

TERMS AND CONDITIONS OF THE SAFARICOM PURCHASE ORDER

1.0 SAFARICOM PURCHASE ORDER TERMS AND CONDITIONS

The Purchase Order Terms and Conditions apply to all Orders for the purchase of goods and services for Safaricom. No other terms apply unless specified in the Purchase Order or otherwise agreed in writing between Safaricom and you. If there is any contradiction between these Purchase Order terms and conditions and those set out in an Agreement executed between you and Safaricom, the Agreement shall prevail.

2.0 DEFINITIONS

- 2.1 Purchase order** means Safaricom generated document that authorizes a purchase of goods/works and or services to which these standard Purchase Terms are attached or incorporated. A Purchase Order sets forth the descriptions of goods/works and or services, quantities, unit prices, total cost, payment terms, the date by which performance of supplier's obligation must be completed (need by date) other associated terms and conditions, and identifies the specific seller.
- 2.2 Seller or Supplier** means the party indicated on the cover page of the Purchase Order that is contracting with Safaricom for the sale of Goods/works and or services.
- 2.3 Buyer** means Safaricom Plc.
- 2.4 Goods** means the goods that are required to be delivered by the Seller pursuant to a Purchase Order, and include all materials, component parts, packaging and labelling of such goods.
- 2.5 Services** means any professional services to be provided by the Seller to Safaricom in accordance with the terms of a Purchase Order.
- 2.6 Need by Date** means the date by which delivery for Goods or performance of Services as specified in a Purchase Order needs to be completed.
- 2.7 Specifications** means the requirements, attributes and specifications for the Goods or Services that are set out in the applicable Purchase Order. Specifications also include:
- Documentation published by the seller relating to the Goods or Services.
 - Operational and technical features and functionality of the Goods or Services.
 - Standards or levels of service performance for Services; and
 - Buyer business requirements that are expressly set out in a Purchase Order.

3.0 CONDITIONS OF PURCHASE

3.1 ACCEPTANCE AND TERMS AND CONDITIONS

- 3.1.1** Every Purchase Order shall remain open for acceptance three (3) days after receipt thereof by the Seller, and if not accepted within the three days, then Safaricom shall have the right to cancel the Purchase Order.
- 3.1.2** The seller shall accept a Purchase Order and any amendments by acknowledging acceptance in Safaricom iSupplier portal.
- 3.1.3** Any queries in regards to the issued Purchase Order(s) should be channeled to below email: purchaseorders@safaricom.co.ke
- 3.1.4** In the absence of a written acknowledgment, the Seller's full or partial performance under this Purchase Order will constitute acceptance of these Terms.
- 3.1.5** By acceptance of this Order, the seller agrees to be bound by, and to comply with all these Terms and Conditions, and any accompanying or attendant variations. These Terms may be modified only by a written document signed by the duly authorized representative of Safaricom and the Seller.
- 3.1.6** Goods/works and or services shall be supplied not later than the delivery (need by) date indicated on the face of the Purchase Order. .
- 3.1.7** Safaricom reserves the right to accept all goods/works and or services supplied after the expiry of the delivery date mentioned therein.

3.2 PACKAGING

- 3.2.1 All goods must be packaged in the manner specified by Safaricom and shipped in the manner and by the route and carrier designated by Safaricom. If Safaricom does not specify the manner in which the goods must be packaged, the Seller shall package the goods so as to avoid any damage in transit.
- 3.2.2 If Safaricom does not specify the manner of shipment, route, or carrier, seller shall ship the goods at the lowest possible transportation rates, consistent with the seller's obligation to meet the delivery schedule set in the Purchase Order.

3.3 SHIPMENT

- 3.3.1 All shipping documents shall contain the Purchase Order Number specified in the Purchase Order.
- 3.3.2 The seller shall ship the goods and/or materials referred to in this Purchase Order in accordance with the agreed Incoterm on the date specified by Safaricom. The applicable standard shall be Incoterms, 2010 as may be varied from time to time. In the event that the seller fails to ship the goods and/or materials on the said date for any reason whatsoever, Safaricom shall have the right to obtain such goods and/or materials from any other source.
- 3.3.3 The seller shall compensate Safaricom for any loss suffered by Safaricom in connection with the failure of seller to ship the goods and/or materials referred to in this Purchase Order on the said date.
- The seller may request in writing change of delivery date before expiry in consultation with Safaricom.

