

# TGCS (Japan) Standard Purchase Order Terms and Conditions

*March 1, 2018, to current date*

**Agreement documents:** This Purchase Order (PO) and any attachments are the sole and exclusive agreement of Buyer and Supplier for the products and services in this PO, and no other document, including the Supplier's proposal, quotation or acknowledgement form, will be part of this PO, unless specifically agreed to in writing by Buyer. Terms contained in the Supplier's response to, or acknowledgement or acceptance of, this PO, if any, that are additional to, or different from, the terms set forth herein (which terms would constitute a counter-offer by Supplier) are specifically rejected by Buyer. Buyer's offer to purchase as provided in this PO may not be modified by Supplier counter-offers. Notwithstanding the foregoing, if this PO is deemed an acceptance by Buyer of a Supplier offer or counter-offer, then such acceptance is expressly made conditional on Supplier's assent to all of the terms of this PO, including those that are additional to, or different from, the terms of Supplier's offer or counter-offer. The terms and conditions of this PO are subject to change without notice.

**Prices:** If this PO does not include pricing, the price for the products or services provided hereunder will be Supplier's lowest prevailing market price for such products or services. Supplier is not entitled to reimbursement of expenses incurred in connection with fulfilling this PO, except as otherwise agreed in writing by Buyer.

**Taxes:** Supplier is responsible for and will pay all applicable taxes, charges, fees, levies, or other assessments imposed or collected by any governmental entity (or political subdivision thereof) worldwide on sales of products or services, or sales, use, transfer, goods, and services or value added tax or any other duties or fees related to any payment by Buyer to Supplier for products and/or services provided to Buyer under or pursuant to this PO. If Buyer provides a direct pay certificate, certification of an exemption from tax, or reduced rate of tax imposed by an applicable taxing authority, then Supplier agrees not to invoice, nor pay, any such tax unless and until the applicable taxing authority assesses such tax, at which time Supplier shall invoice and Buyer agrees to pay any such tax that is legally owed. Buyer shall withhold taxes as required under applicable law on payments made to Supplier hereunder and shall be required to remit to Supplier only the net proceeds thereof.

**Terms of payment and acceptance:** Unless otherwise mandated by local law, the terms of payment are net 60 days after receipt of Supplier's valid invoice or after receipt of the products or services, whichever is later. Payment will not be deemed acceptance of products or services, and such products or services will be subject to inspection, test, acceptance or rejection. At Buyer's option, Buyer may reject products or services that do not comply with Buyer's acceptance criteria for a refund, or require Supplier to repair or replace such products or re-perform such services without charge and in a timely manner. Buyer may return non-conforming products to Supplier at Supplier's expense.

**Termination:** This PO may be terminated by Buyer with or without cause, provided, however, that, if Supplier is juridical entrepreneur whose amount of capital or total amount of subscribed equity is not exceeding 300 million yen and the scope of work specified in this PO is the manufacturing related subcontracting work, repairing related subcontracting work, information technology development related subcontracting work and service related subcontracting work as defined in the Act against Delay in Payment of Subcontract Proceeds, etc. to Subcontractors (Act No. 120 of 1 June 1956) and its related cabinet orders, Buyer shall not terminate this PO unless Supplier is liable for such termination. If Buyer terminates without cause, Buyer will pay Supplier for Supplier's actual and reasonable expenses for work that has been satisfactorily completed as of the date of termination, but in no event will such payment exceed the agreed upon prices.

