

Philips Terms and Conditions of Sales

These terms ("**Terms**") apply to the Services provided by Philips Malaysia Sdn Bhd ("**PMSB**") to the customer ("**Customer**") under the quotation.

1. SERVICES

PMSB agrees to provide the services specified in the quotation ("**Services**") on the equipment specified in the quotation ("**Equipment**").

2. PAYMENT

Customer shall pay to PMSB all amounts set forth in the quotation in the manner specified in the quotation. Where a credit term is not specified in the quotation, all amount invoiced by PMSB shall be paid in full by the Customer within thirty (30) days from the date of invoice. Any amount remaining unpaid for thirty (30) days after payment is due is subject to interest at the rate of 1.5% (one point five percent) per month, or the maximum interest rate allowed by law, whichever is less, until the amount owing is paid in full. In the event that collection efforts are required, Customer agrees to reimburse PMSB the reasonable costs and expenses of collection, including actual attorneys' fees. Payment of any given invoice shall not be set off or withheld against fees on any other invoice due to any claim or dispute between PMSB and Customer on that other invoice. All prices indicated in the quotation are in Malaysian Ringgit (MYR) and are exclusive of any applicable sales, goods and services, excise, use, import or customs duties or other taxes in effect or later levied. Philips shall invoice the customer for those taxes, and the customer shall pay those taxes in accordance with the terms of the invoice.

3. TERM; TERMINATION.

- 3.1 The term of the Services shall commence on the date set forth in the quotation and shall remain in effect until the Services are performed by PMSB.
- 3.2 Either party, upon giving written notice to the other party, may terminate the Services: (a) if the other party or its employees, consultants or other agents violate any provision of these Terms and/or the quotation (including failure to make timely payment) and the violation is not remedied within thirty (30) days of the party's receipt of written notice of the violation; (b) at any time in the event the other party terminates or suspends its business, becomes insolvent, files for bankruptcy, is dissolved, goes into liquidation, or has a receiver appointed over any material portion of its assets.
- 3.3 In the event the Services are terminated, Customer shall be liable to PMSB for all sums owing for all work performed and any other termination charges as set forth in the quotation.

4. REPLACEMENT OF PARTS OR COMPONENTS

- 4.1 Where the Services require any part or component of the Equipment to be replaced, PMSB shall inform Customer of the same to obtain the Customer's prior approval for replacement to be effected. For the avoidance of doubt, PMSB shall not be liable or responsible for any delays that occur or are caused as a result of the Customer's failure to provide the approval on a timely basis.
- 4.2 Unless stated otherwise in the quotation, replacement of any part or component shall be chargeable to Customer and shall be paid against invoices issued by PMSB.
- 4.3 Customer shall return all defective spare parts of the Equipment to Philips once replacement work is completed.

5. RESPONSIBILITIES

PMSB and Customer shall each perform the responsibilities specified in the quotation.

6. LOCATION OF PERFORMANCE

Services will be performed at the Customer's location where the Equipment is installed.

7. INDEPENDENT CONTRACTOR

PMSB's employees shall perform the Services as independent contractors and consultants to Customer and not as employees of Customer. PMSB shall be solely responsible for the payment of salary, payroll taxes and worker's compensation insurance for its employees.

8. WARRANTY

- 8.1 PMSB warrants to Customer that the Services to be rendered hereunder, will be performed in a workmanlike manner and by qualified personnel.
- 8.2 Unless otherwise specified in the quotation, PMSB makes no representations or warranties as to any equipment or third-party software provided to Customer, all of which is transferred to Customer on an "as is" basis (and subject to any third party terms and conditions). With respect to such equipment and third party software that is warranted by a third party, PMSB shall use commercially reasonable efforts to pass any such warranties and intellectual property rights on to Customer. Customer shall look solely to the warranties and remedies provided by the equipment manufacturer and third-party software licensor, if any.
- 8.3 PMSB MAKES NO OTHER WARRANTIES AND EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, WHETHER WRITTEN, ORAL OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR ANY OTHER WARRANTY WITH RESPECT TO THE QUALITY, ACCURACY OR FREEDOM FROM ERROR OF THE OPERATION, USE AND/OR FUNCTION OF THE SERVICES OR SOFTWARE PRODUCTS.

