

**Purchase Order - Terms and Conditions** (applies to supply of goods and services)

- 1 (Purchase Order)** These terms and conditions apply to the Purchase Orders issued by DHL Global Forwarding (Bangladesh) Ltd. ("DHL").
- 2 (Acceptance by the Supplier)** Upon the Supplier's acceptance (whether in writing or by conduct), the Supplier agrees to the terms and conditions of this Agreement.
- 3 (Agreement not exclusive)** This Agreement is not an exclusive supply agreement. Nothing in this Agreement prevents DHL from procuring goods or the supply of services that are identical or similar to the Goods and/or the Services from any third parties at any time.
- 4 (Relationship between the parties)** The Supplier's relationship with DHL under this Agreement shall be that between independent contractors and nothing in this Agreement shall be construed as constituting the Supplier or any of its employees an agent, representative, associate, joint venture partner, franchisee or employee of DHL. The Supplier shall not represent itself as an agent or legal representative of DHL nor purport to bind DHL in any manner.

**SUPPLY OF GOODS**

- 5 (Supply of Goods)** The Supplier must supply the Goods any carry out the whole of the work required by this Agreement in a proper and workmanlike manner to the satisfaction of DHL and in accordance with the terms and conditions of this Agreement. Time is of the essence for the delivery of Goods (including rental items).
- 6 (Delivery of Goods)** The Goods shall be delivered on the date, time and at the place stated in the Purchase Order, and in accordance with the instructions specified. If it is apparent that the delivery date will not be met, then without prejudice to DHL's other rights or remedies, the Supplier must immediately notify DHL in writing and take all necessary corrective action that DHL may direct at the Supplier's cost.
- 7 (Specifications)** The Goods must conform in all respects with the specifications and other requirements or descriptions specified by DHL. All Goods must be of sound materials, workmanship and design, and shall be equal in all respects to relevant samples, or patterns provided by or accepted by DHL.
- 8 (Quality)** All of the Goods must pass the acceptance tests of DHL's personnel. DHL shall be entitled to reject all Goods which do not conform completely in every respect with the terms of this Agreement. If by the nature of the Goods, any defects would not become apparent (despite the carrying out of any examination and/or such tests) until after use, DHL may reject the same even after a reasonable period of use.
- 9 (Hazardous Goods)** The Supplier will mark all hazardous goods with international danger symbols where they exist, and display the name of the material in English. Transport and other documents must include declaration of the hazard and name of the material in English. Goods must be accompanied by emergency information in English in the form of written instructions, labels or markings. The Supplier shall observe the requirements of applicable legislation and any relevant international agreements relating to the packing labelling and carriage of hazardous goods. All information held by or reasonably available to the Supplier regarding any potential hazards known or believed to exist in the transport handling or use of the goods supplied shall be promptly communicated to DHL prior to delivery.
- 10 (Rejection)** Subject to applicable laws, Goods rejected must at DHL's request be replaced by the Supplier at its expense; alternatively DHL may elect (at its option) to cancel this Agreement in respect of the Goods in question and of the whole of the undelivered balance (if any) of the Goods covered by this Agreement. All rejected Goods will be returned to the Supplier at its expense.
- 11 (Delivery notes etc.)** DHL's signature, given on any delivery note, or other documentation, presented for signature in connection with delivery of the Goods, is evidence only of the number of packages received. In

particular, it is no evidence that the correct quantity or number of Goods has been delivered or that the Goods delivered are in good condition or of the correct quality.

**12 (Requirements of statute etc.)** The Supplier will ensure that in all respects (except by way of design or specification where DHL has supplied the same) the Goods comply with all relevant requirements of any statute, statutory regulation or order, or other instrument having the force of law, which may be in force when the Goods are delivered. In particular, without prejudice to the generality of the foregoing, all Goods capable of use as, or in any way likely to be used in the preparing or packing of, food, toiletries, perfume, cosmetics, pharmaceutical products or any other Goods for human consumption or for use upon the human body shall contain nothing rendering them unsuitable for their purpose and shall comply with all relevant requirements relating to their sale and composition and to the use of preservative or colouring matter or other additives therein.