3.4 DELIVERY

- 3.4.1 Goods/works and or services delivered to Safaricom by the seller must be confirmed by way of Goods Receipt Note (GRN). The GRN is raised by Safaricom once the goods/works and or services have been accepted.
- 3.4.2 The Purchase Order must be quoted on all invoices and other correspondence regarding the supply or otherwise of the said goods or services.

3.5 RIGHTS OF INSPECTION AND TITLE AND RISK

- 3.5.1 Safaricom retains the right to inspect and approve all goods/works and or services and to reject any or all of the said goods/works and or services that do not meet the procurement specifications.
- 3.5.2 Goods rejected for whatever reason remain the property of the seller for which risk shall not pass to Safaricom whether kept at Safaricom premises or not and no liability whatsoever for loss or damage shall be claimed against Safaricom.
- 3.5.3 The goods and/or materials referred to in this Purchase Order shall be subject to inspection by Safaricom within a reasonable time after receipt thereof by Safaricom.
- 3.5.4 If any of the goods or services are found at any time to be defective in material form or workmanship, or otherwise not in conformity with the requirements of this Order, including any applicable drawings and specifications, Safaricom reserves the right to reject and return the said goods and/or materials at the seller's expense. Payment, if any, made for any goods rejected under this condition shall be promptly refunded by seller by issuing a credit note, Cheque or making an electronic bank transfer to Safaricom's bank account.

3.6 PRICE

- 3.6.1 Safaricom shall be under no obligation to pay a price higher than the price agreed with the seller before the date of shipment and detailed on the face of the Purchase order. In the absence of express agreement as to price, Safaricom shall pay to the seller the price last offered by the seller to Safaricom for identical goods, materials or services or the market price of identical goods, materials or services at the date of receipt thereof by Safaricom, whichever is lower.
- 3.6.2 No extra charges of any kind will be allowed unless specifically agreed to in writing by Safaricom. If the seller reduces its prices for such goods/works and or services during the term of this Order, Seller shall correspondingly reduce the prices of goods/works and or services sold thereafter to Safaricom under this Order.

3.7 DISCOUNT

The amount of any discount shall be calculated from the date on which an invoice, conforming in all respects to the provisions of this Purchase Order, is received by Safaricom, or the date on which proof of shipment is received by Safaricom, whichever is later.

3.8 DRAFTS AND/OR SAMPLES

Samples relating to the goods and/or materials and/or referred to in any Purchase Order shall not be accepted by Safaricom unless otherwise agreed. Safaricom shall be under no obligation to pay for delivery of such drafts and/or samples.

3.9 CARTAGE

Safaricom shall be under no obligation to pay any charges in connection with shipping or packing in excess of the charges that Safaricom has agreed to pay, and which result from the performance by the seller of the terms and conditions contained herein.

3.10 INVOICES, PAYMENTS AND TAXES

3.10.1 Invoices shall be rendered on completion of services or delivery of goods and shall contain the Purchase Order Number, item number, description of goods or services, quantities, unit prices, date(s) rendered and total purchase price. Each invoice must refer to only one purchase order.

3.10.2 The invoice relating to the goods and/or referred to in this Purchase Order shall be addressed to Safaricom Plc.

3.10.3 Unless subject to a separate agreement, the seller will be paid in accordance with the payment terms appearing on the body of the purchase order. All seller invoices and statements shall be uploaded on the Safaricom iSupplier portal.

3.10.4 The seller shall pay those taxes imposed by law upon or in connection with the goods/works/services and or material referred to in this Purchase Order. In the event that Safaricom shall be required by law to make any deductions or withholding tax then Safaricom shall, at the cost and expense and for the account of the seller, comply with such applicable legislation and remit the amounts to the appropriate authorities.

