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| --- |
| *Purchase Order to be used for the supply (outright purchase) of scanners and printers under the DPS established for the purchasing of the mentioned equipment. The value of each Specific Contract shall not exceed the total value of €139,000 when the Contracting Authority is listed in Schedule 2 and €250,000 when the Contracting Authority is listed in Schedule 3 or Schedule 16.*  *Contracting authorities may issue a simple Accounts Purchase Order for purchases not exceeding €5,000 net of VAT.*  *Procurers are to review the Purchaser Order to take account of the specific procurement requirements. Fields highlighted in yellow must be filled in/ removed accordingly and instruction notes highlighted in grey are to be removed prior to issue of the Specific Contract. Fields highlighted in green are to be filled after award of the Specific Contract.*  *No alterations/ deviations from the templates are permitted except where provided in the templates.* |

[to insert Letterhead on first page]

Letter Ref: <insert number>

Date: <insert date>

<insert Supplier address>

Dear <insert name>,

**Purchase Order – Supply of [insert equipment type] (Reference:** <insert reference number>**)**

Following the award of the Specific Contract for the Supply of [insert equipment type] for [insert Contracting Authority name], by virtue of this Purchase Order [insert Contracting Authority name] (the ‘Purchaser’) wishes to engage [insert name of company] (the ‘Supplier’) to provide it with the Equipment as detailed in Appendix A (Purchaser Requirements and Charges) and in accordance with the terms and conditions of this Purchase Order, including Appendix C (Terms and Conditions for Purchase of Equipment) and Appendix D (Maintenance [and Support] Services) attached to this Purchase Order.

**Term**

[If no maintenance is required, retain reference to warranty and include warranty period. If maintenance is required, remove reference to warranty and include period for maintenance services]

The Term of this Purchase Order is for a period of [insert period] for the delivery, installation, commissioning and testing of the Equipment from the [insert date] (Effective Date) and subsequently the period of [insert period] for [warranty/ maintenance services] from the date of the acceptance in writing by the Purchaser.

**Provision of Equipment**

1. The Supplier shall be responsible for the successful delivery, installation, testing and commissioning of the Equipment, in accordance with the timelines as detailed in this Purchase Order and in line with the technical requirements as detailed in this Purchase Order. The Supplier is responsible to install the Equipment by connecting the Equipment to the network at the Location and install the required drivers on Purchaser workstations at the Location.
2. Without prejudice to the general liability provisions set out in the PO, the Supplier shall be liable to a penalty for mere delay of [fifty Euro (€50) per working day] from the Delivery Date if the provision of the Equipment is delayed, unless the Purchaser is of the opinion that such delay has arisen from causes which were unavoidable and could not be foreseen or overcome by the Supplier, in which case the Purchaser shall decide the extent, if any, to which deduction shall be remitted.
3. On delivery of the Equipment, the Purchaser shall perform visual testing of the Equipment to check that the delivered Equipment is free from any physical damage and to check whether the Equipment powers on correctly and no errors are reported.
4. Following successful completion of the testing, a Delivery Note shall be signed by the Purchaser. Title and risk of the Equipment, free and clear of claims and encumbrances, shall pass to the Purchaser upon issuance of the Delivery Note. For such purpose, the Supplier warrants that it has the necessary title, free and clear of all claims and encumbrances to pass the Equipment to the Purchaser.
5. Notwithstanding the outcome of the tests carried out, the Supplier shall ensure that the Equipment will function in accordance with the technical and functional requirements set out in the PO.
6. The Supplier shall furnish the Purchaser with Documentation in English upon delivery of the Equipment. The Supplier shall continue supplying any relevant Documentation existing from time to time. As a minimum, the combination of the Documentation and any training provided shall allow proper use, operation, administration and management of the Equipment and Services by appropriately qualified personnel who have access to such documentation and who receive such training. ‘Appropriately qualified personnel’ shall refer to a generally accepted level of ability, education and experience acquired by personnel following any training provided by the Supplier. At the request of the Purchaser, the Supplier shall provide such additional copies of the Documentation as the Purchaser may require for the normal operation of its business.
7. The Purchaser will use its best endeavours to afford to authorised personnel of the Supplier at all reasonable times and with prior agreement, which shall not be unreasonably withheld, access to its premises as may be necessary for the delivery of the Equipment. The Purchaser shall have the right to refuse admittance to, or order the removal from, its premises of any person employed by or acting on behalf of the Supplier who, in the opinion of the Purchaser (which shall be final) is not a fit and proper person to be on its premises. The Purchaser undertakes not to use this right in an unreasonable manner. The Supplier undertakes to replace such personnel without jeopardising the performance of the Purchase Order. Action taken under this provision shall forthwith be confirmed in writing to the Supplier by the Purchaser and shall not relieve the Supplier of its obligations under the Purchase Order.
8. The Supplier is responsible to escalate any issues which may potentially impact the Delivery Dates. In the event that the Supplier fails to inform the Purchaser of such issues and the Purchaser suffers any loss or damages due to the negative impact on the Delivery Dates, the Supplier shall indemnify the Purchaser for the loss or damage incurred. The Purchaser may, if it deems necessary for any valid reason, extend the Delivery Date as it may consider reasonable or proper. The Supplier shall be informed in writing of any such extension.