9. LIMITATION OF LIABILITY

PMSB'S LIABILITY TO CUSTOMER UNDER OR RELATING TO THE SERVICES SHALL BE LIMITED TO ACTUAL DAMAGES AND SHALL IN NO EVENT EXCEED THE AMOUNTS PAID BY CUSTOMER TO PMSB FOR THAT PORTION OF THE SERVICES OR DELIVERABLES DIRECTLY CAUSING THE DAMAGES, AND IN NO EVENT SHALL COMPANY BE LIABLE TO CUSTOMER FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS OR GOODWILL) RELATED TO THE SERVICES OR RESULTING FROM CUSTOMER'S USE OR INABILITY TO USE THE SOFTWARE, PRODUCTS AND/OR SERVICES, OR BASED ON THE LOSS OF OR COST OF RECOVERING ANY DATA OR DATA BASE, OR ARISING FROM ANY CAUSE OF ACTION WHATSOEVER, INCLUDING CONTRACT, WARRANTY, TORT,

STRICT LIABILITY, INDEMNITY OR NEGLIGENCE, EVEN IF PMSB HAS BEEN NOTIFIED OF THE POSSIBILITY OF SUCH DAMAGES.

10. INTELLECTUAL PROPERTY

- 10.1** PMSB shall own all the intellectual property rights (“IPR”) in all materials created by PMSB as a result of performing the Services.
- 10.2** PMSB, Customer and any third party shall continue to own their pre-existing intellectual property, whether or not incorporated into a deliverable specified in the quotation (“**Deliverable**”).
- 10.3** To the extent PMSB is the owner of the IPR in any Deliverables, then, subject to clause 10.2 and Customer’s compliance with the terms and conditions herein, PMSB hereby grants to Customer a perpetual, non-exclusive, royalty-free license to use the Deliverables for its own internal purposes.
- 10.4** Except to the extent that PMSB tools are embedded in, and used solely as components of, the Deliverables, upon completion or termination of the Services, Customer shall return to PMSB the originals and all copies of CSC tools used in connection with the Services.
- 10.5** To the extent a third party is the owner of IPR in any Deliverables, Customer’s rights and obligations in relation to such Deliverables shall be governed by the terms and conditions of the third party’s applicable intellectual property licence agreement.
- 10.6** PMSB will have the perpetual right to use any know-how it acquires or generates in the performance of the Services.
- 10.7** Subject to clauses 10.8 and 10.9, PMSB will:
- 10.7.1** at its own expense defend or settle, any demand, claim, suit, action or proceeding by a person against the Customer that the Deliverables directly infringes the IPR of that person (“**IPR Infringement Claim**”); and
- 10.7.2** indemnify Customer against all losses and damages that are incurred by Customer in connection with the IPR Infringement Claim.
- 10.8** If a third party makes an IPR Infringement Claim, Customer must:
- (a) notify PMSB in writing of the claim as soon as practicable;
 - (b) allow PMSB to conduct the defence of such a claim, including any negotiations for its settlement or compromise;
 - (c) co-operate with PMSB and provide PMSB with reasonable assistance in defending or settling the claim, including making its personnel available to give statements, advice and evidence as PMSB may reasonably request; and
 - (d) permit PMSB to modify, alter or substitute the infringing material, at its own expense, to render that material non-infringing, or procure for the Customer the authority to use and have possession of the material.
- Failure by Customer to comply with this clause 10.8 relieves PMSB of any obligation to indemnify under clause 10.7 in respect of the subject matter of the relevant IPR Infringement Claim.
- 10.9** PMSB will not indemnify Customer to the extent that any IPR Infringement Claim is based upon:
- (a) any material furnished to PMSB by Customer;
 - (b) use of material in combination with hardware, software or other material not specifically approved by PMSB;
 - (c) use of material in a manner or for a purpose not reasonably contemplated or not authorised by PMSB;
 - (d) modification or alteration of material by anyone other than the PMSB;
 - (e) modifications to Customer-owned or Customer-supplied material where the modification is not in contravention of any conditions of use notified to PMSB; or
 - (f) a failure by Customer to obtain the rights and licences contemplated by the quotation,
- and Customer will indemnify PMSB against any loss or damage arising out of a third party claim which arises from an event specified above.
- 10.10** The provisions of clause 10 constitute the entire liability and obligations of PMSB with respect to infringement of any IPR by the Deliverables, and Customer expressly waives any other such claims or other liabilities against PMSB.