**Preclusion of Antisocial Forces :**

- i. Each party represents that it is not and shall not be Antisocial Forces as defined below.
  - a. Boryokudan --- a group which promotes its members organizationally and routinely to engage in illegal activities.
  - b. Boryokudan Koseiin --- a member of Boryokudan.
  - c. Boryokudan Jun Koseiin --- an individual, other than Boryokudan Koseiin, who have a relationship with Boryokudan Koseiin, and (1) perform or likely to perform illegal activities backed by Boryokudan's influence, or (2) assist Boryokudan's operations in manners of providing monetary support or weapons, otherwise connect with such activities.
  - d. Boryokudan Kanren Kigyo --- a company (1) where Boryokudan Koseiin controls or substantially participates in the management thereof, (2) which purposefully assists Boryokudan's operations by providing Boryokudan monetary support or other benefits, or (3) which assists Boryokudan's operations by purposefully utilizing Boryokudan for business activities.
  - e. Soukaiya etc. --- an individual such as corporate extortionist or corporate rogue who is likely to illegal activities for obtaining benefits and threatens people's life.
  - f. Syakai-undo-to Hyobo Goro --- an individual who is likely to engage in illegal activities to receive benefits under the pretext of conducting social campaigns or political movements and threatens people's life.
  - g. Any other individual equivalent to the above.
- ii. Neither party may perform any of the acts below, directly or via third party.
  - a. Any demands with physical threats.
  - b. Any inappropriate demands outside the scope of legal obligation.
  - c. Any threat or assaults in connection with business transaction.
  - d. Damaging to the credit or obstruction to the business by spreading rumors, utilizing fraudulent conducts, or violent action.
  - e. Any other activities equivalent to the above 1 to 4.
- iii. If a party breaches any terms under Article 1 or Article 2, the non-breaching party may immediately terminate all or any of the agreements between parties without any notice.
- iv. The non-breaching party, who terminates any agreements pursuant to article 3, shall not be liable for any damages, based on contract, tort or any other legal claims, to the breaching party even though the breaching party suffers from damages due to such termination pursuant to the terms under article 3.
- v. The non-breaching party, who terminates any agreements pursuant to the terms under article 3, may recover damages from the breaching party in accordance with the terms under each terminated agreement.

**Imports and exports:** Supplier is the importer and exporter of record. Supplier will comply with all import and export laws and administrative requirements, including the payment of all associated duties, taxes and fees and all applicable laws, regulations, certifications and registrations associated with the import or export of Supplier's products including but not limited to product safety, electromagnetic compatibility, telecommunications, product take-back/recycling and environmental requirements. Upon Buyer request, Supplier will promptly provide all information necessary to export

and import products, including, as applicable, the Export Control Classification Numbers (ECCN) and subheadings or munitions list category number, certification and or test results relating to the products or services and any other and will notify Buyer in writing of any changes to the information provided by Supplier to export and import products. For products that will be imported by the Buyer, Supplier will provide promptly any requisite information, documentation, certification and/or test results for Buyer to comply with applicable import laws and administrative requirements.

**Packages/transportation:** Supplier will comply with: (i) all country of origin marking instructions and all Buyer instructions for exports to Buyer; (ii) all packaging and labeling requirements set out in this PO; and (iii) the transportation routing guidelines in this PO and pursuant to the Shipping transportation guidelines. Default minimum requirements for (i) and (ii) are found under Instructions for cross-border shipments.

**Social and environmental management system:** Supplier will comply with the social and environmental management system supplier requirements as required by Buyer.

**Risk of loss; delivery:** Title and risk of loss remain with Supplier until products purchased under this PO have been delivered to Buyer at the location specified in the PO and accepted by Buyer. For Supplier's delivery of products, time is of the essence. If Supplier fails to deliver on time, Buyer may purchase replacements elsewhere, and Supplier will be liable for actual and reasonable costs and damages Buyer incurs. Supplier will promptly notify Buyer if it is unable to comply with the delivery date specified in this PO.

**Warranties:** Supplier warrants that:

- i. it has the right to enter into this PO;
- ii. it is knowledgeable with, and is and will remain in full compliance with (at its own expense) all laws, rules and regulations that are, or may become, applicable in the provision of products and services hereunder including, without limitation,
  - a. labor and employment laws,
  - b. applicable export and import laws, regulations, orders, and policies, including, but not limited to:
    - i. securing all necessary clearance requirements, export and import licenses and exemptions from, and making all proper filings with appropriate governmental bodies and/or disclosures relating to the release or transfer to non-U.S. nationals of technology and software in the U.S., or outside the U.S., release or transfer of technology and software having U.S. content or derived from U.S.-origin software or technology);
    - ii. being knowledgeable with applicable supply chain security recommendations issued by applicable governments and industry standards organizations and making best efforts to comply with such recommendations;
    - iii. agreeing not to transfer to Buyer any hardware, software, technical data or services controlled under the U.S. International Traffic in Arms Regulations ("ITAR");
  - c. environmental laws, regulations or ordinances governing product environmental and energy characteristics, product content prohibitions, product end-of-life management/product take-back, and/or product safety related to Buyer's transport, import, export, distribution, sale and/or use of Supplier's products as, or as part of, a Buyer product;
  - d. anti-corruption laws; and
  - e. laws and regulations regarding data privacy and data protection;
- iii. its execution of this Agreement will not result in a breach of any other agreements or contracts to which it is a party;
- iv. no claim, lien, or action exists or is threatened against Supplier that would interfere with Buyer's rights under this PO;
- v. products and services do not infringe any privacy, publicity, reputation or intellectual property right of a third party;

