

**PURCHASE ORDER STANDARD TERMS AND CONDITIONS
FOR THE SUPPLY OF GOODS AND
SERVICES**

The Purchase Order (defined below) and the following terms and conditions shall form the Agreement between the Supplier and Bank of America unless a master agreement is in effect between Supplier and Bank of America or its Affiliates for the Services or Goods purchased, in which event such master agreement shall supersede these terms and conditions. If there is no master agreement, then in the event of any inconsistency between the Purchase Order and these terms and conditions, these terms and conditions shall take precedence

1. Definitions

In these conditions:

- 1.1 **"Affiliate"** means an entity now or hereafter Controlled by, Controlling, or under common Control with a party, or under common Control of a Controlling party which for the avoidance of doubt shall mean any company Controlled by Bank of America Corporation shall be an Affiliate of any other company so controlled.
- 1.2 **"Agreement"** means the Purchase Order and these terms and conditions;
- 1.3 **"Bank of America"** means Bank of America, N.A. a national banking association.
- 1.4 **"Control"** means that an entity owns or controls directly or indirectly 50% or more of the equity representing the right to vote for the election of directors or other managing authority of another entity or where an entity otherwise possesses the power to direct or cause the direction of the management and policies of another entity.
- 1.5 **"Customer"** means Bank of America or the Bank of America Affiliates that executes this Purchase Order.
- 1.6 **"Delivery Address"** means the address for delivery of the Goods and/or Services set out on the Purchase Order or as otherwise agreed between the parties in writing;
- 1.7 **"Delivery Date"** means the date(s) for delivery of the Goods and/or Services set out on the Purchase Order or as otherwise agreed between the parties in writing;
- 1.8 **"Goods"** means the goods set out on the Purchase Order;
- 1.9 **"Intellectual Property Rights"** means any and all patents, trade marks, trade names, service marks, copyrights, moral rights, rights in design, rights in databases, know how and all or any other intellectual property rights whether or not registered or capable of registration and whether subsisting anywhere in the world;
- 1.10 **"Price"** means the price of the Goods and/or Services as agreed by the parties and set out on the Purchase Order. The Price excludes value-added tax, business or service taxes or similar indirect taxes imposed by the jurisdiction of a non-PRC Supplier which shall be payable by Customer at the applicable rate. The Price includes PRC value-added tax at the applicable rate;
- 1.11 **"Purchase Order"** means the relevant purchase order issued by Customer;
- 1.12 **"Services"** means the services set out on the Purchase Order;
- 1.13 **"Specification"** means the specification for the Goods or Services (as appropriate) as set out on the Purchase Order or otherwise agreed between the parties in writing;
- 1.14 **"Supplier"** means the supplier whose details are set out on the Purchase Order.

2. Terms for the Supply of the Goods and Services

- 2.1 Customer orders and Supplier agrees to supply the Goods and/or Services on the terms and condition of the Agreement.
- 2.2 These terms and conditions shall be deemed incorporated into and made part of each submission of a Purchase Order. Any other printed terms and conditions appearing on any Purchase Order shall be void and of no effect; for the avoidance of doubt, the parties agree that no provision in any acknowledgement or acceptance of or response to a Purchase Order shall form part of this Agreement.
- 2.3 Each Purchase Order and these terms and conditions shall form a distinct and separate agreement. No variation of it shall be valid unless agreed in writing by the parties.
- 2.4 Delivery of the Goods and/or Services by the Supplier to Customer shall be deemed conclusive evidence of Supplier's acceptance of the Agreement.
- 2.5 Time of delivery of the Goods and Services shall be of the essence of the Agreement.
- 2.6 The Supplier agrees to provide reasonable assistance to enable Customer to use the Goods and/or Services to

their best advantage. Unless otherwise provided in writing between the parties, the Goods and Services may be used by any Bank of America Affiliate.

3 Purchase Order

- 3.1 Customer shall submit the Purchase Order in writing to the Supplier.
- 3.2 The Supplier shall within **(2)** days of the date of each Purchase Order respond to each Purchase Order confirming its interest on that Purchase Order and this shall constitute the acceptance of that Purchase Order for the supply of the Goods and/or Services.
- 3.3 Customer may modify or cancel any Purchase Order which has not been accepted in accordance with Section 3.2 above.

