

## PERNAMA E-MARKETPLACE – TERMS AND CONDITIONS OF SALE

### 1. Interpretation

#### 1.1 In these Conditions:

**"Buyer"** means the person who purchases Goods on the Platform;

**"Conditions"** mean these Terms and Conditions of Sale;

**"Contract"** means the contract formed when Merchant accepted the order placed by Buyer on the E-Marketplace for the purchase of Goods sold by Merchant;

**"Goods"**, also known as **"product"**, means the goods made available for sale on the E-Marketplace, including any instalment of the goods or any parts for them;

**"PERNAMA"**, **"we"**, **"our"**, or **"us"** means Perwira Niaga Malaysia, a corporation incorporated in Malaysia and having its principal address at No. 6, Solok Waja 1, Bukit Raja, 41050 Klang, Selangor Darul Ehsan, MALAYSIA;

**"Terms and Conditions"** means these Terms and Conditions of Sale and all other terms and conditions and policies pertaining to the use of the E-Marketplace and/or the Services;

**"E-Marketplace"** means the [www.perwirasuperapp.com.my](http://www.perwirasuperapp.com.my) website and/or the PERWIRA mobile application;

**"Merchant"** means a meller which uses the E-Marketplace and/or Services to sell Goods to the Buyers, and includes a Third-Party Vendor. We may also be a "Merchant" for selected Goods;

**"Services"** means the use of any services, information and functions made available by us at the E-Marketplace;

**"Third-Party Vendor"** means a seller which uses the E-Marketplace and/or Services to sell Goods to the Buyers, and excludes us; and

**"Writing"** includes electronic mail and any comparable means of communication.

1.2 Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

1.3 Any references to "PERNAMA", "we", "our" or "us" in these Conditions refer to both PERNAMA's actions on its own behalf as Merchant and/or as the operator of the E-Marketplace and/or as the agent of Third-Party Vendors as Merchants in respect of each and every Contract.

1.4 The headings in these Conditions are for convenience only and shall not affect the interpretation of any terms and conditions.

## **2. Basis of the Contract**

- 2.1 The E-Marketplace provides a place and opportunity for the sale of Goods between the Buyer and the Merchant (collectively “Parties”). The identity of the Merchant for a particular Goods listed for sale on the E-Marketplace, be it us or a Third-Party Vendor, may be stated on the webpage listing such Goods.
- 2.2 Where the Buyer has placed an order on the E-Marketplace for the purchase of Goods sold by us and we have accepted the same, this shall constitute a Contract entered into directly between the Buyer and us. On the other hand, where the Buyer has placed an order on the Platform for the purchase of Goods sold by a Third-Party Vendor and the said Third-Party Vendor has accepted the same, this shall constitute a Contract entered into directly between the Buyer and the Third-Party Vendor. Where the Contract is entered into directly between the Buyer and a Third-Party Vendor, we are not a party to the Contract or any other Contract between the Buyer and Third-Party Vendor and accept no obligations in connection with any such Contract. Parties to such contracts shall be entirely responsible for the Contract between them, the listing of Goods, warranty of purchase and the like.
- 2.3 Any information made available on the E-Marketplace in connection with the supply of Goods, including photographs, drawings, data about the extent of the delivery, appearance, performance, dimensions, weight, consumption of operating materials, operating costs or any information disclosed by Third-Party Vendors through the chat system are not binding and for information purpose only. In entering into the Contract, the Buyer acknowledges that he / she / it does not rely on and waives any claim based on any such representations or information so provided.
- 2.4 While the Merchant endeavours to provide an accurate description of the Goods, neither we nor Merchant warrants that such description is accurate, current or free from error. In the event that the Goods the Buyer receives is fundamentally different from the Goods as described on the E-Marketplace and which the Buyer has ordered, **Clause 7** of these Conditions shall apply.
- 2.5 Any typographical clerical or other error or omission in any quotation, invoice or other document or information issued or published by us on the E-Marketplace shall be subject to correction without any liability on the part of us.

