or in connection with these Conditions or any Agreement including without prejudice to the generality of the foregoing:
- 9.2.1** any breach of these Conditions or any Agreement by the Seller;
  - 9.2.2** any death of and injury to any person and loss of or damage to any property which may arise out of or in consequence of the Seller's, its servants', agents' or sub-contractors' presence or activities at any Delivery Location;
  - 9.2.3** any statement, act, omission, fraud, negligence or default whatsoever of the Seller or any of its servants, agents or sub-contractors (which the Seller agrees it shall be fully and solely liable and responsible for); and
  - 9.2.4** any enforcement or attempted enforcement by the Buyer of its rights or remedies against the Seller.

## **10. Termination**

- 10.1** Until acceptance of the Goods in accordance with Clause 4.2 and not later than 30 days after the date of the Purchase Order, the Buyer shall have the right to terminate the Purchase Order at any time by providing the Seller a termination notice in writing.

**10.2** In the event that either Party defaults in the observance or performance of any of its undertakings, warranties or obligations under these Conditions or any Agreement, the other Party shall be entitled to terminate any Agreement forthwith without prejudice to any of its other rights and remedies, by a notice served on the Party in default.

**10.3** In the event of the Seller's permit(s) or other authorisation(s) to supply the Goods, wholly or in part, being revoked, cancelled or suspended, the Seller shall notify the Buyer immediately of such event and the Buyer may terminate any Agreement in force at the effective date of such revocation, cancellation or suspension by giving to the Seller notice thereof.

**10.4** The right of termination conferred by this Clause 10 is in addition to and not in derogation of any other rights of termination conferred under any other provision of these Conditions.

## **11. Assignment**

**11.1** Neither Party may assign or transfer its rights or benefits and/or obligations under the terms of any Agreement to any third party without the prior written consent of the other Party, provided that the Buyer may assign its rights and benefits under the terms of any Agreement to any of its Affiliates, and in the event of such assignment, the duties and obligations of the Buyer under any Agreement may be performed by its assignee in lieu of the Buyer.

## **12. Non-exclusivity**

**12.1** The Seller acknowledges and agrees that it may not be the exclusive supplier of the Goods to the Buyer and the Buyer may purchase Goods or goods similar to the Goods from, or otherwise conduct business with other parties who may be in competition, whether directly or indirectly, with the Seller.

## **13. Relationship between the Parties**

**13.1** The Seller shall, in the supply of Goods and for all other purposes under these Conditions, be deemed to be an independent contractor, and nothing contained in these Conditions is intended nor shall it be regarded as constituting a partnership, agency, joint venture or fiduciary relationship between the Parties.

## **14. Invalidity**

**14.1** If at any time any provision of these Conditions is or becomes invalid, illegal or unenforceable in any respect, the validity, legality or enforceability of the remaining provisions of these Conditions shall not in any way be affected or impaired thereby. The Buyer shall amend or replace any invalid, illegal or unenforceable provision of these Conditions by valid, legal and enforceable provisions which achieve, to the greatest extent possible, the economic and all other purposes of the invalid, illegal or unenforceable provision.

## **15. Waiver**

**15.1** The failure of either Party to insist upon a strict performance of any of the terms or provisions of these Conditions or to exercise any option, right or remedy herein contained, shall not be construed as a waiver or as a relinquishment in the future of such term, provision, option, right or remedy. No waiver by either Party of any term or provision

thereof shall be deemed to have been made unless expressed in writing and signed by an authorised representative of such Party.

**16. Contracts (Rights of Third Parties) Act**

**16.1** A person who is not a Party has no right under the Contracts (Rights of Third Parties) Act (Chapter 53B of Singapore) to enforce any term of these Conditions or any Agreement, save that any of the Buyer's Affiliates may enforce and rely on the provisions of Clauses 9.2 and 11.1 to the same extent as if it were a Party.

**17. Governing Law and Jurisdiction**

**17.1** These Conditions (and each Agreement) shall be governed by and construed in accordance with the laws of Singapore.

**17.2** Any dispute, controversy or disagreement arising out of or relating to these Conditions (or any Agreement), including any question regarding its existence, validity or termination shall be submitted unconditionally to the exclusive jurisdiction of the courts of Singapore.