



# Purchase Order Terms And Conditions

---

## 1.0 Definitions

Unless the context otherwise requires, the singular includes the plural and vice versa; a reference to any agreement or document is to that agreement or document as amended, supplemented or replaced from time to time; a reference to any party includes that party's executors, administrators, substitutes, successors and assigns; headings are for convenience only and shall not affect the interpretation of this PO; and references to a specific gender shall apply to both genders.

- 1.1 COMPANY means Eterna Plc.
- 1.2 COMPANY REPRESENTATIVE means a person designated by COMPANY in Section 1 (Agreement), Clause 2 (Notices And Representatives) of the PO; who shall have the duties, rights and obligations outlined therein.
- 1.3 DEFECTIVE means GOODS and/or SERVICES (or any aspect of them) which are not in accordance with the PO or which are damaged, deficient, faulty, inadequate or incomplete.
- 1.4 DELIVERY ADDRESS means the place or places specified on the PO where SUPPLIER is required to deliver the GOODS and/or SERVICES.
- 1.5 DELIVERY DATE means the date or dates specified on the PO by which SUPPLIER is required to deliver the GOODS and/or SERVICES.
- 1.6 GOODS means the goods described on the PO which SUPPLIER is required to supply to COMPANY.
- 1.7 PRICE means the price set out in the PO which is inclusive of all costs and charges, except otherwise stated.
- 1.8 SERVICES means the services described on the PO which SUPPLIER is required to perform for COMPANY.
- 1.9 SUPPLIER means the party identified as such in the PO.
- 1.10 SUPPLIER REPRESENTATIVE means a person designated by SUPPLIER in Section 1 (Agreement), Clause 2 (Notices And Representatives) of the PO; who shall have the duties, rights and obligations outlined therein.
- 1.11 WARRANTY PERIOD means the period specified on the PO and commencing on the date of delivery of the GOODS and/or SERVICES.

## 2.0 Supply of GOODS And/Or SERVICES

- 2.1 In consideration of payment of the PRICE by COMPANY, SUPPLIER must supply to COMPANY the GOODS and/or perform the SERVICES in accordance with the PO.
- 2.2 SUPPLIER must, in supplying the GOODS or performing the SERVICES:
  - (a) Not interfere with COMPANY's activities or the activities of any other person at the DELIVERY ADDRESS;
  - (b) Be aware of and comply with and ensure that SUPPLIER's employees, agents and contractors are aware of and comply with:
    - (i) All applicable laws, rules and regulations of any governmental or regulatory body having jurisdiction over the supply of the GOODS and/or performing the SERVICES;
    - (ii) All standards and procedures at the DELIVERY ADDRESS, to the extent that they are applicable to the supply of the GOODS or the performance of the SERVICES by SUPPLIER;
    - (iii) All lawful directions and orders given by COMPANY REPRESENTATIVE to give directions to SUPPLIER;



# Purchase Order Terms And Conditions

---

- (iv) All relevant Community Affairs, Safety, Health, Environment and Security requirements for the supply of the GOODS and/or performing the SERVICES; and
- (v) COMPANY's CASHES Policy Manual.
- (c) Ensure that SUPPLIER's employees, agents and contractors entering COMPANY's premises or DELIVERY ADDRESS, perform in a safe manner and are properly qualified for, and skilled in, the performance of their tasks and are of such character as not to prejudice:
  - (i) Safe working practices;
  - (ii) Safety and care of property; and
  - (iii) Continuity of work.
- 2.3 The supply shall meet or exceed the specifications provided in the PO. Any item that the SUPPLIER proposes to modify, change, substitute, etc., shall be approved by COMPANY prior to proceeding with that phase of the supply. Any item found not to be in compliance with the specifications in the PO shall be subject to correction by the SUPPLIER, even after completion of the supply.
- 2.4 The SUPPLIER shall carry out checks on all technical information and drawings for the supply in order to ensure that such technical information and drawings are fit for the intended purpose.
- 2.5 Should errors be found in or anything be omitted from the technical information and/or drawings which, in the SUPPLIER's opinion, is necessary for the proper carrying out and completion of the supply, it shall be the duty of the SUPPLIER to advise and notify COMPANY, in writing, of the errors or inconsistencies, or request for any further technical information that may be required for the proper carrying out and completion of the supply, prior to accepting the PO and/or proceeding with the supply.
- 2.6 COMPANY shall not be responsible for any additional costs and/or delay that result from the SUPPLIER's omission to complete such checks on all technical information and/or drawings provided by COMPANY, promptly and properly.
- 2.7 Documents submitted for approval do not relieve SUPPLIER of any of its obligations to fulfil each requirements of the PO.

