

The following Standard Purchase Order Terms and Conditions (“Terms”) only apply to transactions that do not have a written agreement, duly executed by both parties.

In the absence of such a written agreement, duly executed by both parties, then these Terms provide you (“Seller”) with the guidelines and legal stipulations of your Purchase Order (“Order”) with Wananchi Group (Kenya) Limited (“Purchaser”) for the goods and/or services that are described on the face of the Order.

## **1. TERMS AND CONDITIONS**

The Purchase Order Terms and Conditions apply to all Orders for the purchase of goods and services for Wananchi Group (Kenya) Limited in the absence of a written agreement. No other terms apply unless specified in the Purchase Order.

### **DEFINITIONS**

- i. “Agreement” means the duly and properly executed contract between Seller and Purchaser for the purchase and sale of Goods and/or Services.
- ii. “Purchaser” means Wananchi Group (Kenya) Limited.
- iii. “Deliverable” means any deliverable or other product or result from Services that is referred to in a Purchase Order, and any related materials, data, documentation, and includes any Intellectual Property Rights developed by Seller pursuant to such Purchase Order.
- iv. “Delivery Date” means the date on which Goods or performance of Services is required to be available at the Delivery Point specified in the Purchase Order.
- v. “Delivery Point” means the location identified by the Purchaser to which the Seller is to deliver Goods and/or perform the services, or such other delivery area or point which is specified in writing by the Purchaser.
- vi. “Goods” means the goods that are required to be delivered by Seller pursuant to a Purchase Order, and include all materials, equipment, component parts, packaging and labelling of such goods.
- vii. Good Warranty Period means twenty-four (24) months after receipt of goods.
- viii. “Intellectual Property Rights” means all intellectual and industrial property rights and rights of a similar nature including all rights in and to, patents including all issued patents and pending applications therefore and patents which may be issued therefrom (including divisions, reissues, re-examinations, continuations and continuations-in-part); trade-marks; copyrights; industrial design rights; rights pertaining to trade secrets and confidential information; publicity rights; personality rights; moral rights; and other intellectual property rights whether registered or not and all applications, registrations, renewals and extensions pertaining to the foregoing.
- ix. “Purchase Order” means these terms and conditions between Purchaser and Seller for the purchase and sale of Goods and/or Services, to which these Standard Purchase Terms are attached or are incorporated by reference.
- x. “Services” means any services to be provided by Seller to Purchaser pursuant to a Purchase Order.

- xi. “Specifications” means the requirements, attributes and specifications for the Goods or Services that are set out in the applicable Purchase Order. Specifications also include: (a) documentation relating to the Goods or Services; (b) operational and technical features and functionality of the Goods or Services; (c) standards or levels of service performance for Services; and (d) Purchaser business requirements that are expressly set out in a Purchase Order.
- xii. “Seller” means the party indicated on the face page of the Purchase Order that is contracting with Purchaser for the purchase and sale of Goods and/or Services.
- xiii. “Seller Proposal” means any acknowledgement, estimate, quote, offer to sell, invoice, or proposal of Seller relating to the supply of Goods and/or Services to Purchaser, including any delivered in connection with a request for quotations, request for proposal or similar process initiated by Purchaser.

## **2. ACCEPTANCE OF TERMS AND CONDITIONS**

The Seller accepts these terms and conditions, and any amendments by signing the acceptance copy of the Purchase Order and returning it to Purchaser promptly. By acceptance of the Purchase Order, Seller agrees to be bound by, and to comply with all these Terms, which include any supplements to it, and all specifications and other documents referred to in the Purchase Order.

These Terms apply to everything listed in the Purchase Order and constitute Purchaser's offer to Seller, which Purchaser may revoke at any time prior to Seller's acceptance.

Terms and conditions different from or in addition to these Terms, contained in any document other than a fully executed contract will not be binding on Purchaser, and Purchaser hereby rejects them. These Terms may be modified or superseded only by a written agreement signed by duly authorized representatives of Purchaser and Seller.

