

Terms And Conditions Between NUS And Supplier On Use Of SAP Ariba E-Procurement System

A. Definition

1. For the purposes of this Agreement, unless the context otherwise requires, the following words shall have the following meanings:

“Agreement” means this Agreement between NUS and the Supplier on the Terms and Conditions for use of SAP ARIBA relating to or in connection with the procurement of goods and/or services by NUS.

“Authentication Device” means Login ID, password, digital signature or such other device or method prescribed by SAP Asia Pte Ltd for access and use of SAP ARIBA by the Supplier.

“Contract” means a contract that has been concluded between NUS and the Supplier arising from the procurement of goods and/or services through SAP ARIBA.

“Framework Agreement” means a binding contract for a fixed period between the Supplier and NUS whereby, in accordance with pre-agreed terms, the Supplier agrees to provide quotations to NUS for the provision of the specified goods and/or services as and when the Supplier receives a Request for Quote from NUS.

“Messages” means data structured in accordance with SAP ARIBA and the Website and transmitted electronically through SAP ARIBA between the parties and/or generated by SAP ARIBA.

“Messages Log” means a complete historical record of all Messages transmitted through and/or generated by SAP ARIBA.

“NUS” means National University of Singapore.

“Party” means either NUS or the Supplier and “Parties” means both NUS and the Supplier.

“Period Contract” means a binding contract between the Supplier and NUS for the provision of specified goods and/or services on pre-agreed terms over a fixed period.

“Representative” means any person authorized by the Supplier to access and use SAP ARIBA on the Supplier’s behalf. Notwithstanding anything in this Agreement, any person who uses and/or enters the correct Authentication Device as prescribed by SAP ARIBA shall be deemed to be a person authorized by the Supplier to access and use SAP ARIBA on the Supplier’s behalf or a Representative of the Supplier.

“SAP ARIBA” means the electronic procurement system operated by SAP Asia Pte Ltd via the internet to facilitate the procurement of goods and/or services by NUS.

“Supplier” means any person who has been granted the right by SAP ARIBA to access and use SAP ARIBA and shall include its Representatives.

“Website” means the Internet website of SAP ARIBA, <https://www.sap.com/products/spend-management.html>, maintained by SAP Asia Pte Ltd and shall include but not limited to all its pages and all information, text, forms, items, images, links, sound and graphics displayed therein.

2. Unless the context otherwise requires or permits, references to the singular number shall include references to the plural number and vice versa; references to person shall include a natural person and a body corporate.

B. Access and Use of SAP ARIBA

3. The Supplier shall access and use SAP ARIBA on the terms and conditions set out herein and such other terms as may be amended by NUS from time to time. The Supplier agrees to fully comply with and observe all the terms and conditions of this Agreement.
4. Without prejudice to the foregoing, the Supplier agrees not to transmit any Message or make any communication to NUS under this Agreement which is in any way inconsistent with or derogates from the terms of this Agreement. The Supplier agrees that any inconsistency or derogation shall not have any legal effect and that NUS will be entitled to treat any Message or communication from the Supplier as if they were not inconsistent with or did not derogate from the terms of this Agreement.
5. Where any Contract has been concluded between NUS and the Supplier, the terms of this Agreement shall be subject to the terms of the Contract and any inconsistency shall be resolved in favour of the Contract.

C. Authority by Virtue of Use of Authentication Device

6. SAP ARIBA will prescribe Authentication Devices to the Suppliers for accessing and using SAP ARIBA. The Suppliers shall access and use SAP ARIBA with the use of such Authentication Devices as prescribed by SAP ARIBA.
7. The Supplier is responsible for the safe-keeping, confidentiality and security of the Authentication Devices prescribed by SAP ARIBA. The Supplier shall ensure that there is no unauthorized access and/or use of SAP ARIBA. Any person who uses and/or enters the correct Authentication Device as prescribed by SAP ARIBA shall be deemed to be a Representative of the Supplier and to be authorised to access and use SAP ARIBA on the Supplier's behalf.
8. The Supplier agrees that NUS is entitled to rely on the use and/or entry of the prescribed Authentication Device as conclusive evidence of the authenticity of the acts of the Supplier and that any action taken pursuant to the use and/or entry of the prescribed Authentication Device is authorised by the Supplier. The Supplier agrees to be bound by any act made through the use and/or entry of the prescribed Authentication Device.
9. NUS shall not be liable in any way for any damages, losses, costs, expenses, liabilities or compensation, whether direct or indirect, which arise from or are referable in any way to any unauthorised use of the Authentication Device by any person.

