

GENERAL COUNTERTRADE and OFFSET AGREEMENT

This General Countertrade and Offset Agreement is executed this _____ day of _____ 2014 by and between;

PHILIPPINE INTERNATIONAL TRADING CORPORATION, a government-owned and controlled corporation organized and existing under and by virtue of P.D. 1071, as amended with principal offices located at NDC Building, 116 Tordesillas Street, Salcedo Village, Makati City, represented herein by its ***President and CEO, MARIA LOURDES T. BAUA***, hereinafter referred to as ***“PITC”***;

and

_____, a private corporation duly organized and existing under and by virtue of laws of the Republic of the Philippines, with head _____, represented herein by its _____, hereinafter referred to as ***“COMPANY”***;

WITNESSETH THAT:

WHEREAS, pursuant to the provisions of E.O. 120 s. 1993 and its Implementing Rules and Regulations relative to Countertrade in Government Procurement, COMPANY is committed to perform countertrade for the benefit of the Philippine Government as a result of the award of the Contract (the “Contract”) by (cite name of procuring government office) for the “supply and delivery of _____ in the Philippines” (hereinafter referred to as the “Equipment”);

WHEREAS, in relation to the above, COMPANY has committed to perform countertrade up to an amount equivalent to fifty percent (50%) of the value of the value of the imported equipment and component under the Contract with (cite name of procuring government office) as per the Countertrade Undertaking signed by the COMPANY on (date of signing) (attached as Annex A);

WHEREAS, the parties hereto have agreed to enter into this General Countertrade and Offset Agreement (hereinafter referred to as the “Agreement”), the effectivity and implementation of which shall be conditional upon the effectivity of the aforesaid contract;

NOW THEREFORE, for and in consideration of the foregoing, the parties hereto agree as follows:

CLAUSE 1: DEFINITION OF TERMS

As used in this Agreement, the following terms shall have the following meanings:

- 1.1 “Agreement” means this General Countertrade and Offset Agreement.
- 1.2 “Counterpurchase” means the purchase of Philippine Goods or the utilization of Philippine Services in accordance with provisions of E.O. 120 and its IRR.
- 1.3 “Countertrade Obligations” in relation to this Agreement, means the obligations of the COMPANY to either purchase Philippine Goods, utilize Philippine Services and/or initiate offset arrangements equivalent to 50% of the value of the imported equipment and components supplied under the Contract or the amount of (amount).

- 1.4 “E.O. 120” means Executive Order No. 120 dated 19 August 1993 on the Adoption of Countertrade with respect to the Philippine government’s importation or procurement of foreign capital equipment, machinery, products, goods and services.
- 1.5 “Force Majeure” means any of the events defined/listed in Clause 10 hereof.
- 1.6 “IRR” means the Implementing Rules and Regulations of E.O. 120.
- 1.7 “Offset Arrangements” means Direct or Indirect Offsets as defined and prescribed in the IRR and Memorandum Circular No. CT-95.1/01, as amended. Such shall include, but not limited to, technology transfer, skills training, investments, donations, etc.
- 1.8 “MC CT-95.1/01, as amended” means Memorandum Circular No. CT-95.1/01 dated 01 January 1995 prescribing the Guidelines for the Evaluation and Approval of Offset Arrangements as amended by Memorandum Circular No. CT-95.4/01 dated 12 April 1995.
- 1.9 “MC CT-2012-001” means Memorandum Circular No. CT-2012-001 dated 10 April 2012, amending certain provisions of Memorandum Circular No. CT-95.1/01 to increase and simplify the multipliers relative to offset arrangements and amending the values of Countertrade obligation vis-à-vis schedule of Countertrade fees.
- 1.10 “Philippine Companies” means any Filipino owned or controlled entities or corporations duly organized and existing under and by virtue of the laws of the Philippines.
- 1.11 “Philippine Goods” means any item manufactured, produced or assembled in the Philippines, including mineral, aquatic, and agricultural and forest products/resources derived from the Philippines.
- 1.12 “Philippine Services” means legitimate services rendered by Philippine companies or entities or Filipinos, either locally or abroad, provided the same are engaged by and paid for by foreign companies or entities.

CLAUSE 2: COUNTERTRADE OBLIGATIONS

It is hereby agreed that COMPANY shall be obligated to perform the countertrade arrangements/activities herein agreed up to an equivalent value of 50% of the total imported equipment and components supplied under the Contract signed between (*cite name of procuring government office*) and COMPANY or the amount of ₱ _____ (US DOLLARS: US\$ _____ per BSP rate dated _____) hereinafter referred to as the “Countertrade Obligations”.