## **3. DELIVERY OF GOODS AND SERVICES**

- i. Supplier agrees to supply and deliver the Goods to Purchaser and to perform the Services, as applicable, on the terms set out in this terms and conditions.
- ii. Supplier shall, at its own expense, pack, load, and deliver Goods to the Delivery Point and in accordance with the invoicing, delivery terms, shipping, packing, and other instructions printed on the face of the Purchase Order or otherwise provided to Supplier by Purchaser in writing. No charges will be allowed for freight, transportation, insurance, shipping, storage, handling, demurrage, cartage, packaging or similar charges unless provided for in the applicable Purchase Order or otherwise agreed to in writing by Purchaser.
- iii. Time is of the essence with respect to delivery of the Goods and performance of Services. Goods shall be delivered and Services performed by the applicable Delivery Date. Supplier must immediately notify Purchaser if Supplier is likely to be unable to meet a Delivery Date. At any time prior to the Delivery Date, Purchaser may, upon notice to Supplier, cancel or change a Purchase Order, or any portion thereof, for any reason, including, without limitation, for the convenience of Purchaser or due to failure of Supplier to comply with this Agreement, unless otherwise noted.

### Packaging & shipping

All shipping containers shall be packed and packaged to: (i) ensure safe arrival to final destination; (ii) secure the lowest transportation costs;(iii) comply with requirements of common carriers; (iv) meet Purchaser's written instructions; and (v) meet the requirements of all applicable laws, ordinances, rules and regulations.

Each package or container shall be marked clearly to show Purchase Order number, ship date, and name of consignee and consigner. An itemized packing list shall be included in each container.

### Title & Risk

- iv. Title and risk of loss or damage shall pass to Purchaser upon receipt of Goods at the Delivery Point.. Risk of loss or damage to, or destruction of the goods shall be borne by the Supplier until physical delivery of the goods has been completed in accordance with the Purchase Order. If Purchaser rightfully rejects the goods, receives a non-conforming tender, or revokes its acceptance, risk of loss and title shall be deemed to have remained with Seller.

## 4. DELAYS

The time for the delivery of the Goods or the performance of the Services shall be of the essence. If delivery of the Goods or performance of the Services is not made within the agreed delivery timelines, Purchaser shall have the right without liability and without prejudice to its other rights and remedies in law, to take one or more of the following actions:

- i. direct expedited delivery of Goods for which the Supplier shall bear all increased costs, including but not limited to, increased transportation charges and risk of loss;
- ii. direct acceleration of the Services for which the Supplier shall bear all increased labor and other acceleration costs
- iii. terminate the Purchase Order for default; or
- iv. claim liquidated damages calculated as set out on the face of the Purchase Order or such other documentation forwarded to the Supplier by Purchaser;
- v. Recover from the Supplier any expenditure reasonably incurred by Purchaser in obtaining substitute Goods or Services from another supplier.

## 5. **INSPECTION, ACCEPTANCE & REJECTION**

- i. All shipments of Goods and performance of Services shall be subject to Purchaser's right of inspection. Purchaser shall have ninety (90) days (the "Inspection Period") following the delivery of the Goods at the Delivery Point or performance of the Services to undertake such inspection, and upon such inspection Purchaser shall either accept the Goods or Services ("Acceptance") or reject them.

