

## Vikudha General Terms and Conditions of Purchase (2019)

These general terms and conditions of purchase ("**Conditions**") are between Vikudha Overseas Corporation Limited (or Vikudha Limited, or any other affiliated company within the Vikudha group of companies) ("**Buyer**") and each person or legal entity which enters into an Agreement (as defined below) with Buyer for the supply of Goods ("**Seller**").

### 1. Definitions

Under these Conditions, the following terms have the following meanings:

**"Agreement"** means the contract between Seller and Buyer stipulating the conditions of sale and purchase of Goods, incorporating Buyer's Purchase Order and these Conditions;

**"Goods"** means goods or services sold by Seller and purchased by Buyer;

**"Purchase Order"** means Vikudha's standard purchase order issued in writing by Buyer to Seller containing, amongst other things, a description of the Goods to be supplied, Buyer's required documents, quality standards, and product specifications; and

**"Parties"** means Buyer and Seller.

### 2. Applicability

- 2.1 All sales by Seller to Buyer whether initiated by written purchase order, quotation, electronic means, telephone or any other method, will be subject to the Conditions set forth herein.
- 2.2 The Conditions set forth herein supersede any conflicting terms or conditions which Seller purports to apply under any Seller's standard terms and conditions, offer, confirmation of order, quotation, pricelist, invoice, specifications, shipping instructions or other document issued by Seller. Failure of Buyer to object to Seller's terms and conditions shall in no event be construed as an acceptance of any terms and conditions of Seller. The confirmation or implementation of the purchase and delivery of the Goods, shall be deemed to be an acceptance of these Conditions.
- 2.3 By contracting on the basis of these Conditions, Seller also agrees to the applicability of these Conditions with respect to all future dealings between Buyer and Seller for the supply of Goods, even if this is not expressly stated. Buyer shall be entitled to update and/or amend these Conditions regularly and as of the moment of notifying Seller of such update or amendment or by sending Seller the updated or amended Conditions, such revised Conditions shall apply to all dealings between Buyer and Seller.

### 3. Conclusion of Agreement

- 3.1 Seller's offers, including but not limited to Seller's price quotations shall be considered an irrevocable offer with respect to the prices, quantities, times of delivery and other essential parts of such offer.
- 3.2 Buyer will issue a Purchase Order in writing to Seller and such written Purchase Order shall be binding on Seller and shall be deemed accepted as is by Seller unless such Purchase Order is rejected in writing or accepted by Buyer with modifications, within four (4) working days from the date of the Purchase Order. If Seller's notice of acceptance and/or Seller's confirmation of an Purchase Order contains any modifications whatsoever or differs in any other aspect from the original Purchase Order placed, this will constitute a new offer to Buyer, which has to be accepted by Buyer explicitly in writing.
- 3.3 Buyer reserves the right to revoke any Purchase Order placed with Seller if Seller has not responded to Buyer's Purchase Order in conformity with clause 3.2. In the event of revocation, Seller shall not be entitled to payment of any part of the purchase price for the Goods or any kind of compensation and/or damages whatsoever.
- 3.4 No amendment to the Agreement and these Conditions shall apply unless expressly accepted in writing by Buyer.

### 4. Prices and Payment

- 4.1 All prices quoted in the Purchase Order are fixed, firm and not subject to revision. Prices are inclusive of all taxes (including value added tax and business services tax), duties, charges, contributions, insurances and all other costs, including, but not limited to, the costs of packing or packaging required

to prevent damage or deterioration of the Goods while in transit to Buyer, incurred by Seller in performing the Purchase Order up to and including the delivery of the Goods at the final location indicated by Buyer.

