

SMART AXIATA PURCHASE ORDER STANDARD TERMS AND CONDITIONS

Version 2.0; effective from 01.06.2021

1. ACCEPTANCE.

- 1.1. These standard terms and conditions of purchase orders ("**Terms and Conditions**"), which are non-negotiable, shall govern and form an integral part of the Purchase Order together with all of its attachments (if any) and are collectively referred to as the "**PO**". The PO is issued by Smart Axiata Co., Ltd. ("**Buyer**") to the party ("**Supplier**") specified in the PO. Except where agreed otherwise in writing by the Buyer or where the PO is issued as an ordering mechanism under the terms and conditions of another frame or master document (i.e. contract) ("**Contract**"), these Terms and Conditions will apply and shall become binding between the parties. As used herein, the term "**Goods**" includes tangible and intangible goods as well as software, services, tools, spare parts and any related software and documentation that may accompany Goods as the case may be.
- 1.2. The PO shall be deemed as accepted by the Supplier: (a) by acknowledgement of the PO; (b) by the Supplier's commencement of delivery of the Goods; or (c) by other conducts by the Supplier reasonably demonstrating acceptance of the PO, whichever occurs first.

2. DELIVERY, TRANSPORTATION, SHIPPING AND BILLING.

- 2.1. **Delivery, Transportation, Shipping.** The Supplier will: (a) ensure the Goods are suitably packed to avoid damage in transit or in storage, marked, and delivered or shipped in accordance with the Buyer's requirements and all applicable laws; and (b) not charge for costs relating to handling, packaging, storage or transportation (including duties, taxes, fees, etc.) unless otherwise expressly stated in the PO. Buyer reserves the right to examine the Goods, after delivery and before acceptance, and to reject any of the Goods if the Buyer considers them defective, inferior or otherwise not in accordance with the PO. The Buyer shall notify the Supplier in writing of any such rejection and the Goods so rejected shall on and from such notification be at Supplier's risk and shall be collected forthwith by Supplier at Supplier's expense. Supplier shall reimburse Buyer its costs and expenses involved in handling and inspecting such rejected Goods and shall (at Buyer's option and without prejudice to Buyer's other rights and remedies) without delay replace such rejected Goods with Goods which comply in all respects with the Contract.
 - 2.2. **Payment.** Unless otherwise stated on the PO or the Contract, invoicing shall be 100% of the PO value upon written acceptance of the Goods by the Buyer. Standard payment term is 30 days after receipt of a valid and correct invoice together with all relevant supporting documents. All payments under the PO are without prejudice to the Buyer's claims, rights, or remedies.
 - 2.3. **Taxes.** Unless otherwise stated in the PO or in the Contract, the price includes all applicable taxes, duties and charges. If the Buyer is required by law to make any deduction or withholding of any sum otherwise payable to the Supplier under the PO, the Buyer is entitled to deduct or withhold such amount and effect payment thereof to the relevant tax authority.
 - 2.4. **Title and Risk.** Title to the Goods shall pass from the Supplier to the Buyer upon full payment of the PO value by the Buyer. Risk of damage to, or loss of the Goods shall remain with the Supplier until the Goods have been accepted by the Buyer in writing.
 - 2.5. **Liquidated Damages.** If the Supplier fails to meet the scheduled date of delivery, the Buyer, upon its own discretion, may implement liquidated damages of 0.3% of the Goods value per day of delay up to 10% of the Goods value.
3. **SPECIFICATIONS.** The Goods delivered by the Supplier to the Buyer shall comply with the Buyer's specifications and requirements as stated in the PO. The Goods shall be free from any faults and defects, failing which, the Buyer may elect to either reject any such Goods without any liability whatsoever to the Supplier, or, to require the Supplier to replace, repair or make good any faults, defects or non-conformance with stated specifications and requirements, at its own cost and expense.

4. WARRANTY.

- 4.1. **General.** The Supplier warrants that: (a) it will comply with all applicable laws to which it is or becomes subject to; (b) the Goods specified in the PO do not infringe any patent, trademark, copyright or other intellectual property right of a third party; (c) the Goods specified in the PO are new, unused, not secondhand and do not contain anything used or reconditioned, unless the Buyer agrees otherwise in writing; (d) it has been disclosed to the Buyer in writing the existence of any third party code including without limitation open source code, that is included in or is provided in connection with the Goods, and the Supplier is in compliance with all licensing agreements applicable to such third party code; and (e) these warranties shall survive inspection, acceptance and payment.
- 4.2. **Warranty Period.** Unless otherwise stated in the PO or the Contract, the warranty period shall be 12 months, effective immediately following the written acceptance of the Goods by the Buyer. If any defect occurs during the Warranty Period, the Supplier shall forthwith, at its own cost and expense repair or replace the Goods, failing which, the Buyer may repair, or replace it and the Supplier shall reimburse the Buyer for all costs and expenses incurred.
- 4.3. **FORCE MAJEURE.** If the Supplier is prevented from producing, selling or delivering any Goods, or the Buyer is unable to accept delivery, buy or use any Goods, as a direct result of an event or occurrence that could not have been reasonable foreseen or beyond the control of the affected party and without such party's fault or negligence, then the affected party shall provide notice to the other within 7 days from the date of occurrence thereof stating the cause and the anticipated duration of delay. Such events and occurrences may include, by way of example and not limitation, natural disasters, explosions, riots, wars, sabotage, lockdowns, lockouts, strikes.

6. **TERMINATION FOR BREACH.** The Buyer may terminate the PO without any liability to the Supplier or obligation to purchase the Goods if the Supplier: (a) repudiates, breaches, or threatens to breach any of the terms of the PO, including the Supplier's warranties, (b) fails to perform or threatens to not perform delivery of the Goods in accordance with the PO, or (c) fails to assure timely and proper completion of delivery of the Goods.

