

# General terms and conditions of Purchase Orders

Unless specifically stated otherwise, the following clauses shall form the terms and the conditions of the PURCHASE ORDER.

## 1. DEFINITIONS

- (a) **"Agreement"** means the Particular Terms and Conditions and General Terms and Conditions, if any
- (b) **"Associated Person"** means a person associated with the Contractor including, but not limited to any of its employees, agents, contractors, sub-contractors, consultants, representatives and agents of the Contractor.
- (c) **"COMPANY"** means the Eaglestar entity whose name and particulars are more particularly stated at the end of the Particular Terms and Conditions and shall include its successors-in-title and permitted assigns.
- (d) **"CONTRACTOR"** means any person or company having a contract for the supply of Product to the COMPANY.
- (e) **"Data Controller"** means a person who, either alone or jointly with others, determines the purposes or means of processing personal data and has control over or authorizes the processing of any personal data but does not include Data Processor.
- (f) **"Data Processor"** means any person (other than an employee of the Data Controller) who processes data on behalf of the Data Controller.
- (g) **"Data Protection Legislation"** means all applicable data protection legislation globally, including but not limited to the Malaysian Personal Data Protection Act 2010, the Singapore Personal Data Protection Act 2012 and the UK Data Protection Act 1998 (together with the General Data Protection Regulation (EU 2016/2017)) or any successor legislation.
- (h) **"INCOTERMS"** means the Incoterms applicable on the date of the PO (latest edition), issued by the International Chamber of Commerce, Paris, France and any amendments made thereto;
- (i) **"PRODUCTS"** means the materials, goods or services to be purchased or to be supplied as specified in the PURCHASE ORDER and/or any part thereof.
- (j) **"Personal Data"** means data relating to individuals who can be identified from the data, or from the data and other information which is in the possession of, or is likely to come into the possession of, the Data Controller, and includes any expression of opinion about the individual and any indication of the intentions of the Data Controller or any other person in respect of the individual.
- (k) **"PURCHASE ORDER"** means the PURCHASE ORDER form or PO, this document, Agreement and any other document listed herein and shall constitute the entire agreement between the parties.
- (l) **"Services"** means the services to be provided by the CONTRACTOR, the details more particularly referred to in the PURCHASE ORDER or whenever applicable, the scope of services and works that may be ordered by the COMPANY under the relevant PURCHASE ORDER.
- (m) **"Work"** means all supplies of Services and/or PRODUCTS to be provided pursuant to the relevant PURCHASE ORDER.

## 2. DELIVERY TIME

- 2.1. Time is of the essence for the PURCHASE ORDER. The time stipulated for delivery of PRODUCTS shall be strictly adhered to in accordance with the agreed INCOTERMS. Without prejudice to the CONTRACTOR's obligation to deliver the PRODUCTS on time, the CONTRACTOR shall give the COMPANY notice in writing immediately if any delay is foreseen. Failure to deliver on the date specified or subsequently agreed shall entitle the COMPANY (without prejudice to any other rights it may have):
  - (a) to cancel order without any penalty to the COMPANY; and/or
  - (b) refuse to accept any subsequent delivery of the PRODUCTS which the CONTRACTOR attempts to make; and/or
  - (c) recover from the CONTRACTOR any expenditure reasonably incurred by the COMPANY in obtaining the PRODUCTS in substitution from another contractor; and/or
  - (d) claim damages for any additional costs incurred by the COMPANY which are in any way attributable to the CONTRACTOR's failure to deliver the PRODUCTS on the due date; and/or
  - (e) to impose liquidated damages (which CONTRACTOR and the COMPANY hereby agree shall not be considered as penalty) which is calculated at 0.1% of the PURCHASE ORDER price per day for each day of delay (pro-rated) up to 10% of the PURCHASE ORDER price. In the event the delay continues and the CONTRACTOR is unable to deliver the PRODUCTS and accumulates the maximum amount of liquidated damages payable by the CONTRACTOR to the COMPANY, the COMPANY shall have the immediate right to terminate this PURCHASE ORDER.
- 2.2. The CONTRACTOR shall ensure that the Work are performed in compliance with the completion date as stated in the PO and/or as stated by the COMPANY. Failure by the CONTRACTOR to perform in complying with the completion date shall entitle the COMPANY (without prejudice to any other rights it may have):
  - (a) to cancel order without any penalty to the COMPANY; and/or
  - (b) recover from the CONTRACTOR any expenditure reasonably incurred by the COMPANY in obtaining the Services from another contractor; and/or
  - (c) claim damages for any additional costs incurred by the COMPANY which are in any way attributable to the CONTRACTOR's failure to perform the Services in compliance with the completion date; and/or
  - (d) to impose liquidated damages (which CONTRACTOR and the COMPANY hereby agree shall not be considered as penalty) which is calculated at 0.1% of the PURCHASE ORDER price per day for each day of delay (pro-rated) up to 10% of the PURCHASE ORDER price. In the event the delay continues and the CONTRACTOR is unable to complete the Services and accumulates the