## 3.0 Quality

- 3.1 The GOODS and/or SERVICES must match the specifications in the PO and free from all defects in design, workmanship and materials.
- 3.2 If SUPPLIER gave COMPANY a sample of the GOODS or a demonstration of the SERVICES, the GOODS and/or SERVICES must be of the same nature and quality as the sample or demonstration given.
- 3.3 The GOODS and/or SERVICES must be fit for the purpose for which GOODS and/or SERVICES of the same kind are intended for and are commonly supplied or bought and for any other purpose COMPANY specifies.
- 3.4 The GOODS must be of merchantable quality and unless otherwise specified in the PO or in writing, must be new.
- 3.5 Unless otherwise provided, all GOODS supplied must have the followings:
  - (a) Manufacturing label, showing:
    - Name,
    - Batch Number,
    - Net and Gross Weights,
    - Date of Manufacture,
    - Date of Expiration.



# Purchase Order Terms And Conditions

---

- (b) Certificate of Analysis, (COA);
- (c) Material Safety Data Sheet, (MSDS), showing storage, handling and toxicity conditions;
- (d) Information provided in (b) and (c) above shall include but not limited to information on direction for use, properties and ingredients of any hazard inherent.

## 4.0 Inspection, Testing And Rejection

- 4.1 SUPPLIER shall carry out and record all tests and inspections of the GOODS and/or SERVICES or parts thereof in order to confirm that the GOODS and/or SERVICES or parts thereof are new and fit for their intended purpose and of good quality and meet the requirements of the PO and applicable Standards and Codes.
- 4.2 SUPPLIER shall supply COMPANY with copies of all test records and inspection reports duly certified by the authority that carried out such test or inspection.
- 4.3 Without prejudice to Clause 1 above, COMPANY shall have the right, but not the obligation, to witness any test or inspection carried out by the SUPPLIER pursuant to Clause 1 above. The SUPPLIER shall notify COMPANY in writing and in adequate time of the tests and inspections to be carried out in order that COMPANY may exercise this right. In addition, COMPANY shall have the right, but not the obligation, to access any facility where the GOODS and/or SERVICES are performed to inspect, test and examine the work carried out or any part thereof and all materials, equipment or parts thereof, including all documentations, for the GOODS and/or SERVICES.
- 4.4 COMPANY shall not accept any liability arising from the inspection, tests, examinations and documents provided by SUPPLIER in the course of supplying GOODS or providing SERVICES.
- 4.5 COMPANY shall subject GOODS and SERVICES supplied to inspection and test at anytime and place. If they are found to be DEFECTIVE, COMPANY may reject them, or require SUPPLIER to correct or replace them without charge, or require a reduction in PRICE which is equitable under the circumstances.
- 4.6 If SUPPLIER is unable or refuses to correct or replace such items within a time deemed reasonable by COMPANY, COMPANY may terminate this PO in whole or in part and SUPPLIER bears all risks as to rejected GOODS and SERVICES. SUPPLIER reimburses COMPANY for all transportation costs, other related costs incurred and overpayment in respect of the rejected GOODS and SERVICES.

## 5.0 Measuring And Test Equipment

SUPPLIER shall make available all the inspection, measuring and test equipment necessary to carry out the required inspection and/or test. This equipment shall be utilized by qualified personnel and be adequately calibrated. The calibration status shall be recorded and SUPPLIER shall supply COMPANY with copies of the Test Equipment Calibration status duly certified by the authority that carried out the test or inspection.

## 6.0 Final Inspection

- 6.1 SUPPLIER shall, before the dispatch of the GOODS or handover of the SERVICES, carry out a "Final Inspection" in order to verify that all the required tests/inspections have been carried out and that the results meet the PO requirements.
- 6.2 Such inspection shall consist but not limited to the following activities:
  - check the correct and complete execution of the testing/inspections required;
  - check that the documents produced are genuine, complete, readable and identifiable to the product involved;
  - check the correct identification of the items supplied;
  - check supply quantity and completeness;
  - check the cleanness, preservation and surface treatment of the items supplied;



# Purchase Order Terms And Conditions

---

- check conformity of the supply to the PO requirements and the complete and positive resolution of any non conformity found.

