



# TERMS AND CONDITIONS - PROVISION OF GOODS AND SERVICES

## JAPAN

These Terms and Conditions apply to the supply of Goods and/or Services from Supplier to Orica, each as identified in the Purchase Order which attaches or references these Terms and Conditions (collectively, Agreement). Any terms or conditions proposed by Supplier including those contained in any Seller quotation, invoice, acceptance, or acknowledgement of order or other instrument, are deemed rejected by Orica and shall not be binding unless it is in writing, signed by an authorised representative of Orica and is specifically described as an amendment or modification of this Agreement.

- 1. Goods and Services.** Supplier shall supply, and Orica shall purchase, the Goods and/or Services in accordance with this Agreement. Orica will not be responsible for any order not supported by a valid Purchase Order. The Purchase Order number must be quoted on all invoices, delivery dockets and parcels.
- 2. Nature of Agreement.** This Agreement is not exclusive. Orica may procure the same or similar Goods and/or Services from other suppliers. Orica is not required to order or purchase a minimum quantity or value of the Goods and/or Services from Supplier, and any estimates, forecasts or indications of future demand for the Goods and/or Services provided by Orica are made without commitment or prejudice.
- 3. Quality.** Supplier warrants to Orica that all Goods supplied to Orica under this Agreement will: (i) be new; (ii) comply with any specifications stated in the Purchase Order or provided to Orica by the Supplier in writing; (iii) be free of defects and deficiencies in materials, workmanship, performance and design at the time of delivery and for a period of 12 months afterwards; (iv) be transferred to Orica with good title and free from all liens and encumbrances; and (v) comply with all Laws (meaning applicable laws, statutory codes and industry regulations and Applicable Trade Controls Laws). If it is agreed Supplier will mark Goods with any Orica branding, the branding must comply with Orica's trademark and copyright standards.
- 4. Conduct.** In performing Services, Supplier must (and must ensure its representatives): (i) conduct themselves in a professional and competent manner; (ii) act in accordance with all reasonable instructions and site rules of Orica and its Affiliates (meaning any companies controlled by, controlling or under common control with Orica); and (iii) comply with all Laws. If Supplier subcontracts all or any part of the Services, Supplier remains liable for the subcontractor's acts and omissions as if that subcontractor was the Supplier and Supplier must conduct due diligence and ensure the subcontractor complies with the Supplier's obligations under clauses 18, 19, 20 and 21.
- 5. Delivery.** Supplier must deliver the Goods and/or provide the Services at the time and place specified in the Purchase Order, and must appropriately package and label the Goods in compliance with all Laws, and to avoid damage in loading, unloading and transit. If Supplier is unable to deliver the Goods and/or Services by the date specified in the Purchase Order, Supplier must provide immediate written notice detailing: (i) the reasons for the failure; (ii) the earliest possible date of delivery; and (iii) any options available to minimise the overall delay, including Supplier sourcing Goods and/or Services from an alternative source or procuring alternative or faster transport for the Goods and/or Services. Upon such notice, Orica may at its discretion: (a) accept the new expected date of delivery specified in Supplier's notice; (b) direct Supplier to implement any alternative option specified in Supplier's notice, or (c) refuse to accept delivery of the Goods and/or Services, in which case Supplier shall be in material breach of this Agreement. Any acceptance by Orica of option (a) or (b) is on the condition that Supplier meets the new agreed delivery date, and that any additional costs and expenses incurred will be borne by Supplier.

