

# GENERAL TERMS AND CONDITIONS OF PURCHASE OF DOKA Philippines Inc.

## 1. GENERAL PROVISIONS

- 1.1 These standalone purchase order terms and conditions ("Purchase Conditions" or "Conditions of Purchase") apply where there is no express contract between Doka Philippines, Inc and the Supplier ("Supplier" or "Contracting Party") for the supply of goods and/or services to DOKA for the company's own use or for passing on to a third party, with or without further processing or handling by Doka.
- 1.2 These Conditions of Purchase alone shall apply. Doka shall not be bound by any terms and conditions of business of the Contracting Party. (e.g. but not limited to 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).
- 1.3 Where there is an express contract, that other contract applies to the exclusion of these Purchase Conditions. If there is any conflict, ambiguity or inconsistency between any parts of this Agreement the following order of precedence shall apply:
  - (a) the relevant Purchase Order;
  - (b) the clauses in the pre-existing contract;
  - (c) the clauses in these Purchase Conditions.
- 1.4 Amendments or supplements shall be in writing. This shall also apply to an agreement to dispense with this written form.

## 2. PURCHASE ORDER

- 2.1 Subject to clause 2.2, the Supplier agrees to supply and DOKA agrees to accept the supply of Products (being the goods and/or services, as appropriate), as set out in the Purchase Order (being the document described as such and provided by DOKA to the Supplier requesting the supply of the Products to DOKA).
- 2.2 If the Purchase Order does not specify a quantity or value of Products to be purchased by DOKA, then DOKA will not be bound to purchase any specific or minimum quantity or value of Products. The Supplier may only invoice DOKA for the quantity of Products actually supplied to DOKA in response to a request from DOKA.
- 2.3 DOKA may withdraw the Purchase Order at any time prior to its acceptance by the Supplier.
- 2.4 Only purchase orders or contract awards that are in writing shall be valid. Verbal or telephone agreements shall be binding if they are confirmed by Doka in writing.

## 3. DELIVERY

- 3.1 The Supplier must deliver the Products to the delivery location specified in the Purchase Order on the delivery date (or earlier with DOKA's prior written consent).
- 3.2 If the Supplier cannot deliver the Products by the agreed delivery date, DOKA may elect, at its discretion, whether to place the Products on back order for delivery on a later delivery date or cancel the Purchase Order and receive a full refund if any amounts have been paid.
- 3.3 Each delivery must be accompanied by:
  - (a) delivery documents marked with the Purchase Order number, a description of the Products, the quantity of Products, the Supplier's details including name, address, telephone number and facsimile number, the address of the delivery point and any other address to which the Products are to be supplied or charged, and the dispatch or delivery date and the dispatch number;
  - (b) a copy of the packing list (within each package of the Products);
  - (c) a copy of the Local Purchase Order LPO; and
  - (d) any other detail or document that is required to be provided under any relevant law or as may be requested by DOKA.
- 3.4 DOKA may reject any Products if DOKA (acting reasonably) considers any of the warranties in these Purchase Conditions are untrue or have been breached, or if the delivered Products do not conform to the Purchase Order. DOKA's acceptance of the Products will not waive, limit or prejudice any rights, powers or remedies DOKA may have as a result of a breach of any of the warranties, or any law.

## 4. SAFETY, HEALTH AND ENVIRONMENT

The Code of Conduct (see [http://www.umdachgroup.com/umdach/Code\\_of\\_Conduct\\_2018\\_.pdf](http://www.umdachgroup.com/umdach/Code_of_Conduct_2018_.pdf)) governing the conduct of Doka employees shall apply analogously to the Contracting Party, its employees and agents, who are obligated to strict compliance with the rules set forth in the Code of Conduct.

## 5. RISK, TITLE AND INSURANCE

- 5.1 Unless an agreement is made to the contrary, the earliest point at which the risk pertaining to the goods delivered is transferred to Doka is when the goods have been delivered and unloaded at the notified destination point, if applicable. If it is the task of the Contracting Party to assemble and/or install the item (in particular, a machine), the risk is not transferred until the Contracting Party has successfully completed the assembly and/or installation and Doka has signed any acceptance report that may be planned. The risk and costs incurred for any return deliveries shall in any event be covered by the Contracting Party.
- 5.2 The Contracting Party and Doka hereby agree that all deliveries to Doka shall be free of retentions of title.
- 5.3 The Supplier must have and maintain the following insurances with a reputable insurer covering the amounts indicated below unless DOKA has agreed for a different amount in an existing contract with the Supplier:
  - (a) (for Services) a public liability insurance policy for at least of USD 2.8 million for any one event, a workers' compensation insurance policy and where applicable an employer liability insurance policy; or
  - (b) (for Goods) a public and product liability insurance policy in respect of the Goods and Services for at least \$2,8 million for any one occurrence in respect of public liability and in the aggregate during any 12 month period in respect of products liability.