## **3. Orders and Specifications**

- 3.1 For the avoidance of doubt, any and all information on this E-Marketplace, including the prices and details, constitutes an invitation to treat (an invitation for a Buyer to make an offer to form a contract), and is not considered a binding offer.
- 3.2 Where you place an Order and make payment for Goods on the E-Marketplace, you are actually making an offer to purchase the Goods from the Merchant, based on the information and description of the Goods applicable at the time of purchase.
- 3.3 The Buyer may purchase Goods by placing and completing the order form on the E-Marketplace and shall be responsible for ensuring the accuracy of the order. All orders shall be subject to the Merchant’s acceptance in their sole discretion and each order accepted by the Merchant shall constitute a separate Contract and shall be deemed to be irrevocable and unconditional upon transmission through the E-Marketplace. We shall be entitled (but not

obliged) to process such order without further consent from the Buyer. Nevertheless, the Buyer may request to cancel or amend the order which we shall endeavour (but not obliged) to give effect to on a commercially reasonable effort basis.

3.4 Order acceptance and the Contract between the Buyer and Merchant will only be concluded upon us issuing a confirmation of dispatch of the Goods to the Buyer. For the avoidance of doubt, we shall be entitled to refuse or cancel any order without giving any reasons to the Buyer prior to issuing confirmation of dispatch. We shall furthermore be entitled to require the Buyer to furnish us with contact and other verification information, including but not limited to address, contact numbers prior to issuing a confirmation of dispatch.

3.5 No concluded Contract may be modified or cancelled by the Buyer except with prior written consent from us and on terms that the Buyer shall indemnify us in full against all losses (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by us as a result of the modification or cancellation, as the case may be.

#### **4. Price**

4.1 The price of the Products shall be the price stated on the E-Marketplace at the time when the Buyer places and completes the order form on the E-Marketplace. The price includes any applicable sales tax or service tax, value added tax or similar tax which the Buyer shall be liable to pay, but it excludes the delivery fee.

4.2 In the event that a Product has been mispriced on the E-Marketplace, the Merchant reserves the right to terminate the Contract, in which case the Buyer will be notified of such cancellation by way of email or through the E-Marketplace website or mobile application. The Merchant shall have such right to terminate the Contract notwithstanding that the Products have been dispatched or are in transit or that payment has been charged on the Buyer.

#### **5. Terms of Payment**

5.1 The Buyer shall be entitled to make payment for the Goods using various payment methods made available on the E-Marketplace. When the Buyer places an order on the E-Marketplace, actual payment shall be only charged upon the Merchant's acceptance of the Buyer's order and the formation of a Contract. All payments shall be made to us, either accepting payment in our own right or as the Merchant's agent (where the Merchant is a Third-Party Vendor). The Buyer acknowledges that we are entitled to collect payments from the Buyer on behalf of Third-Party Vendors.

5.2 The terms and conditions applicable to each type of payment method, as prescribed by us on the E-Marketplace, shall be applicable to the Contract. The payment method may also be subject to the following terms:

##### **5.2.1 Credit Cards**

- (a) Credit card payment option is available for all Buyers. We accept all Visa and MasterCard credit cards that are 3D Secure enabled (verified by Visa and secured by MasterCard). All credit card information of the Buyers shall be protected by industry leading encryption standards.

- (b) Please take note that additional charges may be incurred if the Buyer is using a non-Malaysian bank issued credit card due to foreign exchange rates.

**5.2.2 Debit Cards.** We accept all Malaysian Visa and MasterCard debit cards, subject to bank availability. All debit card numbers shall be protected by industry leading encryption standards.

**5.2.3 Online Banking.** By choosing this payment method, the Buyer shall transfer the amount of the total purchase price (including any applicable taxes, fees and shipping costs) for the Goods purchased by the Buyer to our account. The transaction must be payable in Ringgit Malaysia. We, in our sole discretion, may refuse to offer this payment method to any Buyer without notice for any reason.