3.11 TOOLS AND EQUIPMENT

The seller shall insure and maintain in good repair any tools and/or equipment provided by Safaricom to the seller in connection with the production of goods by the seller for use by Safaricom. Safaricom reserves the right to recall the said tools and/or equipment at any time upon which the seller shall return the said tools and/or equipment in good repair forthwith.

3.11.1 In the event that the seller is, for any reason whatsoever, unable to return the said tools in good repair at the date of recall or at such other date agreed with Safaricom, the seller shall provide replacement tools with specifications identical to those of the tools originally provided by Safaricom within a reasonable time.

3.12 THIRD PARTY INTELLECTUAL PROPERTY INDEMNITY

The seller shall hold and indemnify Safaricom, its officers, agents, servants and users of its products or services harmless from liability for the infringement of any third party's intellectual property relating to any goods and/or material supplied by seller.

3.13 COMPLIANCE

3.13.1 The Purchase Order is placed by Safaricom on the understanding that the seller's acceptance hereof serves as a warranty that no statute or any other legal regulation has been violated in the manufacture or sale of the goods and/or materials or the provision of services referred to in this Purchase Order.

3.13.2 The seller shall be required to obtain and pay for any license, permit, inspection or listing by any public body or certification organization required in connection with the manufacture, performance, completion or delivery of any good and/or service.

3.14 ENTIRE AGREEMENT

3.14.1 This Purchase Order contains the entire agreement between the Parties with respect to the purchase of the goods and/or materials hereof and, unless the terms and conditions herein are

replaced in accordance with varied superseding agreement signed by mutual consent of the Parties, whether oral or written, express or implied, in relation to the subject matter between them.

3.14.2 Safaricom reserves the right to vary the terms and conditions of this Purchase Order as a direct result of new legislation, statutory instrument, government regulations or licenses, amendments or recommendations from regulatory bodies, changes to its internal business rules or similar events provided that such variations or new terms and conditions shall be notified to the seller and shall be limited to the extent necessary for these purposes.

3.15 GOVERNING LAW

3.15.1 The terms and conditions of this Purchase Order are governed by the Laws of Kenya.

3.15.2 Any dispute arising out of or in connection with this Purchase Order or the goods/works and or services supplied in accordance with this Purchase Order, if not resolved amicably within a period of thirty days be referred to arbitration by a single arbitrator to be appointed by Agreement between the Parties or in default of such Agreement within fourteen (14) of the notification of a dispute, upon the application of either party, by the Chairman for the time being of the Kenya Chapter of the Chartered Institute of Arbitration.

3.15.3 The seat of arbitration shall be in Nairobi in accordance with the Rules of Arbitration of the said Institute and subject to and in accordance with the provisions of the Arbitration Act 1995.

3.15.4 To the extent permissible by law, the determination of the Arbitrator shall be final and binding upon the Parties.

3.15.5 Notwithstanding the Arbitration provisions, the Parties shall not be precluded from seeking urgent injunctive relief, in which case the Parties submit to the exclusive jurisdiction of the High Court of Kenya.

3.16 ENVIRONMENT

Safaricom requires the seller to assume responsibility for the environmental impacts caused by its activities in recognition of ecological limits and environmental sustainability. The seller is also expected to monitor and continually improve on its environmental performance.

3.17 PLASTICS MANAGEMENT

Safaricom requires the seller to comply with Kenya Gazette Legal Notice **No. 2334** of 14th March 2017 (as may be amended from time to time) which bans all plastic carrier bags regardless of their thickness or color used as secondary packages with effect from 28th August 2017. Should the seller desire to continue using flat bags for primary packaging, then the seller has the obligation to seek for exemption from the National Environment Management Authority (NEMA) and share the certificate of clearance from NEMA with Safaricom. The following conditions will apply for the exempted use of flat plastic bags for industrial primary packaging:

3.17.1 They are used for industrial primary packaging at the source of the product and it is not available on sale at the counter or given freely outside the industrial setting.

