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## **SSM Group Standard Service Level Terms and Conditions**

### **1. Definitions**

- 1.1 “**Terms and Conditions**” means these SSM Group Standard Service Level Terms and Conditions which may be amended, varied and updated by SSM Group from time to time.
- 1.2 “**Contract**” means quotations or proposals issued by SSM Group or contracts of sales of the Good and/or Services signed by SSM Group and/or other documents issued or signed by SSM Group specifying the terms and conditions of the sale and purchase of the Goods and/or Services between SSM Group and the Customer.
- 1.3 “**Customer**” means any person or corporation who purchases the Goods and/or Services from SSM Group.
- 1.4 “**Customer’s Information**” shall mean all material and information relating to and/or provided by Customer including but not limited to information whether of a technical nature or not, trade secrets, know-how, processes, method, manner of assembly, specifications, designs and other technical or business information.
- 1.5 “**Goods and/or Services**” means the goods and/or services agreed to be sold by SSM Group to the Customer pursuant to a Contract.
- 1.6 “**SSM Group**” means Southern Steel Mesh (Registration No. 65949-T) and/or any of its subsidiaries entering into the Contract with the Customer.
- 1.7 “**Intellectual Property Rights of SSM Group**” means any and all intellectual property rights in and to all the Goods and/or Services including but not limited to patents, patent applications, copyrights, copyright registrations, trade secrets, trademarks and service marks, industrial designs, industrial designs registrations (including, where applicable, all derivative works of the foregoing).
- 1.8 “**Specific Terms and Conditions**” means the specific terms and conditions set out in the Contract.

### **2. Application and Conflict of the Terms and Conditions**

- 2.1 The Terms and Conditions shall form part of all Contracts relating to the Goods and/or Services. The Specific Terms and Conditions and the Terms and Conditions shall apply exclusively and shall override any terms and conditions whether previously or hereafter stipulated incorporated or referred to by the Customer whether orally, in its purchase orders or other documents.

2.2 Any inconsistent, diverging or additional conditions of the Customer shall not apply even if they are incorporated in its purchase orders or other documents whether issued before or after the Contract and SSM Group does not need to expressly object to the inconsistent, divergent or additional conditions of the Customer and SSM Group may execute the order pursuant to the Contract without reservation. SSM Group's silence signifies its rejection of the inconsistent, divergent or additional conditions of the Customer.

2.3 The Terms and Conditions shall apply in addition to the Specific Terms and Conditions provided that in the event of any conflict between the Terms and Conditions and the Specific Terms and Conditions, the Specific Terms and Conditions shall, unless otherwise provided herein, prevail.

### **3. Amendments of the Terms and Conditions**

3.1 Any amendments, supplement or cancellation of the provisions of the Terms and Conditions shall not be effective and binding unless the same shall be in writing and duly executed by SSM Group.

3.2 Notwithstanding the aforesaid, SSM Group reserves the right to amend and vary the terms and conditions herein contained from time to time without notice or reference to the Customer.

### **4. Delivery**

4.1 Any time for delivery stipulated whether in the Contract or any other documents shall be an estimate only and SSM Group shall not be liable in any manner whatsoever to make good any damage or loss arising out of any delay in delivery.

4.2 Unless otherwise agreed expressly in writing, the delivery of the Goods and/or Services shall be at the risk of the Customer. SSM Group reserves the right to select the method of transport, the route and the carrier. Partial delivery is permitted.

4.3 Delivery shall be deemed to have been made if SSM Group delivers the Goods and/or Services to the location specified by the Customer and the delivery order is endorsed by any person present thereat. SSM Group shall not be responsible to ensure the Goods and/or Services have been delivered to or is collected by the Customer or its authorized personnel and shall not be liable for any loss or damage to the Customer by reason of unauthorized collection of the Goods and/or Services.