7. **TERMINATION FOR CONVENIENCE.** In addition to any other rights of the Buyer to terminate the PO, the Buyer may immediately terminate the PO, at any time and without being obliged to give any reason, by notifying the Supplier 7 days in writing. Upon such termination, the Buyer shall pay for all Goods delivered and accepted until the effective date of the termination. Payment of such costs by the Buyer shall be the full and final settlement of all claims by the Supplier in respect of termination and represents the Buyer's total liability to the Supplier, whether at law or under contract.

8. **INTELLECTUAL PROPERTY RIGHTS.** The Supplier warrants that it owns or is licensed to use the Intellectual Property Rights (including patent, trademark, copyright, moral, industrial design, trade secret or other proprietary rights) contained in the Goods, if any. The Supplier confirms that it has the right to grant and hereby grants to the Buyer a non-exclusive, worldwide, perpetual, transferable and royalty-free license to the Buyer with respect to use all Intellectual Property Rights contained in the Goods in conjunction with the use or sale of the Goods.

9. **INDEMNIFICATION.** The Supplier will defend, hold harmless and indemnify the Buyer, its employees and their respective successors and assigns, from and against all claims, damages, liabilities, losses, government proceedings, and costs and expenses, including reasonable attorney fees and costs of suit, arising out of any alleged or actual breach of the PO or the Contract, Intellectual Property Rights infringement, or the breach of any warranty or representation made by it or any act or omission by it in the performance of its obligations herein.

10. **INSURANCE.** The Supplier shall obtain sufficient coverage and maintain validity of all appropriate insurance (including, without limitation, business, works' compensation, auto, errors and omissions, professional, product, property, public, commercial and comprehensive general liability insurance) at the amount stated in the PO or consistent with the law and industry best practice applicable for the delivery of the Goods. The Supplier shall on request provide certificates and copies of the insurance policies in effect to the Buyer.

11. **CONFIDENTIALITY.** The Supplier agrees that neither it nor any of its employees shall disclose or communicate to any third party any information about the Buyer's policies, prices, systems, methods of operation, contractual agreements or other proprietary matters concerning the Buyer's business or affairs, except to the extent necessary in the ordinary course of supplying the Goods.

12. **REMEDIES AND INJUNCTIVE RELIEF.** The rights and remedies reserved to the Buyer in the PO are cumulative with, and in addition to, all other or further remedies provided by law. The Supplier acknowledges and agrees that monetary damages would not be a sufficient remedy for any actual, anticipatory or threatened breach of the PO by the Supplier with respect to its delivery of the Goods and that, in addition to all other rights and remedies which the Buyer may have, the Buyer shall be entitled to specific performance and injunctive or other equitable relief as a remedy for any such breach.

13. **RECOVERY AND SETOFF.** With respect to any monetary obligations of the Supplier to the Buyer, resulting from the Supplier's failure to deliver the Goods in a timely manner, failure to conform to applicable warranties or other breach by the Supplier, the Buyer may at any time, recover, or set-off such amounts by deducting such amounts from any sums that are, or will become, due or payable to the Supplier.

14. **NO INDUCEMENT, GIFTS, CANVASSING OR SOLICITING OF CONFIDENTIAL INFORMATION.** The Supplier shall not, under any circumstances, give or at any time offer to give or agree to give to any person, including but not limited to any of the Buyer's personnel or persons acting on its behalf, any gift, commission or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any act in relation to the supply of Goods or any PO entered pursuant thereto or forbearing to show favor or disfavor to any person in relation to the terms set out herein. The Supplier shall not, neither directly or indirectly, exchange, offer any gift, bribe, commission, provide rebate, consideration, personal service, indulge in unusual hospitality of any kind as an inducement or reward for any act or omission by the Buyer's personnel in relation to the Buyer's purchase. The Supplier is further refrained from soliciting confidential information from any of the Buyer's personnel for unethical or illegal advantage, engage and collude with other suppliers to fix prices, perform any services, conduct any work or deliver any Goods to the Buyer without a valid PO with the expectation of unfair gain, profit, benefit or advantage. Supplier shall adhere to Smart Axiata's (a) Supplier Code of Conduct, and (b) Anti-Bribery and Anti-Corruption Policy (<https://www.smart.com.kh/media/2021/06/Smart-Axiata-ABAC-Policy-Final.pdf>). In the event that the Buyer finds that the Supplier has not complied with this clause, the Buyer may at its own discretion (a) terminate the PO; and (b) seek such remedies available to it under the applicable laws.

15. **GOVERNING LAW AND JURISDICTION.** The PO is to be construed according to the laws of Cambodia. If any dispute arises between the parties relating to the PO, the parties herein shall use their best endeavors to resolve the dispute amicably. Failing which, the parties agree to submit their dispute to the Cambodian National Commercial Arbitration Centre ("**NCAC**") under the NCAC arbitration rules in force when the arbitration notice is submitted. The seat of arbitration shall be Phnom Penh. The number of arbitrators shall be one, the arbitral award shall be final and binding.

16. **GENERAL CONDITIONS.** The Supplier may not assign, delegate or sub-contract its rights or obligations herein without the written consent of the Buyer. The PO shall inure to the benefit of and be binding upon the parties hereto and to their respective successors. No provisions of the PO will be waived by any party except in writing. The parties hereto agree that the waiver by any party of a breach of any provision of the PO shall not be construed as a waiver of any subsequent breach of that provision by the same party, or any other provision or condition of the PO. If any provision or application of the PO shall be held invalid or unenforceable, the remaining provisions and applications of the PO shall not be affected, but rather shall remain, invalid and enforceable. Those obligations contained herein which are continuing in nature shall survive the expiration or termination of the PO.