**Charges and Payment Terms**

1. The Charges due to Supplier by the Purchaser for the provision of the Equipment for the Term shall be [sum in words] (€ figures) exclusive of VAT. A detailed breakdown of the Charges is provided in Appendix A (Customer Requirements and Charges). The INCOTERMS2020 shall be Delivery Duty Paid (DDP), and charges are inclusive of any expenses, customs, duties or shipping costs, incurred for the delivery, but excluding VAT.
2. Payment of charges by the Purchaser will be due to the Supplier in accordance with the terms of payment defined in Appendix A (Purchaser Requirements and Charges) and Appendix C (Terms and Conditions for Purchase of Equipment). The Supplier shall ensure that all payment details are to be included in the invoices.
3. No payment will be made for any part of the contractual obligations omitted because of a suspension required by the Purchaser as a result of any breach of contractual terms by the Supplier and neither will any additional payment be made for steps which the Purchaser reasonably requires the Supplier to take.
4. Payment of charges by the Purchaser is without prejudice to any rights or claims that the Purchaser may have against the Supplier and will not constitute any admission by the Purchaser as to the proper performance by the Supplier of its obligations under this Purchase Order.
5. In the event that the Purchaser breaches the payment timeframes, the Supplier would become entitled to the payment of interest at the rate established by law.

**Order of Precedence:**

In case of conflict between the terms of this Purchase Order and the Appendices, the following order of precedence shall apply:

(i) The main text of this Purchase Order; and

(ii) Appendix A (Purchaser Requirements and Charges); and

(iii) Appendix C (Terms and Conditions for Purchase of Equipment)

(iv) Appendix D (Maintenance [and Support] Services)

(v) Appendix B (Supplier’s Technical Offer).

The Purchaser reserves the right to cancel or terminate this Purchase Order without written notice in the event that you are in breach of the terms and conditions agreed to in this Purchase Order, including, without limitation, where the Supplier fails any of the grounds listed in Part VI (Exclusion and Blacklisting of Economic Operators) of the Public Procurement Regulations (Subsidiary Legislation 601.03 of the Laws of Malta).

Kindly sign the attached duplicate of this letter as an indication of your acceptance of the terms contained herein.

Yours sincerely,

...........................................

<insert name>

<insert designation>

<insert Contracting Authority>

**Acceptance**

I the undersigned agree to the contents of this letter of engagement.

|  |
| --- |
| ……………………………………  <insert name>  <insert designation>  <insert Company name (if applicable)>  ID Card Number: <insert number>  Address: <insert address, if different from top of first page address>  Email: <insert email>  VAT Registration Number (where applicable)………....  Registration Self-Employed Number (if self-employed)  Company Registration Number (where applicable)………....  Contact Person (Name and e-mail)...................................  Date: …………………………. |

Encl: Appendix A: Purchaser Requirements and Charges

Appendix B: Supplier’s Technical Offer

Appendix C: Terms and Conditions for the Purchase of Equipment

Appendix D: Maintenance [and Support] Services

**Appendix A – Purchaser Requirements and Charges**

1. **Technical Specifications**

[to insert technical specifications as published in the Specific Contract document by the Contracting Authority]

1. **Training**

[to insert any training requirements as published in Specific Contract document]

1. **Charges and Payment Terms**

[to insert Price Schedule and payment terms as published in the Specific Contract document]

**Appendix B- Supplier’s Technical Offer**

[to insert successful tenderer’s response to CfT including Spare Parts List, if requested in Invitation Document]

**Appendix C -Terms and Conditions for Purchase of Equipment [Training and Maintenance and Support]**

These General Terms and Conditions (the ‘Terms’) including Schedule D (Maintenance [and Support] Services) are an integral part of the Purchase Order (PO) and shall apply to the extent that they are consistent with any special terms appearing on the PO or otherwise incorporated in the PO by express reference. These Terms and the terms on the PO, (if any) shall constitute the entire agreement between the Purchaser and the Supplier on the subject matter of the PO. No other condition of the Supplier shall supersede these Terms. These Terms may only be varied with the written agreement of the Purchaser. The Supplier accepts the PO by acknowledging receipt or commencing performance.