**13 (Property and Risk)** Property and risk in the Goods shall pass to DHL, when they are delivered in accordance with clause 6. Such passing of property and risk shall be without prejudice to any right of rejection arising under this Agreement.

**14 (Intellectual Property)** The Supplier warrants that neither the sale nor the use of the Goods nor the performance of the work will infringe any local or foreign patent, trademark, registered design, or other industrial or intellectual property rights whether or not similar to any of the foregoing. The Supplier indemnifies DHL from and against all Liabilities, actions, costs, claims, demands, expenses and liabilities whatsoever, including without limitation legal costs, resulting from any actual or alleged infringement as aforesaid, and at its own expense will defend or (at DHL's option) assist in the defense of any proceedings which may be brought in that connection.

**15 (Other third party rights)** No Goods shall be manufactured sold or disposed of by the Supplier in violation of any right whatsoever of third parties, and in particular, but without prejudice to the generality of the foregoing, of any patent right, trademark or similar right, or of any charge, mortgage or lien.

## **SUPPLY OF SERVICES**

**16 (Service standards)** The Supplier must, and warrants and represents on a continuing basis that the Supplier shall, at all times supply the Services:

- (a) in full compliance with any relevant and applicable statutes, regulations, standards or principles of general law including all required documents/ certificates;
- (b) to the highest standards reasonably to be expected by a procurer of services identical or similar to the Services;
- (c) with all due care, skill and diligence;
- (d) in full compliance with this Agreement including any service levels or key performance indicators specified by DHL;
- (e) in full compliance with any DHL or Deutsche Post World Net policies or procedures brought to the attention of the Supplier by DHL at any time;
- (f) in full compliance with the DPDHL Supplier Code of Conduct;
- (g) in accordance with any reasonable directions given to the Supplier by DHL from time to time;
- (h) using only Personnel who are suitably skilled, trained and qualified to enable the Supplier to supply the Services in accordance with this Agreement;
- (i) such that the Services and the results of the Services are fit for the purposes for which they are intended, including any purposes brought to the attention of the Supplier by DHL at any time; and

- (j) using equipment and materials (to the extent that the Supplier is obliged to supply its own equipment and materials under this Agreement) that are fit for the purposes for which they are intended, including any purposes brought to the attention of the Supplier by DHL at any time.

The Supplier further warrants and represents on a continuing basis that its entry into this Agreement and its supply of the Services in accordance with this Agreement does not and shall not at any time cause the Supplier to be in breach of any obligation owed by the Supplier to any third parties, including contractual obligations, fiduciary obligations, confidentiality obligations, or other binding or enforceable duties, unless the existence of such obligations has been disclosed to DHL and DHL has given its consent in writing (such consent not to be unreasonably withheld).

**17 (Provision of equipment and materials)** In relation to the supply of the Services, the Supplier must provide at its sole cost such equipment or materials (if any).

## GENERAL

**18 (Warranties not exclusive)** Nothing in this Agreement excludes or limits, or may be construed as excluding or limiting, the effect of any applicable statutes, regulations or principles of general law that imply into or in respect of this Agreement or the supply of Goods and/or the Services under this Agreement any conditions or warranties.

**19 (Remedies for breach of warranties)** In respect of any breach by the Supplier of any of the warranties or representations specified in this Agreement, the Supplier must promptly on DHL's demand and at the Supplier's sole cost take all action (including execution of any documents) considered necessary or appropriate by DHL to remedy the breach to DHL's satisfaction. Nothing in this provision limits or otherwise affects, or may be construed as limiting or otherwise affecting, any other rights or remedies that DHL may have under this Agreement or at law in respect of any breach by the Supplier of any warranties or representations specified in this Agreement.

**20 (Purchase Price/Service Fees)** In consideration of the supply by the Supplier of the Goods and/or the Services, DHL shall pay to the Supplier the Purchase Price and/ or the Service Fees.