- 4.2 If Seller fails to fulfill any obligations under the Agreement or if Buyer has justifiable grounds to believe that Seller has failed to deliver and/or perform as agreed, Buyer may withhold payment to Seller and Seller shall not suspend performance of Seller's obligations.
- 4.3 Buyer shall at all times have the right to set off and deduct from any amounts owing from Buyer to Seller against any amount owing from Seller to Buyer irrespective of the nature of any claim. Seller shall not have a right of title retention or lien.
- 4.4 Payment by Buyer or on behalf of Buyer will not be construed as acknowledgement that Goods were delivered without non-conformities and does not discharge Seller from any warranty, duty and/or liability under the Agreement and the law.

## **5. Transport**

- 5.1 Seller shall pack Goods properly and in such manner as to prevent damage to the Goods during transportation and to facilitate efficient unloading, handling and storage. Seller shall pack various chemical products as per the nature of the products in order to ensure that the product reaches the port of destination in sound condition where Buyer intends to deliver the Goods. Unless otherwise stipulated under Incoterms 2010 as applied to the particular Purchase Order, Seller shall at Seller's own expense insure all Goods up to the point when delivery is complete.
- 5.2 All Goods shall be properly marked, which include, but are not limited to: (i) markings which indicate that the Goods are destined for Buyer and in accordance with Buyer's instructions (if any); (ii) markings which set out Buyer's Purchase Order number, Seller's identification, place of delivery, declaration of contents, weight and quantity, date of shipment, date and method of dispatch, and contain a certificate of country of origin; (iii) and all other markings required for proper delivery.
- 5.3 Seller shall take all measures necessary to transport the Goods in a proper manner and using all appropriate equipment and accessories, with the assistance of competent agents or subcontractors where necessary. Seller shall also arrange for the transport of the Goods to the agreed place of delivery in such manner that the Goods will be delivered in good condition and will be unloaded in a safe, secure and efficient way. All agreed shipping conditions shall be strictly observed, and Seller shall be liable in full for any damage and expense arising from non-compliance with such shipping conditions. Shipment by a forwarding agent shall be subject to Buyer's consent.
- 5.4 Without prejudice to clauses 5.1, 5.2 and 5.3, all information held by, or reasonably available to Seller regarding any potential hazards known or believed to exist in connection with the Goods, including but not limited to the transport, handling or use of the Goods to be supplied, shall be promptly communicated to Buyer. Seller shall provide Buyer with a material safety data sheet (MSDS) and/or accident instruction sheet in accordance with the applicable laws and regulations including but not limited to health, safety and environmental regulations, with respect to Goods which, due to their nature, qualities, or state may be harmful to human life, health and/or the environment, and which therefore may be subject to laws and regulations requiring special treatment in terms of packing, labeling, transportation, storage, handling and waste disposal.
- 5.5 Seller shall observe all laws and regulations, including but not limited to laws and regulations relating to the packing, marking, labeling, transportation, storage, handling and waste disposal of such Goods and shall provide Buyer with all information required to enable Buyer and its customers to comply with such laws and regulations.
- 5.6 The latest Incoterms 2010 apply to the Agreement between Seller and Buyer. Subject to clauses 4.1, 5.1 and 13.1, if there is any conflict between the Incoterms and the Agreement, the latter shall prevail.

## **6. Inspection**

- 6.1 Upon Buyer's request, Buyer shall be entitled to inspect and/or to assay the Goods before, during or after delivery, including conducting any quality investigations or testing Buyer deems necessary.
- 6.2 Buyer reserves the right to entrust the inspection and/or testing of the Goods to third parties. For the purpose of such inspections or assaying as set out in clause 6.1, Seller shall grant Buyer and its

representatives free access to the relevant location at all times and shall fully cooperate and provide all necessary information and documentation with respect to the Goods at Seller's own expense.

6.3 Inspection of the Goods by or on behalf of Buyer shall not constitute acceptance by Buyer and shall not release Seller from any of its obligations and warranties under the Agreement.

6.4 If the results of such inspection or assay cause Buyer not to accept the Goods, clause 12 (*Non-Compliance*) shall apply.

