

**CBRE Enterprise Facility Management
Terms and Conditions of Purchase**

DEFINITIONS.

For the purpose of these Terms and Conditions:

- (i) "CBRE" shall mean CB Richard Ellis (subject to individual country entity);
- (ii) "the Supplier" shall mean the person, firm, enterprise, or corporation to whom the Purchase Order is addressed;
- (iii) "the Purchase Order" or "PO" shall mean the instructions given in the physical document referred to as 'the Purchase Order', for the supply of Items, all appendices and attachments referenced in it, and these Terms and Conditions;
- (iv) "the Authorised Signatory" shall mean the designated representative of CBRE duly authorised to make such a commitment;
- (v) "Items" shall mean the goods, licences, equipment or services specified in the Purchase Order to be provided under such PO;
- (vi) "Owner" shall mean the corporation together with its affiliates, individually and collectively, has engaged CBRE for the performance of certain services at Owner's facilities.

PART I: ORDERING AND DELIVERY PROVISIONS.

1. VALIDITY OF CBRE PURCHASE ORDER.

- 1.1. Only Purchase Orders which: (i) are signed or authorised by the Authorised Signatory, on official CBRE Purchase Order forms will be recognized.
- 1.2. No PO or contract shall be renewed or extended unless renewal or extension is agreed in writing by a duly authorised representative of CBRE.

2. PURCHASE ORDER.

- 2.1. The Supplier shall not invoice the Purchase Order at higher prices than specified in the PO without CBRE's prior written consent.

3. AMENDMENTS.

- 3.1. Prior to completion of the Purchase Order CBRE may, by written notice at any time, make changes in the specifications, designs or drawings, samples or other description to which the Items are to conform by providing Supplier with a written notification of the required amendments.
- 3.2. If any such amendments cause an increase or decrease in the cost of, or the time required for, the performance of any part of the work under the PO, an equitable adjustment may be made in the price or delivery schedule, or both, and the PO will be modified in writing accordingly.
- 3.3. Any claim by the Supplier for an adjustment must be made in writing within thirty (30) days of the receipt of written notice of the changes from CBRE.
- 3.4. Nothing in this Clause shall excuse the Supplier from proceeding without delay to perform the PO as amended.

4. DELIVERY AND PROVISION OF SERVICE.

- 4.1. Unless otherwise agreed in writing, the delivery date specified by will be of the essence of the contract.
- 4.2. The Supplier shall deliver the Items at the time and to the place specified in the Purchase Order.
- 4.3. CBRE shall be entitled to cancel the PO should the Supplier fail to deliver all of the Items required by the times and/or to the quality specified, and to claim damages for breach of contract.
- 4.4. In the event that Items are delivered incorrectly or to the incorrect destination, the Supplier shall at its own expense collect and re-deliver the correct Items to the correct location and Supplier may be liable for any losses, costs or damage suffered by CBRE owing to the incorrect delivery.

5. RISK AND TITLE.

- 5.1. Title and risk in the Items shall remain with the Supplier until they are delivered and accepted by CBRE, except where CBRE, for whatever reason, pays for the Items either in full or in part in advance of receipt (in which case title is deemed to have passed to CBRE, and the Supplier shall adequately insure CBRE's property in its possession).
- 5.2. Until installation, if applicable, and acceptance by CBRE, risk in the Items shall remain with the Supplier following full or partial payment of the Items.

6. ACCEPTANCE.

- 6.1. All Items shall be subject, at CBRE's election, to inspection and test by CBRE. CBRE shall not be deemed to have accepted any Items until reasonable time has elapsed from the time of delivery to allow for inspection of the Items.
- 6.2. CBRE shall have the right in respect of Items which are defective or not conforming to the Purchase Order, at its option to (a) reject relevant Items at the Supplier's expense; or (b) require Supplier to replace or re-perform relevant non-conforming Items with items that conform to the PO and are not defective.
- 6.3. CBRE will have no payment obligation for any Items not accepted by CBRE.

PART II: FINANCIAL PROVISIONS.