- vi. (A) it has disclosed to 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 product(s) or services and (B) it and the products and services comply fully with all licensing agreements applicable to such third party or open source code;
- vii. all authors have agreed not to assert their moral rights in the products and services, to the extent permitted by law;
- viii. products are free from defects in design and free from defects in material and workmanship;
- ix. products are safe for use consistent with and will comply with the warranties, specifications and requirements of this PO;
- x. products do not contain harmful code and Supplier will not engage in electronic self-help;
- xi. products do not contain (and products are not manufactured using) ozone depleting substances known as halons, chlorofluorocarbons, hydro chlorofluorocarbons, methyl chloroform and carbon tetrachloride as defined by the Montreal Protocol and as specified by Buyer in the Baseline Environmental Requirements for Supplier Deliverables;
- xii. products are new and do not contain used or reconditioned parts unless Buyer agrees otherwise in writing;
- xiii. it will not use, disclose, or transfer across borders any information that may identify an individual ("Personal Data") that is processed for or on behalf of Buyer, except to the extent necessary to perform under this PO;
- xiv. it will not offer, promise or make, directly or indirectly any payment for the purpose of improperly influencing (or inducing anyone to influence) decisions or actions of any official of a government controlled entity or public international organization.
- xv. (A) it will implement and maintain appropriate technical and organizational measures and other protections for Personal Data (including, without limitation, not loading any Personal Data provided to Supplier on (a) any laptop computers or (b) any portable storage media that can be removed from Supplier's premises unless each case (i) such data has been encrypted and (ii) such data is loaded onto portable storage media solely for the purpose of moving such data to off-site storage), (B) it will report to Buyer any breaches of security of Personal Data immediately after discovery ("Security Incident"), (C) it will cooperate fully with Buyer in investigating any Security Incidents, (D) it will cooperate fully with Buyer's requests for access to, correction of, and destruction of Personal Data in Supplier's possession, and (E) it will comply with all instructions or other requirements provided or issued by Buyer from time to time relating to Personal Data;
- xvi. it will not export, directly or indirectly, any technology, software or commodities of U.S. origin or having U.S. content provided by Buyer or their direct product to any of the countries or to nationals of those countries, wherever located, listed in U.S. Export Administration Regulations, as modified from time to time, unless authorized by appropriate government license or regulations;
- xvii. it will not, nor will it authorize or permit Supplier Personnel to, disclose, export or re-export any of Buyer's information, or any process, or product that is produced under this PO, without prior notification and compliance with all applicable Federal, State and local laws, regulations and ordinances, including U.S. export control regulations.

**Intellectual property:** Supplier grants Buyer all rights and licenses necessary for Buyer and its affiliates to use, transfer, pass-through, and sell the products and services and to exercise the rights granted under this PO.

**Products and services containing open source code:** With respect to the products and services containing open source code, Buyer will order the products and services on behalf of the customer to Supplier directly or indirectly, and Buyer shall not intend to resale as general. The products and services shall be licensed to the customer not by Buyer but directly by the copyrights holders or other rights holders of such products and services ("Rights Holders"), in that case, the terms of use provided by Rights Holders shall apply to Customer for such use. If the product is electronic licenses, the issuance of license keys to be intended to directly license to Customer by Suppliers shall be deemed as delivery of PO.

**Ownership of products:** Except for products consisting of software (which is licensed as provided under Intellectual Property above), all work product developed by Supplier and provided to Buyer under this PO are and shall remain the personal property of Buyer.

**Indemnification:** Supplier agrees to defend, hold harmless, and indemnify Buyer and its affiliates from any claim (including without limitation costs, expenses and attorneys fees) arising from (a) claims that any product infringes any intellectual property rights, (b) the failure of Supplier to comply with its warranties and obligations under this PO or (c) a Security Incident. If a claim of infringement is made, Supplier will, at its own expense, exercise the first of the following remedies that is practicable: (i) obtain for Buyer the rights granted under this PO; (ii) modify the product so it is non-infringing and in compliance with this PO; (iii) replace the product with non-infringing ones that comply with this PO; or (iv) accept the return or cancellation of the infringing product and refund any amount paid.

**Limitation of liability:** To the extent permitted by local law, in no event will Buyer or its affiliates be liable for any lost revenues, lost profits, incidental, indirect, consequential, special or punitive damages. In no event shall Buyer's liability to Supplier exceed the total amount of fees actually paid by Buyer to Supplier hereunder.