**5.2.4 Instalment Payment Plan**

**(a) by Credit Card**

- i. Buyers making payment for selected Goods by means of a credit card issued by partnering banks (**"Instalment Payment Partner Bank"**), may be entitled to participate in an instalment payment plan (**"Instalment Payment Plan"**) for a period up to 36 months, depending on the Goods purchase price, and subject to policies as determined by us from time to time (**"Entitled Buyer(s)"**).
- ii. Instalment Payment Plan shall be handled by a party appointed by us (**"Appointed Party"**) subject to verification and approval by the Instalment Payment Partner Bank.
- iii. While an approval for an Instalment Payment Plan transaction is subject to the Entitled Buyer's available balance and credit availability on his/her credit card account, the Instalment Payment Partner Bank also shall retain absolute discretion in granting its approval to any Instalment Payment Plan.
- iv. When an Entitled Buyer makes an application to us for the payment of Goods via Instalment Payment Plan and upon approval of the application, as provided above, the Buyer's bank will debit the Entitled Buyer's credit card account with the instalment payable monthly, for the duration stipulated. The Entitled Buyer's available credit limit will be provisionally reduced by earmarking an amount, equivalent to the amount of the total purchase price for the relevant Goods, which will not be available to Entitled Buyer for the duration of the instalment payments. However, the credit limit will progressively restore on a monthly basis as repayment of each instalment amount is made monthly.
- v. Each Instalment Payment Plan may be charged a processing fee prescribed by the Instalment Payment Partner Banks. This fee shall not be refundable, even if the purchase transaction is terminated, regardless of the reason of termination.

- vi. If the Entitled Buyer decides to cancel his/her orders twenty-four (24) hours after the relevant order has been confirmed and prior to shipment, We shall be entitled to impose a minimum of 15% of the total amount of the purchase price of the relevant Products and the processing fee as administrative fees, in addition to the transaction fees charged by the relevant Instalment Payment Partner Banks. The balance after deduction of the administrative fees and the transaction fees will be refunded to the Entitled Buyer.
- vii. In the event of cancellation of the Entitled Buyer's credit card account, any unpaid portion of the purchase price of the relevant purchased Products shall become immediately due and payable. Insofar as is possible, this outstanding sum shall be debited to the Entitled Buyer's credit card without further reference payable by the Entitled Buyer.
- viii. When the Entitled Buyer chooses to make payment for purchase of Products via the Instalment Payment Plan, Returns Policy will no longer be applicable and the Entitled Buyer will no longer be allowed to return any items unless it is damaged to which the item shall be replaced or refunded for the amount paid. Such replacement or refund will not affect or interrupt the Instalment Payment Plan. No returns for "change of mind" reason will be valid for Entitled Buyers that choose to make payment for the Goods via the Instalment Payment Plan.

**(b) PN Easy Payment Plan (EPP)**

- i. Privileged Buyers making payment for selected Goods may be entitled to participate in a PERNAMA Easy Payment Plan ("**PN EPP**") for a period up to 60 months, depending on the Products purchase price, and subject to policies, and terms and conditions of PN EPP as determined by us from time to time ("**Privileged Buyer(s)**").

**5.2.5 Cash on Delivery or Payment on Delivery.** Cash on Delivery or Payment on Delivery is available in the areas as determined by us with a fee as may be prescribed by us for each order. We reserve the right to schedule the delivery time. Products will only be handed over to the Buyer upon full payment by the Buyer.

**5.2.6 E-Wallets.** We accept Touch'n Go eWallet and Boost Wallet e-wallet payment method.

**5.3** The Buyer may not claim against the Merchant or any of its agents (which may include us), for any failure, disruption or error in connection with the Buyer's chosen payment method. We reserve the right at any time to modify or discontinue, temporarily or permanently, any payment method without notice to the Buyer or giving any reason.

**5.4** If the Buyer fails to make any payment pursuant to the terms and conditions of the payment method elected or the payment is cancelled for any reason whatsoever, then without prejudice to any other right or remedy available to the Merchant, the Merchant shall be entitled to:

- 5.4.1 cancel the Contract or suspend delivery of the Goods until payment is made in full; and/or,
- 5.4.2 charge the Buyer interest on the amount unpaid at the rate of one per cent (1.0%) per month until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).
- 5.5 All payments for the purchased Goods must be made to us using the payment methods made available on the E-Marketplace only. We shall not be held responsible for any losses which may arise from payments made directly to Third-Party Vendors or through payment methods apart from the available payment methods on the E-Marketplace.
- 5.6 All refunds shall be made via the original payment mechanism and to the person who made the payment, except for Cash on Delivery and Payment on Delivery, where refunds will be made to the Buyer's E-Marketplace Wallet.
- 5.7 We offer no guarantee of any nature for the timeliness of the refunds reaching your account. The processing of payment may take time and it is subject to the payment provider internal processing timeline. All costs associated with the refund process imposed by the processing bank and/or payment provider shall be borne by us. All refunds are conditional upon our acceptance of a valid return of the Goods. We reserve the right to modify the mechanism of processing refunds at any time without notice.