CLAUSE 3: COUNTERTRADE ARRANGEMENTS

COMPANY shall carry out its Countertrade Obligations through any of the following countertrade arrangements/activities:

- 3.1. Counterpurchase of Philippine Goods &/or Utilization of Philippine Services – which includes the export of Philippine Goods/commodities to any foreign country either directly or through a designated trading entity provided that in the latter case, the designation of the trading entity must be pre-approved in writing by PITC and/or the contracting/engagement of Philippine Services (as the term in defined in Par. 1.12 hereof) by foreign firms or entities.

It is an express condition hereof that all exports and services contracts must be paid for in freely convertible foreign currency and inwardly remitted into the Philippine Banking system.

- 3.2. Offset Arrangements – which includes any Direct or Indirect offsets as defined in E.O. 120, the IRR, MC CT-95.1/01 as amended and MC CT-2012-001, as may be approved by PITC such as but not limited to: trainings, technical exchange programs, foreign investments, donations/grants and other related activities provided by the company to any Philippine beneficiary at no additional cost to the government. Also encouraged are offset activities which will benefit the Armed Forces of the Philippines (AFP) and/or the Department of National Defense (DND) such as those included in Annex “B”.

Any Offset Arrangement undertaken pursuant to this Agreement shall have the prior written approval/endorsement of PITC.

The corresponding “multiplier” applied to the value of the activities shall be based on the provisions of CT-Memorandum Circular 2012-001 dated 10 April 2012.

- 3.3. The parties hereto mutually agree to conduct regular mid-year and/or quarterly reviews of performance under this Agreement and shall likewise discuss any outstanding issues relative to this Agreement. Both parties shall likewise provide each other with regular status reports as may be necessary relative hereto.

CLAUSE 4: COUNTERTRADE PERIOD

- 4.1 COMPANY shall commence performance & complete the countertrade arrangements herein agreed within two (2) years from the date of signing of this Agreement (hereinafter referred to as the “Primary Period”).
- 4.2 Notwithstanding the foregoing, COMPANY shall be granted an additional one (1) year from the end of the Primary Period (hereinafter referred to as the “Grace Period”) within which to complete/meet its Countertrade Obligations. Any further extensions beyond the Grace Period due to causes other than Force Majeure shall be subject to mutual agreement of the parties.
- 4.3 If COMPANY does not meet/complete its Countertrade Obligations within the Primary Period and the Grace Period due to Force Majeure under Clause 10 hereof, COMPANY shall be entitled to extensions of the period for performance commensurate or equivalent to the period when the Force Majeure was in effect.

CLAUSE 5: CAUSALITY

COMPANY hereby agrees to carry out this Agreement in accordance with the principle of *Causality* such that the countertrade arrangements/activities to be undertaken hereunder are the result of the award of the Contract by (name of importing government office) and must be performed after the effectivity date of this Agreement unless otherwise agreed to by PITC in writing.

CLAUSE 6: ROLE OF THE PARTIES

The principal role of the parties hereto includes but shall not be limited to the following:

6.1. *Role of PITC:*

- a) Overall management of the countertrade program herein established;

- b) Review and approval of countertrade activities carried out under this Agreement and if necessary, solicit the assistance of appropriate Philippine Government offices/agencies, in the review and evaluation of offset arrangements to be undertaken hereunder;
- c) Monitor performance of countertrade arrangements hereunder and ensure that the same are carried out in accordance with existing circulars, rules and regulations and that appropriate documentation is submitted to support/evidence such arrangements;
- d) Provide on an “as-needed” basis, such advisory support services to COMPANY relative to the implementation of this agreement;
- e) Perform its other functions under the IRR.

6.2. *Role of COMPANY*

- a) Perform countertrade/offset arrangements to meet its Countertrade Obligations in accordance with this Agreement;
- b) Ensure that the payment for the exports and/or payment for Philippine Services contracted pursuant to this Agreement are inwardly remitted to the Philippine banking system;
- c) Submit all required transactional documents/information as may be required by PITC in support of countertrade arrangements undertaken or to be undertaken pursuant to this Agreement;
- d) Provide acceptable performance guarantee to PITC;
- e) Payment of PITC monitoring fees upon completion of countertrade obligations per Clause 7.6 hereof.

CLAUSE 7: MONITORING AND CREDITING PROCEDURES

7.1 On a regular basis, COMPANY shall submit proof of performance of every countertrade arrangement effected pursuant to this Agreement by submitting a *Certificate* summarizing details of each transaction supported by copies of relevant documents required under the IRR and related circulars, such as but not limited to the following:

- a) For Counterpurchase/Exports of Philippine Products:
 - Copy of Bill of Lading or transport document evidencing actual contents and destination of shipment
 - Copy of Commercial Invoice
 - Copy of Letter of Credit and/or certified true copy of other evidence of payment/inward remittance for the Goods acceptable to PITC
- b) For Utilization of Philippine Services:
 - Copy of Invoice or Contract pertaining to the Philippine Services utilized
 - Copy of Letter of Credit or certified true copy of other evidence of payment/inward remittance for the Services acceptable to PITC
 - Copy of Official Receipt issued by the relevant Philippine entity rendering the Philippine Service utilized hereunder evidencing full payment for said service by COMPANY.
- c) For Direct or Indirect Offsets:
 - Copy of pertinent contract or agreement relative to offset arrangement to be performed
 - Certification/Endorsement from the Philippine beneficiary of the offset arrangement that COMPANY has performed a particular offset for their benefit and to their satisfaction.