**Assignment:** Supplier will not assign its rights or subcontract its duties without Buyer's written consent. Any unauthorized assignment is void.

**Exchange of information:** All exchanges of information between the parties pursuant to this PO will be considered non-confidential. If the parties intend to exchange confidential information, such exchanges shall be made under a separate written confidentiality agreement. For any Personal Data relating to Supplier's personnel that Supplier provides to Buyer, Supplier will obtain the informed consent of such personnel to release the information to Buyer and to allow Buyer to use, disclose, and transmit such information on a worldwide basis among Buyer and its affiliates in connection with this PO.

**Right to audit:** Buyer may, on reasonable notice to Supplier, audit Supplier's books, ledgers, supporting records/documentation and related procedures and controls, relating to any charges paid by Buyer in connection with this PO.

**Insurance:** Supplier shall obtain and maintain all applicable and appropriate insurance, (including, without limitation, business, workers' compensation, auto, errors and omissions, professional and commercial general and liability insurance) in an amount consistent with Supplier's industry practice. Each policy shall name Buyer as a loss payee or additional insured, as appropriate.

**Applicable laws:** This PO is governed by the laws of the country where the Buyer is located, except: (i) in Australia, this PO will be governed by the laws of the State or Territory in which the transaction occurs; (ii) in the United Kingdom, this PO will be governed by the laws of England; (iii) in Bulgaria, Croatia, Czech Republic, Hungary, Poland, Romania, Slovakia and Slovenia, this PO will be governed by the laws of Austria; (iv) in Estonia, Latvia, and Lithuania, Finnish law will apply; (v) in Canada, the laws of the Province of Ontario govern this PO; and (vi) in the United States (including if any part of the transaction occurs within the United States), Puerto Rico, and People's Republic of China, the laws of the State of New York applicable to contracts executed in and performed entirely within that State govern this PO.

**General:** Any reproduction of this PO by reliable means will be considered an original of this PO. The United Nations Convention on Contracts for the International Sale of Goods does not apply. The parties expressly waive any right to a jury trial regarding disputes related to this PO. Unless otherwise provided by local law without the possibility of contractual waiver or limitation, any legal or other action related to this PO must be commenced no later than two (2) years from the date on which the cause of action arose.

No modification, amendment, supplement to, or waiver of this PO by Buyer shall be binding upon the parties unless made in writing duly signed by both parties and specifically referencing this PO. Buyer's failure to exercise any right hereunder shall not operate as a waiver thereof.

Both shrinkwrap and clickwrap licenses accompanying any product consisting of software and online Terms of Use or Terms of Service relating to services provided online are null and void, and the terms and conditions of this PO prevail.

Any services performed by Supplier shall be performed as an independent contractor, and Supplier is solely liable for applicable payroll or income taxes.

Supplier shall not use the name or trademarks of Buyer or its affiliates or refer to or identify Buyer or its affiliates in any marketing materials (including without limitation testimonials or customer listings) or press releases without the prior written consent of Buyer.

Where applicable, the order of precedence among documents will be set forth in the Master Procurement Agreement - SOW.

**Additional provisions relating to Federal and public sector:**

**Compliance with laws unique to government contracts:** For work performed under specific U.S. government procurement contracts the following provisions apply: 48 C.F.R. 52.222-26, Equal Opportunity (Apr. 1984); 48 C.F.R. 52.222-35, Affirmative Action for Special Disabled and Vietnam ERA Veterans (Apr. 1984) (If for \$10,000 or more); 48 C.F.R. 52.222-36, Affirmative Actions for Handicapped Workers (Apr. 1984) (if in excess of \$2,500); and 48 C.F.R. 52.222-37, Employment Reports on Special Disabled Veterans of the Vietnam Era (Jan. 1988) (If \$10,000 or more). These provisions have the same force and effect as if they were stated in their full text. Supplier agrees that it and its employees who work under this PO will comply, and assist Buyer in complying with, the laws unique to performing on government contracts, including without limitation, the following statutes and regulations: 31 U.S.C. 1352, relating to the limitation on the use of appropriated funds to influence certain Federal contracts; 41 U.S.C. 51-58, Anti-Kickback Act of 1986; 41 U.S.C. 423, Procurement Integrity Act; and 48 C.F.R. Subpart 9.5, relating to conflicts of interest; and 29 CFR Part 471, including the posting of the employee notice prescribed at 29 CFR Part 471, Appendix A to Subpart A. Supplier also agrees not to offer or give gifts on behalf of Buyer to third parties, including without limitation, U.S. government employees and officials.