## **6. Delivery/Performance**

- 6.1 Delivery of the Goods shall be made to the address specified by the Buyer in its order.
- 6.2 We have the right at any time to sub-contract all or any of its obligations for the sale/delivery of the Goods to any other party as it may from time to time decide without giving notice of the same to the Buyer.
- 6.3 Any dates quoted for delivery of the Goods are approximate only. The time for delivery/performance shall not be of the essence, and we shall not be liable for any delay in delivery or performance howsoever caused.
- 6.4 If Merchant has failed to deliver the Goods in accordance with the Contract or within a reasonable time, the Buyer shall be entitled, by serving written notice on us, to demand performance within a specified time thereafter, which shall be at least 14 days. If we fail to do so within the specified time, the Buyer shall be entitled to terminate the Contract in respect of the undelivered Goods and claim compensation for actual loss and expense sustained as a result of our non-performance, which was foreseeable at the time of conclusion of the Contract and resulting from the usual course of events, subject always to the limitations set out in these Terms and Conditions.
- 6.5 If the Buyer fails to take delivery of the Products (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of our fault) then without prejudice to any other right or remedy available to we may:
  - 6.5.1 sell the Products at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the

price under the Contract provided the price has been paid in cleared funds in full or charge the Buyer for any shortfall below the price under the Contract; or

6.5.2 Terminate the Contract and claim damages.

## **7. Return, Refund and Replacement of Products**

- 7.1 Save for perishable products, all returns must be done in accordance with the instructions set out in the Return Policy. The Buyer may initiate the return process by communicating with us or the Merchant through the E-Marketplace, as the case may be. The logo(s) of the Return Policy for each Goods can be found on the Goods' product page.
- 7.2 The Buyer may, by completing the Online Return Form, apply to return the purchased Goods to us or the Merchant in exchange for a replacement or a refund. The Buyer shall ensure that the purchased Goods is returned to us or the Merchant within the applicable returns eligibility period set out in the Return Policy. For avoidance of doubt, the countdown starts from the date the Buyer received the purchased Goods to the post stamp date on the return parcel. In case of damaged Goods, please contact us or the Merchant within 48 hours of receiving the delivery to expedite the claim process.
- 7.3 The Buyer may only apply for return of the purchased Goods in the following circumstances:
- 8.3.1 the Goods delivered to the Buyer is defective and/or damaged on delivery;
  - 8.3.2 the Goods, in particular fashion items, which does not fit (not applicable for fashion items from the overseas Merchants);
  - 8.3.3 the Goods delivered to the Buyer is materially different from the description provided by the Merchant in the listing of the Products;
  - 8.3.4 the Goods delivered to the Buyer does not match the agreed specification (e.g. wrong size, colour, etc.) stipulated in the order;
  - 8.3.5 the Buyer has a change of mind with regard to the Goods; and
  - 8.3.6 such other circumstances which may be prescribed by us on the E-Marketplace.
- 7.4 Notwithstanding Article 7.3 above, milk formula products are returnable except for "change of mind" request. The Buyer is to ensure that milk formula product package is not opened, as otherwise it will not be accepted for return.
- 7.5 Notwithstanding Article 8.3 above, return or cancellation of any perishable goods are not allowed. To ensure that the Buyer is satisfied with the product the Buyer received, the Buyer should inspect the contents as soon as the order arrives.
- 7.6 The application for return of Purchased Goods may also be subject to additional terms and conditions prescribed by us on the E-Marketplace. Please see Support Centre for further details.
- 7.7 Questions and complaints with regards to returns:
- 7.7.1 If you have any questions or complaints, (i) you may either contact the Merchant directly via the E-Marketplace or (ii) contact us using the "Contact Us" page on the E-Marketplace, as applicable.

7.7.2 In the event that Buyer is unable to resolve any dispute with Merchant directly through amicable negotiations, we reserve the right to suggest and implement an appropriate resolution at its sole discretion.

