



## REFERENCE TO APPLICABLE TERMS AND CONDITIONS / NOTES TO SUPPLIERS ON PURCHASE ORDERS

This purchase order ("**PO**") expressly incorporates the DHL Purchase Order Terms and Conditions as provided and available at <http://www.dhl.com/mo-en/home/footer/purchase-terms-conditions.html> valid as at the date of this purchase order (the "**Conditions**"). These Conditions govern the purchase of the goods and/or services set out in this PO, to the exclusion of any other terms and conditions that the Supplier seeks to impose or incorporate or which may be implied by law, trade custom, practice or course of dealing.

The Supplier accepts that by supplying the goods and/or services set out in this PO it does so solely upon the terms of this PO and the Conditions. Any attempt to negate the effect of the PO and the Conditions shall be null and void regardless of any communication sent by Supplier following the issuance of this PO.

Where there is a separate written contract that has been agreed and signed between DHL and the Supplier and which is referenced in this PO, the terms of that separate written contract shall apply to this purchase and shall prevail over these Conditions.

The Supplier may obtain a copy of the Conditions from the link provided above or on request from DPDHL.



## **Purchase Order Terms and Conditions for Goods and Services**

**1 (Purchase Order)** These terms and conditions apply to each Purchase Order issued by DHL.

**2 (Purchase Order Cancellation)** DHL may without incurring any liability to the Supplier amend or cancel the Purchase Order no later than thirty (30) days before the scheduled delivery date specified in the Purchase Order by notifying the Supplier of the required amendments or cancellation.

### **SUPPLY OF GOOD(S)**

**3 (Supply of Goods)** The Supplier shall supply the Goods pursuant to the Purchase Order and carry out any installation work (if applicable) in a proper and workmanlike manner to the satisfaction of DHL and in accordance with these terms and conditions. Time is of the essence for the delivery of Goods (including rental items).

**4 (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 therein. 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. Acceptance of late delivery does not tantamount to waiver of DHL's rights to claim for any damages or contractual penalties available to DHL under these terms and conditions, at law, in contract or in equity.

**5 (Specifications)** The Goods must conform in all respects with the specifications and other requirements or descriptions specified by DHL or as described in the Purchase Order. Where samples are provided, all Goods must be of sound material, workmanship and design, and shall be equal in all respects to such samples, or patterns provided to or accepted by DHL.

**6 (Quality)** All of the Goods must pass any acceptance tests and signed off by DHL. DHL shall be entitled to reject all Goods which do not conform completely in every respect with the Specifications. If by 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 Goods even after a reasonable period of use.

**7 (Rejection)** Goods rejected may at DHL's request be replaced by the Supplier at the Supplier's risk and expense; alternatively DHL may elect (at its option) to cancel the Purchase Order in respect of the Goods in question and return the rejected Goods to the Supplier at Supplier's risk and expense. Upon such cancellation, Supplier shall forthwith refund to DHL the Purchase Price that has been paid in advance (if any) to the Supplier.

**8 (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. DHL shall not be deemed to have accepted the Goods until it has stated in writing that the Goods have passed any acceptance tests. Where Goods are delivered in instalments with the prior written consent of DHL, such Goods may be invoiced and paid for in instalments after receipt.

**9 (Compliance with Law etc.)** The Supplier will ensure the Goods comply with all applicable laws then in force when the Goods are delivered including all requirements relating to the manufacture, labelling, packaging, storage, handling, delivery, installation and commissioning of the Goods.

**10 (Title and Risk)** Risk of loss or damage to the Goods shall pass to DHL upon acceptance by DHL of the Goods. Title to the Goods shall pass to DHL upon payment of the Purchase Price for such Goods. Such passing of title and risk shall be without prejudice to any right of rejection DHL may have under these terms and conditions.



**11 (Intellectual Property Rights)** The Supplier warrants that neither the sale nor the use of the Goods will infringe intellectual property rights of any third parties. The Supplier indemnifies DHL from and against all Liabilities, 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 against DHL by any third party resulting from the use the Goods.

**12 (Goods Free From Third Party Rights)** The Supplier shall sell the Goods to DHL with full title guarantee and free from any encumbrances and third party rights.

**13 (Warranty For Defects)** The Supplier warrants that the Goods are free from defects for a period of 12 months from acceptance of the Goods or such period (if any) as specified in the Purchase Order ("**Warranty Period**"). During the Warranty Period, the Supplier shall promptly repair or replace the defective Goods without additional cost to DHL failing which the Supplier shall forthwith refund the Purchase Price paid for such defective Goods. Defective Goods may, at the request of Supplier, be returned to the Supplier with the risk and costs to be borne by the Supplier. If the Supplier is a reseller, the Supplier shall ensure all warranties and support for the Goods from the owner/manufacture of the Goods flow through to DHL and the Supplier will assist DHL in enforcing the same against such owner/manufacture.