## **7. Quantity and Quality**

7.1 Seller shall deliver the quantity and quality specified in the Purchase Order.

7.2 All Goods supplied on a price-for-weight basis shall be delivered to the agreed place of delivery and the weight of the Goods shall be determined by or on behalf of Buyer, by weighing at the agreed place. The net weight so recorded by or on behalf of the Buyer shall be the determinative weight with respect to the Agreement.

7.3 As far as the chemical and physical composition of the Goods is concerned, absence testing report issued from Société Générale de Surveillance, Bureau Veritas or an equivalent internationally recognized inspection agency containing contrary findings, the values determined by Buyer or by Buyer's surveyor acting on the Buyer's behalf shall be binding values for such deliveries with regards to establishing the supplied quality. Buyer shall be entitled to a reasonable period of time within which to prepare the quality assessment.

## **8. Delivery**

8.1 Seller shall deliver the Goods in accordance with the agreed upon Incoterms and at the agreed place and time, as specified in the Purchase Order.

8.2 Time is of the essence and all delivery times set out in the Agreement shall be firm. Seller shall immediately notify Buyer in writing of any (possible) delays or any other issue which may have a material adverse effect on the delivery of the Goods or on Seller's performance of its other obligations under the Agreement, including but not limited to a change in Seller's or Seller's sub-suppliers' financial condition, business or prospects. Simultaneously, Seller shall provide Buyer all information in writing concerning the reason and/or the extent of the delay, as well as all details relating to the efforts Seller intends to make in order to avoid delay or expedite delivery.

8.3 Buyer reserves the right to refuse partial deliveries or delivery prior to the agreed delivery date and in such case may return the Goods or, at Buyer's discretion, store them. Seller shall assume all risks and expenses associated with the storage costs and/or any other costs associated with the return of the Goods.

8.4 Signing of a receipt and/or bill of lading by or on behalf of Buyer upon delivery shall be deemed to only relate to receipt of the Goods and shall not constitute acceptance of the Goods in any way whatsoever.

## **9. Delay**

9.1 In the event of any breach with respect to the agreed delivery time, Seller shall be in default, and Buyer, without any prior written notification of default to Seller and in addition to Buyer's other rights under the Agreement or at law, may, at Buyer's discretion:

9.1.1 notify Seller that Buyer insists on delivery by Seller and Seller's performance of its other obligations under the Agreement, and in addition Buyer shall be entitled, without any prior notification of default to Seller, to withhold liquidated damages from Seller in the amount of 1% of the Purchase Order value for each full week of delay, not to exceed a maximum of 10% of the total Purchase Order value until complete delivery has been effected. Such liquidated damages shall be without prejudice to Buyer's right to claim compensation for all damages incurred in connection with such breach including but not limited to lost profits as well as any indirect financial and consequential damage suffered by Buyer in connection with such breach, or

9.1.2 Buyer may decide to rescind the Agreement and in addition to Buyer's other rights under the Agreement or at law, Buyer shall also have the right to claim compensation for all damage

incurred in connection with such breach including but not limited to lost profits as well as any indirect financial and consequential damage. In case Seller prior to the agreed date of delivery becomes aware that timely delivery will be partly or fully impossible, Seller shall promptly inform Buyer in writing to this effect stating the reasons as well as the expected delayed delivery date. Such circumstances shall also entitle Buyer at Buyer's discretion to rescind the Agreement with immediate effect, even if this is prior to the agreed delivery date and to claim compensation for all damages incurred in connection with such breach.

## **10. Postponement**

10.1 Buyer shall have the right to postpone delivery of the Goods. Upon Buyer's request to postpone delivery of the Goods, Seller shall pack such Goods properly and clearly mark them as destined for Buyer. Seller shall then store such Goods in a secured environment and shall arrange for proper insurance of such Goods.