maximum amount of liquidated damages payable by the CONTRACTOR to the COMPANY, the COMPANY shall have the immediate right to terminate this PURCHASE ORDER.

### **3. INSPECTION**

- 3.1. The CONTRACTOR shall be responsible for ensuring that all inspections and testing of the PRODUCTS and/or Services are properly and adequately performed.
- 3.2. The CONTRACTOR shall ensure that COMPANY or any third party appointed by him, has the opportunity to inspect and witness any testing of the PRODUCTS and/or Services at any time at the CONTRACTOR's workplace or at any places where such PRODUCTS may be and/or Services are performed.
- 3.3. Such inspection or testing including the witnessing thereof shall not relieve the CONTRACTOR from any of its responsibilities and liabilities under the PURCHASE ORDER.
- 3.4. The PRODUCTS will be subject to final inspection and acceptance or rejection upon arrival at their destination as specified in the PURCHASE ORDER.

### **4. PAYMENT**

- 4.1. Payment will be effected within forty-five (45) days after receipt of an undisputed invoice (together with supporting documents) by the COMPANY provided always that the COMPANY has accepted the Work, or as otherwise agreed and stipulated in the PURCHASE ORDER.
- 4.2. The COMPANY shall be entitled to set-off, deduct and/or withhold any payments due under the PURCHASE ORDER when the CONTRACTOR has failed to perform or complete the Work to the COMPANY's satisfaction. Any payment set-off, deducted and/or withheld shall be without prejudice to any other rights or remedies available to the COMPANY.

### **5. CHANGE**

- 5.1. The COMPANY reserves the right at any time to make changes in the PURCHASE ORDER or any part thereof.
- 5.2. No change to or modification of the items, specifications, terms, conditions and prices appearing in the PURCHASE ORDER shall be binding upon the COMPANY unless expressly agreed in writing by the COMPANY. CONTRACTOR shall promptly notify COMPANY in the event that any PRODUCTS subject of the PURCHASE ORDER are affected by changes in drawings, specifications or design, but the CONTRACTOR shall not without prior written consent of the COMPANY incorporate any such changes in the order.

### **6. TITLE AND RISK**

- 6.1. Property and risk in the PRODUCTS shall remain with the CONTRACTOR until they are delivered at the point specified in the PURCHASE ORDER and a delivery order is signed.
- 6.2. The passing of property shall not affect the right to reject the PRODUCTS.
- 6.3. In the case of Work delivered by the CONTRACTOR not conforming with the PURCHASE ORDER whether by reason of not being of the quality or in the quantity or measurement stipulated or being unfit for the purpose for which they are required, the Company shall have the right to reject such Work within a reasonable time of their delivery and inspection and to purchase elsewhere and to claim for any additional expenses consequent thereto.