## **8. Risk and property of the Products**

- 8.1 Risk of damage to or loss of the Goods shall pass to the Buyer at the time of delivery or if the Buyer wrongfully fails to take delivery of the Goods, the time when we have tendered delivery of the Goods.
- 8.2 Notwithstanding delivery and the passing of risk in the Goods or any other provision of these Conditions the property in the Goods shall not pass to the Buyer until we have received in cash or cleared funds payment in full of the price of the Goods and all other goods agreed to be sold by us to the Buyer for which payment is then due.
- 8.3 Until such time as the property in the Goods passes to the Buyer, the Buyer shall hold the Goods as our fiduciary agent and bailee and shall keep the Goods separate from those of the Buyer.
- 8.4 The Buyer agrees with us that the Buyer shall immediately notify us of any matter from time to time affecting our title to the Goods and the Buyer shall provide us with any information relating to the Goods as we may require from time to time.
- 8.5 Until such time as the property in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold) we shall be entitled at any time to demand the Buyer to deliver up the Goods to us and in the event of non-compliance we reserve our right to take legal action against the Buyer for the delivery up the Goods and also reserves its right to seek damages and all other costs including but not limited to legal fees against the Buyer.
- 8.6 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of us but if the Buyer does so all moneys owing by the Buyer to us shall (without prejudice to any other right or remedy of us) forthwith become due and payable.
- 8.7 If the provisions in this Article 8 are not effective according to the law of the country in which the Goods are located, the legal concept closest in nature to retention of title in that country shall be deemed to apply mutatis mutandis to give effect to the underlying intent expressed in this condition, and the Buyer shall take all steps necessary to give effect to the same.
- 8.8 The Buyer shall indemnify us against all loss damages costs expenses and legal fees incurred by the Buyer in connection with the assertion and enforcement of our rights under this condition.

## **9. Termination**

- 9.1 On or at any time after the occurrence of any of the events in Article 7 we may stop any Products in transit, suspend further deliveries to the Buyer and exercise its rights under Article 7 and/or terminate the Contract with the Buyer with immediate effect by written notice to the Buyer.
- 9.2 The events are:-



- 9.2.1 the Buyer being in breach of an obligation under the Contract;
- 9.2.2 the Buyer passing a resolution for its winding up or a court of competent jurisdiction making an order for the Buyer's winding up or dissolution;
- 9.2.3 the making of an administration order in relation to the Buyer or the appointment of a receiver over or an encumbrancer taking possession of or selling any of the Buyer's assets;
- 9.2.4 the Buyer making an arrangement or composition with its creditors generally or applying to a Court of competent jurisdiction for protection from its creditors.

## **10. Warranties and Remedies**

- 10.1 Save for as expressly provided in these Conditions, all other warranties conditions or terms, including those implied by statute or common law, are excluded to the fullest extent permitted by law.
- 10.2 Subject to this Clause 10 of these Conditions, we warrant that the Goods will correspond with their specification at the time of delivery, and agrees to remedy any non-conformity therein for a period of 12 months commencing from the date on which the Goods are delivered or deemed to be delivered ("**Warranty Period**"). Where the Buyer is dealing as a consumer (within the meaning of the Sale of Goods Act 1957 and the Consumer Protection Act 1999), we further give to the Buyer such implied warranties as cannot be excluded by law.
- 10.3 Our above warranty concerning the Goods is given subject to the following conditions:
  - 10.3.1 No condition is made or to be implied nor is any warranty given or to be implied as to the life or wear of the Goods supplied or that they will be suitable for any particular purpose or use under any specific conditions, notwithstanding that such purpose or conditions may be known or made known to us.
  - 10.3.2 Any description given of the Goods is given by way of identification only and the use of such description shall not constitute a sale by description.
  - 10.3.3 We bind itself only to deliver Goods in accordance with the general description under which they were sold, whether or not any special or particular description shall have been given or shall be implied by law. Any such special or particular description shall be taken only as the expression of our opinion in that behalf. We are not liable for any such special or particular description which may have been provided by Third-Party Vendors through the chat system. We do not give any warranty as to the quality state condition or fitness of the Goods.
  - 10.3.4 We shall be under no liability for the following measures and actions taken by the Buyer or third parties and the consequences thereof: improper remedy of defects, alteration of the Goods without our prior agreement, addition and insertion of parts, in particular of spare parts which do not come from us.
  - 10.3.5 We shall be under no liability in respect of any defect arising from unsuitable or improper use, defective installation or commissioning by the Buyer or third parties, fair wear and tear, wilful damage, negligence, abnormal working conditions, defective

