

JTI Leaf Malawi LTD – General Terms and Conditions of Purchase

1. Definitions

The following terms shall be interpreted as indicated:

- a) “Purchase Order” means the agreement entered into between the Purchaser and the Supplier, including all purchase order(s), specifications, plans, drawings or other documents and conditions which may be referred to in the Purchase Order.
- b) “Force Majeure” means an event, beyond the control or fault, or negligence of the Supplier and not foreseeable, such as strike, riot, wars or revolutions, fires, floods, epidemics, quarantine restrictions, governmental order or regulation and freight embargoes.
- c) “Goods” means equipment, machinery, commodities and/or other materials which the Supplier is required to supply under the Purchase Order.
- d) “Services” means professional, technical, advisory, or maintenance obligations of a Supplier under a Purchase Order.
- e) “Works” means the construction, installation, maintenance, refurbishment, repair and related activities required under a Purchase Order.
- f) “Purchaser” means JTI Leaf Malawi LTD.
- g) “Supplier” means an individual or a legal person supplying Goods, Works or Services, under a Purchase Order.

2. Scope

Supplier acknowledges that these General Terms and Conditions of Purchase (“Terms and Conditions”) if attached to an order by the Purchaser shall apply to the purchase of goods or services from Supplier pursuant to a Purchase Order.

3. Standards

The Goods, Works and Services supplied shall conform to all standards and requirements mentioned in the technical specifications, plans, drawings, terms of reference or other documentation attached to and forming part of the Purchase Order.

4. Confidentiality

The Supplier agrees that all the information provided by the Purchaser is confidential and that it shall not be revealed or used for its own benefit, or be disclosed to or used for the benefit of any other third party; except with the Purchaser’s prior written consent. This obligation shall continue for a period of two (2) years from the issue of the Purchase Order.

5. Compliance

Supplier shall comply with all laws, regulations, permits and governmental rules and regulations applicable to Supplier’s activities.

6. Intellectual Property Rights

The Supplier shall indemnify the Purchaser against all third-party claims of infringement of patent, trademark, or industrial design rights arising from use of the goods, output of the services, performance of the works, or any part thereof in the Republic of Malawi. Supplier shall not use for any purpose JTI’s trademarks, trade name, service marks or logos without the Purchaser’s written consent.

7. Inspections and Tests

The Purchaser or its representative shall have the right to inspect and/or to test the Goods, Works or Services to confirm their conformity to the Purchase Order at no extra cost to the Purchaser. Where applicable the Purchaser shall specify any inspections and tests and

where they are to be conducted. Goods, Works or Services which fail the tests may be rejected and the Supplier shall replace or make alterations necessary to meet specification at own cost.

9. Packing of Goods

The Supplier shall provide such packing of Goods as is required to prevent damage or deterioration during transit to their final destination, as informed to the PO. Packing, marking, and documentation within and outside the packages shall comply strictly with such special requirements as shall be expressly provided by the Purchaser.

10. Transportation, Delivery and Documents

Where the Supplier is required to transport Goods to a specified destination, transport, insurance and storage, shall be arranged by the Supplier, and related costs shall be included in the Price. Delivery of Goods shall be made by the Supplier in accordance with the terms specified in the Purchase Order. The details of shipping and/or other documents shall be furnished by the Supplier. Documents to be submitted by the Supplier shall be specified by the Purchaser and shall include certificates issued by the Purchaser confirming acceptance of the Goods, Works or Services provided by the Supplier

11. Insurance

Goods shall be fully insured in a freely convertible currency against loss or damage incidental to manufacture or acquisition, transportation, storage, and delivery. For Works, the Supplier shall provide insurance cover, from the Start Date to the end of the Defects Liability Period, for the loss of or damage to the Works, Materials; Equipment; property and personal injury or death in connection with the Purchase Order. For Services the Supplier shall where applicable provide insurance for public liability; third party; professional liability; employer’s liability and workers’ compensation.

12 Warranty

The Supplier warrants that Goods supplied are new, unused, of the most recent or current models and shall have no defect, arising from design, materials, or workmanship or from any act or omission of the Supplier, which may develop under normal use of the supplied goods in the conditions prevailing in the Republic of Malawi. The Supplier warrants that all Works and Services performed under the Purchase Order shall be of the highest professional and technical standards. Warranties shall remain valid for twelve (12) months after final acceptance, unless specified otherwise. The Purchaser shall promptly notify the Supplier in writing of claims arising under the warranty and the Supplier shall, with reasonable speed, repair or replace the defective goods, works or parts thereof, at own costs, failing which, the Purchaser may, without prejudice to any other rights, proceed to take such remedial action as may be necessary, at the Supplier’s expense.

