

## ASM Terms of Use for Supplier Portal

This ASM Front-End Mfg (S) Pte Ltd ("**ASM**") Terms of Use for Supplier Portal sets out the terms under which ASM permits you (the "**Supplier**") and its Authorised Users to access and use the Supplier Portal on the Ariba Network.

ASM and Supplier are referred to collectively as the "**Parties**" and individually as a "**Party**". Any reference in this ASM Terms of Use for Supplier Portal to: (i) ASM shall include the Affiliates of ASM, and (ii) Supplier shall include the Supplier's Affiliates who use the Supplier Portal.

By executing this ASM Terms of Use for Supplier Portal and/or by using the Supplier Portal, the Supplier agrees with ASM that the Supplier will be bound by and accepts the ASM Terms of Use for Supplier Portal. This is in consideration of the mutual covenants, terms, and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged.

### 1 Definitions

- 1.1 In this ASM Terms of Use for Supplier Portal, unless the context otherwise requires, the following terms shall have the following respective meanings:
- (a) **Administrator** means the main Supplier contact for the Supplier Portal and who is also an Authorised User.
  - (b) **Affiliate** means any corporation or other entity that controls, is controlled by, or is under common control with a Party. A corporation or other entity shall be deemed to control another corporation or entity if it directly or indirectly owns or controls more than fifty percent (50%) of the voting stock or other ownership interest of that corporation or entity or otherwise has the ability to direct the management of such entity or corporation.
  - (c) **Ariba Network** means SAP Ariba's cloud-based hosted service that enables suppliers and buyers to form relationships and conduct transactions over the Internet.
  - (d) **ASM's Privacy Policy** means the privacy policy available at the following link <https://www.asm.com/privacy-policy>.
  - (e) **Authorised Users** means any employee, independent contractor or authorised agent of the Supplier that is authorised to access and use the Supplier Portal on behalf of the Supplier.

- (f) **Confidential Information** means all information (of whatever nature and however recorded or preserved) which was disclosed by ASM or received by the Supplier before, on or after the date of Effective Date and is designated as “confidential information” by ASM at the time of disclosure or would be regarded as being confidential by a reasonable business person or is clearly confidential from its nature and/or the circumstances in which it was imparted including information which relates to the commercial affairs, business, designs, drawings, finances, infrastructure, intellectual property rights, products, services, developments, inventions, trade secrets, know-how, personnel, evaluation prototypes, samples, or contracts of, and any other information relating to ASM including Forecast Information.
- (g) **Effective Date** means the date that the Supplier accepts this ASM Terms of Use for Supplier Portal.
- (h) **Forecast Information** means the estimated quantity of goods that ASM may wish to purchase at a future date.
- (i) **Improper Material** means any information or material that is misleading, libellous, defamatory, threatening, an invasion of privacy, obscene, indecent, improper, illegal, racist, or false or that includes programs that contain viruses, Trojan horses, worms, time bombs or any other programs, scripts or executable codes designed, or which have the tendency, to impair, interfere, interrupt, obstruct or prevent access to the operation and functionality of the Supplier Portal or the Ariba Network, or any other computer or network.
- (j) **Losses** means any and all losses, claims, judgments, awards, penalties, sanctions, settlement amounts, actions, charges, liabilities, damages, costs and expenses of whatsoever nature, including without limitation: (i) direct, indirect or consequential losses, loss of profit, loss of reputation, loss of data (ii) legal costs for external and internal counsel calculated on a full indemnity basis; (iii) all other professional costs and expenses including costs related to investigation, litigation or settlement; and (iv) all interest charges, taxes, fees and fines.
- (k) **Personal Data** has the meaning given under applicable law.
- (l) **SAP Ariba Terms of Use** means the terms of use between SAP Ariba and the Supplier which govern the Supplier’s access and use of the Ariba Network.
- (m) **Supplier Portal** means the ASM section of the Ariba Network through which ASM may issue purchase orders and conduct planning, quality, sourcing, performance, business

information maintenance and other activities related to its supply chain engagement and management.

## **2 Authorised Representative**

2.1 The Supplier warrants, represents and undertakes to ASM that:

- (a) it has full capacity and authority to enter into and to perform the Supplier's obligations in accordance with this ASM Terms of Use for Supplier Portal; and
- (b) this ASM Terms of Use for Supplier Portal has been entered into by a duly authorised representative of the Supplier and the acceptance of this ASM Terms of Use for Supplier Portal by its duly authorised representative shall constitute legal, valid and binding obligations on the Supplier enforceable in the jurisdictions in which the Supplier Portal is accessed and used from.

