

1) Definitions

- a) “Purchase Contract” means any purchase order, call-off, work order, delivery instruction or similar contractual document agreed or issued by the Parties, these Terms and Conditions and all other documents specifically made part of the Purchase Contract by the Yokohama TWS.
- b) “Supplies” means the components and services (including any part shipment of the Supplies) further described in the Purchase Contract.
- c) “Yokohama TWS” means any subsidiary or affiliate of Yokohama TWS named in the Purchase Contract but not Yokohama TWS.
- d) “Supplier” means the contracting party supplying the Supplies.

2) Binding Purchase Contract

- a) Purchase Contracts are binding only if they are issued or confirmed in writing by Yokohama TWS’s Purchasing Department. These Terms and Conditions of Purchase become an integral part of the Purchase Contract between the Parties once the Purchase Contract is accepted by Yokohama TWS.
- b) Payments made or acceptance of Supplies by Yokohama TWS is not an acknowledgement of any other conditions than these Terms and Conditions of Purchase or a Purchase Contract between the Parties.

3) Performance

- a) Supplier shall properly pack, mark, and transport the Supplies and provide all documentation required by Yokohama TWS, by the carriers involved and by the authorities of the country of destination.
- b) Unless otherwise specified in the Purchase Contract, Supplies shall be delivered DDP Yokohama TWS’s address, as set forth on the face of the Purchase Contract (in accordance with the latest version of the ICC INCOTERMS)
- c) Time is of the essence and the agreed dates of delivery are binding. If Supplier, for any reason, does not comply with Yokohama TWS’s delivery schedule or any other requirement, Yokohama TWS may, in its sole discretion apply appropriate compensatory or corrective measures at the expense of the Supplier.
- d) In the event that the Supplier fails to meet an agreed date of delivery Yokohama TWS may in its discretion chose to either (i) apply late delivery penalties of 5 % of the purchase sum for that part of delivery which is delayed per commenced week of delay, up to a maximum sum of 25% of the total purchase sum for all supplies under the Purchase Contract or (ii) hold Supplier liable for all costs, losses and expenses incurred by Yokohama TWS as a result of the delayed delivery.

4) Price and payment terms

- a) The purchase sum for the Supplies shall be as agreed in the Purchase Contract.
- b) Unless otherwise stated in the Purchase Contract, the purchase price: (i) is a fixed price and no unilateral price changes are permitted (ii) is exclusive of VAT but inclusive of all other taxes and any duties applicable; and (iii) is inclusive of all storage, handling, packaging and all other expenses and charges of Supplier.
- c) Unless otherwise agreed Yokohama TWS shall pay for the Supplies within 60 (sixty) days from the latter of delivery of Supplies and the receipt of an undisputed and properly raised invoice.
- d) Invoices must state the name of the Supplier, the relevant purchase order number, the period to which the invoice relates and the Supplier’s bank account for payment.
- e) If the payment date is not a business day, payment shall be due the next business day thereafter.

5) Changes

- a) Except with Yokohama TWS prior written approval Seller will not make any change to the Supplies.
- b) Yokohama TWS reserves the right to cancel any undelivered part of the Supplies or to request change of the Supplies and its delivery, including the packaging, testing requirements, shipping date, or time or place of delivery.

6) Warranties

In addition to any other express and implied warranties provided by law or otherwise, Supplier warrants to Yokohama TWS that it has good and marketable title to the Supplies and that the Goods shall be: (i) new; (ii) free and clear of any and all liens and encumbrances; (iii) conform with all specifications, drawings, samples and other descriptions furnished by Yokohama TWS or offered by Supplier; (iv) free from all defects in design (to the extent designed by Seller), workmanship and materials; (v) be of merchantable quality; (vi) be fit and sufficient for the purposes intended by Yokohama TWS – to the extent known by Supplier; (vii) conform to all applicable laws in the country of production and delivery (viii) do not infringe patents or other intellectual property rights of third parties

7) Default and Remedies

Supplier shall defend, hold harmless and indemnify Yokohama TWS from and against any and all direct costs and expenses arising from or in connection with any damages, injuries or third party claims or demands to recover for personal injury, death, or property damage caused by or arising out of any of the Supplies provided by Supplier (regardless of whether such claim or demand arises under tort, negligence, contract, warranty, strict liability or other legal theories), except to the extent such injury, damage or loss results from the gross negligence or intentional/willful acts of Yokohama TWS.