D. Warranties and Representations

10. The Supplier represents and warrants at all times as follows:
 - (a) All particulars of the Supplier and its Representatives given and to be given to SAP ARIBA and NUS from time to time are accurate;
 - (b) It has the legal capacity and power to enter into, perform and comply with its obligations under this Agreement and any resulting Contract with NUS; and
 - (c) All Messages and communications sent to NUS are complete, true and accurate and authorised by the Supplier.

E. Notices

11. Any notice which NUS is required to give to the Supplier under this Agreement shall be deemed to have been served on the Supplier if the notice is sent:
 - (a) Personally;

- (b) By post to the address provided by the Supplier in its SAP ARIBA registration form or to such other address as may be provided in writing by the Supplier to SAP ARIBA or NUS; or
 - (c) By e-mail to the e-mail address provided by the Supplier in its SAP ARIBA registration form or to such other e-mail address as may be provided in writing by the Supplier to SAP ARIBA or NUS.
12. Any notice which the Supplier is required to give to NUS shall only be deemed to have been served on NUS if the notice is sent:
- (a) Personally;
 - (b) By post to 21 Lower Kent Ridge Road, University Hall, Lee Kong Chian Wing, UHL #03-07, Singapore 119077; or
 - (c) By e-mail to cpo@nus.edu.sg.
13. For the purposes of this Clause, notices required to be served under this Agreement shall not include Messages.
14. Any such notice shall be deemed to have been duly served:
- (a) If delivered personally, on the day of delivery;
 - (b) If sent by post, three (3) days after posting; and
 - (c) If sent by e-mail, on the day of the conclusion of the transmission

F. Delivery and Receipt of Messages

15. The Supplier agrees that the Messages Log or the date and time display indicated in the Message shall constitute evidence of the date and time of the delivery or receipt of Message and shall be final and conclusive against the Supplier for all purposes.

G. Formation of Contract through SAP ARIBA

16. A Contract may only be formed in the manner specified in this Agreement.

Invitation to Quote (“ITQ”)

17. NUS may at any time invite Suppliers to submit offers in response to an ITQ for the supply of goods and/or services through SAP ARIBA. The ITQ represents an invitation to treat from NUS to the Suppliers.
18. The Supplier may, in response to the ITQ, submit its offer to NUS through SAP ARIBA.
19. If NUS decides to accept the Supplier’s offer, it will convey its acceptance by issuing a Letter of Acceptance or Purchase Order to the Supplier.

Invitation to Tender (“ITT”)

20. NUS may at any time invite Suppliers to submit offers in response to an ITT for the supply of goods and/or services through SAP ARIBA. The ITT represents an invitation to treat from NUS to the Suppliers.
21. The Supplier may, in response to the ITT, submit its offer to NUS through SAP ARIBA.
22. If NUS decides to accept the Supplier’s offer, it will convey its acceptance by issuing a Letter of Acceptance or Purchase Order to the Supplier.

Period Contracts

23. Where a Period Contract is concluded between the Supplier and NUS, the Supplier is deemed to have made standing offers to NUS for the provision of goods and/or services specified in the Period Contract for the prices or rates agreed upon in the Period Contract in accordance with the terms of the Period Contract. The issuance of a Purchase Order shall constitute the acceptance by NUS of the standing offer of the Supplier under the Period Contract.

Framework Agreements

24. Where a Framework Agreement is concluded between the Supplier and NUS, the Supplier is deemed to have made standing offers to NUS for the provision of goods and/or services specified in the Framework Agreement in accordance with the terms of the Framework Agreement. The issuance of a Request for Quote by NUS represents an invitation to treat from NUS to the Supplier. The quote submitted by the Supplier in response to the Request for Quote shall constitute an offer by the Supplier to NUS. The issuance of a Purchase Order shall constitute the acceptance by NUS of the standing offer of the Supplier under the Framework Agreement.

Delay in Submission of Offer by Supplier

25. NUS reserves the right to disregard any offer from a Supplier submitted through SAP ARIBA after the time specified by NUS, regardless of whether the delay in the submission of the offer was occasioned wholly or in part by any unavailability of SAP ARIBA, interruption in the access and/or use of SAP ARIBA or any other factor attributable to SAP ARIBA.