## **3 Access to Supplier Portal**

3.1 The Supplier represents, warrants and undertakes that:

- (a) the Authorised Users are fully authorised on behalf of the Supplier to access and use the Supplier Portal;
- (b) if any Authorised User ceases to be authorised for any reason, the Supplier shall immediately disable such Authorised User's access to the Supplier Portal and notify ASM pursuant to Clause 3.2;
- (c) the Supplier will not permit anyone other than an Authorised User to access and use the Supplier Portal;
- (d) the Authorised Users will access the Supplier Portal in accordance with this ASM Terms of Use for Supplier Portal, the SAP Ariba Terms of Use and in accordance with all applicable law;
- (e) the Supplier is solely responsible for all acts, omissions and defaults of its Authorised Users as if they were its own acts, omissions and defaults;
- (f) it owns or has all required licences, consents or rights to use, copy and distribute any material that it or its Authorised Users provide to ASM on the Supplier Portal;

- (g) the information and material that it or its Authorised Users submit to ASM on the Supplier Portal will be accurate and complete;
  - (h) any material that it and its Authorised Users submit to ASM on the Supplier Portal does not infringe or make any unauthorised use of any intellectual property rights or any other proprietary rights whatsoever owned by any third party; and
  - (i) it and its Authorised Users shall not submit any Improper Material to ASM on the Supplier Portal.
- 3.2 The Supplier shall notify ASM in writing of the identity of all Authorised Users before such Authorised Users are given access with a password for the Supplier Portal. The Supplier shall notify ASM of any changes in the identity or number of any Authorised Users and shall promptly reconfirm the identity of its Authorised Users at any time upon ASM's request.
- 3.3 The Supplier is responsible for maintaining the confidentiality of all passwords assigned to its Authorised Users. Any unauthorized access or use of the Supplier Portal or of a password assigned to an Authorised User will be at the sole risk, and will for all purposes be binding on the Supplier, as if such use had in fact been made by an Authorised User.
- 3.4 The Supplier shall immediately notify ASM of any unauthorised access or use of the Supplier Portal.
- 3.5 The Supplier is responsible for regularly logging into the Supplier Portal to keep up to date of all updates or notifications from ASM including any new purchase orders issued by ASM and to enable the Supplier to promptly respond to all such updates and notifications.
- 3.6 The Supplier consents and shall procure any consents required from Authorised Users under any applicable laws and regulations, to ASM's collection of information regarding the Supplier and its Authorised Users' use of the Supplier Portal ("**Usage Information**") and the Supplier acknowledges and agrees that to the maximum extent permitted by law, the Usage Information shall be the sole property of ASM.

## **4 Confidentiality**

- 4.1 ASM may provide Supplier and its Authorised Users with access to Confidential Information on the Supplier Portal.

- 4.2 Subject to this Clause 4, the Supplier shall keep ASM's Confidential Information confidential and shall not copy, reproduce, republish, transmit, distribute, lease, sell or modify any Confidential Information that is made available on the Supplier Portal.
- 4.3 The Supplier shall:
- (a) use the Confidential Information solely in connection with the performance of its obligations or exercise of its rights under this ASM Terms of Use for Supplier Portal;
  - (b) take all reasonable measures to secure the Confidential Information against theft, loss or unauthorised disclosure;
  - (c) only disclose the Confidential Information to the Authorised Users and its employees (the "Permitted Disclosees") to whom disclosure is required for the performance of the Supplier's obligations or the exercise of its rights under this ASM Terms of Use for Supplier Portal or pursuant to a Contract, but only to the extent necessary to perform such obligations or exercise such rights and who are bound by confidentiality and restricted use obligations at least as protective of the Confidential Information as the terms set forth in this Clause 4; and
  - (d) be responsible for the acts, omissions or defaults of any Permitted Disclosee in relation to the Confidential Information as if they were the Supplier's own acts or omissions.
- 4.4 The Supplier may disclose the Confidential Information if required by applicable law, provided that prior to such disclosure the Supplier shall notify ASM of the intended disclosure.