**Notification of debarment/suspension:** By acceptance of this PO either in writing or by performance, Supplier certifies that as of the date of issuance of this PO neither Supplier, nor any of Supplier's principals, is debarred, suspended, or proposed for debarment by the Federal Government or any State Government. Further, Supplier shall provide immediate written notice to Buyer in the event that during the performance of this PO Supplier or any of Supplier's principals is debarred, suspended, or proposed for debarment by the Federal Government or any State Government.

**Conflicts of interest:** In the performance of this PO, it is Supplier's responsibility to avoid: (1) any actual or apparent conflict between Supplier's duties or obligations to other parties, including the Federal Government, and such duties and obligations assumed under this PO and (2) disclosure of information which would, or would appear to, violate such duties and obligations to third parties. In the performance of this PO, Supplier shall not make or participate in any marketing calls or contacts with the Federal Government or others which might create the possibility or appearance of a conflict of interest or an actual conflict of interest. Supplier also agrees that, if subsequent to the issuance of this PO, Supplier finds that a conflict, or what may appear to be a conflict, develops because of a relationship created or intended to be created between Supplier or Supplier's agents, or employees and any third party or with an agency or other representative of the Federal Government or any other Government, Supplier shall immediately notify Buyer, and Buyer shall have the right, at its sole discretion, to terminate this PO on notice. Upon exercise of such right of

termination, Buyer's only obligation to Supplier shall be to reimburse Supplier for proper services satisfactorily completed as of the date of termination.

**Additional warranties:** Supplier warrants that:

- i. any information it discloses to Buyer does not violate any law, regulation or ordinance of any U.S. Federal, state or local governmental authority regarding the integrity of the procurement process and has not been obtained from any Government classified documents or other classified information sources;
- ii. it is not now employed by the Federal or any other Government, and further, it is not consulting with any agency or other representative of the Federal Government, or with any other third party, on matters which conflict or appear to conflict with the subject matter of this PO;
- iii. (A) no individual who is a former officer or employee of the U.S. Government shall be employed or compensated for services rendered under this PO within one year after conveying a benefit to Buyer in excess of \$10 million within the meaning of the Procurement Integrity Act, 41 USC, 423, and its implementing regulations; (B) it shall pay no compensation hereunder to any covered U.S. Department of Defense official within the meaning of section 847 of the National Defense Authorization Act for Fiscal Year 2008, Pub. L. No. 110-181, unless that individual has first obtained a written ethics opinion from the appropriate DoD ethics counselor; and (C) it shall immediately, at Buyer's request and sole discretion, remove any specified employee(s), subcontractor(s) and/or agent(s) of Suppliers from Buyer's premises, and agree that they will not be reassigned to any Buyer premises under this PO;
- iv. it will require that each individual working for Supplier hereunder obtains a copy of the [Toshiba Group Standards of Conduct](#) (collectively, the "Guidelines"), and Supplier and Supplier's employees working hereunder will review the Guidelines and assist Buyer in complying with the Guidelines;
- v. (A) neither Supplier, nor any of Supplier's employees or others whom Supplier will employ (as authorized by Buyer), will make any communication with any employee of a Federal Agency, a Member of Congress or any employee of with the intent to influence or attempt to influence the award of contracts to Buyer; (B) it will not engage in lobbying for Buyer within the meaning of the Lobbying Disclosure Act of 1995, 2 U.S.C, 1601 e seq.; (C) it, and all of its employees or others engaged by Supplier are authorized by Buyer to perform services under this PO, are familiar with, and agree to comply with and assist Buyer in complying with, the following, (including any reporting obligations Buyer or Supplier may have relating to):
  1. The Procurement Integrity Act, 41 U.S.C. 423 and Government implementing regulations (Federal Acquisition Regulations/FAR 3.104 et. Seq.);
  2. Government regulations implementing organizational and consultant conflicts of interest, section 8141 of the 1989 Department of Defense Appropriation Act, Public law 100-463 (1988) and Conflict of Interest Policies Applicable to Consultants (FAR Subpart 9.5);
  3. Limitations on the use of appropriated funds to influence certain federal contracting and financial transactions (the Byrd Amendment), 31 U.S.C. 1352 and Government implementing regulations (FAR Subpart 3.8);
  4. The policies and procedures restricting contingent fee arrangements for soliciting or obtaining Government contracts, see 48 C.F.R. Subpart 3.4; and
  5. The revolving-door restrictions set out in 18 U.S.C. Section 207 and its implementing regulations.