- Such other documentary requirements prescribed under MC CT-2012-001 as amended.

PROVIDED: that PITC shall be entitled to request COMPANY to submit such other documents/data as may be necessary to support the transactions undertaken hereunder.

7.2 All the above documents submitted to PITC must be stamped with the following:

“THIS TRANSACTION HAS BEEN EFFECTED IN COMPLIANCE WITH THE GENERAL COUNTERTRADE AGREEMENT BETWEEN PITC AND COMPANY DATED _____.”

7.3 Upon receipt of the required documents, PITC shall review the same and if the same meets with the requirements of E.O. 120, IRR, MC CT-95.1/01 as amended, as well as the provisions of this Agreement, PITC shall credit the value of such countertrade transaction (inclusive of multipliers, where applicable), against the Countertrade Obligations of COMPANY hereunder by issuing a *Certificate of Discharge* therefore. However, PITC shall have the right to request for additional documents/data in support of each transaction should the need arise and verify the same prior to crediting such transaction.

7.4 Countertrade arrangements which do not meet the requirements set forth in this Agreement shall not be credited and PITC shall not be required to credit the same against the Countertrade Obligations of COMPANY. Neither shall PITC be required to grant multipliers for countertrade arrangements not expressly entitled to such under existing rules, regulations and circulars (i.e. Counterpurchase of Philippine Goods and Utilization of Philippine Services).

7.5 The value of a specific countertrade arrangement, for purposes of crediting against the Countertrade Obligations of COMPANY, shall be as follows:

- a) For Counterpurchase/Exports of Philippine Goods: the FOB invoice price for such Goods; if only the CIF or C & F price are available, 95% of such price shall be deemed to be the FOB price.
- b) For Utilization/Contracting of Philippine Services: the amount invoiced or contract price, whichever is official receipt of payment therefore.
- c) For Offsets: the value/costs of such offset transaction, including multipliers, where applicable, as prescribed in MC CT-2012-001 as amended. To illustrate:

(Value of Offset Activity as validated by PITC) x (multiplier) = OFFSET CREDIT

7.6 For monitoring performance and managing the fulfillment of this Countertrade Agreement, PITC shall receive from COMPANY a Monitoring/Management Fee equivalent to one and one half percent (1.5%) of the value of each credited transaction, to be paid within fifteen (15) days from receipt by COMPANY of the *Certificate of Discharge* and *Debit Note* issued by PITC for the credited transaction.

CLAUSE 8: CURRENCY CONVERSION

All countertrade arrangements/transactions shall be denominated in US DOLLARS. Should any said arrangements/transactions be invoiced in any other freely convertible currency, for the purpose of assessment under the Countertrade Obligations of COMPANY, the credit value will be converted into US DOLLARS at the exchange rate prevailing between these two currencies on the date payment is made or such date when the transaction was consummated, in case payment date is not applicable. The rate of exchange would be the reference exchange rate

posted/quoted by the Bangko Sentral ng Pilipinas (BSP) of the Philippines on such date. If on such date no exchange rate is posted/quoted, the last posted/quoted exchange rate shall be applied.

CLAUSE 9: PROVISIONS FOR NON-PERFORMANCE

9.1 To the extent that COMPANY shall be in breach of its Countertrade Obligations under this Agreement at the end of the Primary Period of every countertrade obligation plus any extensions granted due to Force Majeure, COMPANY shall pay PITC a penalty equivalent to five percent (5%) of the resulting unfulfilled balance of the Countertrade Obligations.

Said penalty shall be payable upon demand by PITC at the end of the Grace Period pertinent to the unfulfilled countertrade obligation (or any extensions due to Force Majeure), notwithstanding that one of the parties may have resorted to Arbitration Proceedings in the interim.

9.2 To secure the foregoing, COMPANY shall, within fourteen (14) working days from the signing of this Agreement, furnish PITC with a *Performance Guarantee* in the sum equivalent to five percent (5%) of the Countertrade Obligations of COMPANY for said Contract, in the form of a Bank Guarantee or Surety Bond, callable upon demand.

9.3 The *Performance Guarantee* shall be valid two (2) months after the end of the two (2) year Countertrade Performance period, subject to replacement / renewal upon mutual agreement on the extension of Countertrade Performance period.