## **5 Supplier Obligations**

- 5.1 The Supplier acknowledges and agrees that if it becomes liable to pay any fees to SAP Ariba for access and use of the Ariba Network or Supplier Portal pursuant to the SAP Ariba Terms of Use, such fees are the sole responsibility of the Supplier and in no event shall any such fees be passed on to ASM. The Supplier acknowledges and agrees that it is responsible for ensuring that its access and use of the Ariba Network and the Supplier Portal is in compliance with all applicable laws including any applicable legal requirements regarding VAT or other taxes and data protection laws.
- 5.2 The Supplier shall use best endeavours to not submit any Personal Data to ASM on the Supplier Portal, but in the event that the Supplier submits any Personal Data, the Supplier shall ensure that it has obtained all necessary valid rights or consents to send, upload, publish or make available such Personal Data on the Supplier Portal as well as for the collection, use and

disclosure of such Personal Data by ASM in accordance with this ASM Terms of Use for Supplier Portal and in accordance with all applicable laws.

- 5.3 Any Personal Data received by ASM from the Supplier on the Supplier Portal shall be subject to the terms of ASM's Privacy Policy.

## **6 No commitment**

6.1 The Supplier acknowledges and agrees that:

- (a) receipt of a trading relationship request to join the Supplier Portal as a supplier is not a commitment that ASM will order any goods or services from the Supplier;
- (b) any Forecast Information made available by ASM on the Supplier Portal is for the Supplier's information purposes only and is not a commitment that ASM will order any goods or services from the Supplier and any reliance by the Supplier on Forecast Information is at the Supplier's sole risk;
- (c) ASM may at its discretion and at any time modify, revise, add or delete any information and material that it makes available on the Supplier Portal; and
- (d) nothing in this ASM Terms of Use for Supplier Portal shall or shall be deemed to obligate ASM to continue to provide the Supplier with access to the Supplier Portal (even if access is being provided to other suppliers of ASM).

## **7 Disclaimers and Liability**

7.1 The Supplier acknowledges and agrees that:

- (a) receipt of a trading relationship request to join the Supplier Portal as a supplier is not a recommendation or endorsement by ASM of the Ariba Network; and
- (b) ASM does not provide nor operate the Ariba Network or the Supplier Portal which is provided and operated by SAP Ariba, and ASM does not make any representations or warranties neither does it owe any obligations to the Supplier with respect to the Supplier's access and use of the Ariba Network and the Supplier Portal.

7.2 The Supplier shall indemnify ASM and its Affiliates and their respective officers, agents, representatives, employees, partners and licensors ("Indemnitees") in full and on demand and

shall keep them fully and effectively so indemnified against all third party claims for Losses in connection with or arising out of the Supplier's or its Authorised Users':

- (a) breach of this ASM Terms of Use for Supplier Portal;
- (b) breach of the SAP Ariba Terms of Use;
- (c) breach or violation of applicable law;
- (d) infringement or claimed infringement of any third party intellectual property right or proprietary right;
- (e) use of the Supplier Portal or the Ariba Network; or
- (f) submission of any information or material on the Supplier Portal or the Ariba Network.

## **8 Exclusion of Liability**

- 8.1 Without prejudice to Clause 7.1, ASM is not responsible or liable for the Supplier or its Authorised Users' access and use of the Supplier Portal and the Ariba Network.
- 8.2 To the maximum extent permitted by applicable law, in no event shall ASM and its Affiliates whether in contract, in tort (including negligence), for breach of statutory duty, or otherwise, be liable for any Losses suffered or incurred by the Supplier and/or its Authorised Users arising under or in connection with this ASM Terms of Use for Supplier Portal or the Supplier or its Authorised Users' access and use of the Supplier Portal and/or the Ariba Network.

## **9 Term, Suspension and Termination**

- 9.1 This ASM Terms of Use for Supplier Portal shall commence on the Effective Date and shall continue until terminated in accordance with this Clause 9.
- 9.2 ASM may request that SAP Ariba immediately suspend and/or terminate access to the Supplier Portal by the Supplier and its Authorised Users at any time and for any reason.
- 9.3 Without affecting any other right or remedy available to it, ASM may by written notice to the Supplier immediately terminate this ASM Terms of Use for Supplier Portal and request that SAP Ariba revoke access to the Supplier Portal by the Supplier and its Authorised Users at any time if:

- (a) the Supplier breaches any term of this ASM Terms of Use for Supplier Portal or the SAP Ariba Terms of Use; or
- (b) the Supplier or any of its Authorised Users is in breach of any applicable law.