7. PRICE.

- 7.1. Prices or rates specified in the Purchase Order shall remain as stated in the PO and will not be subject to increases or additional charges.
- 7.2. Prices shall include any and all charges associated with the supply of Items including but not limited to taxes, duties, inspection charges, equipment, consumables, packaging and shipping costs unless separately and clearly listed in the PO.
- 7.3. No invoices for costs in excess of the prices shown on the PO will be considered unless the Authorised Signatory has agreed in writing in advance to incur such additional costs.
- 7.4. Where site work is involved, the Supplier is deemed to have surveyed the site and be satisfied as to the extent of services, access and other matters pertinent to the supply of Items as specified in the PO.

8. INVOICES.

- 8.1. The Supplier shall submit invoices only upon delivery of all Items or completion of all services as specified in the Purchase Order. Invoicing for Items or services on an instalment basis shall only be permitted where clearly agreed to by CBRE in writing.
- 8.2. All Invoices must state (save where clearly inapplicable): (i) the relevant Purchase Order number; (ii) the relevant line item number; (iii) relevant part numbers and/or description of materials or service; (iv) relevant quantities of Items being invoiced for; (v) the relevant unit of issue for Items; (vi) relevant unit prices; and (vii) extended totals. Invoices must also be in the same currency as stated in the PO (or Supplier's quotation if not stated in the PO), must comply with local legal tax requirements and comply with any other requirements as stated on the PO.
- 8.3. Any applicable taxes shall be shown separately on the invoice as a separate charge.

- 8.4. Invoices must (unless otherwise specified in the PO) be presented to CBRE by no later than within ninety (90) days after the date the applicable fees are due.
- 8.5. Invoices shall be sent to the CBRE Accounts Payable invoice address indicated in the PO. Copies of invoices will not be accepted unless certified.
- 8.6. No invoices will be accepted unless an official PO Number is quoted. Invoices not quoting a valid PO Number will be returned, unpaid, to the Supplier.

9. PAYMENT.

- 9.1. Subject to Clause 14.1, CBRE's standard payment terms shall be the earlier of forty-five (45) days from its receipt of a valid and correctly submitted invoice or as stipulated in the PO.
- 9.2. Payment shall be deemed to have been made on the date CBRE sends payment.
- 9.3. Payment shall not constitute acceptance and will not waive or otherwise affect CBRE's right to inspect the Items or reject non-conforming Items.
- 9.4. Adjustments may be made by CBRE for rejected Items or in respect of any previous over-payment made by CBRE to the Supplier (or alternatively, at CBRE's option, it may require the Supplier to promptly refund any such over-payment upon request).
- 9.5. CBRE reserves the right to refuse payment of any invoice which is not submitted in accordance with the PO or for any Items that have not been delivered or performed or that do not conform to the PO requirements. Invoices failing to comply shall be returned unpaid to the Supplier.

PART III: IPR, WARRANTY & ADMINISTRATIVE PROVISIONS.