### **7. TERMINATION**

- 7.1. Without prejudice to the rights and remedies available under the PURCHASE ORDER, the COMPANY shall have the right to terminate the PURCHASE ORDER at any time for any reason by giving fourteen (14) calendar days prior written notice to the CONTRACTOR.
- 7.2. Without prejudice to the right of termination described under Clause 7.1 above, the COMPANY may if it is of the reasonable opinion that any default by the CONTRACTOR is capable of being remedied, give written notice stating the details of such default and require the CONTRACTOR to remedy the default within seven (7) days, failing which COMPANY shall have the right to issue a notice of discontinuance of part or whole of the Work and/ or terminate the PURCHASE ORDER at the sole discretion of the COMPANY.
- 7.3. The COMPANY shall be entitled to terminate the PURCHASE ORDER immediately pursuant to Clause 2.1(e) or Clause 2.2(d), as the case may be. 7.3 Either Party hereto (the "Notifying Party") shall have the right at all times by giving notice in writing to the other to terminate the PURCHASE ORDER with an immediate basis if the other Party has committed fundamental and/or material breach of its obligations under the PURCHASE ORDER and/or has ceased to trade, become insolvent or is subject to any bankruptcy or liquidation proceedings, receivership, administration or any other procedure arising out of the failure to pay debts as they become due or ownership of the CONTRACTOR has been materially altered.
- 7.4. Upon termination of the PURCHASE ORDER, the COMPANY shall only be liable to pay such portion of the PURCHASE ORDER price for the Work accepted by the COMPANY prior to the termination of the PURCHASE ORDER without prejudice to its right to set-off or retain any payment as stipulated in the PURCHASE ORDER.

## 8. LIABILITY AND INDEMNITY

- 8.1. The CONTRACTOR shall indemnify and hold harmless the COMPANY from and against any and all claims, liability, damage, loss or expense (including attorney fees) of the CONTRACTOR and third parties in respect of injury, sickness, diseases or death of persons, and/or loss of or damage to property both real and personal, of the CONTRACTOR and third parties save where such claim, liability, damage or loss is solely caused by the gross negligence or wilful misconduct of the COMPANY.
- 8.2. The CONTRACTOR shall indemnify and hold harmless the COMPANY from and against all claims brought against the COMPANY by a third party alleging that the Work performed by the CONTRACTOR infringes the Intellectual Property Right, any patent copyright or trademark, foreign or domestic resultant from the use or resale of Product of the third party.
- 8.3. The CONTRACTOR shall protect, indemnify and hold harmless the COMPANY and its personnel, against any and all liability, loss or expense by reason of any claim, action or litigation in respect of any patent copyright or trademark, foreign or domestic, resultant from the use or resale of PRODUCTS.
- 8.4. The COMPANY shall not be liable for any indirect, remote or consequential losses (including but not limited to loss of earnings or loss of anticipated profits) and/or claims arising out of or in connection with the termination of the PURCHASE ORDER and/or payment of compensation for the unexpired term of the PURCHASE ORDER.
- 8.5. The CONTRACTOR's obligations arising under Clause 5 herein shall survive termination of the PURCHASE ORDER.

## 9. LICENCE AND PERMIT

- 9.1. In the performance of the PURCHASE ORDER, the CONTRACTOR shall obtain and maintain, all necessary permits, licenses and authorisations in the country or countries where any part of the PURCHASE ORDER is being performed including all necessary immigration and/or work permits for personnel engaged in the performance of the PURCHASE ORDER at its own costs;.
- 9.2. The CONTRACTOR shall abide by and comply with all applicable laws, rules and regulations of any governmental or regulatory body having jurisdiction over the PURCHASE ORDER.