9.4 On termination/suspension of this ASM Terms of Use for Supplier Portal or the Supplier's access to the Supplier Portal:

- (a) the Supplier shall promptly destroy any Confidential Information in its possession or control and shall within ten (10) days of such termination, certify to ASM that it has done so; and
- (b) any rights, remedies, obligations or liabilities of the Parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of this ASM Terms of Use for Supplier Portal which existed at or before the date of termination shall not be affected or prejudiced.

## **10 Miscellaneous**

### **10.1 Notices**

Any notice, request, consent or approval required or permitted to be given under this ASM Terms of Use for Supplier Portal or pursuant to law shall be sufficient if in writing and sent to

- (a) the Administrator at their registered office address in the case of the Supplier; and
- (b) the ASM Global Procurement Department at their registered office address in the case of ASM.

### **10.2 Severability**

If any provision of this ASM Terms of Use for Supplier Portal is declared to be unenforceable, the remainder of this ASM Terms of Use for Supplier Portal will continue in full force and effect, and the unenforceable provision will be deemed modified to the extent necessary to comply with the applicable requirements of law, while retaining to the maximum extent permitted by law its intended effect, scope and economic effect.

### **10.3 Rights cumulative**

Unless otherwise specifically provided for in this Agreement, in the case of ASM only, no right, power, privilege or remedy conferred by any provision of this Agreement is intended to be



exclusive of any other right, power, privilege or remedy (whether under any other provision of this Agreement, at common law, equity, under statute or otherwise).

#### 10.4 **Assignment**

This ASM Terms of Use for Supplier Portal and any of the Supplier's rights or obligations hereunder may not be transferred or assigned by the Supplier without ASM's express prior written consent. ASM is entitled to and reserves all rights to assign or novate this ASM Terms of Use for Supplier Portal to any person or entity at any time and shall give the Supplier subsequent notice of such assignment or novation.

#### 10.5 **Waiver**

No action or delay by either Party, may be construed as a waiver of any provision of this ASM Terms of Use for Supplier Portal unless expressly stated in writing to be a waiver. A waiver of a right or remedy on any one occasion will not be construed as a bar to or waiver of rights or remedies on any other occasion.

#### 10.6 **Third party rights**

Except as provided for in Clause 7.2, a person or entity who is not a party to this ASM Terms of Use for Supplier Portal shall have no right under the Contracts (Rights of Third Parties) Act (Cap. 53B) to enforce any term of this ASM Terms of Use for Supplier Portal, regardless of whether such person or entity has been identified by name, as a member of a class or as answering a particular description. The Parties agree that no consent is required from any third party to amend or terminate this ASM Terms of Use for Supplier Portal (whether or not in a way that varies or extinguishes rights or benefits in favour of such third parties).

#### 10.7 **Amendment**

ASM may modify and update this ASM Terms of Use for Supplier Portal from time to time by posting the latest version on the Supplier Portal. By continuing to access and use the Supplier Portal subsequent to the posting of a revised version on the Supplier Portal the Supplier shall be deemed to agree to any amendments to the ASM Terms of Use for Supplier Portal.

#### 10.8 **Survival**

The rights and obligations under provisions of this ASM Terms of Use for Supplier Portal which expressly or by their nature survive termination shall remain in full force and effect, including

Clause 4 (Confidentiality), Clause 6 (No Commitment), clause 7 (Disclaimer and Liability), Clause 8 (Exclusion of Liability) and this Clause 10 (Miscellaneous).

#### 10.9 **Entire Agreement**

This ASM Terms of Use for Supplier Portal constitutes the entire agreement between the Parties with respect to the Supplier Portal and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

#### 10.10 **Governing law and jurisdiction**

- (a) This ASM Terms of Use for Supplier Portal shall be governed by, construed under and enforced in accordance with the laws of Singapore including without limitation the provisions of the Electronic Transactions Act (Cap. 88), without giving effect to any principles of conflicts of law.
- (b) Any dispute arising out of or relating to this ASM Terms of Use for Supplier Portal, or breach thereof, shall be resolved by the courts of Singapore and the parties hereby agree that venue and jurisdiction for any related proceedings arising hereunder shall lie exclusively with such courts; provided, however, that ASM may enforce its intellectual property rights and any breach of confidentiality by the Supplier in any country and related court of competent jurisdiction, including but not limited to equitable relief. No actions against ASM for breach hereof shall be commenced more than one (1) year after the accrual of the cause of action. In any action to enforce the terms hereof, the prevailing Party shall be entitled to reasonable attorneys' fees and any other costs incurred in that proceeding in addition to any other relief to which it is entitled.