## 7.0 Final Dossier - Technical Documents

SUPPLIER shall prepare and along with the delivery, furnish COMPANY with all the applicable documents below:

- Certificate of compliance with the PO requirements;
- Material and/or Analysis Certificates;
- Material Safety Data Sheet, showing storage, handling and toxicity conditions;
- Test and Final Inspection Reports;
- Non Conformity and remedial actions report;
- Installation, Operating and Maintenance Manual;
- Other information necessary to define the GOODS / SERVICES and its performance, including but not limited to information on properties and ingredients of any hazard inherent.

## 8.0 Packaging And Shipment

8.1 All GOODS must be properly packed and packages must be in a manner which assures that they are protected against deterioration, contamination and pollution.

8.2 The packages must also be sufficiently strong to withstand rough handling in transit and storage and to prevent damage to the GOODS in transit.

8.3 Preservation, packing and packaging will be in accordance with best practices in the absence of any specifications provided by COMPANY.

8.4 Where GOODS are in packages, each package must be marked with the:

- PO Number,
- DELIVERY ADDRESS,
- Item number,
- Quantity,
- Gross/Net Weight,
- Dimensions (L x W x H),
- Packaging symbols showing, preservation, stacking and other handling requirements.

8.5 The packaging shall be the responsibility of SUPPLIER, while the shipment shall be the responsibility of the party specified on the PO.

8.6 SUPPLIER shall be held liable for any consequences of its failure to comply with the shipment requirements, where the shipment is specified on the PO as SUPPLIER's responsibility.

## 9.0 Delivery

9.1 The terms of delivery, DELIVERY DATE and DELIVERY ADDRESS are as specified on the PO.

9.2 SUPPLIER must deliver the GOODS to or perform the SERVICES at the DELIVERY ADDRESS and by the DELIVERY DATE specified in the PO.

9.3 COMPANY may reject GOODS and/or SERVICES delivered by SUPPLIER after the DELIVERY DATE without adducing any reason.

9.4 SUPPLIER must, upon delivery of the GOODS and/or SERVICES, ensure that,

- (a) Goods Received Note is issued and duly signed by COMPANY as proof of delivery of the GOODS;



# Purchase Order Terms And Conditions

---

(b) For Ex Works delivery, Freight Forwarder Certificate of Cargo Receipt is issued and duly signed by the freight forwarder as proof of delivery of the GOODS; or

(c) Job Completion Certificate is issued and duly signed by COMPANY as proof of delivery of the SERVICES.

9.5 Any GOODS and/or SERVICES rejected by COMPANY shall be at SUPPLIER's risk and expenses, including storage charges, insurance charges, etc.

9.6 SUPPLIER shall be held liable for any consequences of its failure to comply with the delivery instructions.

## 10.0 Title And Risk

10.1 SUPPLIER warrants that he has legitimate title or intellectual proprietary right to the GOODS and/or SERVICES to be provided under the PO.

10.2 Title and Risk in the GOODS shall pass from SUPPLIER to COMPANY when the GOODS are delivered to the DELIVERY ADDRESS in accordance with the delivery terms specified in the PO.

## 11.0 Price

11.1 The PRICE indicated in the PO is firm for the supply of the GOODS and/or performing the SERVICES, and is not subject to variation/escalation.

11.2 Unless otherwise specified in the PO, the PRICE is inclusive of profit and all costs, taxes and charges of whatever nature incurred by SUPPLIER in the supply of the GOODS and/or performance of the SERVICES.

## 12.0 Invoicing

12.1 Unless otherwise provided in the PO, SUPPLIER shall, upon delivery of the GOODS and/or completion of the SERVICES, submit an invoice to COMPANY for the GOODS delivered or SERVICES performed and accepted by COMPANY.

12.2 The invoice shall clearly state the following:

- The PO Number
- Supplier Code
- Item Number, Item Description, Item Quantity, Item Unit of Measurement and the Item amount as specified on the PO
- Total amount payable in figures and words

12.3 The following shall be attached to the invoice:

- Copy of the PO
- Copy of duly signed delivery note/waybill, Goods Receipt Note or Freight Forwarder Certificate of Cargo Receipt (for ex-works delivery) or Job Completion Certificate for SERVICES.