4.4 Should the Customer fail to take delivery of the Goods and/or Services, SSM Group shall be entitled (without prejudice to its right under the laws) to charge the Customer for storage and insurance for the Goods and/or Services calculated from the date fixed for delivery.

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## **5. Defective Goods and/or Services**

- 5.1 The Customer shall inspect the Goods and/or Services immediately upon delivery and shall notify SSM Group if the Goods and/or Services are not in accordance with the Contract and the Customer shall return the Goods and/or Services to SSM Group within 24 hours from the date of delivery. Should the Customer fail to give such notification, the Goods and/or Services shall be deemed accepted Provided Always SSM Group will not accept return of used Goods and/or Services and the Customer shall not reject any Goods and/or Services which are in accordance with the Contract.
- 5.2 If notification is duly served in accordance with Clause 5.1 hereof, SSM Group shall, at its discretion, either replace or repair the defective Goods and/or Services or refund the purchase price for such defective Goods and/or Services.
- 5.3 Notwithstanding anything herein contained, the Customer's remedies in respect of the defective Goods and/or Services as set out in Clause 5.2 hereof shall be exclusive and in lieu of all other remedies, and represent SSM Group's sole obligations.

## **6. Goods and/or Services Information**

- 6.1 Notwithstanding any description and/or details of the Goods and/or Services given by SSM Group or Customer, no sale of the Goods and/or Services shall constitute or be construed as a sale by description.
- 6.2 Any information of the Goods and/or Services in the brochures or other advertisements are merely recommendations. It is not possible to infer any warranted qualities or warranted use from these details, unless they were expressly agreed as a warranted quality. SSM Group reserves the right to make technical modifications in the course of the Goods and/or Services development.
- 6.3 The Customer must verify the suitability of the Goods and/or Services for the use or application intended by the Customer. Information on the quality and durability and other particulars are warranted only if these are agreed and designated as such.

6.4 Notwithstanding the provisions of the Terms and Conditions, the Contract and/or any agreement made between SSM Group and the Customer, the Customer shall ensure and warrant the accuracy, completeness and reliability of all Customer Information as the Customer acknowledges and agrees that the Customer Information may, at SSM Group's sole and absolute discretion, be used by SSM Group for purposes of the provision of any Goods and/or Services to the Customer. Without prejudice to anything contained in the Terms and Conditions or the Contract, SSM Group shall not be liable or responsible in any manner whatsoever for any loss or damage suffered by the Customer whether directly or indirectly as a result of or arising from any inaccuracy and/or incompleteness in Customer Information provided to SSM Group. The Customer shall indemnify SSM Group against all damage, claim, costs and expenses including third party claims for which SSM Group may become liable as a result of any inaccuracy and/or incompleteness in Customer Information provided to SSM Group and/or reliance by SSM Group of such Customer Information.

## **7. Retention of Title**

7.1 The title to the Goods and/or Services sold and/or delivered shall remain with SSM Group until payment of the purchase price in full for the respective Goods and/or Services has been received by SSM Group. If any of the Goods and/or Services is sold by the Customer before title has passed to the Customer, the Customer shall hold the proceeds of sale in trust for SSM Group.

## **8. Risk**

8.1 The risk in the Goods and/or Services shall pass to the Customer upon Ex-Works SSM Group's premises. Unless otherwise agreed expressly in writing, the Customer shall insure and bear all the costs and expenses in relation to the delivery of the Goods and/or Services.

## **9. Prices**

9.1 Unless otherwise agreed expressly in writing, the prices quoted and/or stated in the Contract shall be subject to changes without notice in the event of any imposition of or increase in taxes and duties whatsoever on the Goods and/or Services, its component or raw materials, costs or any other production or related costs and shall exclude the cost of packing, insurance, freight, all taxes and duties. If exemption from such taxes and duties is claimed, the Customer must provide a certificate of exemption.