- ii. Purchaser shall have the right to reject any Goods that are delivered in excess or falls below the quantity ordered or are damaged or defective. In addition, Purchaser shall have the right to reject any Goods or Services that are not in conformance with the Specifications.
- iii. Transfer of title to Purchaser of Goods shall not constitute Purchaser's Acceptance of above mentioned Goods. Purchaser shall notify the Supplier within the Inspection Period of any Goods or Services that are rejected, together with the reasons for such rejection.
- iv. Failure to inspect and accept or reject goods or services or failure to detect defects by inspection, will neither relieve Seller from responsibility for such goods or services that are not in accordance with the Purchase nor impose liabilities on Purchaser for them. Purchaser's inspection, testing, or Acceptance or use of the Goods or Services hereunder shall not limit or otherwise affect Supplier's warranty obligations hereunder with respect to the Goods or Services, and such warranties shall survive inspection, test, Acceptance and use of the Goods or Services.
- v. The Purchaser shall be entitled to return rejected Goods to Supplier at Supplier's expense and risk of loss for, at Purchaser's option, either: (i) full credit or refund of all amounts paid by Purchaser to Supplier for the rejected Goods; or (ii) replacement Goods to be received within the time period specified by Purchaser. Title to rejected Goods that are returned to Supplier shall transfer to Supplier upon such delivery.. Supplier shall not deliver Goods that were previously rejected on grounds of non-compliance with this Purchase Order, unless delivery of such Goods is approved in advance by Purchaser, and is accompanied by a written disclosure of Purchaser's prior rejection(s).

## **6. PRICE OR PAYMENT TERMS**

- i. Prices for the Goods and/or Services will be set out in the applicable Purchase Order. Prices shown in the Purchase Order may not be varied except with the express written agreement of Purchaser. Supplier will issue all invoices on a timely basis.
- ii. All invoices delivered by Supplier must meet Purchaser's requirements, and at a minimum shall reference the applicable Purchase Order. Purchaser will pay as per the agreed terms with the vendor and as indicated in the purchase order.
- iii. Purchaser shall have the right to withhold payment of any invoiced amounts that are disputed in good faith until the parties reach an agreement with respect to such disputed amounts and such withholding of disputed amounts shall not be deemed a breach of this Agreement nor shall any interest be charged on such amounts. Notwithstanding the foregoing, Purchaser agrees to pay the balance of the undisputed amounts on any invoice that is the subject of any dispute within the time period specified herein.
- iv. Purchaser shall have a reasonable time after delivery of the goods to inspect them and to reject and refuse acceptance of goods not conforming to the Purchase Order; payment for goods pursuant to the Purchase Order shall not be deemed to constitute acceptance by Purchaser of the goods.

## **7. TAXES**

Where applicable, payment shall be subject to the deduction of any applicable taxes as may be prescribed by any relevant government authority from time to time.

Any tax, tariff or duty which is imposed upon Supplier by any governmental authority and included in the price shall be separately stated on the Supplier's invoice(s).

## **8. INTELLECTUAL PROPERTY RIGHTS**

In respect of any Goods that are transferred to the Purchaser as part of the Services under this Purchase Order, the Supplier warrants that it has full clear and unencumbered title to all such items, and that at the date of delivery of such terms to the Purchaser, it will have full and unrestricted rights to sell and transfer all such items to the Purchaser.

- i. The Supplier hereby grants the Purchaser a perpetual, royalty-free, irrevocable, non-exclusive licence to use all intellectual property rights in the materials created or developed pursuant to this Purchase Order.
- ii. The Supplier shall keep the Purchaser indemnified against all liabilities, costs, expenses, damages and losses suffered incurred by the Purchaser as a result of or in connection with any claim made against the Purchaser for actual or alleged infringement of a third party's intellectual property rights arising out or in connection with, the manufacture, supply or use of the Goods, or receipt, use or supply of the Services, to the extent that the claim is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors.
- iii. This clause shall survive termination or expiry of this Purchase Order.