9.4 The *Performance Guarantee* shall be released by PITC to COMPANY (i) upon satisfactory completion by COMPANY of its Countertrade Obligation for the Contract and compliance with all the terms of this Agreement relative thereto and/or (ii) upon termination of this Agreement, subject however to the provisions of Clause 15.2 hereof.

CLAUSE 10: FORCE MAJEURE

10.1 Neither party shall be liable for any delay or non-performance due to floods, earthquakes, typhoons, volcanic eruptions, governmental embargoes or restrictions, strikes/lockouts, fires, civil war, strife, vagaries of the sea and other similar acts/circumstances beyond their control which materially affects due performance under this Agreement. The party affected by such event shall notify the other not later than fifteen (15) calendar days after the occurrence of the event, submitting necessary proofs of such event and the effects thereof on performance. Failure to comply with this notice/documentary requirement shall not entitle the invoking party to make a claim under this Clause.

10.2 If the fulfillment of this Agreement by COMPANY is adversely affected by Force Majeure and provided that the conditions stated in 10.1 above are complied with, PITC shall extend the period of fulfillment commensurate/equivalent to the period when the Force Majeure event was in effect, or such period as may be reasonably granted under the circumstances, if PITC is duly satisfied with the proofs submitted by COMPANY.

CLAUSE 11: ASSIGNMENT

COMPANY may not assign or transfer its rights and obligations hereunder to any other party except with the prior written consent of PITC.

CLAUSE 12: CONFIDENTIALITY

No confidentiality information regarding this Agreement shall be released by the parties to any third party without the prior written consent of the other except on a “need-to-know” basis.

CLAUSE 13: SETTLEMENT OF DISPUTE

Any dispute, controversy, or claim arising out of or in connection with this Agreement shall be settled amicably by the parties. Where amicable settlement fails, the dispute shall be brought before the proper courts of Makati City to the exclusion of other courts.

CLAUSE 14: APPLICATION OF LAWS

This Agreement shall be governed and construed in accordance with the laws of the Philippines.

CLAUSE 15: EFFECTIVITY AND TERMINATION

- 15.1 This Agreement shall become binding on the parties upon signing hereof.
- 15.2 If the Contract is terminated in accordance with its terms, then the countertrade obligations relative hereto will correspondingly terminate.
- 15.3 The suspension of performance by the parties to a particular Contract shall not affect countertrade performance under said contract and countertrade arrangements shall continue to be performed with respect to such Contract in accordance unless the parties hereto mutually decide otherwise.

CLAUSE 16: AMENDMENTS/MODIFICATIONS

Any amendments or modifications to this Agreement shall be made in writing and mutually agreed to by the parties hereto.

CLAUSE 17: WARRANTIES

- 17.1 Each party hereto warrants that it has all the legal power and authority to execute this Agreement and carry out the terms and conditions hereof.
- 17.2 This Agreement is binding upon and shall operate for the benefit of the parties hereto or its successors-in-interest and assignees.

CLAUSE 18: NOTIFICATION

Any notices to be given to either party under this Agreement shall be validly made if personally served on the other party or sent via registered mail, telex, telefax, or courier services at the following addresses:

FOR PITC:

PHILIPPINE INTERNATIONAL TRADING CORPORATION (PITC)
NDC Building, 116 Tordesillas Street, Salcedo Village
Makati City, Philippines
Tel.: 818-9801

Fax: 892-1261
Attention: DAVID A. INOCENCIO
Manager – Countertrade Department

FOR COMPANY:

CLAUSE 19: APPLICATION

This Agreement shall govern the countertrade obligations and performance of the COMPANY with respect to pertinent Contract signed between COMPANY and the (name of the procuring government office) / the Philippine Government.

IN WITNESS WHEREOF, the parties hereto have set their hands on the date and place first above-written.

PHILIPPINE INTERNATIONAL TRADING CORPORATION (PITC) (COMPANY)

BY: **MARIA LOURDES T. BAUA**

President and CEO

BY: _____

SIGNED IN THE PRESENCE OF:

MARIO M. LEYGO
Vice President
International Trading and Services Group

ACKNOWLEDGMENT

REPUBLIC OF THE PHILIPPINES)
_____) S.S.

BEFORE ME, a Notary Public for ____ this ____ day of _____ 2014 personally appeared the following:

NAME	COMPETENT EVIDENCE OF IDENTITY	DATE/PLACE ISSUED
_____	_____	_____
_____	_____	_____

known to me and to me known to be the same persons who executed the foregoing instrument consisting of 9 pages including this page, and who acknowledged to me that the same are their free and voluntary acts and deeds and that of the corporations they respectively represent.

IN WITNESS WHEREOF, I have affixed my hand and seal on the date and place first above-written.

Doc. No. _____
Page No. _____
Book No. _____
Series of 2014