

## **General Terms & conditions for the purchase of goods & services**

### **1. Interpretation**

The following definitions and rules of interpretation apply in this agreement.

**1.1 Definitions:** Business Day: a day other than a Friday or any public holiday in Bangladesh.

**Commencement Date:** has the meaning given in clause 2.2. **Conditions:** these terms and conditions as amended from time to time in accordance with clause 16.7.

**Contract:** the contract between the Company and the Supplier for the supply of Goods and/or Services in accordance with these Conditions.

**Company:** R.A.K Ceramics (Bangladesh) Ltd. registered with Bangladesh Joint Stock Companies having Incorporation no# 36813(1113)/98.

**Company Materials:** All materials, equipment and tools, drawings, specifications and data supplied by the Company to the Supplier.

**Deliverables:** All documents, products and materials developed by the Supplier or its agents, contractors and employees as part of or in relation to the Services in any form or media, including drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts).

**Goods:** the goods (or any part of them) set out in the Order.

**Goods Specification:** any specification for the Goods, including any related plans and drawings that is agreed in writing by the Company and the Supplier.

**Intellectual Property Rights:** without limitation, patents, utility models, rights to inventions, copyright and neighboring and related rights, moral rights trademarks and service mark, business names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**Order:** The Company's written order for the supply of Goods and/or Services, as set out in the Company's purchase order form, or in the Company's written acceptance of the Supplier's quotation, or overleaf, as the case may be.

Services: the services (or any part of them), including any Deliverables, to be provided by the Supplier under the Contract as set out in the Service Specification.

**Service Specification:** the description or specification for Services agreed in writing by the Company and the Supplier.

**Supplier:** the person or firm from whom the Company purchases the Goods and/or Services.

### **1.2 Interpretation:**

(a) Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

A reference to writing or written includes email but not fax.

## **2. Basic of Contract**

2.1 The Order constitutes an offer by the Company to purchase Goods and/ or Services from the Supplier in accordance with these Conditions.

2.2 The Order shall be deemed to be accepted on the earlier of:

(a) the Supplier issuing written acceptance of the Order; or

(b) any act by the Supplier consistent with fulfilling the Order, at which point and on which date the Contract shall come into existence

### **(Commencement Date).**

2.3 These Conditions apply to the Contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.4 All of these Conditions shall apply to the supply of both Goods and Services except where the application to one or the other is specified.

## **3. Supply of Goods**

3.1 The Supplier shall ensure that the Goods shall:

(a) correspond with their description and any applicable specification and/or patterns supplied or advised by the Company to the Supplier (including without limitation the Goods Specification) in all respects;

(b) be of the best quality and design, and fit for any purpose held out by the Supplier or made known to the Supplier by the Company, expressly or by implication, and in this respect the Company relies on the Supplier's skill and judgement;

(c) where they are manufactured products, be free from defects in design, materials and workmanship and remain so for 24 months after delivery, or any longer period referred to in Goods/Service Specification, the Company's purchase order form or the Supplier's quotation; and

(d) Comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods.

3.2 The Supplier shall ensure that at all times it has and maintains all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under the Contract in respect of the Goods.

3.3 The Company may inspect and test the Goods at any time before delivery. The Supplier shall remain fully responsible for the Goods despite any such inspection or testing and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Contract.

3.4 If following such inspection or testing the Company considers that the Goods do not comply or are unlikely to comply with the Supplier's undertakings at clause 3.1, the Company shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance.

3.5 The Company may conduct further inspections and tests after the Supplier has carried out its remedial actions.

#### **4. Delivery of Goods**

4.1 The Supplier shall ensure that:

(a) The Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition;

(b) each delivery of the Goods is accompanied by a delivery note which shows the Order number, the date of the Order, the name/type and quantity of the Goods (including the code number of the Goods (where applicable)), packing list (if required), special storage instructions (if any) and, if the Goods are being delivered partially, the outstanding balance of Goods remaining to be delivered. The Supplier's details including name, address, telephone number and email address (if any), the address of the delivery point and any other address to which the Products are to be supplied or charged, and the dispatch date and the dispatch/challan number;

(c) any other document that is required to be provided under any relevant law or pursuant to a reasonable direction by Company.

(d) it states clearly on the delivery note any requirement for the Company to return any packaging material for the Goods to the Supplier. Any such packaging material shall only be returned to the Supplier at the cost of the Supplier.