**1. DEFINITIONS**

1. ‘Accepted' means that the Equipment has passed the relevant Acceptance Tests and 'Acceptance' shall be construed accordingly.
2. 'Acceptance Tests' means such tests as may be conducted by the Purchaser on the Equipment in order to verify that they meet the relevant specifications to facilitate Acceptance.
3. 'Delivery Date' means the date specified in this PO by which the Equipment shall be delivered by the Supplier to the Purchaser.
4. ‘Delivery Note’ means the document provided by the Supplier to the Purchaser certifying that the Equipment has been delivered.
5. 'Equipment' shall mean the Equipment to be supplied to the Purchaser by the Supplier as specified in Schedule B (Supplier’s Technical Offer) of the PO.
6. 'Event of Force Majeure' shall mean the occurrence of any contingency beyond the reasonable control of a Party, including, but not limited to, war (whether a declaration thereof is made or not), sabotage, insurrection, rebellion, riot or other act of civil disobedience, act of a public enemy, act of any government or any agency or subdivision thereof, judicial action, fire, accident, explosion, epidemic, quarantine, restrictions, storm, flood, earthquake, adverse weather conditions, Acts of God, unless such occurrence is caused by a Party’s negligent and/or willful act or omission.
7. 'Personnel' shall mean the Supplier’s employees, subcontractors and/or agents.
8. 'Place of Delivery' means the location(s) or place(s) as specified in the PO where the Equipment are to be delivered.
9. 'Price' means the price for the Equipment or Services excluding VAT.
10. 'Service' shall mean all service work specified in the PO including the Maintenance and Services as detailed in Appendix D (Maintenance Services).
11. ‘Software’ means the license software, if any, required to operate the Equipment.
12. ‘Supplier' shall mean any natural person or legal entity whose name and address appears in the box marked 'Supplier' in the PO and includes any subcontractor of the Supplier.
13. ‘Warranty Period’ means the period specified in the PO.

**2. CONDITIONS APPLICABLE**

The acceptance by the Supplier of a PO shall create a contract of sale between the Purchaser and the Supplier, subject to the contractual terms of this PO. The PO shall prevail over any terms and conditions put forward by the Supplier, unless the Purchaser expressly agrees to them in writing.

**Pre-Financing Guarantee**

[Where a Pre-Financing Guarantee is required, Contracting Authorities are to include the appropriate text covering the submission of a pre-financing guarantee. Contracting Authorities are to ensure they adhere to any applicable DoC policy notes.]

**Performance Guarantee**

Where a Performance Guarantee is required, Contracting Authorities are to include the appropriate text covering the submission of a performance guarantee. Contracting Authorities are to ensure they adhere to any applicable DoC policy notes.]

**Insurance**

The Supplier shall be responsible to take out an adequate insurance policy for the Equipment which shall cover the Equipment until date of signature of the Delivery Note and include protection against risks in case of transfer of the Equipment to the Location.

The Purchaser reserves the right to request the Supplier to take out and maintain, for the duration of the Contract, comprehensive policies of public liability and property damage insurance, insuring the Supplier for all sums that the Supplier may become obliged to pay as damages by reason of injury to persons or damage to property in the course of activity carried out under the PO.

1. **APPOINTMENT**
2. The Purchaser hereby appoints the Supplier to deliver the Equipment and, where applicable, to provide Maintenance Services as detailed in Schedule D (Maintenance Services). The Supplier represents that the obligations expressed to be assumed by it in this PO are legal and valid obligations binding on it and enforceable against it in accordance with the terms hereof.