14. Prices and Payment

Prices charged by the Supplier shall not vary from the prices quoted by the Supplier, except where such variations are specifically provided for in the Purchase Order. Unless the parties agree otherwise, the Purchaser shall pay, all payments in Malawi Kwacha, within thirty (30) days from receipt of an invoice or claim by the Supplier. Unless otherwise requested by the Purchaser, invoices shall (a) be rendered separately for each delivery; (b) cover not more than one PO; and (c) be rendered with PO number noted thereon.

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15. Acceptance; Title and Risk of Loss

Except as otherwise expressly provided by written agreement, acceptance of any of the Goods and or services shall not occur until the Purchaser has been given a reasonable opportunity to inspect and test such Goods and Services after arrival at destination or after completion of installation or completion of the Services, if Supplier is obligated to install the Goods or perform any Services. Except as otherwise mutually agreed in writing, delivery will occur, and title and risk of loss will transfer, when: (i) with respect to Goods not incorporated into Services, Goods are accepted and are placed in the final destination; and (ii) with respect to Goods incorporated into Services, the completed Services have been accepted by the Purchaser.

16. Subcontracting and assignment

Supplier will not subcontract or assign the performance of any service without the prior written consent of the Purchaser. Approval of a sub-contractor or assignee by the Purchaser will in no way relieve Supplier from any of its obligations under these Terms and Conditions nor establish any form of contractual relationship between Purchaser and the subcontractor or assignee. Supplier shall be entirely responsible and liable for all acts and omissions of any subcontractors or assignees..

18. Delays in the Supplier's Performance

Delivery of goods, performance of works and services shall be made by the Supplier in accordance with the time schedule prescribed by the Purchaser. If the case, in the event that the Supplier or its subcontractor(s) should encounter conditions impeding timely delivery of the Goods or performance of the Works or Services, it shall promptly notify the Purchaser in writing of the fact of the delay and likely duration. The Purchaser may extend the time for performance subject to ratification by amendment of Purchase Order with or without liquidated damages.

19. Liquidated Damages

Subject to Clause 22, if the Supplier fails to deliver any or all of the goods or to perform the works or services within the period(s) specified, the Purchaser may, without prejudice to other remedies, deduct from the Price as liquidated damages, 0.5% of the price of the delayed goods or unperformed works or services for each week or part thereof of delay up to a maximum of four weeks thereafter the Purchaser may terminate the Order.

20. Indemnity

Supplier shall defend, indemnify, and hold harmless the purchaser from and against any and all claims, losses, damages, expenses and liabilities, including attorneys' fees arising from or in connection with Supplier's performance pursuant to these Terms and Conditions.

21 Termination

The Purchaser, without prejudice to any other remedy for breach, by written notice of default sent to the Supplier, may terminate this Order in whole or in part: (a) if the Supplier fails to deliver any or all of the goods or to perform the works or services within the period(s) specified in the Purchase Order, or within any extension thereof, or (b) if the Supplier fails to perform any other obligation(s) under the Purchase Order. (c) for its convenience.

Except for (c), the Purchaser may then procure, goods, works or services similar to those undelivered, and the

Supplier shall be liable to the Purchaser for any excess costs for such similar goods, works or services.

For termination for convenience, the notice shall specify the date upon which such termination becomes effective. The Purchaser shall pay the supplier termination charges equal to the cost of materials and labor incurred (and not otherwise mitigated) on ordered goods or services prior to the date of notice; provided Supplier takes all steps reasonably necessary to mitigate such costs. The Supplier shall notify the Purchaser of the actual termination charges within thirty (30) days after termination.

22. Force Majeure

Notwithstanding the provisions of the Purchase Order, the Supplier shall not be liable for liquidated damages, or termination for default if and to the extent that its delay in performance or other failure to perform its obligations under the Purchase Order is the result of an event of Force Majeure.

If a Force Majeure situation arises, the Supplier shall promptly notify the Purchaser in writing of such condition and the cause thereof. Unless otherwise directed by the Purchaser in writing, the Supplier shall continue to perform its obligations under the Purchase Order as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the Force Majeure event.

23. Amendments

No variation in or modification of the terms of the Purchase Order shall be made except by written amendment signed by the parties.

24. Notices

Any notice given by one party to the other pursuant to the Purchase Order shall be sent to the other party in writing or by cable, telex, or facsimile and confirmed in writing to the other party's address specified in the Purchase Order. A notice shall be effective when delivered or on the notice's effective date, whichever is later.

25. Taxes and Duties

A Supplier shall be entirely responsible for all taxes, stamp duties, license fees, and other such levies imposed both inside and outside of the Republic of Malawi.

26. Settlement of Disputes

If any dispute shall arise between the parties in connection with or arising out of the Purchase Order, the parties shall make every effort to resolve amicably such dispute or difference by mutual consultation within 30 days. Failing which the dispute shall be finally settled by arbitration under the Rules of the International Chamber of Commerce - ICC, in Lilongwe, Malawi

27. Governing Language and Law

The Purchase Order shall be in English and shall be interpreted in accordance with the laws of the Republic of Malawi, as well as these Terms and Conditions.