## **9. INSURANCE**

Supplier represents and warrants to Purchaser that it has in place with reputable insurers such insurance policies in coverage amounts that would be maintained by a prudent supplier of goods and services similar to the Goods and Services provided hereunder

## **10. WARRANTIES**

- i. **Product Warranties.** Supplier warrants to Purchaser that during the Goods Warranty Period all Goods provided hereunder shall be: (i) of merchantable quality; (ii) fit for the purposes intended; (iii) unless otherwise agreed to by Purchaser, new; (iv) free from defects in design, material and workmanship; (v) in strict compliance with the Specifications; (vi) free from any liens or encumbrances on title whatsoever; (vii) in conformance with any samples provided to Purchaser; and (viii) compliant with all applicable laws, regulations, standards, and codes.
- ii. **Service Warranties.** Supplier shall perform all Services: (i) exercising that degree of professionalism, skill, diligence, care, prudence, judgment, and integrity which would reasonably be expected from a skilled and experienced service provided providing services under the same or similar circumstances as the Services under this Agreement; (ii) in accordance with all Specifications and all Purchaser policies, guidelines, by-laws and codes of conduct applicable to Supplier; and (iii) using only personnel with the skills, training, expertise, and qualifications necessary to carry out the Services. Purchaser may object to any of the Supplier's personnel engaged in the performance of Services who, in the reasonable opinion of Purchaser, are lacking in appropriate skills or qualifications, engage in misconduct, constitute a safety risk or hazard or are incompetent or negligent, and the Supplier shall promptly remove such personnel from the performance of any Services upon receipt of such notice,

and shall not re-employ the removed person in connection with the Services without the prior written consent of Purchaser.

- iii. **Intellectual Property Warranty.** Supplier further warrants to Purchaser that at all times all Goods and or Services (including any Deliverables) will not be in violation of or infringe any Intellectual Property Rights of any person.
- iv. **Manufacturer Warranties.** Supplier shall assign to Purchaser all manufacturer's warranties for Goods not manufactured by or for Supplier, and shall take all necessary steps as required by such third party manufacturers to effect assignment of such warranties to Purchaser.

## **11. WARRANTY REMEDIES**

In the event of breach of any of the warranties above, and without prejudice to any other right or remedy available to Purchaser (including Purchaser's indemnification rights hereunder), Supplier will, at Purchaser's option and Supplier's expense,

- i. refund the purchase price for, or correct or replace the affected Goods, or re-perform the affected Services, within fourteen (14) days of warranty breach.
- ii. All associated costs, including costs of re-performance, costs to inspect the Goods and/or Services, transport the Goods from Purchaser to Supplier, and return shipment to Purchaser, and costs resulting from supply chain interruptions, will be borne by Supplier.
- iii. If Goods are corrected or replaced or Services are re-performed, the warranties herein will continue as to the corrected or replaced Goods for a further Goods Warranty Period commencing on the date of Acceptance of the corrected or replaced Goods by Purchaser. If Supplier fails to repair or replace the Product within the time periods required above, Purchaser may repair or replace the Goods at Supplier's expense.
- iv. In the event that any Goods provided by Supplier to Purchaser are subject to a claim or allegation of infringement of Intellectual Property Rights of a third party, Supplier shall, at its own option and expense, without prejudice to any other right or remedy of Purchaser (including Purchaser's indemnification rights hereunder), promptly provide Purchaser with a commercially reasonable alternative, including the procurement for Purchaser of the right to continue using the Goods in question, the replacement of such Goods with a non-infringing alternative satisfactory to Purchaser, or the modification of such Goods (without affecting functionality) to render them non-infringing

## **12. INDEMNITY**

Supplier shall indemnify, defend and hold harmless Purchaser, its Affiliates, and their respective officers, directors, employees, consultants, and agents (the "**Purchaser Indemnified Parties**") from and against any claims, fines, losses, actions, damages, expenses, legal fees and all other liabilities brought against or incurred by the Purchaser Indemnified Parties or any of them arising out of: (a) death, bodily injury, or loss or damage to real or tangible personal property resulting from the use of or any actual or alleged defect in the Goods or Services, or from the failure of the Goods or Services to comply with the warranties hereunder; (b) any claim that the Goods or Services infringe or violate the Intellectual Property Rights or other rights of any person; (c) any intentional, wrongful or negligent act or omission of Supplier or any of its Affiliates or subcontractors; (d) Supplier's breach of any of its obligations under this Agreement; or (e) any liens or encumbrances relating to any Goods or Services.