**21 (Set-off)** Whenever any sum of money is recoverable from or payable by the Supplier to DHL as a result of the operation of any part of this Agreement or any breach by the Supplier of the same, such sum may be deducted by DHL from any sum then due or which at any time thereafter may become due to the Supplier under any other order or transaction placed or entered into by DHL with the Supplier.

**22 (VAT)** Any prices or amounts specified in or quoted or invoiced pursuant to this agreement are subject to VAT unless expressly specified otherwise in writing.

**23 (VAT compliance)** Each party must strictly comply with its obligations under the VAT regulations.

**24 (Pricing inclusive of taxes)** Unless specified otherwise in this Agreement or separately agreed between the parties in writing, any prices or amounts specified in or quoted or invoiced pursuant to this Agreement are inclusive of all taxes, duties, and any other kind of charges whatsoever levied or imposed by any government, quasi-government or regulatory body or authority in connection with this agreement or any of the subject matter of this Agreement.

**25 (Invoicing)** The Supplier must provide DHL with tax Invoice in arrears in respect of the Goods and/or the Services. Each tax invoice must specify the Goods and/or the Services supplied during the preceding month/week/period, the Purchase Price/Service Fees applicable to the Goods and/or the Services supplied, and the VAT payable in respect of the Goods and/or the Services supplied. On reasonable notice, DHL has a right to audit the records which relate to the cost elements of the Goods and/or Services and the Supplier agrees to cooperate with such request.

**26 (Payment terms)** DHL shall pay to the Supplier by such method as may be agreed between the parties from time to time, the undisputed amount of any Tax Invoice received from the Supplier within thirty (30) days of the date of that Tax Invoice (if no other payment terms agreed).

**27 (Disputed invoices)** In respect of the disputed portion of any Tax Invoice received from the Supplier by DHL, the parties shall apply the dispute resolution procedures specified in this Agreement. The Supplier must continue to supply the Goods and/or the Services in accordance with this Agreement notwithstanding the existence of a dispute in relation to a Tax Invoice.

**28 (Liability - Supplier)** The Supplier indemnifies, and will keep indemnified, DHL from any and all Liabilities, including without limitation liability arising from any and all actions, proceedings, claims and demands whatsoever which may be brought or made against DHL, its agents, officers, employees or sub-contractors for any reason arising directly from any breach by the Supplier of any term of this Agreement including, without limitation, any claim for damages for breach of agreement or negligence (including a claim for breach of agreement or negligence by third parties), manufacturing defect of Goods, financial loss including loss of profits, death or injury to any person, damage to property of any person and any claim for trade practices and product liability.

**29** The Supplier shall at all times remain fully responsible and liable for the acts or omissions of the Supplier's Personnel. Any act or omission on the part of the Supplier's Personnel that, if committed or omitted by the Supplier, would constitute a breach of any provision of this Agreement shall be deemed to constitute a breach of that provision by the Supplier. Nothing in this Agreement excludes or limits or may be construed as excluding or limiting any liability of the Supplier to DHL or DHL's Personnel arising from or in connection with any:

(a) Breaches of any provisions of this Agreement;

(b) willful, unlawful or negligent acts or omissions; or

(c) acts or omissions on the part of the Supplier's Personnel which, if committed or omitted by the Supplier, would constitute material breaches of any material provisions of this Agreement or which are willful, unlawful or negligent acts or omissions,

Provided that, except in any case of willful misconduct (in which case the Supplier liability shall be unlimited):

(d) neither party shall under any circumstances whatsoever have any liability to the other party or any third party in respect of any indirect or consequential loss or damage including loss of profit or loss of opportunity; and

(e) each party's liability under or in connection with this Agreement shall be reduced proportionally by the extent to which that liability was directly caused or contributed to by any willful, unlawful or negligent acts or omissions, or acts or omissions in breach of this Agreement, by the other party or that other party's Personnel.