1. The Supplier shall at all times act as an advisor to and an independent contractor of the Purchaser and provide the Equipment in accordance with best industry standards.
2. Nothing in this Purchase Order shall constitute the appointment of Supplier as the agent of the Purchaser. The Supplier shall not have the power, and shall not indicate to any third party that it has the power**,** to bind or commit the Purchaser to any third party in any way whatsoever.
3. **DELIVERY OF THE EQUIPMENT**
4. In order to successfully provide the Equipment, the Supplier must meet all agreed fixed deadlines in respect of which time shall be of the essence. If the Supplier fails to deliver on the Delivery Date specified in the PO, the Customer may at its discretion, impose a penalty for mere delay as specified in this PO.
5. Without prejudice to the preceding clause and to this PO, if the Supplier fails to deliver on the Delivery Date specified in the PO, the Purchase may at its sole discretion and without prejudice to its statutory rights (a) set a reasonable period of time for the Supplier to remedy the failure and deliver the Equipment or (b) cancel all or part of the PO.
6. A delivery note must accompany every delivery. This must detail the PO number, a description of the Equipment and the quantities included in the consignment.
7. The Supplier shall deliver the Equipment at the place of delivery specified in the PO between [0800 and 1700 hours Monday to Friday] unless otherwise agreed with the Purchase in writing. The Supplier must obtain proof of delivery on a separate copy of the Delivery Note.
8. **INSPECTION AND ACCEPTANCE**
9. The duly authorised representatives of the Purchaser shall have the right, before payment, to inspect the Equipment ordered under the PO. Any inspection carried out by representatives of the Purchaser or any waiver thereof shall be without prejudice to other rights at law concerning obligations assumed by the Supplier. The Purchaser may by written notice to the Supplier reject any of the Equipment which fail to meet the requirements specified in the Purchase Order or which are defective. Such notice shall be given within a reasonable time after delivery of the Equipment. If the Purchaser rejects any of the Equipment pursuant to this condition, the Purchaser shall be entitled, (without prejudice to any other rights and remedies) either to (i) have the rejected Equipment repaired by the Supplier as quickly as possible or have the Equipment replaced by the Supplier with Equipment which comply in all respects with the requirements specified in the PO or (ii) to obtain a refund from the Supplier in respect of the Equipment concerned.
10. Any Equipment rejected or returned by the Purchaser as described in this clause shall be returned to the Supplier at the Supplier's risk and expense.
11. **WARRANTY**
12. The Supplier represents and warrants that the Equipment is new, unused, of current manufacture and free from defects in design, workmanship and materials.
13. The Supplier warrants that the Equipment conforms to the quality, quantity and specification as specified in the PO and any variation thereto and are fit for the purposes for which such Equipment are ordinarily used, as well as for the purposes, in the locations and under the circumstances made known to the Supplier by the Purchaser.
14. The Supplier represents and warrants that the Equipment shall conform in all material respects with the requirements of any laws or regulations in force at the time of purchase.
15. The Supplier represents and warrants that the Supplier has satisfied himself that all necessary tests and examinations have been made or will be made prior to delivery of the Equipment.
16. The Supplier represents and warrants that all necessary permits or licences required for the supply of the Deliverables have been obtained. The Supplier shall indemnify the Purchaser against all actions, suits, claims, demands, losses, charges, costs and expenses which the Purchaser may suffer or incur as a result of or in connection with any breach of this condition. The Supplier also warrants that it is formally authorised by the manufacturer of the Equipment to provide the Equipment and to provide the Services on the same Equipment to the Purchaser pursuant to this PO.
17. The Supplier warrants that it does not fail under any of the grounds listed in Part VI (Exclusion and Blacklisting of Economic Operators) of the Public Procurement Regulations (Subsidiary Legislation 601.03 of the Laws of Malta).

[Where the subject matter of the PO relates solely to toners/ drums, remove the following sub-articles:]

1. [The Supplier shall warrant the Equipment for a minimum period of five (5) years from the date of Acceptance by the Purchaser unless the standard manufacturer's warranty period is longer than such period. Should the standard manufacturer's warranty period be longer than five (5) years, then the Purchaser shall be granted the standard manufacturer's warranty period. The Supplier shall bear all costs necessary to make good for any defects in the Equipment delivered as and when these are discovered during the warranty period. A defect in the Equipment shall subsist where the Item does not correctly perform the function it is intended to perform.
2. In case that the Equipment malfunctions during the Warranty Period, the Supplier undertakes to repair and/or replace, at its sole expense, the Equipment to ensure that it functions according to the specifications attached as Schedule A (Purchaser Requirements and Charges). Without prejudice to Article 9 (Liability and Indemnity) in the case that the Equipment or its replacement fails to function according to the specifications, the Purchaser shall within a reasonable time exercise its right to:
3. either require the Supplier to supply, free of charge, such additional services to rectify such defects in the Equipment as may be necessary;
4. or accept and retain such Equipment as it may consider expedient at such reduced price as may be agreed between the Purchaser and the Supplier;
5. or reject the Equipment, in which case no costs shall be due to the Supplier and the Supplier shall refund all amounts paid by the Purchaser in respect of such Equipment.

(g) The Supplier guarantees the availability of genuine or equivalent spare parts for the Equipment for at least five (5) years from the date of purchase, whether directly or through other nominated agents. This clause shall not apply to unavoidable temporary situations beyond the manufacturer’s control including but not limited to natural disasters.]

[Where the PO involves large consignments and a Spare Parts List has been requested, include the following text: *The Supplier shall provide the Purchaser with a list of spare parts, indicating all relevant details, that may be required throughout the Term to keep the Equipment in good working condition]*.