11. CONFIDENTIALITY

- 11.1** A party receiving Confidential Information under this Agreement (“**Receiver**”) may only use Confidential Information of the other party (“**Discloser**”) to the extent necessary to enable the Receiver to exercise its rights or perform its obligations hereunder.
- 11.2** Receiver may only disclose Confidential Information to subcontractors and personnel and legal and accounting advisers having a need to know, and who are under non-disclosure obligations no less restrictive than in this Agreement. Receiver will advise such subcontractors, personnel and advisers who receive Confidential Information of its confidential nature, and ensure that such persons do not make any unauthorised use or disclosure of it. Receiver shall not disclose Confidential Information to any other third party without the prior written consent of Discloser.
- 11.3** Receiver shall protect the disclosed Confidential Information from unauthorised disclosure by using the same degree of care, but no less than a reasonable degree of care, as Receiver uses to protect its own proprietary or confidential information of a like nature.
- 11.4** Upon the written request of Discloser, Receiver will return or destroy (at Discloser’s election) all Confidential Information received (including all copies) and provide Discloser with documentation attesting to that fact.
- 11.5** Receiver shall notify Discloser of any unauthorised use or disclosure of the Confidential Information. In the event of a breach, or threatened breach, by the Receiver of this clause 11, monetary damages may not be sufficient relief, so the Discloser is entitled to enforce its rights by specific performance or injunction proceedings, in addition to any other rights or remedies which it may have.
- 11.6** Except as otherwise agreed in writing with respect to any particular Confidential Information, the obligations of a party receiving Confidential Information under this clause 11 will continue (a) indefinitely in relation to intellectual and industrial property rights, trade secrets and know how in respect of software; and (b) for three (3) years beyond the date of signing of this Agreement in relation to all other Confidential Information.
- 11.7** The obligations under this clause 11 will not apply to any information which is (a) available to the public other than by breach of this Agreement by Receiver; (b) lawfully received by Receiver from a third party without proprietary or confidentiality limitations; (c) independently developed by Receiver; or (d) known to Receiver prior to first receipt of same from Discloser.
- 11.8** This clause 11 will not apply to prevent Receiver from disclosing Confidential Information to the extent required by law or regulatory requirement, provided Receiver notifies Discloser promptly on receiving notice of such requirement, and asserts the confidentiality of the relevant Confidential Information to the body requiring disclosure.

12. FORCE MAJEURE

Neither party shall be responsible for any delay or failure in performance, caused by flood, riot, insurrection, fire, earthquake, strike, communication line failure and power failure, explosion or act of God, death of, or incapacitating illness or injury to, key personnel of PMSB or any other force or cause beyond the control of the party claiming the protection of this clause.

13. CHANGE ORDERS

The scope of the services may be modified by mutual agreement between PMSB and Customer. All modifications shall be in writing specifying the necessary changes to the quotation, the expected completion dates and the cost ("**Change Order**"). PMSB shall perform no services outside the scope of the Services as defined in writing in the quotation, except as agreed to in writing and documented in a Change Order.

14. COMPLIANCE WITH LAWS

Both parties agree to comply, and assist one another in complying with all applicable Federal, State and local laws and regulations.

15. GENERAL

15.1 Assignment. Neither party may assign its rights and obligations hereunder, except to its subsidiaries and affiliates, without the prior written consent of the other party. Request for consent may not be unreasonably withheld. PMSB has a right to subcontract all or any portion of the work hereunder; provided, however, PMSB shall remain fully responsible for performance and completion of such work. The use by PMSB of personnel from any of its subsidiaries and affiliates shall not be deemed an assignment.

15.2 Choice of Law and Jurisdiction. These Terms and the quotation will be governed by the laws of Malaysia without reference to conflicts of laws rules or choice of laws rules or principles and shall inure to the benefit of PMSB, its successors, administrators and assigns. The parties submit to the non-exclusive jurisdiction of the courts of Malaysia.

15.3 Saving Clause. Each provision of these Terms is severable from all other provisions and, if one or more of the provisions of these Terms shall be declared invalid, the remaining provisions of these Terms shall, nevertheless, remain in full force and effect.

15.4 Complete Agreement. These Terms and the quotation represent the entire agreement between Customer and PMSB with respect to matters covered herein and supersedes all previous proposals and/or agreements, whether written or oral. No variation or alteration of any term of these Terms and the quotation shall have effect, unless in writing and signed by authorized representatives of PMSB and Customer. Terms and conditions contained in any purchase order issued by Customer to PMSB that are inconsistent with these Terms and/or the quotation, or which add terms and conditions beyond those contemplated herein, including any pre-printed terms and conditions on such purchase order, shall be ineffective and void.

15.5 Notices. Any notice required to be given by either party hereunder shall be in writing and sent by certified mail to the address of the other party specified in the quotation. Such notice will be deemed to have been received two days from the date of mailing.

15.6 Captions and Headings. Captions included in these Terms are for convenience only and are not to be used for purposes of interpretation of these Terms and the quotation.

15.7 Waiver. No failure or delay by either party in exercising any right, power, or remedy hereunder will operate as a waiver of any such right, power or remedy. No waiver of any provision of these Terms will be effective unless in writing and signed by the party against whom such waiver is sought to be enforced. Any waiver by either party of any provision of these Terms will not be construed as a waiver of any other provision of these Terms, nor will such waiver operate as or be construed as a waiver of such provision respecting any future event or circumstance.

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