4.2 The Supplier shall deliver the Goods:

(a) on the date specified in the Order or, if no such date is specified, then within 7 days of the date of the Order or as mutually agreed with the Supplier in writing;

(b) to the Company's premises at head office or factory (wherever applicable) or such other location as is set out in the Order or as instructed by the Company before delivery (Delivery Location); and

(c) during the Company's normal hours of business on a Business Day, or as instructed by the Company.

4.3 Time for delivery of the Goods shall be of the essence.

4.4 Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location.

4.5 If the Supplier:

(a) delivers less than the quantity of Goods ordered, the Company may reject the Goods; or

(b) delivers more than the quantity of Goods ordered, the Company may at its sole discretion reject the full Goods or the excess Goods, and any rejected Goods shall be returnable at the Supplier's risk and expense or be destroyed by the Buyer after 30 days. If the Supplier delivers more or less than the quantity of Goods ordered, and the Company accepts the delivery, the Supplier shall make a pro rata adjustment to the invoice for the Goods.

4.6 The Supplier shall not deliver the Goods in instalments without the Company's prior written consent. Where it is agreed that the Goods are delivered by instalments, they may be invoiced and paid for separately. However, failure by the Supplier to deliver any one instalment on time or at all or any defect in an instalment shall entitle the Company to the remedies set out in clause 6.1.

4.7 Title and risk in the Goods shall pass to the Company on completion of delivery.

## **5. Supply of Services**

5.1 The Supplier shall from the date set out in the Order and for the duration of the Contract supply the Services to the Company in accordance with the terms of the Contract.

5.2 The Supplier shall meet any performance dates for the Services specified in the Order or that the Company notifies to the Supplier and time is of the essence in relation to any of those performance dates.

5.3 In providing the Services, the Supplier shall:

(a) co-operate with the Company in all matters relating to the Services, and comply with all instructions of the Company;

(b) perform the Services with the best care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;

(c) use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with the Contract;

(d) ensure that the Services and Deliverables will conform fully to all descriptions and specifications set out in the Service Specification;

(e) ensure that the Deliverables shall be fit for any purpose that the Company expressly or impliedly makes known to the Supplier;

(f) provide all equipment, tools and vehicles and such other items as are required to provide the Services;

(g) use the best quality goods, materials, standards and techniques, and ensure that the Deliverables, and all goods and materials supplied and used in the Services or transferred to the Company, will be free from defects in workmanship, installation and design;

(h) obtain and at all times maintain all licenses and consents which may be required for the provision of the Services;

(i) comply with all applicable laws, regulations, regulatory policies, guidelines or industry codes which may apply to the provision of the Services, and with the Company's policies and codes;

(j) observe all health and safety rules and regulations and any other security requirements that apply at any of the Company's premises;

(k) wears the personal protective equipment (PPE) appropriate for their work.;

(l) keep arrangement for all things necessary to prevent harm, damage or nuisance to the environment, plant and equipment or infrastructure;

(m) ensure that prior to commencing each task, the Supplier provides to company with a draft risk assessment or a **Safety Work Method Statement (SWMS)** for any high risk construction work in relation to that task for review and then any amendments, prior to work continuing;

(i) ensure that each risk assessment and SWMS and any revisions are read and understood by all relevant Workers prior to work commencing or continuing;

(ii) acknowledge and agree that by reviewing a risk assessment or SWMS, Company (RAK) does not warrant or represent that the risk assessment or SWMS is complete or accurate and that the Supplier must satisfy itself through its own investigations that the SWMS is appropriate for the relevant work.

(n) hold all Company Materials in safe custody at its own risk, maintain the Company Materials in good condition until returned to the Company, and not dispose or use the Company Materials other than in accordance with the Company's written instructions or authorization;

(o) not do or omit to do anything which may cause the Company to lose any license, authority, consent or permission upon which it relies for the purposes of conducting its business, and the Supplier acknowledges that the Company may rely or act on the Services; and

(p) comply with any service levels, project plans and milestones communicated by the Company to the Supplier.

## **6. Company remedies**

6.1 The Supplier shall demonstrate on demand the conformity of the Goods and/or Services to the requirements of clauses 3, 4 and 5 and the conformity of the Supplier and its processes to any legal, regulatory or statutory requirement. The Supplier is the legal and beneficial owner of the Products and has the right to sell the Products to Company free from all mortgages, charges, encumbrances, liens and other third party rights and claims;

6.2 If the Supplier fails to deliver the Goods and/or perform the Services by the applicable date, the Company shall, without limiting or affecting other rights or remedies available to it, have one or more of the following rights:

(a) to terminate the Contract with immediate effect by giving written notice to the Supplier;

(b) to refuse to accept any subsequent performance of the Services and/or delivery of the Goods which the Supplier attempts to make;

(c) to recover from the Supplier any costs incurred by the Company in obtaining substitute goods and/or services from a third party;

(d) to require a refund from the Supplier of sums paid in advance for Services that the Supplier has not provided and/or Goods that it has not delivered; and

(e) to claim damages for any additional costs, loss or expenses incurred by the Company which are in any way attributable to the Supplier's failure to meet such dates.