## 6. PURCHASE PRICE AND INVOICING

- 6.1 DOKA will pay the purchase price set out in the Purchase Order ("Price") for the Products until the due date specified on the Supplier's tax invoice. The Price will be in line with any agreed pricing between DOKA and the Supplier.
- 6.2 Each Purchase Order is placed on a firm price basis in accordance with the Deliverables specified in the Purchase Order and is not subject to any price increases without Doka's prior written consent.
- 6.3 Unless otherwise DOKA has different delivery conditions agreed in an existing contract, the Supplier's prices shall be deemed to include all costs payable by Doka for the Deliverables based on DDP terms as per Incoterms 2010.
- 6.4 Estimates, quotations, and planning and consultancy work shall not be charged to Doka, unless an agreement is made to the contrary.
- 6.5 All payments due under this Agreement shall be made in the currency agreed in the PO and by electronic funds transfer to such bank account as the receiving Party may designate from time to time.
- 6.6 The Supplier must reference the 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.
- 6.7 DOKA will not be liable for any interest or other costs incurred to the Supplier for late payment of an invoice, e.g. because of but not limited to the Supplier's failure to comply with clause 6.6.
- 6.8 DOKA 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.
- 6.9 Each Party shall be responsible for paying its own bank charges.
- 6.10 The Contracting Party shall not be entitled to set off his own receivables against Doka claims or receivables or to withhold or reduce payments for whatever reason. This prohibition in respect of offsetting receivables shall not apply to the Contracting Party's receivables if these have been acknowledged in writing by Doka or if they have been recognized by a declaratory judgement.

## 7. Tax

- 7.1 The Supplier shall give all notices and pay all taxes (including withholding tax), duties and fees that are required of it by Applicable Laws in connection with its provision and/or performance of the Deliverables (according to negotiated Incoterms).
- 7.2 All withholding taxes on payments to be made to Supplier shall be reported and withheld by DOKA. In the event that the Supplier is exempt from withholding taxes, the supplier shall duly and timely inform and provide DOKA with its exemption certificate upon issuance of the Purchase Order.

## 8. WARRANTY/INDEMNITY/PRODUCT LIABILITY AND REMEDIES

- 8.1 Doka does not have a duty to check the supplies immediately. Potential warranty/indemnity claims of Doka remain unaffected.