9.2 The payment for the Goods and/or Services and all other monies to be paid by Customer to SSM Group under the Contract, including any amount representing reimbursements to be paid by Customer to SSM Group, is exclusive of any Tax, and shall be paid without any set-off, restriction or condition and without any deduction for or on account of any counterclaim or any deduction or withholding.

- 9.3 In the event Customer is required by law to make any deduction or withholding from the payment for the Goods and/or Services and/or all other monies payable to SSM Group under the Contract in respect of any Tax or otherwise, the sum payable by Customer in respect of which the deduction or withholding is required shall be increased so that the net payment for the Goods and/or Services and/or the net amount of monies received by SSM Group is equal to that which SSM Group would otherwise have received had no deduction or withholding been required or made.
- 9.4 The Customer shall in addition to the payment for the Goods and/or Services and all other monies payable, pay to SSM Group all applicable Tax at the relevant prevailing rate and/or such amount as is determined by SSM Group to cover any Tax payments/liabilities/obligations in connection therewith, without any set-off, restriction or condition and without any deduction for or on account of any counterclaim or any deduction or withholding, apart from any Taxes which may be required under any laws to be paid by the Customer directly to any Appropriate Authority, which the Customer shall remit directly to the Appropriate Authority .
- 9.5 If at any time an adjustment is made or required to be made between SSM Group and the relevant taxing authority on account of any amount paid as Tax as a consequence of any supply made or deemed to be made or other matter in connection with the Contract by SSM Group , a corresponding adjustment may at SSM Group's discretion be made as between SSM Group and Customer and in such event, any payment necessary to give effect to the adjustment shall be made.
- 9.6 All Tax as shall be payable by the Customer to SSM Group as herein provided shall be paid at such times and in such manner as shall be requested by the SSM Group, failing which the Customer shall pay to the SSM Group interest at the rate of ten per centum (10%) per annum calculated on a day-to-day basis on the amount of Tax unpaid from the due date until payment.
- 9.7 The Customer hereby agrees to do all things reasonably requested by SSM Group to assist SSM Group in complying with its obligations under any applicable legislation under which any Tax is imposed. In the event a new Tax is introduced, and such Tax is required to be charged on the transaction contemplated in the Contract, the Customer agrees to provide its fullest cooperation to SSM Group in assisting SSM Group in complying with its obligations under the relevant laws.
- 9.8 The Customer shall indemnify SSM Group and shall hold SSM Group harmless from any liability arising as a result of any breach of obligation on the part of the Customer to pay the Tax as set out herein, together with all loss, costs and expenses resulting from such breach. Nothing in the Contract requires SSM Group to pay any amount of fine, penalty, interest or other amount for which the Customer is liable for.

9.9 For the avoidance of doubt, the parties agree that any sum payable or amount to be used in the calculation of a sum payable expressed elsewhere in the Contract has been determined without regard to and does not include amounts to be added on under this clause on account of Tax.

9.10 Tax" means any present or future, direct or indirect, Malaysian or foreign tax, levy, impost, duty, charge, fee, deduction or withholding of any nature, that is imposed by any Appropriate Authority, including, without limitation, any consumption tax such as the goods and services tax ("GST") and other taxes by whatever name called, and any interest, fines or penalties in respect thereof.

"Appropriate Authority" means any government or taxing authority.

## **10. Payment Terms**

10.1 Payment for the Goods and/or Services shall be made within the time stipulated in the invoice. Interest at 1.5% per month will be charged on late payment.

10.2 Time within which the Customer is to pay for the Goods and/or Services shall be of the essence of the Contract.

## **11. Appropriation of Payment**

11.1 All payments received from the Customer will be applied towards settlement of the Customer's oldest debts comprising of the earliest invoices, debit notes (including debit notes for overdue interest) and other charges howsoever arising Provided Always SSM Group may appropriate any payments towards account of interest before principal in respect of any debt as SSM Group shall in its absolute discretion deem fit.