### **13. LIMITATION OF LIABILITY**

Purchaser's aggregate liability arising from or relating to the Purchase Order is limited to the amount paid by purchaser for the goods and/or services. To the maximum extent allowable under applicable law, Purchaser shall not be liable under this order for any special, incidental, consequential, indirect, or punitive damages including, without limitation, anticipated profits or lost revenues even if Purchaser has been advised of the possibility of such damages.

### **14. COMPLIANCE WITH THE LAW**

Seller represents and warrants that it is in compliance with, and all goods and/or services supplied hereunder have been produced or provided in compliance with the applicable provisions of all local laws or ordinances and all related lawful orders, rules and regulations. Seller shall comply with any provisions, representations, or agreements, or contractual clauses required to be included or incorporated by reference or operation of law in any Order. 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.

### **15. CONFIDENTIAL INFORMATION**

- i. Notwithstanding any document marking to the contrary, any knowledge or information that the Seller has disclosed or may later disclose to Purchaser, and which in any way relates to the goods or services covered by this terms and conditions will not, unless otherwise specifically agreed to in writing by Purchaser, be deemed to be confidential or proprietary information, and will be acquired by Purchaser, free from any restrictions.
- ii. Seller will not, unless with prior explicit consent, transmit to Purchaser any sensitive personal information, including, but not limited to, identified health information, financial information, social security numbers, biometrics or other personally identified or identifiable information of like sensitivity.
- iii. Seller will keep confidential any technical, process, economic, or other information derived from drawings, specifications and other data furnished by Purchaser in connection with the Purchase Order (in whatever form or format) and will not divulge, export, or use, directly or indirectly, such information for the benefit of any other party without obtaining Purchaser's prior written consent.
- iv. Except as required for the efficient performance of the Purchase Order, Seller will not use such information or make copies or permit copies to be made of such drawings, specifications, or other data without the prior written consent of Purchaser.

- v. Upon completion or termination of the Purchase Order, Seller will promptly return to Purchaser all materials incorporating any such information and any copies, except for one record copy. Seller agrees that no acknowledgment or other information concerning the Purchase Order and the goods or services provided will be made public by Seller without the prior written agreement of Purchaser.

## **16. TERMINATION**

Purchaser may terminate this Agreement or any order under this Purchase Order for cause in the event of any default by Seller. The following are causes, among others, allowing Purchaser to terminate: (i) late delivery, (ii) delivery of goods that are defective or that do not conform to Purchase Order, or (iii) failure upon request to provide Purchaser with reasonable assurances of future performance. Additionally, Purchaser may forthwith cancel this Purchase Order in the event of any of the following: (i) insolvency of Seller; (ii) the filing of an involuntary or voluntary petition of bankruptcy against Seller; (iii) the execution by Seller of an assignment for the benefit of creditors; or (iv) the appointment of a receiver over Seller's assets

Without prejudice to any other right Purchaser reserves the right to terminate the Purchase Order, or any part hereof, for its sole convenience upon written notice to the Supplier. In the event of such termination, the Supplier shall immediately stop all work hereunder and immediately instruct any and all of its suppliers and subcontractors to cease work. The Supplier shall be paid a percentage of the Purchase Order price reflecting the percentage of the Services performed or Goods delivered and accepted prior to the notice of termination. The Supplier shall not be paid for any work performed or costs incurred after receipt of the notice. In no event shall Purchaser be liable for loss of profits or other cancellation charges.

## **17. INDEPENDENT CONTRACTORS**

Supplier will perform its obligations under the Agreement as an independent contractor and in no way will Supplier or its employees be considered employees, agents, partners, fiduciaries, or joint ventures of Purchaser. Supplier and its employees will have no authority to represent Purchaser or its Affiliates or bind Purchaser or its Affiliates in any way, and neither Supplier nor its employees will hold themselves out as having authority to act for Purchaser or its Affiliates.