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- 8.2** The Contracting Party is liable for ensuring that his contractual services in particular deliveries of goods and work as regards the processing, workmanship or manufacture of products and services –comply with the intended use of which the Contracting Party was aware or of which he should have been aware. The Contracting Party has a duty to clarify any queries he may have about the purpose for which the product is to be used by asking Doka. In particular, the Contracting Party also guarantees that, if the products for which the Contracting Party has provided services of whatever kind are passed or sold on to a third party, these products can be used for the purpose envisaged by the third party.
- 8.3** The Contracting Party shall provide for the goods or services a full guarantee for the duration of 12 months from acceptance. Here all defects that occur within the warranty period shall be covered by the warranty. The Contracting Party shall, within the context of this warranty, also replace all losses that have been incurred by Doka as a result of the defective supplies/services without the need for proof of negligence.
- 8.4** Apart from the warranty Doka shall be able to make unlimited use of the warranty regulations within the period of two years (for movable property) and three years (for immovable property). It is agreed by common consent that the assumption of defects at the point of acceptance shall apply if the defect manifests itself within 18 months after the acceptance of the goods or services provided. In the event of warranty becoming operative, Doka shall have the choice between a reduction in price, rescinding the contract, or asking for the item to be improved or exchanged.
- 8.5** Where Doka has to provide warranty to the subsequent holder, Doka shall be able to obtain warranty from the Contracting Party if this is claimed by means of a written demand by Doka within five years of acceptance of the goods or services.
- 8.6** The Supplier will indemnify DOKA and its respective officers, employees and agents for all claims, costs or losses in respect of personal injury or death, or loss of or damage to any property arising out of or as a consequence of the provision of Goods or Services under these Purchase Conditions.
- 8.7** The indemnity shall be reduced proportionally to the extent that the act or omission of DOKA or its officers, employees or agents contributed to the claims, costs or losses.
- 8.8** The indemnities and assumptions of liability contained in this clause and elsewhere in these Purchase Conditions will continue in full force and effect notwithstanding termination of this Contract whether by the passage of time or otherwise.
- 8.9** The product safety of the supplies and services provided by the Contracting Party shall comply with the requirements of the relevant regulations, in particular the Austrian Law on Product Liability. The Contracting Party shall be liable to Doka for this and shall also indemnify Doka against all claims by third parties. Furthermore, in this context the Contracting Party shall, if requested to do so by Doka, undertake for a period of 15 years to name the relevant manufacturer, importer or the party who supplied him with the product and all useful documentation to fight product liability claims by a third party and make these available to Doka in a timely manner. Insofar as the Contracting Party provides any services on Doka's premises (including unloading and erection work), in respect of other liability vis-à Doka, the Contracting Party shall ensure that the relevant accident prevention regulations will be complied with.
- 9. CONFIDENTIALITY & INTELLECTUAL PROPERTY**
- 9.1** Where Doka has made documentation available to the Contracting Party – in particular, drawings, plans and samples – the Contracting Party shall, in particular, check these to ensure that they are correct and complete and, if any doubts exist in this respect, the Contracting Party shall take the initiative to clarify these with Doka. Documentation that has been handed over shall remain the property of Doka and is to be handed back to Doka at the end or upon completion of the contract. Copyright and/or other intellectual or industrial property rights to these documents have not been transferred by Doka or assigned for use.
- 9.2** The Contracting Party undertakes to treat in the strictest of confidence the terms of the Purchase Order, any negotiations and information relating to the Purchase Order and any other information passing between Doka and the Supplier as well as all documents and other information received from Doka and in particular, but not exclusively, production know how, quantities, documentation and drawings, which are made available to the Contracting Party in the course of the business relationship with Doka or from which the Contracting Party derives knowledge in another way, and only to use these for the purpose set out in the subject of the agreement. This duty shall not cease when the business relationship ends.
- 10. TERMINATION**
- 10.1** DOKA may terminate the Purchase Order in whole or in part at its sole discretion upon 30 (thirty) days' prior written notice. In case the Contracting Party has already incurred costs for necessary expenses (in work or material) in order to fulfil its contractual obligations arising from a Purchase Order before such notice from Doka, Doka shall compensate for such costs, if the Contracting Party can prove that it cannot use those necessary expenses otherwise. In case of a compensation payable under this clause, Doka may decide to take over the work results or material corresponding to its compensation. Upon such notice, the Contracting Party may not continue performing the execution of a Purchase Order without the prior written consent of Doka.
- 10.2** DOKA shall have the right to terminate, cancel or suspend, by written notice, in whole or in part, the Purchase Order with immediate effect in the following events:
- If the Contracting Party commits breach of any terms and conditions of this Purchase Order;
  - If the Contracting Party is incapable of complying and fulfilling its obligations as stated herein;
  - If the Contracting Party becomes insolvent or makes a composition with its creditors or being a company going into liquidation either voluntarily or compulsorily;
  - If the financial position of the Contracting Party at any time is considered to be unsound; or
  - If the Contracting Party assigns or attempts to assign its responsibilities under the Purchase Order to third party without prior written consent of DOKA.
- 10.3** Upon cancellation or termination of this Purchase Order, DOKA may require the Contracting Party to transfer title and deliver to DOKA any completed Products and DOKA will pay the Price for such Products subject to set off against any damages claimed by DOKA.
- 10.4** The right to terminate shall be without prejudice to any other rights and remedy which DOKA may have against the Contracting Party.
- 11. FORCE MAJEURE**
- 11.1** Neither party shall be deemed to be in breach of any obligation under these Purchase Conditions resulting from acts or events beyond that Party's reasonable control, including but not limited to any act of God (including lightning, storm, flood, fire, earthquake, explosion, cyclone, tidal wave, landslide, or adverse weather conditions), outbreak, epidemic or pandemic of any kind or communicable or virulent disease/infection and any actions taken by any government or public authorities in response to any of the foregoing, any acts of war or terrorism, hostilities (war be declared or not), invasion, act of foreign enemies, strikes, lock out, disorder, any shortage of labor, any customer's failures, civil unrest, riots, revolution, rebellion, quarantine of any kind, natural disaster, flood, fire, embargo, boycott, insurrection, explosion, shortage of gas, fuel or electricity, hacker attack, piracy, interruption of transportation, governmental actions and injunctions, change of law, unavoidable accident.
- 11.2** Upon the occurrence of a force majeure event, the Contracting Party shall notify Doka thereof as soon as practicable, but without undue delay. In this case, the Contracting party shall take all mitigation measures in order to limit the impact of the force majeure event to the maximum extent possible and inform Doka of any possible consequences and solutions. If the inability to perform of the Contracting Party shall continue or can be reasonably expected to continue longer than 2 months, Doka may terminate the agreement by written notice with immediate effect.
- 12. ASSIGNMENT AND SUB-CONTRACTING**
- 12.1** The Supplier shall not sub-contract the whole or any part of these Purchase Conditions without prior written consent of DOKA.
- 12.2** If such consent is granted by DOKA, it shall not relieve the Supplier from any liability or obligations under these Purchase Conditions and the Supplier shall be responsible for the acts, omissions, defaults or negligence of any sub-contractor, its agents or workman as fully as if they were the acts, omissions, defaults or negligence of the Supplier.
- 12.3** Where Doka makes available personnel, in particular for processing, assembly work, undertaking a trial run or unloading, these members of staff shall be subject to the Contracting Party's instructions and are considered to be his agents. Therefore the Contracting Party and not Doka is responsible for their mistakes.
- 13. MISCELLANEOUS**
- 13.1** Should one provision in these Conditions of Purchase be or become invalid, the validity of the remaining provisions shall not be affected.
- 13.2** Nothing in this contract shall be construed to make either party an agent, employee, franchisee, joint venture or legal representative of the other Party.