**14 (IoT Devices)** The Supplier will use and otherwise process DHL Data and/or personal data only: (a) to provide DHL the contractual services or goods in accordance with DHL's instructions; (b) as described in any controller to processor agreement ("**CPA**") and/or (c) as required by the applicable law. "**DHL Data**" means all data or records of whatever nature and in whatever form relating to the business, employees, customers or otherwise relating to the business of DHL, created processed or provided to Supplier in the course of provision of Services or Goods. As between the parties, DHL retains all right, title and interest in and to DHL Data and the Supplier shall not use or reproduce the same for any other purpose in any manner without the prior written consent of DHL.

**15 (Software)** If the purchase relates to Software, the parties agree to comply with any end user licensed agreement ("**EULA**") executed between the parties (or with the reseller) relating to such software. For the avoidance of doubt, "**Software**" in this clause shall mean software not embedded with any hardware or IoT Devices or is purchased separately, and also does not include software as a services or SAAS.

## **SUPPLY OF SERVICE(S)**

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

(a) in full compliance with any relevant and applicable law including but not limited to having obtained all necessary permits and licenses required for the performance of Services;

(b) with all due care, skill and diligence;

(c) in full compliance with these terms and conditions including any service levels or key performance indicators specified by DHL;

(d) in full compliance with DHL policies or procedures, including without limitation the Occupational Health and Safety rules (OHS) when in the premises or sites of DHL, which shall be notified by DHL to the Supplier from time to time;

(e) in full compliance with DPDHL Supplier Code of Conduct and Information Security Code of Practice for Partners as signed by the Supplier at DHL vendor registration stage; and

(f) putting in place all necessary measures to avoid introduction of any virus, malicious code, malware or security vulnerabilities to DHL IT system and network.

**17 (Qualitative Defects in Service)** If the Service is not rendered to the satisfaction of DHL or not in compliance with the requirements of DHL, the Supplier shall be required to re-perform the said Service within a reasonable period without additional cost to DHL failing which DHL may terminate



the affected Service with full refund if Service Fee has been paid or shall not be required to pay for the affected Service.

**18 (Deliverables)** DHL shall exclusively own the deliverables created specifically for DHL in the course of performing the Services.

**19 (Open Source Software)** Any use of open source software by the Supplier in the performance of Services shall be subject to approval of DHL and DHL's open source software policy.

## GENERAL

**20 (Remedies for Breach of Warranties)** In respect of any breach by the Supplier of any of the warranties or representations specified in these terms and conditions, the Supplier must promptly on DHL's demand and at the Supplier's sole cost take all actions (including execution of any documents) considered necessary or appropriate by DHL to remedy the breach to DHL's satisfaction. Nothing in this provision limits any other rights or remedies that DHL may have under these terms and conditions, at law or in equity in respect of such breach by the Supplier.

**21 (Set-off)** Any sum of money that is recoverable from or payable by the Supplier to DHL under these terms and conditions shall be deducted from any sum then due and owing to the Supplier under any other Purchase Order placed or entered into by DHL with the Supplier.

**22 (Withholding Tax)** If DHL is required by law to withhold and remit tax relating to the Goods or Services to the relevant authority, DHL shall be entitled to reduce the payments by the amount of such tax and furnish to the Supplier a tax certificate or other acceptable evidence of payment of such tax.

**23 (Pricing Inclusive of Taxes)** Unless expressly specified otherwise in writing, any prices or amounts specified in or quoted or invoiced pursuant to the Purchase Order are inclusive of all taxes, duties, and any other levies whatsoever imposed by the authority in connection with the supply of Goods or provision of Services.

**24 (Invoicing)** The Supplier must provide DHL with a tax invoice in respect of the Goods and/or the Services using e-billing/e-invoicing system of DHL where required. Each tax invoice must specify the Goods and/or the Services supplied, the Purchase Price/Service Fees and the applicable taxes payable in respect of the Goods and/or the Services. All tax invoices must be submitted to DHL within 180 days from the date the Supplier is first entitled to invoice for the Goods supplied or Services performed. The Supplier irrevocably waives the right to payment of any such sums not invoiced within this period.

**25 (Payment Terms)** DHL will pay the Supplier undisputed invoices within 60 days of receipt of a valid invoice. DHL will withhold payment of disputed amounts until they are resolved and Supplier shall continue to perform its obligations under the Purchase Order during the period of dispute resolution.