6.3 If the Goods are not delivered by the applicable date, the Company may, at its option, claim or deduct 10% of the price of the Goods for each week's delay in delivery by way of liquidated damages.

6.4 If the Supplier has delivered Goods and/or performed Services that do not comply with the undertakings set out in clause 3.1 and/or 5.3, then, without limiting or affecting other rights or remedies available to it, the Company shall have one or more of the following rights, whether or not it has accepted the Goods or the Services have been completed or accepted in whole or part:

(a) to terminate the Contract with immediate effect by giving written notice to the Supplier;

(b) to reject the Goods (in whole or in part) whether or not title has passed and to return them to the Supplier at the Supplier's own risk and expense;

(c) to require the Supplier to repair or replace the rejected Goods and/or Services, or to provide a full refund of the price of the rejected Goods and/or Services;

(d) to refuse to accept any subsequent delivery of the Goods and/or performance of the Services which the Supplier attempts to make;

(e) to recover from the Supplier any expenditure incurred by the Company in obtaining substitute goods and/or services from a third party; and

(f) to claim damages for any additional costs, loss or expenses incurred by the Company arising from the Supplier's failure to supply Goods and/or Services in accordance with clause 3.1 and/or 5.3.

6.5 These Conditions shall extend to any substituted or remedial services and/ or repaired or replacement goods supplied by the Supplier.

6.6 The Company's rights under the Contract are in addition to its rights and remedies implied by any other applicable statute from time to time.

## **7. Company's obligations**

7.1 The Company shall:

(a) provide the Supplier with reasonable access at reasonable times to the Company's premises for the purpose of providing the Services;

(b) provide such necessary information for the provision of the Services as the Supplier may reasonably request.

## **8. Charges and payment**

8.1 The price for the Goods:

(a) shall be the price set out in the Order; and

(b) shall be inclusive of the costs of packaging, insurance and carriage of the Goods. No extra charges shall be effective unless agreed in writing and signed by the Company.

8.2 The charges for the Services shall be set out in the Order, and shall be the full and exclusive remuneration of the Supplier in respect of the performance of the Services. Unless otherwise agreed in writing by the Company, the charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.

8.3 In respect of the Goods, the Supplier shall invoice the Company on or at any time after completion of delivery. In respect of Services, the Supplier shall invoice the Company on completion of the Services. Each invoice shall include such supporting information required by the Company to verify the accuracy of the invoice, including but not limited to the relevant purchase order number.

8.4 In consideration of the supply of Goods and/or Services by the Supplier, the Company shall pay the invoiced amounts within the time frame set out in the Purchase Order. Company shall make the payment by issuing account payee cheque/Pay order as per payment terms mentioned in the PO/Contract.

8.5 The Supplier must reference this Purchase Order number on its invoice. Failure to do this may result in extra time required to resolve any issues and may cause payment delays. Company shall not be liable for any interest or other costs where it is late paying an invoice because of the Supplier's failure to comply with this clause.

8.6 Company shall not be required to pay any disputed amount or invoice until such dispute has been resolved and the Parties agree that the amount is valid and properly due to the Supplier.

8.7 Company is not bound by any terms and conditions printed on Supplier's acknowledgment form or invoices, and other related forms which impose additional terms and conditions or impose terms and conditions that are inconsistent with the terms and conditions of this document or the relevant PO.

8.8 VAT & AIT:

a. RAK shall deduct TAX as per applicable laws of Bangladesh.

b. Supplier shall issue VAT Challan along with the invoice at the time of delivery of the Goods/Services. The Company shall deduct / Pay VAT as per VAT law applicable from time to time.

8.9 The Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in providing the Services, and the Supplier shall allow the Company to inspect such records at all reasonable times on request.

8.10 The Company may at any time, without notice to the Supplier, set off any liability of the Supplier to the Company against any liability of the Company to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the Contract. Any exercise by the Company of its rights under this clause shall not limit or affect any other rights or remedies available to it under the Contract or otherwise.