## 10. WARRANTY

- 10.1. The CONTRACTOR warrants to the COMPANY and its clients that the PRODUCTS shall comply in every respect with any specifications, drawings and other data forming part of the PURCHASE ORDER and shall be of merchantable quality, free of defective materials or workmanship, shall have a clear title, free from all liens, taxes, encumbrances and is complete without any omissions and fit for purpose. The CONTRACTOR shall be fully responsible for making good immediately upon being notified by the COMPANY any omission and defects in the PRODUCTS or any portion thereof which may appear or occur during the warranty period (including repair and/or replacement), which shall not in any case be less than twelve (12) months from the date of completion of offshore commissioning or eighteen (18) months from the date of shipment, whichever occurs first. For repaired and/or replaced PRODUCTS, the CONTRACTOR shall provide additional warranty to COMPANY. If the CONTRACTOR fails to rectify the defects, the COMPANY may rectify the defects and all costs and expenses incurred shall be borne by the CONTRACTOR.
- 10.2. The CONTRACTOR warrants and guarantees to the COMPANY that the Services is of good quality, fit for purpose for which it is generally intended and/or for which the COMPANY has informed the CONTRACTOR or the CONTRACTOR has represented it is intended, shall be completed without any omission; in accordance with good principles and accepted professional standards and meeting the intents and objectives of the PURCHASE ORDER and the CONTRACTOR has the experience, capability and all necessary registrations and licenses to perform the Services under the PURCHASE ORDER. The warranty period shall be for a period as stated in the PURCHASE ORDER.
- 10.3. The CONTRACTOR shall be responsible for making good, with all possible speed, any failure of omission and defects in the Services or any portion thereof. Remedied Services shall be at the CONTRACTOR's cost and shall carry an additional guarantee period as mutually agreed by both parties from the period the Services are remedied.
- 10.4. The CONTRACTOR shall ensure that the warranty is directly extended to the COMPANY and, at the COMPANY's option, the COMPANY may exercise any of the warranty herein directly against the manufacturer of the PRODUCTS and its agents.
- 10.5. The CONTRACTOR's liability hereunder shall extend to all damages directly cause by the omissions or defects, including incidental damages such as removal, inspection, costs of return or storage. The CONTRACTOR shall not be liable for any indirect, remote or consequential losses except for losses recoverable under valid and collectable insurance carried by the CONTRACTOR.

## 11. CONFIDENTIALITY

Any PURCHASE ORDER placed by the COMPANY including all accompanying designs, drawings, specifications and information shall be treated as confidential and the CONTRACTOR shall not in particular, make use of the COMPANY'S name or the name of any companies associated with the COMPANY for publicity purposes without the consent of the COMPANY.

## 12. FORCE MAJEURE



- 12.1. Neither party shall be liable for any failure to fulfill any term of the PURCHASE ORDER if fulfillment has been delayed interfered with or prevented by force majeure (including, but not limited to) acts of God, acts of civil or military authority, civil commotions, fire, strikes, hijacking, lockouts or labour disputes (excluding strikes, lockouts, labour disputes or other action primarily by the act of employees or agents of the affected party), epidemics, wars, riots, earthquakes, storms, sand storms, typhoons, perils of the sea, blockade, embargo, plague or other epidemics or similar events. Force majeure may only be invoked if the event preventing the fulfillment is due to no fault or beyond the control of the obligor, is not for his risk and has occurred since the obligation came into being.
- 12.2. The affected party is obligated to notify the other party as soon as reasonably practicable after it becomes aware of a force majeure. COMPANY and CONTRACTOR shall concur as to the actions to be taken, if any, to mitigate the effects of the force majeure.

## **13. TAXES AND DUTIES**

All taxes, fees and duties assessed against the CONTRACTOR, in connection with the PURCHASE ORDER by national or local authorities having jurisdiction over the CONTRACTOR at its place of business and at place of execution of the PURCHASE ORDER shall be for the CONTRACTOR's account.

## **14. INSURANCE**

The CONTRACTOR shall effect and maintain at its own cost, all applicable insurances as required by law and to cover the CONTRACTOR's responsibilities and liabilities under the PURCHASE ORDER. Nothing contained herein shall serve in any way to limit or waive the CONTRACTOR's responsibilities or liabilities under the PURCHASE ORDER.

## **15. APPLICABLE LAW**

The PURCHASE ORDER shall be governed, construed and shall take effect in accordance with the laws of Singapore and the CONTRACTOR agrees to submit to the exclusive jurisdiction of the Singapore Courts.

## **16. ENTIRE AGREEMENT**

The terms and conditions set out on the PURCHASE ORDER together with any subsequent amendments made in writing by the COMPANY represent the entire terms and conditions of the agreement between the COMPANY and CONTRACTOR. In the event that the Company and CONTRACTOR have previously entered into an agreement for particular standard terms and conditions, which is valid at the creation date of the PURCHASE ORDER, the particular standard terms and conditions shall take precedence and prevail over the terms and conditions set out in the PURCHASE ORDER.