H. Termination of Agreement

26. NUS may terminate this Agreement with immediate effect by giving notice in writing to the Supplier on any one of the following grounds:
- (a) If the Supplier breaches the Agreement or defaults in his performance of the Agreement and following expiry of seven (7) days' written notice from NUS has failed to take effective steps to remedy the breach or default;
 - (b) If the Supplier becomes bankrupt or insolvent or makes a composition with creditors or if, being a company, a winding-up order of any kind is made in respect of the Supplier, and/or if a receiver or manager (including judicial manager) is appointed over the Supplier's undertaking or assets or possession of or execution on any part of such undertaking or assets is taken or levied by creditors;
 - (c) If the Supplier is in breach of any law and regulation, including but not limited to the commission of any corrupt act or transaction; or
 - (d) If any irregularity or fraud is discovered to have been committed by the Supplier or if the Supplier breaches any of the applicable laws, regulations and rules governing procurement by NUS, including but not limited to the Government Procurement Act 1997 and the subsidiary legislation under the Act.
27. NUS may also terminate this Agreement, without any reason whatsoever, at any time by giving 7 days' written notice to the Supplier.
28. In the event of termination of this Agreement, NUS shall not be liable to the Supplier for any damages, losses, costs, expenses or compensation (whether direct or indirect, special or consequential) arising from the termination.
29. Upon the termination of this Agreement, the Supplier shall not be able to access, use and/or transact through SAP ARIBA. The termination of this Agreement shall nevertheless not affect any rights and liabilities accrued before the date of termination of this Agreement or any rights and liabilities under any Contract concluded through SAP ARIBA. For the avoidance of doubt, the Supplier's obligations under

existing Period Contracts and Framework Agreements shall continue and shall not be affected in any way by the termination of this Agreement.

I. Liability and Indemnity

- 30. NUS shall not be liable to the Supplier in any way for any damages, losses, costs, expenses or compensation which arises from the Supplier's access and/or use of SAP ARIBA.
- 31. The Supplier agrees to indemnify and hold NUS harmless against all damages, losses, costs, expenses and compensation suffered or incurred by NUS arising out of any claims, suits or proceedings brought against NUS by a third party in connection with the access and/or use of SAP ARIBA by the Supplier or its Representatives.

J. No Subcontracting or Assignment

- 32. The Supplier shall not sub-contract, assign, novate or otherwise transfer or dispose of any part of its rights or obligations under this Agreement to any other person without the prior written consent of NUS.

K. No Third Party Rights

- 33. This Agreement is made between the Supplier and NUS.
- 34. A person who is not a party to this Agreement shall have no rights under the Contracts (Rights of Third Parties) Act 2001 to enforce any of the terms of this Agreement.

L. Severability

- 35. If any part of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

M. Waiver

- 36. Neither the failure nor delay by NUS to exercise any right or remedy under this Agreement or to insist upon strict compliance by the Supplier with any of its obligation shall constitute a waiver of any of NUS's right or remedy under this Agreement.
- 37. No waiver of any breach of any terms of this Agreement shall be deemed to be a waiver of any other or of any subsequent breach.

N. Status of Parties

- 38. Nothing in this Agreement shall create, or be deemed to create, a partnership or the relationship of principal and agent or employer and employee between the Parties.

O. Rights Cumulative

- 39. The rights and remedies of NUS under this Agreement are cumulative and are without prejudice and in addition to any rights or remedies NUS may have in law or in equity. No exercise by NUS of any one

right or remedy under this Agreement, or at law or in equity, shall operate so as to hinder or prevent the exercise by it of any other right or remedy.

P. Applicable Law

40. This Agreement shall be governed by and interpreted in accordance with the laws of the Republic of Singapore.

Q. Dispute Resolution

41. Any dispute arising out of or in connection with this Agreement shall first be submitted to the Singapore Mediation Centre for resolution by mediation in accordance with the mediation procedure for the time being in force. The Parties agree to participate in the mediation in good faith and undertake to abide by the terms of any settlement reached.
42. In the event that the dispute is not resolved pursuant to mediation under this clause, NUS shall be entitled to have such dispute to be finally resolved by arbitration in Singapore in the English language in accordance with the Arbitration Rules of the Singapore International Arbitration Centre (the “SIAC”) for the time being in force, which rules are deemed to be incorporated by reference in this clause. The arbitration tribunal shall consist of one (1) arbitrator to be appointed by the Chairman of the SIAC and the official language of the arbitration shall be English.