## 13.0 Payment Terms

13.1 Except as otherwise provided in the PO, payments shall, in accordance with clauses 13.2, 13.3 and 13.4, be made by COMPANY at ninety (90) calendar days from date of receipt of SUPPLIER's correctly prepared and adequately supported invoice.



# Purchase Order Terms And Conditions

---

- 13.2 COMPANY shall deduct the Government Withholding Tax, (WHT), and any other amount required by law at the point of payment from any amount payable to SUPPLIER. Any amount so deducted shall be dealt with by COMPANY in accordance with the provisions of the relevant laws and regulations providing for the deductions. COMPANY shall furnish evidence of the payment of the WHT or any such payments to relevant Government Agencies, to SUPPLIER as soon as they are received from the relevant authorities. Where SUPPLIER claims to be exempted from any statutory deductions, SUPPLIER shall provide exemption certificate or confirmation letter to COMPANY. COMPANY may act on the information given at its discretion and shall not be liable to SUPPLIER or any other person or body in the event that COMPANY applies the statutory deduction according to the relevant Laws or regulations.
- 13.3 COMPANY may withhold money due to SUPPLIER under the PO if the GOODS or SERVICES (or any part of them) are DEFECTIVE.
- 13.4 COMPANY may reduce any payment due to SUPPLIER under the PO by any amount which SUPPLIER must pay COMPANY, including costs, charges, damages and expenses and any debts owed by SUPPLIER to COMPANY on any account whatsoever. This does not limit COMPANY's right to recover those amounts in other ways.

## 14.0 Warranty Period

- 14.1 If during the WARRANTY PERIOD, any of the GOODS or SERVICES are found to be DEFECTIVE, COMPANY may:
- (a) Return the DEFECTIVE GOODS to SUPPLIER;
  - (b) Reject the DEFECTIVE SERVICES;
  - (c) Repair or make good the DEFECTIVE GOODS; or
  - (d) Re-perform or make good the DEFECTIVE SERVICES.
- 14.2 SUPPLIER must, at its cost:
- (a) Repair or replace the DEFECTIVE GOODS;
  - (b) Re-perform or make good the DEFECTIVE SERVICES; or
  - (c) Reimburse COMPANY for any expenses incurred in repairing, re-performing or making good, (as the case may be), any DEFECTIVE GOODS or SERVICES.

## 15.0 Force Majeure

- 15.1 Neither COMPANY nor SUPPLIER shall be responsible for any failure to fulfill any term or condition of the PO if and to the extent that the fulfillment has been delayed or temporarily prevented by a force majeure occurrence, as hereunder defined, which has been notified in accordance with this Clause, (15), and which is beyond the control and without the fault or negligence of the party affected and which, by the exercise of reasonable diligence, the said party is unable to provide against.
- 15.2 The following occurrences shall be force majeure:
- (a) Riot, war, invasion, act of foreign enemies, hostilities (whether war be declared or not), acts of terrorism, civil war, rebellion, revolution, insurrection of military or usurped power;
  - (b) Ionising radiations or contamination by radio-activity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel or radio-active, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof;
  - (c) Pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds;



# Purchase Order Terms And Conditions

---

- (d) Earthquake, flood, fire, explosion and/or other natural physical disaster, but excluding weather conditions as such, regardless of severity;
  - (e) Maritime or aviation disasters;
- 15.3 In the event of a force majeure occurrence, the party that is or may be delayed in performing the provisions of the PO shall notify the other party in writing without delay giving the full particulars thereof and shall use all reasonable endeavours to remedy the situation without delay.
- 15.4 Unless otherwise expressly provided in the PO no payments of whatever nature shall be made in respect of a force majeure occurrence.
- 15.5 Following notification of a force majeure occurrence in accordance with Clause 15.3 above, COMPANY and SUPPLIER shall meet without delay with a view to agreeing a mutually acceptable course of action to minimize any effects of such occurrence including the option of terminating the PO.