4. Price and Payment

- 4.1 Unless otherwise specified in the Purchase Order or agreed between the parties in writing the Price of the Goods shall include: (i) secure and proper packing, storage, transport; and (ii) safe delivery to the Delivery Address on the Delivery Date. Risk of loss shall remain with Supplier until the Goods are delivered to a Customer location.
- 4.2 Prices are exclusive of value-added tax, business or service taxes or similar indirect taxes imposed by the jurisdiction of a non-PRC Supplier. Prices are inclusive of PRC value-added tax. Prices shall remain fixed unless otherwise notified in writing of any variation by the Supplier and agreed by Customer. Any PRC value-added tax imposed by way of withholding shall be borne by non-PRC supplier.
- 4.3 Unless otherwise set out in the Purchase Order or agreed between the parties in writing, Customer shall pay the Price to the Supplier not earlier than 30 days after the later of:
 - (a) Customer's receipt of accurate and comprehensive details of Supplier's bank account;
 - (b) Customer's receipt of the Goods;
 - (c) Completion of the Services to Customer's satisfaction;
 - (d) Customer's receipt of a valid, correct and undisputed invoice for the Goods and/or Services from Supplier quoting the Purchase Order number which should contain the following information: purchase order, item number, charge number, Supplier number, descriptions of goods or services, quantities, unit prices, extended totals, and applicable taxes (For PRC supplier which is registered as a VAT general taxpayer, the invoice should be a value-added tax special invoice which states the fee and the PRC value-added tax amount (the total amount of which is the same as the Price) separately, the original value-added tax special invoice should be in a good condition and submitted to Bank of America within 30 days of its issuance date as well as within 6 months upon receipt of the Goods or Services by the Customer).
- 4.4 Supplier agrees that Customer may set off against the Price (including VAT) any payments due to Customer from the Supplier under the Agreement or any other agreement; or due to any offer which the Supplier may make from time to time. However, the amount stated in the valid invoice should be in accordance with the Purchase Order without any setting off.
- 4.5 Customer may request from Supplier monthly statements.
- 4.6 If the Goods and/or Services are not delivered on the Delivery Date or if Customer does not accept the Goods or Services, Customer may reject the Goods and/or Services without any liability.
- 4.7 Subject to the provision of Clause 4.3 (d), the invoice issued to Bank of America should state the price and the VAT amount separately. The original invoice shall

be provided and in a good condition.

- 4.8 Any withholding requirements imposed on Bank of America that may arise in respect of any fees or other payments made under this Agreement to Vendor are solely the liability of Vendor. In the event that Bank of America is required by laws of any applicable jurisdiction to withhold any amounts from payments made by Bank of America to Vendor hereunder, Bank of America shall withhold the relevant taxes (including income tax and VAT) from the payment to Vendor and remit the remaining amount to Vendor. Vendor should cooperate and provide necessary supporting documents required by laws of any applicable jurisdiction for the purpose of facilitating Bank of America to withhold relevant taxes and remit the remaining amount to Vendors.

5. Delivery, Title and Risks

- 5.1 The Goods shall be securely and properly packed by Supplier.
- 5.2 Supplier shall deliver the Goods and/or supply the Services to the Delivery Address on the Delivery Date(s).
- 5.3 On delivery, the Supplier shall ensure that the Goods are signed for by a duly authorized member of Customer.
- 5.4 Title of the Goods shall pass to Customer on delivery of the Goods.
- 5.5 The Supplier shall deliver the Goods with such documentation as is necessary to enable Bank of America and its Affiliates to use the Goods safely and effectively.