1. **PRICE AND TERMS OF PAYMENT**
2. The Price of the Purchase Order shall be fixed as stated in the Purchase Order and may not be increased, except by express written agreement of the Purchaser. The Purchaser shall settle an undisputed invoice within the period specified in this PO, from receipt of a valid invoice following Acceptance by the Purchaser. Each invoice shall bear the Purchase Order number and the date of Acceptance and be sent following Acceptance. Unless otherwise agreed in writing, all payments under this Contract will be in Euro.
3. In the event of any failure by Supplier to provide the Services in accordance with the Contract as a result of any act or omission of Supplier, the Purchaser shall have the right to withhold payment of related fees until satisfactory performance, without prejudice to any other remedies of the Purchaser under this Contract or applicable law. This provision shall not apply to any delay occurring as a result of an Event of Force Majeure or to the extent that the Purchaser or a third party acting on its behalf is responsible for the delay.
4. Unless otherwise agreed, prices are exclusive of value added tax.

[Where the subject matter of the PO relates solely to toners/ drums, remove the following article:]

1. **[INTELLECTUAL PROPERTY RIGHTS AND INDEMNITY**
2. The Supplier shall, at its expense, indemnify and hold the Purchaser and the Government of Malta harmless from and against any and all claims that the Deliverables constitute an infringement of any Intellectual Property Rights except to the extent that such infringement is caused by the Purchaser’s use thereof in a manner inconsistent with the use for which the Equipment was reasonable intended.
3. The Supplier shall pay all costs, fees (including attorney’s fees) or damages incurred by the Purchaser or the Government of Malta for any such claim or settlement thereof to which the Supplier consents. If any allegation of infringement of any Intellectual Property Right with respect to the Equipment is made, or in the Supplier’s opinion is likely to be made, then in addition to the Purchaser’s other rights and remedies under this PO, the Supplier shall at its expense, either (i) procure for the Purchaser the right to continue using such Equipment, (ii) modify or replace the alleged infringing item so as to avoid the alleged infringement or (iii) terminate the relevant purchase order and refund to the Purchaser all amounts already paid in respect of the Equipment not yet performed as at the date of termination.
4. All Intellectual Property Rights in any specification, instruction, design or other material furnished to or made available to the Supplier by the Purchaser shall remain vested solely in the Purchaser and the Supplier shall not, except to the extent necessary to execute the PO use or disclose any such specifications, instructions, designs or other material (whether or not relevant to the PO).
5. Any Software OEM licences provided under the PO shall be in the name of the Government of Malta and on a perpetual, royalty free and non-exclusive basis and shall entitle the Purchaser to make copies of the Software for backup purposes. The Software is owned by the Supplier and/or its third party licensors and title to the Software and any copy thereof remains in Supplier and/or its third party licensors. However, Supplier shall be solely responsible and liable for all Software supplied under this PO.
6. Any new Intellectual Property Rights arising from the supply of Equipment under the PO shall be vested in and become the property of the Purchaser. Save that nothing in this clause 8 shall be construed as affecting the ownership of Intellectual Property Rights in the Equipment existing prior to the performance of the PO.]
7. **LIABILITY AND INDEMNITY**

Without prejudice to any rights or remedies of the Purchaser, the Supplier shall at all times hold harmless and keep indemnified the Purchaser, its employees, directors and agents from and against any fine, penalty, loss, cost, damage, injury, claim, expense or liability (individually and collectively referred to as “Liabilities”), as a result of Supplier conduct resulting in (i) injury to or death of any person, (ii) damage to, loss or destruction of any property, (iii) contamination of or any adverse impact upon the environment, including clean-up, or (iv) attachments, liens or claims of workers or labourers, except to the extent that Liabilities are caused by the active negligence or wilful misconduct of the Purchaser. The Supplier shall pay all costs, fees (including attorney’s fees) and damages which may be incurred by the Purchaser for any such claim or action or settlement thereof to which the Supplier consents.

1. **CONFIDENTIALITY**
2. The Supplier shall, at all times keep confidential (and procure that its employees, agents and Subcontractors keep confidential) any information which may be acquired in relation to the affairs of the Purchaser and shall not communicate or divulge such information, whether directly or indirectly except with the consent of the Purchaser, to the extent permitted by law or where through no fault of that party the information becomes public domain.

(b) The provisions of this clause shall survive the termination of the Contract for any cause whatsoever.

1. **ASSIGNMENT AND SUB-CONTRACTING**
2. The Supplier shall not, without the prior written consent of the Purchaser, assign, subcontract or otherwise transfer all or any of the obligations undertaken pursuant to this PO. Any attempted assignment, subcontract or transfer in breach of the provision of this Clause shall be null and void.
3. Notwithstanding the approval by the Purchaser of a subcontractor, such subcontracting shall not relieve the Supplier from the obligations under the Purchase Order or impose any liability upon the Purchaser to any subcontractor of the Supplier.