**26 (Disputed Invoices)** Any disputed invoices shall be referred to the dispute resolution procedures stated in clause 35. The Supplier shall continue to supply the Goods and/or perform the Services notwithstanding the existence of a dispute in relation to a tax invoice.

**27 (Indemnity - Supplier)** The Supplier indemnifies, and will keep indemnified, DHL from any and all Liabilities, 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 these terms and conditions 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, death or injury to any person, damage to property of any person and any claim for trade practices and product liability.

**28 (Supplier's Personnel)** (a) The Supplier undertakes to use all reasonable endeavours to ensure continuity of Services by the same personnel for the fulfilment of the Services in particular for time and material basis; (b) for time and material basis, DHL shall inform Supplier of any individual recommended by Supplier and selected by DHL who is unsatisfactory or unsuitable or delays or



fails in the performance of any Services. In this event, Supplier shall take immediate action to forthwith resolve the same failing which Supplier shall comply with DHL's request to forthwith replace any individual but in any event it shall not exceed thirty (30) days from the notification date; (c) in the event Supplier wishes to change its personnel, Supplier shall justify and provide reason(s) for such change by prior written notice of at least thirty (30) days to DHL. Supplier undertakes to facilitate a smooth transition and handover to ensure the timing, quality and performance of the Services is maintained and not compromised; (d) in the event DHL decides that any or all resources engaged by DHL either on time and material or project basis are not required anymore, DHL will inform Supplier with thirty (30) days prior written notice and such resources will be released upon the expiration of 30 days without any further obligations from DHL; (e) Supplier shall at all times remain fully responsible and liable for the acts and omissions of the Supplier's Personnel. Any act or omission on the part of the Supplier's Personnel shall be deemed to constitute a breach by the Supplier of its obligations under these terms and conditions.

**29 (Limitation of Liability)** Neither party limits its liability in respect of (a) fraud or fraudulent misrepresentation; (b) death of, or personal injury to, any person caused by negligence; (c) anything else which cannot be excluded or limited by applicable law where the Goods are supplied or Services performed. The Supplier does not limit its liability in respect of (a) any losses caused by the Supplier's wilful misconduct, gross negligence or intentional default; (b) any indemnity given to DHL under these terms and conditions; and (c) causes of action brought under Confidentiality, Intellectual Property and Data Protection provisions hereunder. Neither party shall be liable to the other party for any indirect or consequential loss or damage including but not limited to loss of business, loss of profit, or loss of opportunity.

**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 the Purchase Order. Where the application of law prevents exclusion of liability by DHL, DHL's liability in any circumstances whatsoever including negligence shall be limited to the total amount paid by DHL for the relevant Goods or Services for the last 12 months.

**31 (Force Majeure)** Neither party shall be liable for a delay or failure in performing its obligations if the delay or failure resulted from circumstances beyond the reasonable control of either party such as act of God, earthquake, flood, fire, explosion, power blackout, embargoes, governmental restrictions, riot, terrorist attack, war or other military action, civil disorder, rebellion and vandalism but excluding any consequence of such event that could have been avoided by the Supplier by implementing its business continuity plan.

**32 (Termination for Convenience)** DHL may terminate the provision of the Services for convenience at any time by giving the Supplier no less than 30 days' notice in writing. Upon such termination, DHL shall pay to the Supplier the Service Fees in respect of Services performed up to the effective date of termination.

**33 (Termination for Breach)** Either party (the "**Terminating Party**") may terminate the Purchase Order immediately upon written notice to the other party (the "**Breaching Party**") if:

(a) the Breaching Party commits any breach of these terms and conditions which is incapable of remedy;

(b) the Breaching Party commits any breach of these terms and conditions which is capable of remedy but has not been remedied within fourteen (14) days by the Breaching Party after receiving written notice from the Terminating Party specifying the breach and requiring its remedy; or

(c) the Breaching Party becomes insolvent or bankrupt or enters into or otherwise becomes subject to any form of external administration whatsoever; or

(d) (in case the Breaching Party being the Supplier) the Supplier or its subcontractors employ person(s) for the purpose of contract performance, who are not in possession of a valid work or employment permit or pass as required by the authorities or applicable law, or

(e) the period of a force majeure event has lasted longer than thirty (30) days.





**34 (Confidentiality and DHL Intellectual Property)** The Supplier must strictly observe and protect the confidentiality of DHL's Confidential Information 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 the Purchase Order; or

(b) disclose that Confidential Information to any third parties.

Further, the Supplier must not use any trademarks, 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.

**35 (Dispute Resolution)** If any dispute arises under or in connection with the Purchase Order and these terms and conditions, the parties shall endeavor to resolve the dispute promptly by negotiation in good faith. If the parties cannot resolve the dispute at the management level, the parties shall then refer the dispute to the court of competent in the jurisdiction stated in clause 41.