6. Warranties and Representations

- 6.1 The Supplier warrants and represents to Bank of America and its Affiliates that:
- (a) the Goods shall be:
 - (i) of merchantable quality; and
 - (ii) fit for the purposes; and
 - (iii) in accordance with the Specifications; and
 - (iv) of first class materials, workmanship and design; and
 - (b) the Services shall be supplied in accordance with the Specifications; and
 - (c) the Supplier, its employees, agents and sub-contractors will carry out all of Supplier's obligations under the Agreement with all reasonable skill and care, in a timely and professional manner, and using appropriately skilled and experienced personnel; and
 - (d) the Supplier shall meet all timelines agreed between the parties under the Agreement; and
 - (e) The Supplier shall maintain sufficient trained and experienced staff to supply the Goods and/or Services under the terms of the Agreement.
 - (f) the Supplier has and shall have the rights and powers to enter into and perform all of its obligations under the Agreement; and that its proposed activities hereunder do not and shall not infringe any laws, regulatory requirements or the rights of any third party.
 - (g) the Supplier holds and shall hold any and all necessary licenses required under and has otherwise complied and shall comply in all respects with the requirements of all applicable statutes, laws, regulations, requirements and codes of practice applicable under and it holds and shall hold any third party licenses or authorities granted to it to enable it to enter into and perform the Agreement.
- 6.2 Where the Goods or any part of them are manufactured by a third party the Supplier shall, in addition to the Supplier obligations in the Agreement, pass on to Customer the benefit of any guarantee, condition and warranty granted by the manufacturer in relation to such Goods; and the Supplier shall use its best efforts to pass on to Bank of America any servicing agreement that the Supplier received from the manufacturer in respect of such Goods.

7. Defects

*Purchase Order Ts &Cs for China
May 2017*

- 7.1 Customer shall be entitled to reject any of the Goods delivered which are not in accordance with the Specifications and shall not be deemed to have accepted any Goods until such reasonable time to inspect them following the delivery.

- 7.2 If later, any of the Goods are found to be defective or do not comply with any of the warranties or representations set out in Section 6.1 above ("**Defective Goods**"), Customer may, at its option:

- (a) reject all the Defective Goods or any part of them without any liability; and/or
- (b) require the Supplier to replace such Defective Goods; and/or
- (c) require the Supplier to repair such Defective Goods.

Supplier shall replace or repair the Defective Goods within 7 days from the date of Customer notification or such other time period as the parties may agree in writing.

- 7.3 If any of the events set out in Section 7.2 above happen, the Supplier shall, at Supplier cost and expense:

- (a) collect the Defective Goods from Customer and from the Delivery Address; and
- (b) return the replacement or repaired Goods to Customer to the Delivery Address;

- 7.4 If any of the Services are not supplied in accordance with the Agreement particularly with the Specification, Bank of America shall without any liability reject and terminate the Services or any part of them.

- 7.5 In the event that Customer rejects the Defective Goods pursuant to Section 7.2(a) above or the Services pursuant to Section 7.4 above, the Supplier shall immediately refund any payments made by Customer in respect of such Defective Goods or Services.

8. Intellectual Property Rights

- 8.1 The Supplier warrants that Supplier's performance of the Agreement and the use of the Goods and Services by Bank of America and its Affiliates and/or any materials resulting from it, do not and will not infringe Intellectual Property Rights or of any third party's right.

- 8.2 Where applicable, the Supplier shall:

- (a) assign to Customer with full title guarantee all existing and future copyright and design right comprised in Customer Materials; and
- (b) agree to assign to Customer, with full title guarantee, at Customer's request, any other Intellectual Property Rights (other than copyright and design right) in Customer Materials, throughout the world for the whole term of the Intellectual Property Rights, including any extensions or renewals of such Intellectual Property Rights and all statutory or common law rights related thereto.

9. Indemnity and Insurance

- 9.1 The Supplier shall indemnify Bank of America and its Affiliates and keep Bank of America and its Affiliates fully and effectively indemnified on demand against any and all claims, liability, direct losses, damages, costs (including legal costs) or expenses which Bank of America or any of its Affiliates may incur in as a result of the Supplier breach of any of Supplier's obligations or warranties under the Agreement or by any negligent act or omission or wilful misconduct of Supplier's employees, its agents or sub-contractors.

- 9.2 The Supplier shall, at its own expense, secure and maintain in full force and effect, the following minimum insurance coverages (converted to local currency) and other coverages which may be reasonable and customary for Supplier's industry, with an insurance company which is at least "A" rated by A.M. Best Company or equivalent: Public Liability \$2,000,000 (any one occurrence)
Products Liability \$1,000,000 (any one period of insurance)
Employer's Liability \$5,000,000 (any one occurrence)

The Supplier shall furnish to Customer the certificates

or cover notes providing sufficient evidence of compliance with this Section.