**30 (Liability – DHL)** To the extent permitted by law, DHL excludes any and all liability of any kind whatsoever arising under or in connection with this Agreement including in respect of negligence. Where the application of law that cannot be excluded by agreement prevents exclusion of liability by DHL as specified in the preceding sentence, DHL's liability in any circumstances whatsoever including negligence shall be limited to the actual quantum of the relevant liability or BDT 5,000 whichever is the lesser, up to a yearly maximum of BDT 20,000.

**31 (Force majeure)** If either party is delayed or prevented from performing its obligations under this Agreement, by circumstances beyond the reasonable control of either party (including without limitation any form of government intervention, strikes and lock-outs / lockdowns relevant to this order, breakdown of plant or delays by subcontractors concerned) such performance shall be suspended, and if it cannot be completed within a reasonable time after the due date as specified in this Agreement, this Agreement may be cancelled by either party.

**32 (Insurance)** The Supplier must maintain at all times during the Term at the Supplier's sole cost the following insurance policies to cover all kind of risks associated with the supply by the Supplier of the Goods and/or the Services:

(a) workers' compensation insurance in accordance with any applicable statutes or regulations/law;

- (b) comprehensive motor vehicle insurance in respect of any motor vehicles used in connection with the Goods and/or the Services;
- (c) public liability insurance coverage in accordance with local laws or in the absence thereof, sufficient public liability insurance coverage relating to the provision of goods and the performance of the agreed services; and
- (d) any other insurance that DHL, acting reasonably, may specify from time to time. Following DHL's reasonable demand, the Supplier shall provide DHL with certificate and specific insurance policies evidencing the existence.
- (e) any other insurance in accordance with local laws/regulations and generally required in the nature of the business including sufficient coverage.

**33 (Termination for convenience)** In addition to any other right of termination or cancellation contained in this Agreement, DHL may terminate this Agreement for convenience at any time by giving the Supplier no less than 30 days' notice in writing.

**34 (Termination for breach)** In addition to any other right of termination or cancellation contained in this Agreement, either party (the "Terminating Party") may terminate this Agreement immediately upon written notice to the other party (the "Breaching Party") if the Breaching Party:

- (a) commits any breach of any provision of this Agreement which is incapable of remedy;
- (b) commits any breach of any provision of this Agreement which is capable of remedy but has not been remedied within fourteen (14) days of the Breaching Party receiving written notice from the Terminating Party specifying the breach and requiring its remedy; or
- (c) becomes insolvent or bankrupt or enters into or otherwise becomes subject to any form of external administration whatsoever.

**35 (Accrued rights unaffected)** Termination of this Agreement under any provision of this Agreement shall not affect the accrued rights of either party existing as at the date of termination.

**36 (No goodwill or proprietary rights)** For the avoidance of doubt, the parties each unreservedly and irrevocably acknowledge, covenant, represent and agree that in respect of this Agreement and the supply by the Supplier of the Goods and/or the Services:

- (a) the Supplier shall not accrue or otherwise become entitled to any goodwill, proprietary interest or other similar rights of any kind whatsoever in respect of DHL, DHL's Affiliates, or the business, business activities or customers of DHL or DHL's Affiliates; and
- (b) the Supplier's sole and exclusive rights and remedies in the event of termination of this Agreement shall be the payment of any Purchase Price/Service Fees in respect of any Goods and/or the Services supplied up to the date of termination.

**37** DHL reserves the right to cancel the whole or any part of this Agreement or any consignment on account thereof, if the same is not completed in all respects in accordance with the instructions and specifications stated in the Agreement.

**38 (Confidentiality and intellectual property)** The Supplier must strictly observe and protect the confidentiality of DHL's Confidential Information (including the Confidential Information of DHL's Personnel, DHL's Affiliates and DHL's Affiliates' Personnel) and must not without DHL's prior written permission:

- (a) use that Confidential Information for any purpose whatsoever except for the direct purpose of discharging the Supplier's obligations under this Agreement; or
- (b) disclose that Confidential Information to any third parties.

Further, the Supplier must not use any trade marks, brands, or other intellectual property belonging to DHL or DHL's Affiliates at any time or in any way without DHL's prior written approval.