6. **Remedies.** If Supplier fails to deliver Orica Goods and/or Services in compliance with this Agreement (including as specified in Clause 5(c) above), Supplier must at its cost and Orica's option: (i) replace or re-perform those Goods and/or Services; or (ii) refund any amount paid by Orica to Supplier in relation to those Goods and/or Services; and (iii) pay to Orica any loss or expense incurred by Orica in relation to transport, storage, handling, return or destruction of non-compliant Goods, or in relation to damage to plant or equipment of Orica or its Affiliates, or the closure of or inability to operate (temporary or otherwise) such plant or equipment. If Orica requires Supplier to replace or dispose of relevant Goods, Supplier must retrieve those Goods at Supplier's cost within 5 days (or such longer period as Supplier can demonstrate is reasonable). The foregoing remedies are not exclusive.
7. **Title and Risk.** Unless otherwise agreed in writing, title in the Goods, and risk of loss or damage to the Goods, will pass from Supplier to Orica on the later of: (i) delivery of the Goods to the place stated in the Purchase Order, or (ii) where applicable, Supplier's completion of any Services to install the Goods. Passing of title and risk does not limit Orica's rights and remedies under this Agreement in respect of any delivered Goods which are defective or otherwise fail to conform to the Agreement.
8. **Inspection.** Orica may inspect any work relating to the Goods and/or Services at any stage of production, engineering, manufacture, installation or prior to their dispatch, including where the work is sub-contracted by Supplier. Supplier must at Orica's direction cease and re-perform at its expense any work being performed not in conformity with this Agreement.
9. **Payment.** Subject to the proper supply of the Goods and Services, Orica will pay to Supplier the amounts specified in the Purchase Order (**Price**), which is the only consideration Supplier is entitled to under this Agreement. Unless otherwise agreed in writing: (i) Orica will pay any correctly issued invoice within 62 days of the end of the calendar month in which the invoice was provided, and (ii) payment shall be by electronic transfer in the currency specified in the Purchase Order.
10. **Taxes.** Each party is responsible for the payment of all taxes, assessments and governmental charges or levies applicable to it under Law. If the Law provides that any sales tax, goods and services tax, or other form of value-added tax (**VAT**) is payable by Orica to the Supplier, Supplier must specify the VAT separately, ensure the invoice is in the form prescribed by Law, and provide Orica with any other documentation required by Law in connection with the VAT.
11. **Insurance.** Supplier must effect and maintain for the term of this Agreement, insurance of the type and amount specified in **Annex 1**. Prior to commencing provision of Goods and/or Services, Supplier must demonstrate it holds such insurance by providing Orica with insurance certificate(s) or other documentation satisfactory to Orica.
12. **Intellectual Property.** In this clause: (i) **IP** means any intellectual or industrial property right anywhere in the world including any patent, patent application, utility model, copyright, registered design and other similar design rights, rights in integrated circuit chip topography and other similar rights and any other rights which may subsist anywhere in the world in inventions, manufacturing processes, technical and other information; and (ii) **Documentation** means any specifications, plans, drawings, operation or maintenance manuals, process information, patterns or designs provided by a party. Supplier warrants that the Goods, Services and any Supplier Documentation, and Orica's receipt and use thereof, do not infringe upon or constitute an unauthorized use of any IP, and must indemnify Orica against any loss or damage incurred by Orica as a result of any third party claim that the Goods, Services and/or any Supplier Documentation infringes upon or constitutes an unauthorized use of any IP. Orica and its subcontractors shall have an unrestricted licence to use any Supplier Documentation as necessary to perform equipment operation and maintenance. Any Orica Documentation provided to Supplier shall remain Orica's property, and any information derived therefrom shall be kept confidential.
13. **Confidential Information.** Each party may be exposed, or have access, to confidential and proprietary information belonging to or supplied by the other party, including, without limitation, work product, specifications, drawings, analysis, research, processes, computer programs, methods, ideas, know-how, business information (including sales and marketing research, materials, plans, accounting and financial information, personnel records, customer lists, and the like) and any other non-public information relating to the business or affairs of a party (**Confidential Information**). Each party (the **Receiving Party**) agrees not to disclose or use for any purpose other than the proper performance of this Agreement any Confidential Information of the other party (the **Disclosing Party**). This does not apply to the extent the Confidential Information: (i) becomes public other than through breach of this

Agreement; (ii) the Receiving Party must disclose to comply with the law or requirement of a government agency or stock exchange; (iii) the Receiving Party needs to share with an advisor or Affiliate (provided the Receiving Party ensures those persons also maintain confidentiality); or (iv) is disclosed to the Receiving Party by a third party with the lawful right to do so. Confidential Information of the Disclosing Party remains that party's property, and the Receiving Party must on written request return such Confidential Information and confirm the destruction of any copies of it.