## **11. Warranties**

11.1 Seller explicitly warrants that:

11.1.1 all Goods shall comply with all specifications, delivered samples and all other requirements set out in the Agreement, including but not limited to the agreed quantity and quality;

11.1.2 all Goods shall be in sound condition, are fit for the intended purposes, shall be of good quality and free from defects, deficiencies and shall satisfactorily fulfill the performance requirements expected by Buyer;

11.1.3 all Goods shall comply with all applicable laws and regulations, including but not limited to international conventions and the applicable laws and regulations concerning both international and national transport of dangerous and/or chemical and/or waste products, and all other applicable national and international laws and regulations with respect to health, product safety and the environment;

11.1.4 title to all Goods transferred shall be free of seizures, restricted rights, title retentions and/or any liens or encumbrances whatsoever;

11.1.5 all required licenses in relation to the Goods are and shall remain valid and in place, and the scope of such licenses shall properly cover the intended use of the Goods and all such licenses shall include the right to transfer the Goods; and

11.1.6 all Goods shall be provided with all relevant instructions and information for safe and proper use and in case the Goods incorporate or contain dangerous hazardous goods or substances, such Goods shall be provided with written and detailed specifications of the composition and characteristics of such Goods or substances and of all laws, regulations and other requirements relating to such Goods in order to enable Buyer to transport, store, process, use and dispose of such Goods in a proper and safe manner.

## **12. Non-compliance**

12.1 If the Goods are defective or are otherwise not in conformity with the requirements of the Agreement ("**Non-Conforming Goods**"), Buyer shall notify Seller thereof and may, without prejudice to Buyer's right to compensation for any losses and damages suffered or to be suffered by Buyer as a result of such breach or any other right available to Buyer under the Agreement or at law, at Buyer's sole discretion:

12.1.1 reject the Non-Conforming Goods and return them to the Seller at the risk and expense of Seller (including without limitation, inspection, handling and storage costs incurred by Buyer in connection therewith) and to require Seller at the Seller's expense either to remedy any defect in the Non-Conforming Goods or to supply replacement Goods and execute any other necessary actions to ensure that the terms of the Agreement are fulfilled within a period acceptable to Buyer;

12.1.2 if Seller fails to fulfill its obligations above within the prescribed time, Buyer may, without prejudice to any other available rights, undertake or engage a third party to fulfill Seller's obligations under the Agreement at the risk and expense of Seller, including but not limited to cost of freight, disassembly and re-assembly or to obtain substitute goods elsewhere and

recover from the Seller any expenditure reasonably incurred by Buyer in obtaining such goods;  
or

12.1.3 terminate the Agreement in whole or in part, by written notification to Seller and without the need of judicial intervention and without prejudice to Buyer's right to compensation for any losses and/or damages suffered or to be suffered by Buyer as a result of such termination, and Buyer may return the Goods already delivered against repayment by Seller.

12.2 In case of rejection of the Goods by Buyer, title to and assumption of risk for the rejected Goods shall be with Seller from the date the rejection notice was sent to Seller.

### **13. Ownership and Risk**

13.1 Title to the Goods shall transfer to Buyer upon proper delivery thereof. Risk for the Goods shall pass from Seller to Buyer in accordance with the agreed upon Incoterms as stated in the Agreement. In case of the absence of a specific Incoterm clause, the assumption of risk for the Goods remains with Seller until the arrival of the Goods at the agreed upon place of delivery and acceptance thereof in writing by Buyer by a person or company (on behalf of Buyer) duly authorized to do so.

13.2 At Buyer's request, Seller shall disclose itself as party in interest and owner of the Goods as far as public legislation is concerned until the Goods are effectively in the control and possession of Buyer, who at all times has the right to decline to accept title to the Goods or to re-deliver the Goods with immediate effect (with respect to possession, ownership, and title) in case of events during storage or transportation which might burden the owner of the Goods with public legal obligations, regardless of whether Seller has breached any contractual obligation. Seller shall be obliged as set out in clause 14.3 to insure itself and any other party in interest for liability towards third parties irrespective of any breach of contractual obligations by Seller.