## **17. SPECIAL CONDITIONS**

Where special conditions are stated in the PURCHASE ORDER, those conditions shall apply equally with the general terms and conditions shown herein except that where there is any inconsistency between the general and special conditions, the special conditions shall apply.

## **18. HEALTH, SAFETY, SECURITY AND ENVIRONMENT (“HSSE”)**

Where a Work is being provided on property occupied by the COMPANY, the CONTRACTOR shall be responsible for the safety of all persons engaged on the work, and all persons who may be affected by activities of the CONTRACTOR and shall comply with all the COMPANY's HSSE regulations and procedures.

## **19. WAIVER**

Failure by the COMPANY to enforce the performance of any of the provision of the PURCHASE ORDER shall neither be deemed to be a waiver of its rights hereunder nor shall it affect the validity of the PURCHASE ORDER in any way.

Any waiver by the COMPANY to any breach of the PURCHASE ORDER shall not constitute a precedent nor bind the parties to any subsequent breach by the CONTRACTOR.

## **20. ASSIGNMENT**

The CONTRACTOR shall not assign nor sub-contract any part or all of its obligations and responsibilities under the PURCHASE ORDER to any other party or sub-contractor without the prior written consent or approval of the COMPANY. In the event that the COMPANY agrees that the CONTRACTOR assigns any part or all of its obligations and responsibilities under the PURCHASE ORDER to any other party or sub-contractor, the CONTRACTOR shall remain liable for all the CONTRACTOR's obligations and responsibilities under the PURCHASE ORDER and shall ensure that the party to which the PURCHASE ORDER is assigned or sub-contracted will

- i. possess all valid and requisite licences, permits and/or approvals required to perform the obligations and responsibilities required of the CONTRACTOR under the PURCHASE ORDER; and
- ii. observe all the terms and conditions of the PURCHASE ORDER applicable to the CONTRACTOR

The COMPANY shall be permitted to assign the PURCHASE ORDER to its Affiliates.

## 21. SEVERABILITY

If any provision of the PURCHASE ORDER (or part of any provision) is found by any court or other authority of the competent jurisdiction to be invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed not to form part of the PURCHASE ORDER, and the validity and enforceability of the other provisions of the PURCHASE ORDER shall not be affected.

## 22. PUBLICITY

Neither party shall use the name of the other in connection with any advertising or publicity materials or activities without the prior written consent of the other party. The CONTRACTOR may, with the prior written consent of the COMPANY, include the COMPANY's name on the CONTRACTOR's customer list and may describe briefly, and in general terms, the nature of the work performed by the CONTRACTOR for the COMPANY, provided the wording is agreed with the COMPANY in advance.

## 23. AUTHORITY

ORDER and that there are no encumbrances or other restrictions that may prevent each such party or its employees from performing any and all provisions of the PURCHASE ORDER.

## 24. NON-EXCLUSIVITY

Nothing contained herein is intended or shall be construed as creating any exclusive arrangement with the CONTRACTOR. The PURCHASE ORDER shall not restrict the COMPANY from acquiring similar, equal or like Services and/or PRODUCTS from other contractors, entities or sources.

## 25. ANTI-BRIBERY

- 25.1. The CONTRACTOR shall comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption including but not limited to the UK Bribery Act 2010 ("Relevant Requirements"). The CONTRACTOR shall have and shall maintain in place throughout the term of the PURCHASE ORDER its own policies and procedures, including but not limited to adequate procedures to ensure compliance with the Relevant Requirements. It is agreed that the CONTRACTOR will not engage in any activity or practice which constitutes an offence under the Relevant Requirements including not to offer, pay, consider or benefit, either directly or indirectly an inducement or reward of any kind for any services, or possible services in relation to the PURCHASE ORDER. Breach of this clause shall be deemed a material breach of the PURCHASE ORDER.
- 25.2. The CONTRACTOR shall comply with COMPANY's Code of Conduct and Business Ethics, Country Supplement, Anti-Corruption and Bribery Manual, other applicable rules, regulations, policies, procedures, guidelines and requirements as updated by the COMPANY from time to time, in providing PRODUCTS and/or performing the Services for the COMPANY. Failure of the CONTRACTOR to comply shall entitle the COMPANY to take any such action as deemed necessary including termination of the PURCHASE ORDER without compensation.
- 25.3. The CONTRACTOR must ensure that all Associated Person who provide PRODUCTS and/or perform any Services in connection with the PURCHASE ORDER comply with the provision of this clause.
- 25.4. From time-to-time, at the reasonable request of the COMPANY, the CONTRACTOR shall confirm in writing that it and its Associated Person have complied with the obligations imposed in this clause and provide any information reasonably requested by the COMPANY in support of the compliance obligations.