**12. DATA PROTECTION**

[In case of data processing, Contracting Authorities are to liaise with their Data Protection Officer (DPO) and to include the necessary provisions]

For the purpose of this Article the terms “Personal Data” and “Processing” shall have the same meaning as set out in the General Data Protection Regulation. The Supplier shall not Process any Personal Data under this Contract.

**13. FREEDOM OF INFORMATION**

1. The Supplier acknowledges that the Purchaser is subject to the requirements of the Freedom of Information Act (Cap. 496 of the Laws of Malta) and that the provisions of the Contract are without prejudice to the obligations of the Purchaser under the said Act, the Code of Practice issued under the same Act and any subordinate legislation made under the Act from time to time and/or any decision issued by the Information and Data Protection Commissioner in relation to such legislation.
2. The Supplier shall provide assistance as necessary to enable the Purchaser to respond to a request for information within the twenty (20) working day time limit established under the Freedom of Information Act (Cap. 496 of the Laws of Malta) for compliance.

**14. TERM, TERMINATION AND CANCELLATION**

1. The Term of the PO shall include the period from the acceptance of the PO by the Supplier up to the Delivery Date for the delivery of the Equipment and thereafter the period specified in the PO for the provision of Maintenance Services from the Delivery Date.
2. The Purchaser may terminate the PO by giving the Supplier notice in writing in the event that (i) the Supplier is in material breach of these Terms or of any PO provided that where the breach is capable of being remedied, the Purchaser has sent the Supplier a five (5) day written notice requesting the Supplier to cure such breach and the Supplier has failed to cure such breach to the satisfaction of the Purchaser within such period; or (ii) the Supplier is adjudged insolvent, or has a receiving order made against it, or enters an arrangement with its creditors, or carries business under a receiver, trustee or administrator for the benefit of its creditors.
3. The Purchaser may cancel a PO at any time by giving the Supplier a three (3) day notice in writing to the Supplier. In such circumstances, the Supplier may charge the Supplier for reasonable costs or expenses incurred by him up to the date of cancellation. Such expenses will only be paid by the Purchaser on production by the Supplier of supporting evidence to the satisfaction of the Purchaser.
4. Termination of the Contract pursuant to clauses 14(a) and 14(b) shall be without prejudice to the perpetual survival of Software licences, if any, granted pursuant to clause 9 above.

**15. FORCE MAJEURE**

1. Neither party shall be responsible for the consequences of any failure to perform or default in performing any of its obligations under this Contract if that failure or default is caused by an Event of Force Majeure. It shall not be considered to be an Event of Force Majeure nor shall either party be excused from liability for delay or failure to perform if that party is delayed or fails to meet its obligations under this Contract as a result of failure by it sub-agents or sub-contractors.
2. When a party considers that an Event of Force Majeure has occurred which may effect the performance of its obligations it shall give notice to the other party immediately giving details of the nature, the probable duration and the likely effect of the circumstances.
3. If such party does not comply with sub-clause (b) it forfeits its rights under sub-clause (a).
4. The party affected by Event of Force Majeure shall use all reasonable efforts to mitigate the effects of the Event of Force Majeure on the performance of its obligations under this Contract and as soon as reasonably possible after the end of the Event of Force Majeure the party affected shall notify the other party that the Event of Force Majeure has ended and shall resume performance of its obligations under this Contract.
5. If such Force Majeure Event persists for a period of thirty (30) days or more and such delay is reasonably anticipated that it may continue, the Purchaser shall be entitled to terminate the Contract forthwith.

**16. SECURITY REQUIREMENTS**

1. The Supplier may be requested by the Purchaser, at any time during the Term, to provide copies of Police Conducts for its personnel involved in anyway whatsoever in the provision of the Services. Where Police Conducts are required, the Purchaser will inform the Supplier that Police Conducts are necessary in relation to the Supplier’s personnel and it will be the Supplier’s responsibility to provide the Purchaser with copies of the Police Conduct certificates, at its own cost, and which are dated not more than thirty (30) days from the date of the Purchaser’s written request. Failure by the Purchaser to provide Police Conducts as may be requested pursuant to this Article will constitute ground for the Purchaser to reject the involvement of the personnel in the provision of the Services.
2. The Personnel involved in anyway whatsoever in the provision of the Services may be subjected to security screening procedures at any time during the term of the Contract. The Purchaser shall inform the Supplier that such security screening procedures are necessary in relation to the Personnel. It will be the responsibility of the Supplier to carry out the security screening procedures, as advised by the Purchaser and at the Supplier’s own cost. The Supplier shall also ensure that the security clearance of personnel for the duration of the Contract and shall make all necessary arrangements for any renewals required in case of impending expiry of the security clearance certificate awarded to its personnel.
3. Failure by the Personnel to be security cleared or to provide police conducts as may be requested pursuant to the preceding clause will constitute ground for the Purchaser to reject the involvement of the Personnel in the provision of the Services.
4. Repeated failure to provide copies of valid Police Conduct certificates and/ or Security Screening certificates within specified or reasonable timeframes, as may be requested pursuant to this Article, and/or repeated negative results arising from Police Conducts and/ or Security Screening certificates, will constitute grounds for the Purchaser to terminate the Contract on grounds of material breach
5. A breach of this clause will constitute a material breach of this PO.