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- 13.3** Except where expressly contemplated, these Purchase Conditions do not create any rights which are enforceable by any person who is not a party to this contract.
- 13.4** Unless otherwise stated, the rights and remedies of Doka under these Purchase Conditions are cumulative and do not exclude any other right or remedy provided by applicable law.
- 13.5** Doka is within its rights to offset open claims held by Doka or its Umdasch Group affiliates against demands and claims from the Contracting Party, its parent, daughter, sister or other affiliated companies. The Contracting Party explains itself in all other respects in agreement with a complete or partial transmission of the rights and obligations of Doka from the present treaty on third by Doka; in this connection the Contracting Party passes on a possible right to objection in case of a transfer of enterprise.
- 13.6** The place of performance for all services of all kinds, in particular deliveries and payments, is Km. 21 West Service Road, 25B Villongco Road Sucat, Muntinlupa City, 1770 Philippines. This shall even apply if it is agreed that the handover or acceptance shall be at another location.
- 13.7** For all disputes between Doka and the Contracting Party, it is agreed that the relevant court for the business seat of Doka at Muntinlupa City, 1770 Philippines shall have jurisdiction for the subject matter. Doka shall however also have the right to bring an action against the Contracting Party at any other legally permissible competent court.
- 13.8** The business relationship between Doka and the Contracting Party shall be governed by the law of Philippines, excluding the conflict of law rules of international private law and the UN sales convention.
- 13.9** Time whenever mentioned shall be of the essence of the Purchase Order and these Purchase Conditions.
- 13.10** In order to fulfil contractual obligations or in case of legitimate interest, Doka processes personal data of a contact person of its customer such as name, business address, business phone number and business email address by data processor Doka GmbH, Josef-Umdasch-Platz 1, 3300 Amstetten, Austria. The data is being stored until contractual or statutory obligations are fulfilled or as long as such a legitimate interest exists. The data subject is entitled to certain rights according to mandatory national or supranational law, such as a right to access, a right to erasure or a right to lodge a complaint with the relevant national supervising authority. In case of questions related to data protection, please contact [dataprotection@doka.com](mailto:dataprotection@doka.com).

(Version of August 2020)