### **14. Liability**

14.1 Seller shall be liable for any direct, indirect or consequential losses and/or liabilities (include, without limitation, environmental liabilities, loss of profits, loss of business, etc.), increased costs, losses, damages, injuries, claims, actions, proceedings, charges, costs and expenses (including but not limited to attorney fees, litigation costs and other professional fees and expenses), suffered or incurred by or brought against Buyer or any third party, resulting from or connected with the non-fulfillment or late or improper fulfillment of Seller's obligations and warranties under the Agreement, or at law.

14.2 Seller shall keep Buyer harmless from and indemnified in full against all suits, actions, legal or administrative proceedings, charges, claims, demands, damages, liabilities, loss (including loss of profits), attorney's fees, costs and expenses of whatsoever kind or nature (including but not limited to special, indirect, incidental, consequential damages) resulting from or connected with the non-fulfillment or late or improper fulfillment of Seller's obligations and warranties under the Agreement, or at law.

14.3 Seller shall take out and maintain in force all insurance policies necessary to cover its liability under the Agreement ("**Liability Insurance Coverage**"). At the request of Buyer, Seller shall provide insurance certificates evidencing the Liability Insurance Coverage of Seller and Seller's sub-suppliers and shall keep Buyer informed of any changes in such Liability Insurance Coverage. Seller shall enter into agreements with all of Seller's sub-suppliers whose terms mandate that Seller's sub-suppliers shall also obtain Liability Insurance Coverage and Seller shall enforce such agreements if such agreements are violated.

### **15. Confidentiality**

15.1 Seller shall keep confidential the existence and content of the Agreement and all technical, commercial and financial data and all other information of a confidential nature ("**Confidential information**") provided by or on behalf of Buyer to Seller in connection with the Agreement and the preparation of the Agreement. All such information shall remain Buyer's property and may be used by Seller only for the purpose of the Agreement. Upon Buyer's request Seller shall promptly return to Buyer all such information and Seller shall not retain any copy thereof.

15.2 Seller shall only disclose Confidential Information to third parties that are engaged by Seller in the execution of Seller's duties under the Agreement ("**Seller's Third Parties**") provided that Buyer has given to Seller, Buyer's prior written consent for such disclosure.

- 15.3 Seller shall enter into agreements with Seller's Third Parties that mandate that such third parties are bound by the same confidentiality undertaking found in clause 15.1 above and Seller shall enforce such agreements if such agreements are violated.
- 15.4 Seller is not entitled to refer to any part of the Purchase Order and/or the Agreement in any of Seller's external communications or publications without the prior written consent of Buyer.

## **16. Intellectual Property Rights**

- 16.1 Seller warrants that neither the Goods nor the sale thereof as covered by the Agreement or the use of the Goods will infringe upon or violate any trademarks, patents, copyrights or any other legal rights of third parties. Seller shall fully indemnify and hold Buyer harmless from all actions, claims, liability, loss (including loss of profits), costs, attorney's fees, expenses and damages due to or arising from any infringement of intellectual property rights. Upon Buyer's request Seller shall, at its own expense, defend Buyer against all such claims, actions or proceedings.
- 16.2 The right of ownership and copyrights in any samples and any other data or information delivered to Seller belong to Buyer and shall be subject to the confidentiality obligations as set out in clause 15.

## **17. Export Control Laws and Customs**

Seller shall obtain all international and national export licenses or similar permits required under all applicable export control laws and regulations and shall provide Buyer with all information required to enable Buyer and Buyer's customers to comply with such laws and regulations. Upon Buyer's request, Seller shall provide Buyer with appropriate certification documents validating the country of origin for Goods and all other information required, sufficient to satisfy the requirements of the customs authorities of the country of receipt and any applicable export licensing regulations.