**17. SURVIVAL**

Any provisions contained herein that by their sense and content are intended to survive notwithstanding the termination of this Contract, shall so survive.

**18. ENTIRE AGREEMENT**

1. This Purchase Order, including the Appendices, constitutes the whole agreement between the parties in respect of the subject matter of this Purchase Order and shall supersede any prior promises, representation, undertakings or implications whether oral or in writing and, for the avoidance of doubt, the Parties acknowledge that neither has entered into this Purchase Order in reliance upon any representation or term other than those which are referred to in this PO. In the event of any conflict between the Purchase Order and any end user licence agreement accompanying the Software, the provisions of this Purchase Order shall prevail.
2. This Purchase Order shall prevail over any terms and conditions put forward by the Supplier, unless the Purchaser expressly agrees to them in writing.

**19. AMENDMENT**

This Purchase Order may be varied only by agreement in writing between the parties in accordance with the provision herein and no other action on the part of the parties shall be construed as acceptance of any conditions other than those agreed, either within this Purchase Order, or separately agreed in writing, whatsoever. No employee or agent of either party has authority to agree to any variation or addition to this Purchase Order, unless such variation or addition is expressed in writing and signed off by authorized representatives of each party.

**20. WAIVER**

1. No waiver of the Purchase Order or part thereof, or of any rights or obligations of the Supplier shall be effective unless in writing and signed by the Purchaser.
2. No waiver, or breach of, or default of provision of the Purchase Order shall be deemed a waiver of any other provision or of any subsequent breach or default of the same provision of the Purchase Order.

**21. SEVERABILITY**

If any provisions of this Contract or the application of any such provision shall be held by a tribunal of competent jurisdiction to be contrary to law, the remaining provisions of this PO shall continue in full force and effect.

**22. GENERAL**

1. Any notice given pursuant to the PO must be in writing and may be sent by hand or by post to the address shown on the PO and shall be deemed to have been served within four (4) working days from day of dispatch.
2. These Terms shall be governed by and interpreted in accordance with the laws of Malta and shall be subject to the jurisdiction of the Maltese Courts. In case of dispute, the dispute shall be submitted either to the Courts of Malta or to an arbitration tribunal, in the case where the Parties by agreement decide to refer the dispute to arbitration.

**Appendix D– Maintenance [and Support] Services**

[Where no maintenance is requested or where toners/ drums are being purchased, retain Schedule and replace text in the Schedule with the following: *No maintenance and support services will be required under this Purchase Order*.

Schedule is to be retained and amended according to specific procurement requirements where baseline maintenance is to be provided. Sections highlighted in yellow may be removed/ amended as required. Instruction notes highlighted in grey are to be removed. All other sections are to be retained as is.

Where full maintenance and support services will be required, include Schedule from Letter of Engagement template.]

**1. Principles**

This Schedule covers the provision of the maintenance services to be provided by the Supplier as part of this PO. The Supplier shall provide:

1. Preventive maintenance for Equipment, at the intervals described below
2. Corrective maintenance, within the Service Levels described below

**2. Maintenance Services**

Maintenance Services shall include the following services:

2.1 The Supplier shall correct any errors and faults in the Equipment if it does not perform in accordance with the specifications as detailed in Schedule A (Purchaser Requirements and Charges).

2.2 The Supplier warrants to investigate Equipment failures and rectify all errors within the specified Service Levels in order to ensure operation and proper functioning of the Equipment. Where the investigation highlights that the Incident relates to Software, the Maintenance Service will include the provision of advice, Workarounds, specification, development, release and supervision or implementation of remedial measures;

2.3 If the failure cannot be rectified within the specified Service Levels, the Supplier warrants to provide replacement Equipment on site, at his own cost. Where applicable, the Supplier shall re-install, test and commission any replacement Equipment.