## 26. PERSONAL DATA PROTECTION ACT

- 26.1. Both parties shall comply with all applicable requirements of the Data Protection Legislation. This clause 26 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.
- 26.2. The CONTRACTOR shall, in relation to any Personal Data processed in connection with the performance by the CONTRACTOR of its obligations under the PURCHASE ORDER:
  - (a) process that Personal Data only to the extent, and in such manner, as is necessary for the purposes specified in the PURCHASE ORDER and in accordance with the written instructions of the COMPANY;
  - (b) ensure that it has in place appropriate technical and organisational measures, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm

that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

ensure that access to Personal Data is limited to personnel who need to access the Personal Data to ensure the CONTRACTOR's obligations under the PURCHASE ORDER and that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;

- (c) not transfer any Personal Data hosted from within the European Economic Area (EEA) outside of the EEA unless the prior written consent of the COMPANY has been obtained and the following conditions are fulfilled:
    - i. the COMPANY or the CONTRACTOR has provided appropriate safeguards in relation to the transfer;
    - ii. the data subject has enforceable rights and effective legal remedies;
    - iii. the CONTRACTOR complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
    - iv. the CONTRACTOR complies with reasonable instructions notified to it in advance by the COMPANY with respect to the processing of the Personal Data;
  - (d) assist the COMPANY at the COMPANY's cost, in responding to any request from an individual for access to Personal Data and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, subject access requests, impact assessments and consultations with supervisory authorities or regulators;
  - (e) notify the COMPANY without undue delay on becoming aware of a Personal Data breach;
  - (f) at the written direction of the COMPANY, delete or return Personal Data and copies thereof to the COMPANY on termination of the agreement or otherwise unless required by applicable global law to store the Personal Data; and
  - (g) maintain complete and accurate records and information to demonstrate its compliance with this clause 26 and allow for audits by the Company or the Company's designated auditor on 7 days' notice. No notice will be required if the COMPANY reasonably believes that the CONTRACTOR is in breach of its obligations under the PURCHASE ORDER.
- 26.3. The COMPANY does not consent to the CONTRACTOR appointing any third party processor of Personal Data under the PURCHASE ORDER.
- 26.4. The CONTRACTOR agrees to indemnify and keep indemnified and defend at its own expense the COMPANY against all costs, claims, damages or expenses incurred by the COMPANY or for which the COMPANY may become liable due to any failure by the CONTRACTOR or its personnel or agents to comply with any of its obligations under the PURCHASE ORDER.

## 27. MODERN SLAVERY

- 27.1. The CONTRACTOR shall comply with all applicable laws, statutes, regulations and codes relating to modern slavery requirements, forced labour and human trafficking including but not limited to the UK Modern Slavery Act 2015 ("Modern Slavery Requirements"). The CONTRACTOR shall have and shall maintain in place throughout the term of the PURCHASE ORDER its own policies and procedures, including but not limited to adequate procedures to ensure compliance with the Modern Slavery Requirements. It is agreed that the CONTRACTOR must commit to all areas of this Modern Slavery Requirements for any services, or possible services in relation to the PURCHASE ORDER.
- 27.2. Without prejudice to any other rights that the COMPANY may have under the Agreement or at law, the COMPANY may terminate the Agreement or any other works relating to the PURCHASE ORDER immediately upon notice in writing should the CONTRACTOR including any of its employees, agents, consultants violate the provisions of this Clause 27.

## 28. AMENDMENT

No amendment or variation of the provisions of the PURCHASE ORDER shall be binding upon any party unless it is mutually agreed in writing by both parties.