

PURCHASE ORDER
Terms and Conditions

1. **ENTIRE AGREEMENT:** This Purchase Order, including these general terms and conditions, and any special conditions, specifications, drawings and other documents herein constitutes the entire agreement between the parties.
2. **DEFINITIONS:** "ADB" means Asian Development Bank.
"Seller" means supplier of the Goods to ADB.
"Goods" means those articles, material, supplies, drawings, data and other property, and performance of all specified or required services, including but not limited to design, drafting, manufacturing, packing, loading, transportation, quality surveillance and testing, as required to be supplied by the Seller to ADB in accordance with the Purchase order and as described therein.
"Purchase Order" means the several documents listed in the Purchase Order and constituting the minimum requirements for the supply of the Goods by Seller to ADB.
"Delivery Point" means the location, on the terms identified herein, set out under "Terms of delivery" in the Purchase Order.
3. **ACKNOWLEDGMENT AND ACCEPTANCE OF PURCHASE ORDER:** The Seller, by signing the acceptance copy of the Purchase Order and returning it to ADB, signifies acceptance of the Purchase Order and of the terms and conditions governing the Purchase Order and thereby has entered into and executed the contract for the Goods and Services stated. The Seller may also signify his acceptance of the Purchase Order by sending telex/fax to ADB, Attention: Head, OAS-PC.
4. **PRICE AND PAYMENTS:** The price of the Goods stated in the Purchase Order shall constitute the full compensation to the Seller for the Goods, and shall include, unless otherwise stated, all costs, fees and other charges of any kind incurred by the Seller related to the Goods prior to delivery of the Goods to ADB at the Delivery Point. Payment will be made in accordance with the applicable provisions of the Purchase Order.
5. **PROGRESS PAYMENTS:** Each progress payment made to the Seller must be supported by an "on demand" banker's guarantee to be provided by the Seller, the format of which shall be mutually agreed between the parties, unless otherwise expressly agreed by ADB. All costs incurred in providing banker's guarantees shall be borne by the Seller.
6. **CHANGES:** ADB may make any change in the specifications including additions to, or deletions from, the quantities of the goods originally ordered. If any such change affects the amount due or the time of performance hereunder, an equitable adjustment shall be made by ADB to the amount or to the time of performance by written change order.
7. **TERMINATION:** ADB may at anytime, at its option, terminate this agreement, in whole or in part, by giving written notice thereof to the Seller. In the event of such termination, the amount due under the Purchase Order shall be subject to an equitable adjustment, provided only that ADB shall not be required to pay the Seller for the Goods ordered, but not delivered, which are part of the Seller's standing stock.
If the Seller becomes insolvent or bankrupt, or enters into liquidation, or gives ADB reasonable evidence of its inability to deliver the Goods as specified or fails to correct any nonconformity in the Goods, or performs in bad faith by willfully not observing the terms and conditions of this agreement, ADB may, upon expiry of five (5) day's written notice of default, terminate this agreement in whole or in part.
8. **DELAYS:** Time is of the essence. Failure by the Seller to deliver the Goods within the time specified in the Purchase Order or within a reasonable period of time, if no time is specified shall, at the option of ADB, relieve ADB of its obligations to accept and pay for the Goods. Where delays in delivery are due to causes beyond the Seller's reasonable control (such as act of nature, act of government, fire, general strike, flood, epidemic, war, riot or civil commotion), delivery shall be subject to an extension of the period of time for performance, provided the Seller has given ADB written notice of delay within three (3) days of its commencement. The extent of any extension to the performance period shall be equal to the time actually lost by the Seller as a result of the delay.
9. **LIQUIDATED DAMAGES:** In case the Seller fails to deliver any or all the Goods within the time period specified in the Purchase Order, ADB may, without prejudice to any other remedy it may have under the order, deduct from the order value, as liquidated damages, a sum equivalent to one-tenth of one percent (0.1%) of the contract value for each day of delay in delivery subject to a maximum amount of ten percent (10%) of the order value.
10. **INSPECTION, TESTING AND ACCEPTANCE:** ADB's authorized representatives shall have the right to inspect and test the Goods at any time during manufacture and prior to shipment, and to inspect and test the Goods within a reasonable period of time after their arrival at the place of final acceptance. Final acceptance of the Goods shall be given by ADB only upon satisfactory completion of such final inspection and testing which ADB may not be able to perform until the Goods have been placed into the service for which they were purchased.
11. **WARRANTY:** The Seller warrants that the Goods shall be free from defect in design, material, workmanship and title; shall conform in all respects with the terms of the Purchase Order; and shall be of the best quality if no quality is specified. If any such defect in the Goods becomes evident within one year of operation, and ADB so notifies the Seller within a reasonable period of time after discovery of the defect, the Seller shall thereupon promptly correct the defect at its expense.
If the Seller does not replace or repair the Goods as notified to the Seller as being defective within a period of time reasonable in the circumstances, ADB shall have the right to remedy the said defect at the Seller's risk, cost and expense.
12. **PATENT-OF-DESIGN INDEMNITY:** The Seller shall, at its expense, hold harmless and defend ADB against any claim based upon a claim, rightful or otherwise that the Goods, or any part thereof, infringe a patent or registered design of the country of manufacture, sale or use.
13. **ASSIGNMENT:** Any assignment of the Purchase Order or of any rights hereunder, in whole or in part, without the prior consent of ADB shall be void.
14. **LANGUAGE:** All communications and documents relating to the Purchase Order shall be in English.
15. **LEGAL STATUS OF ADB:** ADB is a public international organization, established by an intergovernmental agreement known as the "Agreement Establishing the Asian Development Bank" (hereinafter the Charter), and has its principal office in the Republic of the Philippines, pursuant to the "Agreement between the Asian Development Bank and the Republic of the Philippines Regarding the Headquarters of the Asian Development Bank" (hereinafter the Headquarters Agreement). Under the Charter and the Headquarters Agreement, the ADB and its assets, property, income, operations and transactions are exempt from any obligation to pay, withhold or collect any tax or duty. Payment of the Philippine Consular fee should be exempt upon presentation of the Certification of Exemption.
16. **ARBITRATION:** Any dispute arising out of or in any way relating to this Purchase Order or its interpretation or performance shall be referred to arbitration which shall take place in Manila, Philippines, and shall be settled under the Rules of Arbitration of the International Chamber of Commerce with arbitrators selected in accordance with the said Rules. The award of arbitration shall be final and binding on both parties and shall be in lieu of any other remedy. Each party shall bear its own costs.