This provision as it applies to Confidential Information, trademarks, brands, or other intellectual property belonging to DHL or DHL's Affiliates shall survive indefinitely at DHL's absolute discretion.

**39 (Restraint)** The Supplier must not during the Term (extending for a period for 6 months after expiry of the Term) without DHL's prior written permission directly or indirectly:

(a) solicit or in any way seek to procure the custom of any customers of DHL; or

(b) offer employment or other business-related engagement to any employees of DHL.

**40 (Notices)** Any formal notice required to be given by a party under or pursuant to this Agreement shall be valid if hand delivered or sent by registered post, express courier, facsimile or email to the other party using the current contact details as advised. A notice shall be deemed to have been received by the party to whom it is addressed: (a) if hand delivered, immediately upon delivery; (b) if sent by registered post, on the third business day following registration and posting; (c) if sent by express courier, immediately on the courier's receipt of a signature from the recipient evidencing delivery; and (d) if sent by facsimile, immediately on the recipient's facsimile machine transmitting to the sender's facsimile machine an electronic notification of successful transmission; and (e) if sent by email to the correct recipient, on the next business working day.

**41 (Dispute resolution)** If any dispute arises between the parties under or in connection with this Agreement, the application or interpretation of this Agreement, the Goods and/or the Services or the supply by the Supplier of the Goods and/or the Services, the parties must: (a) promptly exchange written statements detailing their respective positions regarding that dispute and providing comprehensive particulars; (b) use their reasonable endeavours to resolve that dispute promptly by negotiation in good faith; and (c) procure that their respective directors also use their reasonable endeavours to resolve that dispute promptly by negotiation in good faith. If the parties cannot resolve any dispute by negotiation in good faith the parties must refer the dispute for mediation to be conducted by such mediator and under such rules as the parties may agree in writing. If the parties cannot agree in writing upon a mediator and rules for mediation in relation to a dispute, or if any mediation fails to resolve a dispute, the parties may seek to enforce their rights by whatever means they see fit. Compliance with this provision is a condition precedent to the commencement of any legal proceedings by a party under or in connection with this Agreement.

**42 (No assignment without consent)** The Supplier must not assign, transfer or novate this Agreement or any of its rights or obligations under this Agreement without the prior written consent of DHL.

**43 (No sub-contracting without consent)** The Supplier must not sub-contract the Agreement or any part of this Agreement without notifying DHL in writing of the identity of any proposed subcontractors. DHL, acting reasonably, may reject any proposed sub-contractors in which case the Supplier must not use such subcontractors. Sub-contracting shall not in any way affect the Supplier's obligations or liabilities under this Agreement.

**44 (No waiver)** No failure or delay of either party to exercise any rights under this Agreement shall operate as a waiver of any right, remedy, obligation or default under this Agreement nor be deemed to be a waiver of any right or subsequent or continuing default of a similar nature.

**45 (Severability)** Any provision or part of provision of this Agreement which is held by a Court of competent jurisdiction to be unenforceable for any reason whatsoever shall be severed and the remaining provisions or parts of provisions of this Agreement shall remain in full force and effect notwithstanding such severance.

**46 (Amendment)** This Agreement may only be amended by separate written agreement duly executed for and on behalf of each party by its duly authorised officers.

**47 (Further assurances)** The Supplier at any time must do all things including execute all documents considered necessary or desirable by DHL in its absolute discretion to give full effect to the entirety of this Agreement and each provision of this Agreement.

**48 (Good faith)** The Supplier at any time must act reasonably and with utmost good faith in performing its obligations under this Agreement or otherwise dealing with DHL.

**49 (Entire agreement)** This Agreement constitutes the entire agreement and understanding between the parties in relation to the subject matter of this Agreement and supersedes all previous negotiations, agreements, understandings, representations and commitments in respect of that subject matter.

**50 (Priority of documents)** If there is any inconsistency between any of the terms and conditions the order of priority for the purposes of construction is:

(a) a current master services agreement between the parties;

(b) the clauses of this Agreement; then

(c) the Purchase Order; then

(d) any other attachments.