## **18. Force Majeure**

- 18.1 In the event Seller is prevented from performing any of its obligations under the Agreement because of force majeure, Seller shall promptly inform the Buyer by written notice thereof specifying the cause of the event of force majeure and how it will affect Seller's performance of Seller's obligations under the Agreement and particularly the period of time said event may delay the timely performance of the Agreement.
- 18.2 Force majeure on the part of Seller shall in any event not include strikes affecting Seller, shortage of production materials or resources, and breach of contract by third parties contracted by Seller. Unless agreed to otherwise, the performance of the obligation concerned shall be suspended for the duration of the force majeure. If the circumstances constituting force majeure endures for more than thirty (30) days after the date of said notice, then Buyer shall be entitled to terminate this Agreement or any part thereof with immediate effect by written notice to Seller and without any obligation or liability of whatsoever kind to Seller and Seller shall reimburse Buyer for any amounts already paid.

## **19. Suspension and Termination**

- 19.1 Buyer shall be entitled to suspend the performance of its obligations under the Agreement or to terminate the Agreement in whole or in part, by written notification to Seller and without the need of judicial intervention, and in each case without any obligation or liability of whatsoever kind to Seller, in the event:
- 19.1.1 Seller has requested suspension of payment, becomes insolvent or unable to pay its debts, or goes into liquidation (other than for the purposes of a reconstruction or amalgamation) or any bankruptcy proceedings are instituted by or against Seller or Seller makes an arrangement for the benefit of its creditors;
- 19.1.2 a substantial part of Seller's assets have been attached or in the event that control over Seller is being transferred to a third party or if Seller ceases or threatens to cease to carry on its business; or
- 19.1.3 Seller fails to comply with any term or condition of the Agreement including these Conditions or Buyer in Buyer's reasonable discretion determines that Seller cannot deliver the Goods as required.
- 19.2 In any of the above mentioned events in clauses 19.1.1, 19.1.2, and 19.1.3 ("**Material Default Events**"), all outstanding claims of Buyer or Seller shall become due and payable instantly and Seller

may not set off any amounts the Buyer owes Seller against any amount that Seller owes Buyer. Moreover, the Material Default Events shall be without prejudice to Buyer's right to claim for compensation for any losses and/or damages suffered or to be suffered by Buyer as a result of such suspension and/or termination of the Agreement.

**20. Assignment and Subcontracting**

Seller shall not subcontract, transfer, pledge or assign any of its rights or obligations under this Agreement without the prior written consent of Buyer. Any such pre-approval from the Buyer for subcontracting, transfers, pledges or assignments shall not release Seller from Seller's obligations under the Agreement and Seller shall be liable for the selection and any defaults of Seller's subcontractors and suppliers.

**21. Waiver**

Failure by Buyer to enforce at any time any provision of the Agreement shall not be construed as a waiver of Buyer's right to act or enforce any such term or condition and Buyer's rights shall not be affected by any delay, failure or omission to enforce any such provision. No waiver by Buyer of any breach of Seller's obligations shall constitute a waiver of any other prior or subsequent breach.

**22. Severability**

In the event that any provision of the Agreement, including these Conditions shall be held to be invalid or unenforceable, the same shall not affect in any respect whatsoever, the validity or enforceability of the remaining provisions between the Parties and shall be severed there from. The pertaining provisions held to be invalid or unenforceable shall be replaced by provisions satisfying the legal and economic intent of the original provisions to the maximum extent permitted by law.

**23. Survival of Rights**

The Parties' rights and obligations shall be binding upon and inure to the benefit of the Parties and their respective successors, permitted assigns, directors, employees, agents and legal representatives. Termination of one or more of the rights and obligations of the Parties, for whatever reason, shall not affect the provisions of these Conditions which are intended to have effect after such termination.

**24. Governing Law and Jurisdiction**

- 24.1 The Parties' rights and obligations arising out of or in connection with the Agreement shall be governed by English law.
- 24.2 The Vienna Convention on the International Sale of Goods (1980) does not apply to, and is excluded from, the Agreement.
- 24.3 Parties hereby agree that all disputes which cannot be resolved amicably shall be resolved by arbitration by the Singapore International Arbitration Centre in accordance with its rules. The language of the arbitration is English. The place of arbitration is Singapore.