14. **Liability.** Except for the remedies specified in clause 6 and the IP indemnity specified in clause 12, neither party shall be liable under this Agreement for: (i) any indirect or consequential loss or damage, nor (ii) any loss of actual or anticipated profits, savings, contracts or business opportunities, whether direct or indirect in nature. The foregoing limitations and exclusions shall not apply to the extent they are unenforceable under the law governing this Agreement.
15. **Term.** This Agreement commences upon Orica's issuance of the Purchase Order (or if earlier, the date on which Supplier commences provision of the Goods and/or Services) and concludes once the Goods and/or Services have been provided to Orica's satisfaction. Either party may terminate the Agreement immediately by written notice if the other party: (i) breaches this Agreement and does not cure such breach within 15 days of notice requiring remediation; or (ii) ceases or threatens to cease carrying on business, becomes insolvent, or becomes subject to an order or resolution for its winding up, or it has a receiver, liquidator or trustee in bankruptcy appointed for the whole or any part of its assets or becomes a Restricted Party. Orica may immediately terminate this Agreement, without penalty or payment, if the Goods and/or Services fail to comply with Clause 3, or Supplier breaches Clause 18, 19, 20 or 21.
16. **Effect of Termination.** Termination of this Agreement will not relieve Supplier from any liability which has accrued up to and including the date of termination, or for any previous breach of the covenants and obligations under this Agreement. Clauses 6, 12, 13, 14, 16, 21, 23 and 24 survive termination of this Agreement.
17. **Force Majeure.** **Force Majeure** means any of the following, provided its impact is not limited to the party claiming Force Majeure: (i) an act of God; (ii) lightning, storm, flood, fire, earthquake, explosion, cyclone, tidal wave, landslide; (iii) strikes, lockouts, industrial or labour disputes or difficulties; (iv) war whether declared or undeclared, revolution or act of public enemies, sabotage, riots, insurrections, civil commotion or epidemics; and (v) power or water shortages. If a party is prevented in whole or in part from carrying out its obligations under this Agreement as a result of Force Majeure, it must immediately notify the other party, specifying: (a) the Force Majeure; (b) the obligations it cannot perform as a result; and (c) the estimated duration the Force Majeure will continue. Following this notice, and while the Force Majeure continues, the obligations that cannot be performed due to the Force Majeure will be suspended. The party prevented from carrying out its obligations due to Force Majeure must resume performance of its obligations as soon as reasonably possible, and take all reasonable action to mitigate any loss suffered by the other party. If the Force Majeure lasts, or is reasonably expected to last, more than thirty (30) days, then the non-declaring party may immediately terminate the Contract by notice in writing.
18. **Labour Practices & Compliance systems.** Supplier warrants it: (i) has thoroughly investigated its labour practices, and those of its direct suppliers, to ensure there is no "Forced Labour" or "Slavery" (each as defined by the International Labour Organisation) used in their businesses; (ii) has implemented all necessary processes, procedures, investigations and compliance systems to ensure the warranties made in this clause and clauses 19 and 20 will continue to be the case at all times; and (iii) will in future take all necessary actions and investigations to validate the warranties made in this clause and clauses 19 and 20.
19. **Bribery.** In this clause, **Government Official** means any individual who is employed by or acting on behalf of a government including political parties and party officials, candidates for public office, employees of state owned companies and any person representing to be the intermediary of any of the above. Supplier warrants that it will comply with all anti-corruption laws applicable to it or Orica and that neither it, any of its affiliates, or any subcontractor or third party utilised by it will authorise, offer, promise or provide (or cause to be offered, promised or provided) anything of value, directly or indirectly, to (i) any Government Official in order to influence or reward official action in connection with this Agreement or (ii) any person to influence or reward that person to act in breach of a duty of good faith, impartiality or trust in relation to this Agreement. Save for any ownership interest in respect of shares listed on a recognised stock exchange, the Supplier represents and warrants that neither it or

any of its affiliates is owned in whole or in part by a Government Official in a position to take or influence official action for or against Orica or the Supplier and that no officer, director or employee of the Supplier or its affiliates is such a Government Official.