3.17.2 The bags must be clearly labeled (Printed) with the name of the industry and product packaged.

3.17.3 They are subject to Extended Producer Responsibility and/or effective take back schemes.

The seller is encouraged to avoid where necessary or take due diligence to segregate and direct all used plastics materials to recycling facilities and NOT DUMPED together with general waste. Safaricom having declared its premises a plastic free zone, requires sellers to eliminate all single use plastics items and Styrofoam in packaging and in daily operations. In cases where plastic may not be avoided, the seller shall provide a clear management plan for plastic waste.

Failure to comply with this ban will lead to Safaricom rejecting the shipments at source/origin and if costs have been incurred by Safaricom to ship the goods, and it warrants reverse logistics, such return costs will be fully borne by the seller and Safaricom will set off the amounts from the invoices payable to the seller.

3.18 CORRUPT PRACTICES

Safaricom requires that the seller as well its subcontractors, employees, directors, shareholders and officers to observe the highest standard of ethics during the procurement and execution of

this Agreement. In pursuit of this, Safaricom:

3.18.1 Defines, for the purposes of this clause the following terms:

- i. "Corrupt practice" means the offering, giving, receiving, or soliciting, directly or indirectly, anything of value to influence improperly the actions of another party including offences listed under all applicable laws, regulations and sanctions relating to anti-bribery, and anti-corruption including but not limited to the Anti-Corruption and Economic Crimes Act and the UK Bribery Act;
- ii. "Fraudulent practice" means any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;
- iii. "Coercive practice" means impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of a party to influence improperly the actions of a party;
- iv. "Collusive practice" means an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party.

3.18.2 Will terminate this Agreement with immediate effect if it determines at any time that representatives of the seller engaged in corrupt, fraudulent, collusive or coercive practices during the procurement or the execution of this Agreement; and

3.18.3 Will sanction the seller, its shareholders, directors and other officers including declaring them ineligible, either indefinitely or for a stated period of time, to be awarded a Safaricom contract if it at any time determines that they have, directly or through an agent, engaged in corrupt, fraudulent, collusive or coercive practices in competing for, or in executing this or any other Agreement entered into with Safaricom.

3.18.4 **Reporting:** Where sellers suspect corrupt or fraudulent acts involving Safaricom they are encouraged to report such instances to an independently managed hotline using any of the following channels;

Toll free number: 0800 720 009

Email: Safaricom@ethics-line.com

Website: www.safaricomethicsline.com

3.19 GENERAL

3.19.1 Cancellation of Order

In the absence of terms to the contrary, where the Supplier fails to perform their obligations under or is otherwise found to be in breach of any of the provisions of this Purchase Order, Safaricom shall be entitled at its option and upon issuing a written notice of seven (7) days to the Supplier, to terminate this order and no goods and services shall be receipted against such cancelled order.

3.19.2 Confidentiality

Each Party agrees that it shall ensure that its trustees, employees, officers and directors shall hold in confidence all the commercial and other engagements and all information, documentation, data and know-how disclosed to it by the other Party and designated as "confidential" both relating to all orders made ("Confidential Information") and shall not disclose to any third Party or use Confidential Information other than in connection with the performance of its obligations pursuant to this Purchase Order or any part thereof without the other Party's written approval,

PROVIDED THAT:

- i) This clause shall not apply to Confidential Information already in the public domain other than by reason of breach of this clause;
- ii) A Party may disclose Confidential Information in accordance with any legal requirements or relevant regulatory or governmental authorities; or to consultants and contractors (subject to obtaining undertakings of confidentiality except where professional duties already impose an obligation of confidentiality) whose duties require such disclosure.

Either Party shall return or destroy Confidential Information in relation to any order made under this Purchase Order and given to the other Party within seven (7) days of cancellation of an order

for any reason whatsoever; or as and when upon receipt of a written request by Safaricom

3.19.3 Mutual Indemnity

The Parties agree to indemnify and to hold each other, their agents and employees harmless against all claims, proceedings, damages, costs, expenses and losses whatsoever whenever and howsoever arising out of any negligent, inadvertent or willful act or omission of their employees, servants or agents in the fulfillment of their respective obligations as provided herein

3.19.4 Publicity

The Supplier shall not use any of Safaricom's trademarks or intellectual property (including without limitation such logos, brands, service marks) without the prior written consent of Safaricom