## 16.0 Termination

- 16.1 This PO may be terminated or suspended by COMPANY in whole or in part.
- 16.2 In the event of termination of the PO, COMPANY shall notify SUPPLIER in writing, specifying the extent to which performance and/or the deliveries of GOODS and/or SERVICES under this PO is terminated and/or suspended and the date upon which such action shall become effective.
- 16.3 In the event of termination of the PO, COMPANY shall pay SUPPLIER for the GOODS and/or SERVICES satisfactorily provided up to the effective date of termination or suspension together with such reasonable costs as agreed between the parties at the time of termination.

## 17.0 Indemnification

- 17.1 Except for damages caused by the negligence of COMPANY, SUPPLIER shall indemnify and hold COMPANY harmless from all claims, actions, demands, losses and cases of action arising from injury, including death, to any person, or damage to any property, when such injury or damage results in whole or in part from the acts or omissions of SUPPLIER.
- 17.2 SUPPLIER further indemnifies COMPANY from all claims arising from a defect in SUPPLIER's Title.
- 17.3 The indemnification mentioned in Clauses 17.1 and 17.2 shall cover consequential losses and all costs incurred by COMPANY to restore its normal business activities to status quo in the event of business disruptions.
- 17.4 SUPPLIER warrants that the required documents shall be signed by person(s) duly authorised by it to do so. Company shall not be under any obligation to verify that signatories have the authority or right to execute any document on behalf of SUPPLIER.

## 18.0 Confidentiality

- 18.1 SUPPLIER hereby agrees that confidential or proprietary information ("Confidential Information") shall be held in the strictest of confidence and SUPPLIER shall afford such Confidential Information the same care and protection as it affords generally to its own confidential and proprietary information (which in any case shall not be less than reasonable care) to avoid disclosure to or unauthorized use by any third party.
- 18.2 Notwithstanding the **following**, SUPPLIER may disclose Confidential Information to its employees, agents, legal, financial, and accounting advisors (hereinafter called 3<sup>rd</sup> party) to the extent necessary or appropriate in connection with the execution and performance of this PO; provided, however, that the 3<sup>rd</sup> party is notified of the confidential and proprietary nature of such Confidential Information and is subject to and agrees to be bound by similar restrictions on its use and disclosure.
- 18.3 The foregoing provisions of this Clause 18 shall not apply to any Confidential Information which;



# Purchase Order Terms And Conditions

---

- (a) becomes publicly available other than through the direct or indirect actions of SUPPLIER;
- (b) is required to be disclosed pursuant to any binding obligation imposed by an applicable governmental or regulatory body or authority, or by law, or an order of an applicable court or the rules of a recognized stock exchange;
- (c) If any Confidential Information is required to be disclosed by SUPPLIER pursuant to the foregoing Clause (b), SUPPLIER shall give such written notice as is reasonably possible under the circumstances to Company of the requirements of such disclosure.

18.4 It is hereby agreed that SUPPLIER shall not be relieved of any obligation to keep and maintain Confidential Information or any other obligation contemplated to survive this PO and the contract thereto.

## 19.0 Governing Law

The PO shall be governed by the laws of the Federal Republic of Nigeria.

## 20.0 Arbitration

20.1 In the event of any controversy, dispute or difference between the parties hereto with respect to the interpretation of the provisions of this PO; or to the breach or termination thereof; or to the termination of the rights and obligations of the parties hereunder; either party may give notice to the other in writing of the existence of such controversy, dispute or difference specifying its nature and the points at issue. If the same shall not have been amicably resolved within Ten (10) days from the receipt of such notice, either party shall be entitled to have such controversy, dispute or difference finally settled by submitting same to the Lagos Multi-Door Court for final resolution using the most cost-effective and binding means.

20.2 In the event of any breach or violation by the parties of any fundamental terms, conditions or provisions of this PO, the offended party shall give notice to the other in writing of the existence of such breach or violation. If the same shall not have been repaired or remedied within Thirty (30) days from the receipt of such notice the offended party shall be entitled to automatically terminate this PO. This right shall not preclude the aggrieved party from seeking redress through the available legal remedies.

## 21.0 Correspondence And Notices

21.1 Unless otherwise provided, all correspondence including notices, requests, demands required under the PO shall be given in writing and in English Language.

21.2 Such correspondence, notices, requests and demands shall be deemed to have been given to or made upon the respective parties to the PO, if addressed and sent to the representative of the party as specified under Section 1 (Agreement), Clause 2 (Notices And Representatives) of the PO and with proof of acknowledgement.