## **12. Right of Set-Off**

12.1 SSM Group shall be entitled to set-off against the Customer's overdue debts all monies now or hereafter standing to the credit of the Customer's account with SSM Group and for this purpose, the Customer shall give irrevocable authority to SSM Group, to collect on behalf of the Customer and give valid receipt and discharge in respect of all such monies owing to the Customer.

## **13. Sale of Goods Act 1957 (Revised 1989) ("the Act")**

13.1 The terms and conditions in respect of the Goods and/or Services under the Act or any statutory modification and re-enactment thereto for the time being enforced are hereby expressly excluded.

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**14. Force Majeure**

- 14.1 In the event of force majeure, resulting from elements, earthquake, acts of God, act of the public enemy, wars, insurrection, riots, lock out, directions by authorities, or any other cause, contingency or circumstance, whether similar or dissimilar, beyond the reasonable control of SSM Group, SSM Group shall be entitled to suspend all or any of SSM Group's commitments and obligations under the contracts, if any, (other than the obligation to make payment thereunder) for the duration and scope of the imperilment. SSM Group shall decide to which extent suspended deliveries caused by force majeure shall be affected subsequently.

**15. Limitation of Warranty**

- 15.1 Save and except for written warranties, if any, given by SSM Group, SSM Group MAKES NO OTHER WARRANTIES OR REPRESENTATION, EXPRESS OR IMPLIED, IN FACT OR IN LAW, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, QUALITY, FITNESS FOR A PARTICULAR PURPOSE OR FOR USE UNDER ANY SPECIFIC CONDITIONS, NOTWITHSTANDING THAT SUCH PURPOSE OR CONDITION MAY BE KNOWN OR MADE KNOWN TO SSM GROUP.

**16. Limitation of Liability**

- 16.1 Unless otherwise agreed in writing and without prejudice to anything contained in the Terms and Conditions or the Contract, SSM Group's sole and entire liability for any demands, claims or actions which the Customer or third party may have against SSM Group at law or in equity, shall be limited to not more than the value of the Goods and/or Services rendered to the Customer that gave rise to the claim.

**17. Exclusion of Liability**

- 17.1 Without prejudice to anything contained in the Terms and Conditions or the Contract, in no event will SSM Group be liable for any delivery delays, negligence, loss of profits, loss of market share, savings, goodwill, or any type of exemplary, incidental, indirect or consequential loss or damage howsoever arising whether or not SSM Group has been advised of the same.

**18. Infringement of Third-Party Intellectual Property Rights**

- 18.1 The Customer shall indemnify SSM Group against all damage, claims, costs and expenses including third party claims for which SSM Group may become liable as a result of the Goods and/or Services rendered to the Customer in accordance with the Customer's specification or Customer's Information which involves infringement of any third party's intellectual property rights. The Customer is also responsible for independently checking the existing intellectual property rights of third parties and is obliged to notify us of such rights.

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**19. Intellectual Property Rights of SSM Group**

19.1 SSM Group shall at all times retain the ownership and rights of the Intellectual Property Rights of SSM Group. Nothing herein shall be deemed to grant the Customer the right to use or exploit the Intellectual Property Rights of SSM Group.

**20. Termination and Consequences of Termination**

20.1 Notwithstanding anything to the contrary herein contained, SSM Group is entitled to terminate the Contract at any time upon the occurrence of any one or more of the following: -

20.1.1 the Customer shall fail, refuse and/or neglect to: -

- a) pay SSM Group all or any part of any monies on the payment due date; or
- b) perform and observe any of the covenants undertakings obligations stipulations and agreements on its part contained herein or in the Contract and for which it is liable,

and the same is not remedied upon the expiry of fourteen (14) days after written notice thereof shall have been given by SSM Group;

20.1.2 the Customer becomes insolvent or commits an act of bankrupt or a petition is presented for its winding up or a resolution is passed for its voluntary winding up; and

20.1.3 the Customer enters into any arrangements or compositions with its creditors,

whereupon,

20.1.4 the Customer shall be liable to pay, in accordance with the payment terms agreed by the parties, all monies payable by the Customer for the Goods and/or Services already delivered by SSM Group, the work in progress and all the raw materials purchased for the Contract with the Customer;

20.1.5 SSM Group shall be entitled to cancel any or all orders which have yet to be delivered to the Customer; and

20.1.6 the Customer shall be liable to pay damages to SSM Group for breach of contract.