8) Termination

- a) Yokohama TWS may terminate the Purchase Contract in whole or in part by written notice; (i) for convenience, effective thirty (30) days following delivery of a written termination notice; (ii) immediately for default.
- b) Supplier shall be in default if it (i) breaches any warranty or other term of the Purchase Contract; (ii) fails to deliver or threatens not to deliver Supplies in accordance with the Purchase Contract; (iii) makes an assignment for the benefit of creditors, or if proceedings in bankruptcy or insolvency are instituted by or against Supplier.

9) Insurance

- a) The Supplier warrants that it has reasonable insurance cover, provided by a reputable insurer, for all general liability and all products liability that may arise in respect of any Supplies made under a Purchase Contract. The limits of such insurance must be at least ten times the contractual value of the Supplies under any Purchase Contract. Unless expressly waived by Yokohama TWS, Yokohama TWS shall be named additional insured on such policies.
- b) The Supplier, on behalf of itself and its insurers, irrevocably waives any right of subrogation against Yokohama TWS for any liability, cost or expenses asserted by any third party.

10) No Agency

Nothing in the Contract shall be construed to place Supplier in the position of a partner, agent, or employee of Yokohama TWS, and Supplier shall have no power to bind Yokohama TWS toward third parties. Supplier covenants and agrees not to hold itself out as a partner, agent, or employee of Yokohama TWS with respect to the Supplies.

11) Set Off

Yokohama TWS shall be entitled to set off any sums owing by Supplier to Yokohama TWS for any reason whatsoever, against any sums payable by Yokohama TWS under the Purchase Contract.

12) Limitation of Assignment

The Supplier is not entitled to assign, transfer or sub-contract out any of its obligations towards Yokohama TWS to any third party, without prior written consent of Yokohama TWS.

13) Severability

The Purchase Contract shall be construed so as to comply with all applicable laws. Should any provision of the Purchase Contract be found to be incompatible with prevailing legal requirements that provision shall be disregarded and shall not affect the validity of the remaining provisions.

14) Force Majeure

- a) Neither Yokohama TWS nor Supplier shall be liable to the other for delay or non performance of their obligations under the Purchase Contract which is due to a cause or causes beyond that party's control ("Force Majeure") which Force Majeure shall include (but not be limited to) Acts of God, civil disturbance, fire, storm, or flood, acts of international state governmental, federal or local authorities, bodies or institutions ("Public Authority"), non availability of shipping or other transport, lockouts, strikes or other trade disputes, or interruption or breakdown of any communication or data processing services or equipment.
- b) Upon Yokohama TWS or Supplier (the "Affected Party") being affected by Force Majeure: (i) the Affected Party shall advise the other party of such Force Majeure in writing as soon as reasonably practicable and shall use reasonable endeavors to mitigate the effect of Force Majeure including, but not limited to, a fair and equitable allocation of any remaining supply of goods available to perform the Purchase Contract; (ii) if the Force Majeure ceases to apply the parties shall resume performance of their obligations hereunder as soon as reasonably practicable after the Force Majeure ceases to apply; (iii) if the Force Majeure continues for more than thirty (30) days Yokohama TWS (but not Supplier) shall be entitled to cancel the Purchase Contract without liability save for any outstanding obligations in respect of Supplies delivered to or in the course of delivery to Yokohama TWS.

15) Governing Law and Jurisdiction

Unless otherwise agreed the Purchase Contract is subject to the laws of the country of Supplier's domicile. Any dispute or controversy arising out of or in connection with this Purchase Contract shall if not settled amicably by the parties be submitted to the jurisdiction of the courts of the country of Supplier's domicile.