or negligent handling, improper maintenance, excessive load, unsuitable operating materials and replacement materials, poor work, unsuitable foundation, chemical, electro-technical/electronic or electric influences, failure to follow our instructions (whether oral or in writing) misuse or alteration or repair of the Goods without our approval.

- 10.3.6 We are not liable for any loss, damage or liability of any kind suffered by any third party directly or indirectly caused by repairs or remedial work carried out without our prior written approval and the Buyer shall indemnify us against each loss, liability and cost arising out of such claims.
- 10.3.7 We shall be under no liability under the above warranty (or any other warranty condition or guarantee) if the total price for the Goods has not been paid in cleared funds by the due date for payment.
- 10.3.8 We shall be under no liability whatsoever in respect of any defect in the Goods arising after the expiry of the Warranty Period.
- 10.4 Where there is any defect in the quality or condition of the Goods or where the Goods fail to correspond with specification, the Buyer may apply to return the defective and/or damaged Goods to us or the Merchant in exchange for a replacement or a refund in accordance with our Return Policy and Clause 7 of these Conditions above.
- 10.5 As an alternative to returning faulty or damaged Goods in exchange for refund or replacement under Clause 7 of these Conditions above, a Buyer may request for a repair of such Goods. We and the Merchant however are entitled to accept or reject such request, at its own discretion. Such request shall be irrevocable upon our or the Merchant's acceptance of the same and the non-conforming Goods (or part thereof) will be repaired as originally ordered. The Buyer may not later elect for a return under Clause 7 of these Conditions above once we or the Merchant has accepted such request.
- 10.6 Where the Goods have not been repaired within a reasonable time, despite a written warning from the Buyer, the Buyer shall be entitled to a reduction of the price in proportion to the reduced value of the Goods, provided that under no circumstance shall such reduction exceed 15% of the price of the affected Goods. In lieu of repair, we may, at its sole discretion, grant such a reduction to the Buyer. Upon a repair or price reduction being made as aforesaid, the Buyer shall have no further claim against the Merchant.
- 10.7 When we or the Merchant has provided replacement Goods or given the Buyer a refund, the non-conforming Goods (or parts thereof) shall become property of us or the Seller.

## **11. Liability**

- 11.1 In no event shall we be liable for loss of profit or goodwill, loss of production or revenue or any type of special indirect or consequential loss whatsoever (including loss or damage suffered by the Buyer as a result of an action brought by a third party) even if such loss were reasonably foreseeable or if we had been advised by the Buyer of the possibility of incurring the same.

- 11.2 The remedies set out in Clause 10 of these Conditions are the Buyer's sole and exclusive remedies for non-conformity of or defects in the Goods and our liability for the same shall be limited in the manner specified in Clause 10 of these Conditions.
- 11.3 Notwithstanding any other provision of these Conditions, the Merchant's maximum cumulative liability to a Buyer or to any other party for all losses under, arising out of or relating to the sale of Goods under each Contract, shall not exceed the sums that the Buyer paid to the Merchant under such Contract.
- 11.4 If a number of events give rise substantially to the same loss they shall be regarded as giving rise to only one claim under these Conditions.
- 11.5 No action shall be brought against us later than 12 months after the date a Buyer became aware of the circumstances giving rise to a claim or the date when he/ she / it ought reasonably to have become aware, and in any event, no later than 12 months after the end of the Warranty Period.

## **12. Force Majeure**

- 12.1 We shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing or any failure to perform any of our obligations if the delay or failure was due to any cause beyond our reasonable control. Without prejudice to the generality of the foregoing the following shall be regarded as causes beyond our reasonable control:

12.1.1 Act of God, explosion, flood, tempest, fire or accident;

12.1.2 war or threat of war, sabotage, insurrection, civil disturbance or requisition;

12.1.3 acts of restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental parliamentary or local authority;

12.1.4 import or export regulations or embargoes;

12.1.5 interruption of traffic, strikes, lock-outs, other industrial actions or trade disputes (whether involving employees of us or of a third party);

12.1.6 interruption of production or operation, difficulties in obtaining raw materials labour fuel parts or machinery;

12.1.7 power failure or breakdown in machinery.