- 20.2 SSM Group may with prior notice but without prejudice to its other rights, suspend and/or cancel further delivery, stop any delivery in transit under the Contract. The Customer shall be liable to SSM Group for all loss and damage suffered by SSM Group arising from suspension, cancellation or stoppage in transit of any deliveries due to the default of the Customer. SSM Group shall not be liable to the Customer for any damages whatsoever which the Customer may suffer or incur by reason thereof.
- 20.3 Without prejudice to anything contained herein, SSM Group shall also be at liberty to terminate the Contract by serving a written notice unto the Customer whereupon:-
- 20.3.1 the Customer shall be liable to pay, in accordance with the payment terms agreed by the parties, all monies payable by the Customer for the Goods and/or Services already delivered by SSM Group, the work in progress and all the raw materials purchased for the Contract with the Customer; and
- 20.3.2 SSM Group shall be entitled to cancel any or all orders which have yet to be delivered to the Customer;

and thereafter the Contract shall be null and void and be of no further effect save for any antecedent breaches.

## **21. Third Party Rights**

- 21.1 A person and/or entity who is not a party to the Contract, has no right to enforce any term of the Contract including the Terms and Conditions.

## **22. Governing Law**

- 22.1 Unless otherwise agreed expressly in writing, the Terms and Conditions and the Contract, shall be governed by the laws of Malaysia and the parties further agree to submit to the non-exclusive jurisdiction of the Courts of Malaysia.

## **23. Notices**

- 23.1 Any notices, communications or demands shall be deemed to have been sufficiently given if sent by prepaid post to the address of the addressee stated herein or to the addressee's last known place of business and shall be presumed to have reached the address in ordinary course of post.

## **24. Waiver**

- 24.1 No failure or delay by SSM Group in exercising any rights hereunder shall operate as a waiver thereof nor shall any single or partial exercise of any right preclude any further exercise thereof or the exercise of any other right.

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**25. Severability**

25.1 If any provision of the Terms and Conditions or the application thereof to any situation or circumstance shall be invalid or unenforceable, the remainder of the Terms and Conditions shall not be affected, and each remaining provision shall be valid and enforceable to the fullest extent.

**26. Anti-Bribery and Corruption**

26.1 The Customer shall, at all times, comply with, and ensure that all its affiliated companies comply with, all anti-bribery and corruption laws and regulations as well as SSM Group's Anti-Bribery and Corruption Policy (an electronic version of which is available at SSM Group's website<sup>1</sup>), failing which SSM Group shall be entitled to, without prejudice to any other rights of SSM Group hereunder and/or under the Contract, terminate the Contract with immediate effect. Upon such termination, the provisions of Clauses 20.1.4, 20.1.5, 20.1.6 and 20.2 hereunder shall apply.

26.2 Notwithstanding any other provisions hereunder and/or under the Contract and without prejudice to any other rights of SSM Group hereunder and/or under the Contract, the Customer shall indemnify and hold harmless SSM Group and its affiliated companies and each of their respective officers, directors, employees, attorneys and agents ("Indemnified Parties"), from and against any and all claims, demands, causes of actions, liabilities, losses, damages, judgments, suits, settlements or the like entered into by any of the Indemnified Parties (whether or not liability is admitted by such Indemnified Party), royalties, licensed fees, and all cost and expenses of any kind arising out of or resulting from or in connection with the Customer's breach of the provisions of this Clause.

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<sup>1</sup> Refer to [www.southernsteelmesh.com](http://www.southernsteelmesh.com) for SSM Group's website