10. WARRANTIES.

- 10.1. General. The Supplier represents and warrants generally that:
 - a) it has no actual or potential conflict of interest concerning the performance of its obligations under the Purchase Order;
 - b) the Supplier's performance under the PO does not require the breach of any agreement or obligation to keep in confidence the proprietary information of any other party, and the Supplier will not bring to CBRE or use in the performance of its duties under the PO any materials or documents of another party considered confidential or proprietary unless it has obtained written authorisation from such party and the informed consent of CBRE, for the possession and use of such materials.
- 10.2. Services. In relation to performance and delivery of services pursuant to the PO, the Supplier represents and warrants that:
 - a) they will be performed in a proper, workmanlike and professional manner by appropriately qualified and trained personnel, to a high level of quality and with the degree of skill, care and diligence that is required by current, good and sound professional procedures;
 - b) they will be performed and completed in accordance with the requirements in the PO and applicable specifications, and shall be correct and appropriate for the purposes contemplated in the PO;
- 10.3. Goods / delivered materials. In relation to goods or other materials provided under the PO, the Supplier represents and warrants that:
 - a) these shall be merchantable, of satisfactory quality and conform to applicable specifications, drawings, samples or other descriptions on the PO;
 - b) they shall be free from defects in design, materials and workmanship;
 - c) they are free from all liens, claims, or encumbrances;
 - d) they are suitable and fit for the purposes for which they are intended;
 - e) they will be new and will not be used, reconditioned, or refurbished (save to the extent agreed and specified on the face of the PO);
 - f) it will make spare parts available for a period of five (5) years from date of shipment at the Supplier's then current prices less applicable discounts;
 - g) manufacture of goods or materials manufactured to order shall be performed to a high level of quality with due care and diligence by appropriately qualified and trained personnel.
- 10.4. Repair etc. In the event CBRE identifies a warranty problem with the Items (including goods and deliverables resulting from any services) during the warranty period, CBRE will notify the Supplier and the Supplier shall promptly, at CBRE's option: Re- perform relevant services to CBRE's satisfaction or repair or replace the non-conforming or unsuitable goods at its cost , or refund CBRE the purchase price paid for relevant Items.
 All expenses associated with the return to the Supplier of such Items and the delivery to CBRE of repaired or replacement Items shall be borne by the Supplier. Unless otherwise agreed in writing, all Items shall be warranted as specified herein for a minimum period of twelve (12) months from acceptance by CBRE. Re-performed services and repaired or replaced Items shall be warranted an additional 12 months, from the replacement or re-performance date.

11. QUALITY STANDARDS.

- 11.1. Unless otherwise specified in the Purchase Order, Items supplied must conform to ISO standards where such exist, or other relevant recognized appropriate quality standards, or the supplied Service Level Agreements and be to the reasonable satisfaction of CBRE.
- 11.2. The Supplier shall not refuse any reasonable request by CBRE to inspect and test Items during manufacture, processing or storage at either the Supplier's premises or any third party, prior to dispatch (and shall provide all facilities reasonably required for such inspection and testing), or to inspect the quality of the services at any time.

12. INDEMNITIES.

- 12.1. The Supplier shall defend, indemnify and hold harmless CBRE, its officers, directors, employees and clients from any losses, liabilities, damages, demands, suits, causes of action, judgments, costs or expenses (including court costs and reasonable legal fees) incurred by CBRE in connection with any claim that the Items infringe or misappropriate any copyright, patent or other IPRs of any third party.
- 12.2. The Supplier agrees that CBRE shall have the right to control and participate in the defence of any such demand, suit or cause of action concerning matters that relate to CBRE, and that such suit will not be settled without CBRE's consent (such consent not to be unreasonably withheld).
- 12.3. If a final injunction against CBRE's use of the Items results from such a claim, suit or proceeding (or if CBRE reasonably believes such a claim is likely) the Supplier shall, at its expense (a) obtain for CBRE the right to continue using the Items; or (at CBRE's option) (b) modify the Items so they become non infringing but functionally and qualitatively equivalent.
- 12.4. The Supplier shall also indemnify CBRE for any loss of or damage to property, or personal injury or death which results from installation, erection or other work carried out by the Supplier in relation to the Purchase Order. The Supplier shall assume full responsibility for the work and for the safety and convenience of persons using the highway and other land and premises where the work is to be carried out.

13. INSURANCE.

- 13.1. The Supplier, its agents and Sub-Contractors shall maintain appropriate insurance with minimum
- a) Employer's Liability (or Worker's Compensation, whichever is appropriate for the relevant country) for personal injury or death caused by the Supplier, its servants, agents or sub-contractors;
 - b) cover of USD1,000,000 (One Million US Dollars) per occurrence for Public Liability Insurance, including an Indemnity to Principles clause;
 - c) cover of USD1,000,000 (One Million US Dollars) per occurrence and in the aggregate for Product Liability Insurance, including an Indemnity to Principles clause;
 - d) any other cover required by any relevant legislation in order for the Supplier, its agents and Sub-Contractors to comply fully with all relevant statutory requirements relating directly or indirectly to the performance of the Purchase Order.
- 13.2. Certificates of Insurance indicating the above coverage shall be delivered to CBRE upon request.
- 13.3. The Supplier shall insure all Items sent to CBRE by the Supplier for any purpose connected with the Purchase Order against loss or damage while in the Supplier's custody or control to the full extent of their value. Goods being transported from the Supplier, its agents, Sub-Contractors or third parties to CBRE by the Supplier, its agents, Sub-Contractors or third parties shall be deemed to be in the Supplier's control until signed into CBRE's custody by an authorised representative of CBRE.