9.3 The Supplier shall furnish Customer with renewal certificates so long as the Agreement is in effect.

9.4 The number of claims during the period of insurance shall not be limited.

10. Confidentiality

10.1 Each party ("Receiving Party") undertakes:-

- (a) to keep confidential all information (written or oral) concerning the business and affairs of the other party ("Disclosing Party") that the Receiving Party has obtained or received as a result of the discussions leading up to or the entering into, or obtains or receives in performance of, the Agreement (the "Information");-
- (b) not to disclose the Information in whole or in part to any other person (which in the case of Bank of America, does not include its Affiliates) without the Disclosing Party's written consent, save to those of the Receiving Party's employees, agents and sub-contractors involved in the performance of the Receiving Party's obligations under the Agreement on a confidential and need-to-know basis; and
- (c) to use the Information solely in connection with the performance of the Receiving Party's obligations under the Agreement and not for the Receiving Party's own or the benefit of any third party.

10.2 The confidentiality obligations in section 10.1 above will not extend to Information which the Receiving Party can prove to the Disclosing Party's reasonable satisfaction:-

- (a) has ceased to be secret without default of the Receiving Party's part; or
- (b) was already in the Receiving Party's possession prior to disclosure by the Disclosing Party; or
- (c) has been received from a third party who did not acquire it in confidence; or
- (d) is required to be disclosed by court, government jury or other regulatory body, but only to the extent required by law, provided that the Receiving Party (if permitted by law) gives the Disclosing Party written notice as soon as practicable of such requirement.

10.3 Manufacture, production or packaging of the Goods to be delivered to Customer shall not be permitted to any person other than the authorized employees or subcontractors of the Supplier.

10.4 Neither party shall issue any media releases, public announcements or public disclosures relating to the Agreement or use the name or logo of the other party including, without limitation, in promotional or marketing material or on a list of customers; unless required by legal, accounting or regulatory requirements beyond the reasonable control of the releasing party.

10.5 In the event Supplier has access to any personal data (within the meaning given in the Personal Data (Privacy) Ordinance (Cap. 486) (the "Ordinance") belonging to Bank of America employees or customers (or the employees or customers of any Bank of America Affiliate) ("Data Subjects"), the following provisions shall apply:

- (a) the Supplier must follow the fair information practices stipulated in the data protection principles in Schedule 1 of the Ordinance; and
- (b) any Data Subject has the right to confirm with the Supplier whether their personal data is held by the Supplier, to obtain a copy of such data and to have such data corrected.

All other provisions of the Ordinance from time to time shall apply.

11. Termination of the Agreement

11.1 Either party may by written notice terminate the Agreement if:-

- (a) the other party is in material breach of the Agreement and fails to remedy such breach within (20) days from the date of notification of such breach from the non-defaulting party; or
- (b) a proposal is made for a voluntary arrangement of the

other party with the aim of preventing liquidation or insolvency; or

- (c) a trustee, receiver, administrative receiver, or similar officer is appointed in respect of all or any part of the business or assets of the other party; or
- (d) a petition is presented or a meeting is convened for the purpose of considering a resolution or other steps are taken for the winding up of the other party or for the making of an administration order (otherwise than for the purpose of an amalgamation or reconstruction); or
- (e) any similar or analogous event occurs in relation to the other party in this or any other jurisdiction.

11.2 Customer shall have the right to terminate the Agreement if:

- (a) Supplier undergoes a change of control; or
- (b) Supplier transfers all, or substantially all, of its assets or common stock; or
- (c) the association with the Supplier is considered to be adverse to Customer's business or interests.

11.3 Upon such termination:

- (a) Customer shall pay the Supplier all sums due and payable to the Supplier under the Agreement at the date of termination, unless the Agreement is terminated by reason of Supplier default or breach;
- (b) The Supplier shall immediately refund to Bank of America any advance payments made by Customer which have not been utilized for any of the Services or for Goods not delivered to Customer.