2.4 The Supplier shall conduct preventive maintenance visits at the Location [at such intervals as the Purchaser deems necessary in order to keep the equipment in good working order/ not less than [number] times during each period of [number][months/weeks] to test the operation and functions of the Equipment and make necessary adjustments, repairs or replacements to keep the Equipment in good working order in accordance with Schedule A (Purchaser Requirements and Charges).

The Supplier’s visits will be made during the Coverage Hours agreed below, by prior appointment with the Purchaser. If it is more efficient and will cause less disruption to the Purchaser, the preventative maintenance may be carried out at the time of any corrective maintenance.

[The Supplier may, as part of the preventative maintenance service, offer to the Purchaser any Equipment Upgrades.]

2.5 The Supplier shall provide spare parts, labour and other requisites to carry out the necessary repairs on the Equipment within the specified times.

2.6 All replacement equipment or Spare Parts shall be provided either on a “standard exchange” basis (i.e. the equipment or parts being refurbished to a condition that is in all relevant respects similar to that of new parts) or as new equipment or parts. Replaced equipment and parts shall become the Purchaser’s sole property on replacement.

Without prejudice to the Supplier’s responsibility to provide the Services in accordance with the terms of this PO, the Supplier reserves the right to provide the Purchaser with “substantially equivalent” equipment, and Spare Parts. (Substantially equivalent shall mean any component which by vendor type is similar in technology and functionality).

2.7 The Supplier guarantees the availability of spare parts for a period of at least five (5) years from the date of purchase. In cases where the parts are no longer available on the market, the Supplier should provide alternative parts that are not of lower functionality or replace the Equipment were no alternative parts are available.

2.8 The Maintenance Services do not include the provision of any accessories other than Spare Parts.

1. **Incidents**

3.1The Purchaser and the Supplier will both appoint an owner for each reported Incident. The Purchaser will raise an Incident via phone or in writing or by any other means of communication which may be agreed to. All Incidents raised via telephone must be subsequently confirmed and documented in writing, preferably by e-mail. The Supplier shall acknowledge an Incident report within [insert time] from being reported

3.2 Incidents shall be reported by the Purchaser during [insert times, applicable days and any exclusions] on the email addresses and/or telephone numbers that are to be communicated by the Supplier in writing to the Purchaser within three (3) days from date of signature of the PO.

The Supplier shall communicate to the Purchaser any changes in the contact telephone number and/or email address specified.

The Supplier shall provide end of month reports which clearly indicate the number of incidents logged, the response and resolution time, and any breaches which may have occurred for the respective month.

3.3 In case of malfunction of the Equipment, the Supplier is expected to attend to a call within [insert time] from notification during Coverage Hours and to solve the problem identified within [insert time] from notification, during Coverage Hours.

3.4 In case where a fault cannot be rectified within [insert time], the Supplier shall provide a temporary replacement for the Equipment within [insert time] from the date of the call logged, until such time as the fault will be resolved. The Replacement Equipment will be provided by the Supplier without any cost to the Purchaser.

3.5 [Where the Equipment cannot be repaired or where more than 3 (three) Faults have been reported within any given month, the Supplier shall provide a permanent replacement of the Equipment within [insert period] from the date of the call of the third Incident.]

3.6 Penalties will apply where the Supplier fails to resolve any fault within the specified Service Levels, as detailed in Section 5 below.

3.7 Where resolution is delayed because of information or assistance requested from the Purchaser has been delayed, the Supplier’s resolution time shall be suspended until the Purchaser responds to the request.

1. **Coverage Hours**

The Supplier will provide the Maintenance Services during the following times: [insert time and applicable days].

**5. Penalties**

5.1 The Supplier will become liable to a penalty for mere delay of [fifty Euro (€50) per hour per fault] for failure to respond within the Service Levels as detailed above. The monetary amounts associated with these penalties shall be credited to the Purchaser and offset against the invoice.

5.2 If the Equipment is inoperable due to faults in the Equipment for more than the stipulated Service Levels, then the Purchaser reserves the right to impose a penalty of [amount] Euro (€ [amount]) per day per fault per printer or part thereof. [The penalty shall be capped to the value of [amount] for that specific Hardware]. The Supplier will pay the penalties to the Purchaser or the Purchaser may (at its option) withhold a sum equal to the penalties from any Charges due under this PO.

5.3 The penalties are without prejudice to any other rights or remedies that the Purchaser may have in respect of any failure by the Supplier to perform its obligations in accordance with the terms of this PO. Any penalties paid will not relieve the Supplier from its obligations to perform the Services nor from any other liability under this PO.

5.4 Failure to meet the same Service Level for [number of occurrences] may constitute grounds for material breach of the PO.

5.5 The Purchaser may, at its sole discretion, decide not to apply the penalties for breach of service levels but to recover the damages as set out in this Contract or at law.