14. SUPPLIER'S COMPENSATION

- 14.1. Supplier acknowledges and agrees that CBRE shall be obligated to pay Supplier Fees only to the extent CBRE has actually received payments with respect thereto from Owner ("Owner Remittances") in amounts allocated and sufficient to pay the Supplier Fees in question. If Owner has failed to pay to CBRE such Owner Remittances, CBRE's only obligation with respect thereto and the payment of such Supplier Fees shall be the exercise of commercially reasonable efforts to enforce Owner's obligations to pay such remittances in accordance with the terms of the applicable agreement or agreements between Owner and CBRE. Accordingly, until such time as CBRE has received Owner Remittances for the Supplier Fees in question, Supplier acknowledges and agrees that it shall not seek payment of the Supplier Fees (or any damages founded upon the failure to pay the Supplier Fees) from CBRE, whether in CBRE's individual capacity, as Owner's agent, or otherwise.

15. TERMINATION.

- 15.1. Without prejudice to any other remedies that it may have, CBRE shall have the right to terminate the Purchase Order in whole or in part forthwith by written notice to the Supplier, effective from the date of service of such notice (and to claim the excess cost of obtaining replacement Items) if the Supplier commits a breach of the PO or these terms, and fails to remedy the breach within the time specified by CBRE in written notice so to do.
- 15.2. In addition, CBRE shall be entitled to terminate the PO in similar manner if the Supplier:
- a) becomes insolvent (within the meaning of The Insolvency Act 1988 including any later amendment or instrument) or ceases to trade or threatens to cease to trade or compounds with its creditors, or commits an act of bankruptcy, or a bankruptcy order is presented or made in relation to the supplier or the supplier has a receiver or administrative receiver or similar officer appointed to take charge of all or part of the Supplier's assets and such condition(s) is not rectified within 14 days, or a petition for an administrative order is presented or such an order is made in relation to the Supplier or a resolution or petition to wind up the Supplier is passed or presented (otherwise than for reconstruction or amalgamation); or
 - b) merges with or is acquired by a third party; or
 - c) attempts to assign any of its rights or obligations under the PO.
- 15.3. CBRE may terminate the PO at its own discretion for any reason, upon giving thirty (30) days' written notice to the Supplier.
- 15.4. Upon termination, the Supplier shall deliver to CBRE such work in progress or completed Items as the Authorised Signatory may request.
- 15.5. Following termination of the PO, CBRE shall have no liability to the Supplier beyond payment for Items accepted by CBRE prior to the notice of termination and for such additional Items specifically requested in writing and accepted by CBRE, and neither party shall have any further rights or obligations in relation to the other save as stated in this Clause or pursuant to sub-Clause 21.10 below.

PART IV: GENERAL.

16. LIMITATION OF LIABILITY.

In no event shall CBRE be liable to the Supplier or any third party for any incidental, indirect, special, punitive or consequential losses or damages, or damages for any loss of profits, loss of revenue, loss of business or goodwill, data or data use arising out of or in connection with the Purchase Order, whether in an action in contract or tort (including negligence) or other legal theory, whether or not CBRE has been advised of the possibility of such losses and/or damages.