20. **Trade Controls.** In this Agreement (i) **Applicable Trade Controls Laws** means any sanctions, export control, or other regulations, directives or laws that restrict the trade of goods, technology, or services which are imposed by Australia, the United States, the United Kingdom, Canada, the EU, EU Member States, Switzerland, the United Nations or United Nations Security Council and also includes U.S. anti-boycott laws and regulations; (ii) **Sanctioned Territory** means any country or territory against which comprehensive sanctions are imposed under Applicable Trade Control Laws. As at the date of this contract, Sanctioned Territories include Cuba, Iran, North Korea, Syria, and the Crimea region of Ukraine. (iii) **Restricted Party** means any person, entity, or vessel/aircraft that is designated for export controls or sanctions restrictions under any Applicable Trade Controls Laws, including but not limited to those designated under the U.S. List of Specially Designated Nationals and Blocked Persons and those located, owned or controlled wholly or partly by the government of, or organised under the laws of, a Sanctioned Territory. The Supplier must comply with all Applicable Trade Control Laws and must not, without Orica's prior written consent, provide any goods or services sourced in whole or in part from a Sanctioned Territory or a Restricted Party. The Supplier warrants that neither it or any of its directors, officers or employees is a Restricted Party and that it will not make any funds, goods, technology or services available to a Restricted Party for any reason in connection with this Agreement. The Supplier must provide to Orica on request (i) the export control jurisdiction and classification and harmonised tariff/import code and/or (ii) a point of origin certificate, for any goods or technology provided under this Agreement.
21. **Privacy.** In this clause: (i) **GDPR** means Regulation (EU) 2016/679 (General Data Protection Regulation), (ii) **Privacy Laws** means GDPR, the Privacy Act 1988 (Australia), and any other any Laws relating to privacy, data protection, surveillance, data security, direct marketing or the processing of Personal Data; (iii) **Personal Data** means 'personal data' as defined in the GDPR, 'personal information' as defined in the Privacy Act 1988 (Australia), and any other information to which a Privacy Law applies; and (iv) **Data Subject** means the person to whom Personal Data relates. Each party must comply with any Privacy Laws applicable to it in performing this Agreement. If Orica provides any Personal Data to the Supplier in connection with this Agreement, the Supplier must keep that data confidential and comply with Orica's directions concerning the maintenance of and access to that data. The Supplier must not provide any Personal Data to Orica in connection with this Agreement unless it has obtained the consent of the Data Subjects, and notified them of Orica's Privacy Statement at <https://www.órica.com/Privacy/>.
22. **Records & Audit.** The Supplier will maintain accurate and reasonably detailed records in connection with this Agreement and will, upon request, permit Orica to audit, examine and inspect any books, financial records, property or location under the control of the Supplier or any subcontractor as necessary for the verification of compliance with clauses 18 to 21 (inclusive), except to the extent prohibited under applicable competition or anti-trust laws.
23. **Notices.** Notices under this Agreement: (i) must be in writing and signed by a person duly authorised by the sender; (ii) must be delivered by hand, prepaid post or fax to the recipient's registered address or contact details last notified in writing by the recipient. If the law applicable to this Agreement specifies any additional or different requirement for the provision of notices, the party providing notice must comply with that legal requirement.
24. **Governing Law and Dispute Resolution.** This Agreement is governed by the law specified in **Annex 1**. If **Annex 1** specifies a dispute resolution process, the parties must follow that process in resolving any dispute arising from, under, or in connection with this Agreement (**Dispute**). The United Nations Convention on Contracts for the International Sale of Goods will not apply.
25. **General.** (i) This Agreement is the entire agreement between the parties in connection with the supply of the Goods and/or Services; (ii) this Agreement can only be varied in writing signed by both parties; (iii) the Purchase Order prevails over these Terms and Conditions to the extent of any inconsistency; (iv) rights, powers and remedies provided in this Agreement are cumulative with and not exclusive of the rights, powers or remedies provided by law independently of this Agreement; (v) if the whole or any part of a provision of this Agreement is void, unenforceable or illegal, it shall be considered severed; (vi) there are no third party beneficiaries to this Agreement, and any law which would otherwise create such a position is expressly excluded to the full extent permissible; (vii) the Supplier must not represent

itself as an agent of Orica, and may not assign or subcontract this Agreement; (viii) Orica may assign its rights to an Affiliate on written notice.

**Annex 1 – Country Specific Terms and Conditions**

**A. Insurance (Clause 11)**

A product liability policy to a minimum value of US\$10,000,000 for any one originating cause for any liability arising in connection with the Goods and/or Services; (ii) a public liability insurance policy to a minimum value of US\$10,000,000 for any one originating cause in respect of any property damage, bodily injury or death to any person; and (iii) workers' compensation insurance in a form prescribed or approved under any workers' compensation legislation applicable to Supplier.

**B. Governing Law (Clause 23)**

This Agreement is governed by the laws of Singapore. This Agreement is drafted and executed in the English language, which shall be the governing language despite any translation into any other language.

**C. Dispute Resolution (Clause 23)**

Disputes must be submitted to and finally settled by arbitration administered by the Singapore International Arbitration Centre (**SIAC**) in accordance with the SIAC Rules. The arbitration shall be referred to one arbitrator, the appointment of whom will be agreed by the parties or, in the absence of such agreement, shall be appointed by the chairperson of SIAC. The place of arbitration shall be Singapore. The language to be used in the arbitral proceedings shall be English. A party may seek injunctive or other equitable relief in a court of competent jurisdiction pending the outcome of any such arbitration proceedings.

**September 2019**