**36 (Severability)** Any provision or part of provision of these terms and conditions 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 these terms and conditions shall remain in full force and effect notwithstanding such severance.

**37 (Entire Agreement)** These terms and conditions constitute the entire agreement and understanding between the parties in relation to the Purchase Order and supersedes all previous negotiations, agreements, understandings, representations and commitments in respect of its subject matter. For the avoidance of doubt, the Supplier's standard terms and conditions shall not form part of the Purchase Order, even if DHL does not explicitly object to them before, during and after the conclusion of the Purchase Order.

**38 (Data Protection)** If the performance of the obligations pursuant to the Purchase Order involves processing by the Supplier of any personal data, the Supplier shall comply with the data protection legislation applicable to its performance and where applicable, the General Data Protection Regulation (EU2016/679). Without prejudice to the foregoing, the Supplier shall implement required security measures, policies and procedures and execute agreements to ensure compliance with the applicable data protection legislation.

**39 (Further Documents)** If required by the applicable laws including EU GDPR, the Supplier agrees to execute additional document(s) including CPA to comply with the same. Further, if the Supplier is required to access DHL network or IT system, the Supplier agrees to execute the network access agreement to be provided by DHL.

**40 (Export Control and Sanctions)** Supplier shall ensure compliance with all applicable export control and sanctions laws and regulations ("**Laws and Regulations**"). In particular, Supplier warrants that:

(a) neither the Supplier nor its holding, subsidiary, associate or affiliated company, agents, vendors and/or other third parties directly contracted by the Supplier for the delivery of Goods and/or Services are listed on any applicable sanctions list as a denied party;

(b) Supplier has obtained all necessary permits, and licenses required for the delivery of Services and/or Goods to its destination and the use of the Services and/or Goods in the contract territory; and

(c) it has informed DHL and will inform DHL promptly in writing as far as the Services and/or Goods are or become subject to applicable restrictions related to their import, re-/export, transit or transfer.

The Supplier shall provide DHL with all information, including permits and licenses that are required by any applicable Laws and Regulations in order to allow DHL and its clients the lawful and contractually agreed use of the Services and/or Goods in any country and territory as required by



DHL. In the case of a breach of the obligations set forth in this clause, the Supplier shall indemnify and hold DHL harmless from any claims, penalties and fees that arise or result from such breach.

**41 (Governing Law and Jurisdiction)** The Purchase Order and these terms and conditions shall be governed by the laws of the country/territory/region (as the case may be) where Goods and/or Services are ordered or purchased by the DHL entity and the parties irrevocably submit to the non-exclusive jurisdiction of the courts of that country/territory/region (as the case may be). **42 (Notices)** Any notice to the other party shall be in writing and considered to have been given if sent by e-mail, registered or certified mail, courier, or personal delivery to the address stated in the Purchase Order or such other address as one party may from time to time designate by written notice to the other party.

**43 (Rights of Third Parties)** A person who is not a party to the Purchase Order has no right under the Contracts (Rights of Third Parties) Ordinance (Cap. 623 of the Laws of Hong Kong) to enforce any term of the Purchase Order but this does not affect any right or remedy of a third party which exists or is available apart from that Ordinance. For the avoidance of doubt, DHL's associated companies are not considered to be third parties for the purposes of the Purchase Order.

**44 (Definitions)** When used in these terms and conditions, 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 in relation to DHL includes any and all members of the DHL or Deutsche Post AG group of companies;
- (b) **"Confidential Information"** means any information of any kind whatsoever, whether or not recorded in material form or otherwise, relating in any way to the business, activities, affairs, customers, products, or services of DHL, including operations, processes, budgets, pricing policies, strategies, trade secrets and know-how and any such 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 these terms and conditions; or (c) is ordered by a court of competent jurisdiction to be disclosed;
- (c) **"Goods"** means the goods specified in the Purchase Order including IoT Devices (as defined below) but excluding Software (as defined in clause 15) where applicable;
- (d) **"IoT Device(s)"** "means a computing device with embedded software and sensors that collects and transmits pre-defined data over a wireless network or the internet;
- (e) **"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;
- (f) **"Personnel"** in relation to a party includes that party's officers, employees, agents, partners, representatives, joint venturers, contractors and sub-contractors;
- (g) **"Purchase Order"** means the purchase order attached to these terms and conditions;
- (h) **"Purchase Price"** means the charges to be paid to the Supplier by DHL for the Goods, as specified in the Purchase Order;
- (i) **"Services"** means the services specified in the Purchase Order; and
- (j) **"Service Fees"** means the fees and charges to be paid to the Supplier by DHL for the Services, as specified in the Purchase Order.