## **18. GENERAL PROVISIONS**

- i. **Non-assignment:** Assignment of the Purchase Order or any interest in it or any payment due or to become due under it, without the written consent of the Purchaser, will be void.
- ii. **Transportation:** All the prices are established as F.O.B. Seller and/or Origin Dock, Freight Prepaid, unless otherwise specifically provided on the front of the Purchase Order. The responsibility for



freight damaged merchandise will be assumed by Seller. No charges for unauthorized transportation will be allowed. Any unauthorized shipment, which will result in excess transportation charges, must be fully prepaid by the Seller.

- iii. **Anticipation of delivery schedule:** Unless otherwise agreed in writing, Seller will not make material commitments or production arrangements in excess of the amount or in advance of the time necessary to meet Purchaser's delivery schedule.
- iv. **Seller's inventory:** Purchaser will have no obligation to request quotations or place Orders with Seller, both of which will be in Purchaser's sole discretion. Purchaser acting in its sole discretion will determine the actual quantity of goods or services to be purchased. The quantity of goods or services, if any, specified in forecasts supplied by Purchaser from time to time, or otherwise, is an estimate only. Seller bears sole responsibility for managing Seller's raw material, work in process, and inventory, and Purchaser will have no liability with respect thereto.
- v. **Force majeure:** Purchaser may delay delivery and/or acceptance occasioned by causes beyond its control.
- vi. **Remedies:** Each of the rights and remedies reserved to Purchaser in this terms and conditions shall be cumulative and additional to any other remedies provided in law or equity. No delay or failure by Purchaser in the exercise of any right or remedy shall affect any such right or remedy and no action taken or omitted by Purchaser shall be deemed to be a waiver of any such right or remedy.
- vii. **Publicity:** Seller will not use Purchaser's name or logo in publicity, advertising, or similar activity, except with Purchaser's prior written consent. Seller will not disclose the existence of the Purchase Order or any of its respective terms to any third party without Purchaser's prior written consent.
- viii. **Documentation:** It is agreed that all technical documentation and other literature necessary for the proper use of the goods or services will be provided to Purchaser with the goods or services, unless otherwise directed by Purchaser, and its cost is included in the price.
- ix. **Governing law:** This terms and conditions, these Terms, and all related transactions, will be interpreted under and governed by the laws of Kenya unless agreed otherwise in writing.
- x. **Dispute resolution:** Disputes arising under this Agreement will be resolved by the parties in good faith through negotiations in the ordinary course of business. Any dispute not so resolved will be submitted to a court of competent jurisdiction within the Republic of Kenya.
- xi. **Waiver; modification:** No claim or right arising out of a breach of this terms and conditions can be discharged in whole or in part by a waiver or renunciation of the claim or right unless supported by consideration and in a writing signed by the aggrieved party. The failure of Purchaser to enforce at any time or for any period of time any of the provisions hereof will not be construed to be a waiver of such provisions or of the right of Purchaser thereafter to enforce each and every such provision. The Purchase Order can be modified or rescinded only by a writing signed by authorized representatives from both parties.



- xii. **Notices:** All notices, consents, waivers, and other communications required or permitted to be given pursuant to the Purchase Order, shall be in writing and shall be deemed to have been delivered either (i) on the delivery date, if personally delivered, or if delivered by confirmed facsimile or e-mail.
  
- xiii. **Severability:** If any provision of this terms and conditions shall be held or deemed to be or shall, in fact, be illegal, inoperative or unenforceable, this provision shall not affect any other provision or provisions contained in this Order.
  
- xiv. **Paragraph titles:** The paragraph titles are solely for convenience of reference and shall not affect the meaning or construction of any provision of this terms and conditions.
  
- xv. **Entire agreement:** Provided that there is no written agreement, duly executed by both parties, applying to the transaction, this terms and conditions, with such documents as are expressly incorporated by reference, is intended by the parties as a final expression of their agreement with respect to such terms as are included in it, and is intended also as a complete and exclusive statement of the terms of their agreement