The parties agree that notwithstanding this Agreement, the parties may have negotiated separate a master agreement for the supply of Goods and/or Services as set out in clause 50(a) which supersedes this Agreement

**51 (Benefit of Agreement)** The benefit of this Agreement and DHL's rights and remedies under this Agreement on DHL's election shall take full effect to the benefit of DHL's Personnel, DHL's Affiliates, and DHL's Affiliates' Personnel.

**52** The Supplier acknowledges and agrees that:

(a) this Agreement and the transactions contemplated by this Agreement do not create or provide for any security interest in favour of the Supplier;

(b) the Supplier must not register any financing statement against DHL in relation to the Agreement or the transactions contemplated by this Agreement; and

(c) the Supplier must immediately upon DHL's request register a financing change statement to remove any registration against DHL made by or on behalf of the Supplier in relation to this Agreement and the transactions contemplated by this Agreement

**53 (Governing law and jurisdiction)** This Agreement is governed by the laws of Bangladesh and the parties irrevocably submit to the non-exclusive jurisdiction of the Courts of Bangladesh.

**54 (Interpretation)** In this Agreement, unless the contrary intention is expressly specified: (a) headings are of no effect; (b) words include the singular and the plural; (c) defined terms include all grammatical forms of that term; (d) a reference to a gender includes all genders; (e) a reference to a person includes a natural person, company, trust, partnership, joint venture, association (incorporated or unincorporated), or other body corporate and the converse also applies; (f) a reference to a party's "opinion", "satisfaction", "discretion" or "consent" means that party's opinion, satisfaction, discretion or consent in its absolute discretion; and (g) any capitalised words or expressions used in this Agreement that are not defined in the preceding provision but which are defined in the VAT Law shall have the meanings ascribed to them in the VAT Law.

**55 (Definitions)** When used in this Agreement, the following capitalised words and expressions have the meanings ascribed to them in this provision:

- (a) "**Affiliates**" in relation to a party includes that party's related bodies corporate, related entities, holding companies, ultimate holding company, subsidiaries and duly appointed agents, and in relation to DHL includes any and all members of the DHL or Deutsche Post World Net global networks of companies and agents;
- (b) "**Commencement Date**" means (if applicable) the date specified in the Purchase Order;
- (c) "**Confidential Information**" means any information of any kind whatsoever, whether or not recorded in material form, relating in any way to the business, activities, affairs, customers, products, or services of DHL, including any such information that is disclosed, provided or made available to the Supplier by DHL at any time and including any information that is by its nature confidential to DHL or is designated by DHL at the time of disclosure as being confidential, but excludes information which: (a) was already in the public domain at the time of disclosure by DHL; (b) was acquired or developed by the Supplier independently without any breach of this Agreement; or (c) is ordered by a Court of competent jurisdiction to be disclosed;
- (d) "**Goods**" means the goods specified in the Purchase Order;
- (e) "**VAT Law**" means the VAT Act 2012 and VAT Rules 2016 of Bangladesh and all associated statutes and regulations imposing, regulating or otherwise affecting a broad-based consumption or goods and services tax in Bangladesh;
- (f) "**Liability**" includes any loss, damage, injury, expense, cost, outgoing, claim, demand, proceeding, obligation or any other form of liability or burdensome commitment of any kind whatsoever;
- (g) "**Personnel**" in relation to a party includes that party's officers, employees, agents, partners, representatives, joint ventures, contractors and sub-contractors;
- (h) "**Purchase Order**" means the purchase order attached to this Agreement;
- (i) "**Purchase Price**" means the charges to be paid to the Supplier by DHL in consideration of the supply by the Supplier of the Goods, as specified in the Purchase Order;
- (j) "**Services**" means the services specified in the Purchase Order;
- (k) "**Service Fees**" means the fees and charges to be paid to the Supplier by DHL in consideration of the supply by the Supplier of the Services, as specified in the Purchase Order; and
- (l) "**Term**" means (if applicable) the term of this Agreement, as specified in the Purchase Order.

Last update: 14<sup>th</sup> June 2020