17. CONFIDENTIALITY.

- 17.1. The Supplier agrees that it shall:
- a) keep confidential all CBRE Confidential Information, both during and after the term of this Purchase Order;
 - b) use CBRE Confidential Information solely for the purpose of performing its obligations under or pursuant to the Purchase Order;
 - c) not make copies of any CBRE Confidential Information, except to the extent that copying is necessary in order for it to perform its obligations under the PO; and
 - d) not disclose or make CBRE Confidential Information available to any third party (except as permitted below or as specifically authorised by CBRE in writing).
- 17.2. "CBRE Confidential Information" shall mean all information and material to which Supplier has access in connection with the PO, delivery of Items or performance of relevant services including, but not limited to: (a) the Purchase Order itself, and its contents; (b) all Commissioned Developments; (c) design information where Items are being made to CBRE's design; (d) all software, documentation, financial, marketing data and other business information of CBRE; and (e) any other material or information that is either marked as confidential or is disclosed under circumstances such that one would reasonably expect it to be confidential.
- 17.3. So far as it may be necessary for the performance of the PO or for the operation and maintenance of the subject matter the Supplier may divulge CBRE Confidential Information to its employees, agents, and sub-contractors on a "need to know" basis, provided that it complies with Clause 16.4.
- 17.4. The Supplier undertakes in respect of any employees, agents, and sub-contractors to whom it discloses CBRE Confidential Information to ensure that they are aware of the obligations as to such information set out in this Clause prior to receipt thereof, and ensure that they comply with obligations equivalent to those which the Supplier owes to CBRE. The Supplier will be responsible to CBRE for any failure by any such person or entity to comply with such obligations whether such person or entity was aware of them or not.

- 17.5. The obligations expressed in this Clause 16 shall not apply to any information which:
- a) is or subsequently comes into the public domain otherwise than by breach of this Clause;
 - b) is already in the possession of the Supplier or other receiving party without an accompanying obligation of confidentiality;
 - c) is obtained by the Supplier from a third party who is free to divulge the same to the Supplier;
 - d) is independently and lawfully developed by Supplier without reference to any CBRE Confidential Information.
- 17.6. This Clause shall not prevent the Supplier from disclosing information where compelled to do so by law, provided that the Supplier notifies CBRE before making such disclosure and discloses only that information which it is compelled to disclose.
- 17.7. All CBRE Confidential Information disclosed to the Supplier shall remain solely the property of CBRE.
- 17.8. On the termination or completion of performance of the PO, the Supplier shall return, or (at CBRE's option) destroy all CBRE Confidential Information disclosed to it, and all copies which have been made of such information.

18. ASSIGNMENT etc.

- 18.1. The Supplier may not assign the Purchase Order without the prior written consent of CBRE. Any purported assignment without such consent shall be null and void.
- 18.2. The Supplier will not, without CBRE's written consent, sub-let the PO or any part thereof other than for materials, minor details or for any part of the Items of which the makers are named in the PO or the specification (provided that this will not prevent the Supplier from sub-letting part of the PO to a company which is a member of the group to which the Supplier belongs, to which the Supplier has a similar association). Any consent pursuant to Clause 17.1 or 17.2 will not relieve the Supplier of any of its obligations under the PO.

19. COMPLIANCE WITH LAWS.

The Supplier shall comply with all applicable laws, rules, regulation, health and safety standards to its provision of the Items to CBRE in country, and to comply with laws relating to non-discrimination in employment and equal opportunity in connection with its performance of the PO.

20. AUDIT.

CBRE shall have the right at all reasonable times to inspect and copy any invoice, Purchase Order, delivery notes, books of account or computer records or any other documents which relate to or are relevant to provision of the Items. All such documents shall be retained by the Supplier for not less than three years from the date of their creation, and the Supplier shall during such time afford CBRE reasonable access to its premises and those of its agents and sub-contractors for the purposes of fulfilling such audit requirements. The Supplier shall instruct its staff to co-operate with CBRE and provide all information and explanations necessary to assist CBRE in interpreting such documentation.