11.4 Upon termination or expiration of the Agreement, Supplier shall immediately return any documents or material property of Customer in Supplier's possession, as Customer may direct. Failure to do so, Customer shall be entitled to access Supplier's premises to recover such property.

11.5 Sections 6, 8, 9, 10, 12, and 14 of this Agreement shall survive the termination of the Agreement or any part of it.

11.6 Any termination of the Agreement is without prejudice to any other rights or remedies a party may be entitled to under the Agreement or at law. It does not affect any accrued rights or liabilities of either party or any provision which is expressly or by implication intended to come into force on, or continue in force after termination.

12. Audit

The Supplier shall maintain, at its own cost, financial records for a period of 7 years or as otherwise required by law. Customer shall be entitled at its own discretion to conduct at least one audit per calendar year of the Supplier's systems and procedures insofar as they relate to the supply of the Goods and Services.

13. Review

Customer may request to Supplier to meet on a quarterly basis to review Supplier's performance of its obligations under this Agreement. Both Customer and the Supplier shall ensure that a senior representative attends each meeting on their behalf.

14. General

14.1 All notices required to be given under the Agreement will be in writing and will be sent at the address(es) set out on the Purchase order or to such other address(es) as the recipient may designate by notice given in accordance with this section 14.1. Any such notice may be delivered by hand, pre-paid letter or facsimile transmission and will be deemed to have been received:(a) by hand – upon delivery; (b) by post – 48 hours after the date of mailing; (c) by facsimile transmission – immediately upon transmission provided a confirmatory copy is sent by first class pre-paid post by the end of the next business day.

14.2 The Supplier may not assign, transfer, change or dispose of any of the rights or obligations under the Agreement to any third party without Customer's prior written consent. No such assignment, transfer, sub-contract or disposal even if consented to, shall relieve the Supplier of Supplier's obligations under the Agreement. The Supplier shall procure that any permitted sub-contractor enters into a

confidentiality agreement as Customer shall require.

- 14.3 Notwithstanding any other provisions in this Agreement, if Bank of America plans to merge or be converted into an independent legal entity locally incorporated within the PRC (the "**Local Incorporation**") in accordance with applicable law of the PRC, after the date of this Agreement, then the Supplier hereby agrees that Bank of America may transfer any or all of its rights and/or obligations under this Agreement to the surviving entity, the newly incorporated entity or the relevant branch of the newly incorporated entity after the Local Incorporation (the "**Successor Bank**"). The Supplier further agrees that a public announcement made in any national newspaper in the PRC, or in any other forms of notice to the extent permitted by the applicable law and at the sole discretion of the Bank of America or Successor Bank, on the assignment or transfer will constitute sufficient notice of such assignment or transfer, and that from the date of operation commencement of Successor Bank, the rights and obligations of Bank of America hereunder shall be transferred and assigned to Successor Bank as if Successor Bank is the original party hereof, and that this Agreement shall remain in force and no consent or approval from the Supplier is required to effect such assignment or transfer.
- 14.4 If any part, term, provision or clause of the Agreement proves to be invalid or unenforceable, the validity or enforceability of the remaining parts, terms, provisions and clauses will not be affected. The rights and obligations of the parties will be construed as if the Agreement did not contain the particular invalid or unenforceable part, term, provision or clause.
- 14.5 No delay or failure by either party to exercise any of its powers, rights or remedies under the Agreement will operate as a waiver of them, or any single or partial exercise of any such powers, rights or remedies preclude any other or further exercise of them. Any waiver to be effective must be in writing.
- 14.6 The Agreement contains all the terms which the parties have agreed and supersedes all provisions, contracts, arrangements, representations (other than fraudulent misrepresentations) or understandings between the parties whether written, arising from custom or oral in relation to the transactions provided for the Agreement.
- 14.7 Nothing in the Agreement shall constitute, or be deemed to constitute, a partnership between the parties nor shall it constitute, or be deemed to constitute, a party the agent of the other party for any purpose.
- 14.8 The Agreement is governed by and shall be constructed in accordance with the laws of Hong Kong. The parties agree to submit to the exclusive jurisdiction of the Hong Kong courts.