## **9. Intellectual property rights**

9.1 Subject to the rights of the Supplier and/or any third party licensors in respect of any pre-existing materials which are supplied in conjunction with the Deliverables (which shall remain unaffected), the Company shall own, in all respects, all Intellectual Property Rights in the Deliverables and the Supplier hereby assigns to the Company, with full title guarantee, all Intellectual Property Rights in the Deliverables.

9.2 The Supplier shall do all such things and sign all documents or instruments reasonably necessary to enable the Company to obtain, defend and enforce its rights in the Deliverables.

9.3 All Intellectual Property Rights in the Company Materials vest in and remain vested in the Company.

## **10. Indemnity**

10.1 The Supplier shall indemnify and hold harmless the Company in full and on demand against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by the Company arising out of or in connection with:

(a) any claim made against the Company for actual or alleged infringement of a third party's intellectual property rights arising out of, or in connection with, the manufacture, supply or use of the Goods, or receipt, use or supply of the Services (excluding the Company Materials);

(b) defective workmanship, quality or materials;

(c) any of the Goods and/or Services failing to comply with the provisions set out in clauses 3 and 5;

(d) any claim made against the Company by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in the Goods, as delivered, or the Deliverables; and

(e) any claim made against the Company by a third party arising out of or in connection with the supply of the Goods, as delivered, or the Services.

10.2 This clause 10 shall survive termination of the Contract.

## **11. Insurance**

During the term of the Contract and for a period of 2 years thereafter, the Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance, product liability insurance and public liability insurance to cover the liabilities that may arise under or in connection with the Contract, and shall, on the Company's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

## **12. Confidentiality**

12.1 Each party undertakes that it shall not at any time during the Contract and for a period of three years after termination of the Contract, disclose to any person any confidential information concerning the business, affairs, Company's clients or suppliers of the other party, except as permitted by clause 12.2.

12.2 Each party may disclose the other party's confidential information:

(a) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information must comply with this clause 12; and

(b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

12.3 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

## **13. Termination**

13.1 Without affecting any other right or remedy available to it, the Company may terminate the Contract:

(a) with immediate effect by giving written notice to the Supplier if:

(i) there is a change of control of the Supplier; or

(ii) the Supplier's financial position deteriorates to such an extent that in the Company's opinion the Supplier's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or

(iii) the Supplier commits a breach of clause 5.3(i),

(b) for convenience by giving the Supplier 1 weeks' written notice.

13.2 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

(a) the other party commits a material breach of any term of the Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified to do so;

(b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business; or

(c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business.

#### **14. Consequences of termination**

14.1 On termination of the Contract, the Supplier shall immediately deliver to the Company all Deliverables whether or not then complete, and return all Company Materials. If the Supplier fails to do so, then the Company may enter the Supplier's premises and take possession of them. Until they have been returned or delivered, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.

14.2 Termination or expiry of the Contract shall not affect the parties' rights and remedies that have accrued as at termination [or expiry], including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

14.3 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination [or expiry] of the Contract shall remain in full force and effect.

#### **15. Force majeure**

The Company reserves the right to defer the date of delivery or payment or to cancel the Contract or reduce the volume of the Goods and/or Services ordered if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of company.

## **16. General**

### **16.1 Assignment and other dealings.**

(a) The Company may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with all or any of its rights and obligations under the Contract.

(b) The Supplier shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract.

**16.2 Notices.** Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be delivered by Hand/Email or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case).

**16.3 Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

**16.4 Waiver.** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

**16.5 No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorize either party to make or enter into any commitments for or on behalf of the other party.

**16.6 Entire agreement.** The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

**16.7 Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by the parties' authorized representatives.

**16.8 Governing law and jurisdiction.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of the Bangladesh. If no settlement is reached within thirty (30) Days from the date of notification by a Party to the other Party, then such

dispute, controversy or claim shall be referred to and finally resolved by arbitration by a sole arbitrator under the Arbitration Act 2001. The Arbitration shall be held in Dhaka and shall be conducted in English. The decision of the Arbitrator shall be final and binding on the Parties. The right to arbitrate disputes under the Agreement shall survive the termination of the Agreement. The Supplier shall strictly comply with the applicable laws of Bangladesh including but not limited to Labor Act 2006. Liability under this Contract/PO is only limited to the value/price of this Contract/PO. Company shall not be liable for any consequential loss, loss of profit or opportunities of the Supplier.

17. **Global code of conduct** as shared in RAK ceramics Webpage does apply for all vendors always.