21. FORCE MAJEURE.

Neither party shall be liable for any failure to perform or delay any of its obligations under this agreement due to circumstances beyond its reasonable control and outside the ordinary course of business including (but not limited to) fire, flood, acts of God, war, civil commotion, terrorism, strikes or other industrial disputes and acts of government. If the period of default continues for more than 30 days, the other party shall be entitled to terminate this agreement immediately by giving written notice and any failure of a third party to comply with its obligations to provide Items to the parties which are necessary for the performance of this agreement.

22. MISCELLANEOUS.

- 22.1. **Governing Law.** The construction, interpretation and performance of this Purchase Order and all transaction under it shall be governed by the laws where this Purchaser Order is issued. Supplier agrees to submit to the jurisdiction of any court wherein an action is commenced against CBRE based on a claimed for which Supplier has agreed to indemnify CBRE under this Agreement.
- 22.2. **Publicity.** The Supplier shall not except with the written consent of CBRE (the giving of which consent shall be at the sole discretion of CBRE) advertise, publicly announce or provide to any person information relating to the existence or details of the PO or use CBRE's name or logo in any format for any promotion, publicity, marketing or advertising purpose.
- 22.3. **Relationship of the parties.** The parties agree that the Supplier is an independent contractor and shall not be deemed to be a partner, agent, employee or principal of CBRE. The Supplier will not act for or in the place of CBRE in CBRE's relations with third parties, and CBRE shall not have any responsibility for payment or compensation of the Supplier's employees, agents or subcontractors.
- 22.4. **Ethics.** The Supplier shall not (and shall procure that its agents and sub-contractors do not) pay any commission or fees, or grant any rebates to any employee, officer or agent of CBRE, nor favour any employees, officers or agents of CBRE with gifts or entertainment of significant cost or value, nor enter into any personal business arrangement with employees, officers or agents of CBRE other than as a representative of CBRE, without CBRE's prior written approval. Breach of this Clause 21.4 shall entitle CBRE to terminate all POs between the Supplier and CBRE forthwith. The audit rights in Clause 21 above shall apply in order for CBRE to ensure compliance with these requirements.
- 22.5. **Severability.** Any provision of these terms held to be invalid or unenforceable shall be deemed amended so as to be as fully enforceable in accordance with applicable laws or regulations as possible, or if it cannot be so amended without materially altering the intention of the parties, it shall be deemed to be deleted from these terms without affecting the validity of the remainder of these terms or the PO.
- 22.6. **Waiver.** Failure by CBRE to enforce any right or remedy herein or otherwise shall not be deemed or construed to be a waiver of such right or remedy on any other occasion, and the obligations of the Supplier shall continue in full force and effect.
- 22.7. **Set-off.** CBRE shall have the right at any time to set off any amount owing from the Supplier to CBRE or its subsidiaries or affiliates against any amount payable by CBRE pursuant to the PO.
- 22.8. **Notices.** Any notice or other communication which either party is required by the PO to serve on the other shall be sufficiently served if sent to the other party at its address as specified in the PO either: (a) by hand; (b) by registered or First Class mail or recorded delivery; or (c) by facsimile or electronic mail transmission confirmed by registered, first class mail or recorded delivery within 24 hours of transmission.
- Notices shall be deemed to have been served: (i) if sent by method a. above, on the day when they are actually received; (ii) if sent by method b. above, two working days after posting; (iii) if sent by method c. above, on the day of transmission if transmitted before 16.00 hours on the working day, but otherwise 09.00 hours on the following working day, provided in each case that the required confirmation is sent. (All time references are to receiving party's local time).
- 22.9. **Entire agreement.** These terms and conditions and those specified in the PO shall exclusively govern the purchase of all Items covered by the PO, and shall supersede any other terms and conditions inferred, implied, understood, indicated, or presumed in or during any negotiations or stipulated, incorporated or referred to in any quotation or any form of acceptance or confirmation of the PO. No modifications may be made unless in writing and signed by both parties.
- 22.10. **Survival.** The obligations set out in Clauses 10 (Warranties), 12 (Indemnities), 13 (Insurance), and Clauses 15 to 19 shall survive expiration or termination of the PO for whatever reason.