- 12.2 Upon the happening of any one of the events set out in Article 12.1 we may at its option:-

12.2.1 fully or partially suspend delivery/performance while such event or circumstances continues;

12.2.2 terminate any Contract so affected with immediate effect by written notice to the Buyer and we shall not be liable for any loss or damage suffered by the Buyer as a result thereof.

## **13. General**

- 13.1 Neither we nor the Merchant shall be liable for non-performance, error, interruption or delay in the performance of its obligations under these Conditions (or any part thereof) or for any inaccuracy, unreliability or unsuitability of the E-Marketplace's and/or Services' contents if this is due, in whole or in part, directly or indirectly, to an event or failure which is beyond our or the Merchant's reasonable control.
- 13.2 Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed, if to us, to its registered office or principal place of business and if to the Buyer, to the address stipulated in the relevant order, email address provided by the Buyer or through the our mobile application.
- 13.3 Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of International Commercial Terms published by the International Chamber of Commerce shall have the same meaning in these Conditions but if there is any conflict between the provisions of Incoterms and these Conditions, the latter shall prevail.
- 13.4 No waiver by us of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision. Further, our failure to enforce these Conditions shall not constitute a waiver of these terms, and such failure shall not affect our right later to enforce these Conditions.
- 13.5 If any provision of these Conditions is held by any competent authority to be illegal, invalid or unenforceable in whole or in part, the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.
- 13.6 No person who is not a party to the Contract (including any employee, officer, agent, representative or sub-contractor of either party) shall have any right to enforce any terms of the Contract which expressly or by implication confers a benefit on that person without the express prior agreement in writing of the parties, which the agreement must refer to Clause 3.5 of these Conditions.
- 13.7 The Contract shall be governed by the laws of Malaysia.
- 13.8 (Where a Contract is concluded between the Buyer and a Third-Party Vendor) The Buyer must exhaust all legal avenues against Third-Party Vendor, should any dispute, controversy or claim arise out of or relate to the Contract, or the breach, termination or invalidity thereof, prior to bringing a claim against us. Any such actions brought against us for any dispute, controversy or claim arising out of or relating to the Contract, or the breach, termination or invalidity thereof shall be settled by arbitration in accordance with the Rules for Arbitration of the Asian International Arbitration Centre (AIAC) for the time being in force. The arbitral tribunal shall consist of a sole arbitrator, to be appointed by the Director of the AIAC. The place of arbitration shall be Kuala Lumpur. Any award by the arbitration tribunal shall be final and binding upon the parties.
- 13.9 Notwithstanding Clause 13.8 above, we shall be entitled to commence court legal proceedings for the purposes of protecting its intellectual property rights and confidential information or for a breach or non-performance by means of injunctive or other equitable relief.
- 13.10 We may, through the E-Marketplace or by such other method of notification as we may designate, vary these Conditions, such variation shall take effect on the date we specify through the above means. If the Buyer continues to use the E-Marketplace after such date,

the Buyer is deemed to have accepted such variation. If the Buyer does not accept the variation, the Buyer must stop access to or using the E-Marketplace and terminate these Terms and Conditions of Sale.

- 13.11 Any typographical, clerical or other error or omission in any acceptance, invoice or other document on the Merchant's part shall be subject to correction without any liability on the Merchant's part.
- 13.12 In the event that these Conditions are executed or translated in any language other than English ("**Foreign Language Version**"), the English language version of these Conditions shall govern and shall take precedence over the Foreign Language Version.
- 13.13 These Conditions shall constitute the entire agreement between the Buyer and the Merchant relating to the subject matter hereof and supersedes and replaces in full all prior understandings, communications and agreements with respect to the subject matter hereof.
- 13.14 We reserve the right to delegate or subcontract the performance of any of its functions in connection with the performance of its obligations under these Conditions and reserve the right to use any service providers, subcontractors and/or agents on such terms as we deem appropriate.