

Regulations on Ensuring Payment to Small and Medium-sized Enterprises of the PRC

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Chapter I — General Provisions

Article 1 — These Regulations are formulated in accordance with the Law of the People's Republic of China on the Promotion of Small and Medium-sized Enterprises and other laws for the purpose of promoting the timely payment by government organs, public institutions, and large enterprises to small and medium-sized enterprises, regulating contract entering into and performance, safeguarding the lawful rights and interests of small and medium-sized enterprises, and optimizing the business environment.

Article 2 — These Regulations apply to the payment by government organs, public institutions, and large enterprises to small and medium-sized enterprises for goods, construction works, and services purchased by them. Where laws, administrative regulations, or the provisions of the State Council otherwise provide, such provisions shall prevail.

Article 3 — The term "small and medium-sized enterprise" as used in these Regulations refers to an enterprise that, within the territory of the People's Republic of China, is legally established and conforms to

the criteria for the classification of small and medium-sized enterprises as determined by the State Council approval in accordance with law.

Article 4 — Government organs, public institutions, and large enterprises shall perform their payment obligations to small and medium-sized enterprises in a timely manner. They shall not default on, delay in, or refuse to pay amounts owed to small and medium-sized enterprises.

Article 5 — The relevant State Council departments shall be responsible for the comprehensive coordination, macro guidance, supervision, and inspection of the work relating to ensuring payment to small and medium-sized enterprises nationwide. The local people's governments at or above the county level shall be responsible for the work relating to ensuring payment to small and medium-sized enterprises within their respective administrative regions.

Article 6 — Small and medium-sized enterprises shall strengthen their contract management and accounts receivable management, and take the initiative to inform the counterparty of their status as a small or medium-sized enterprise. Small and medium-sized enterprises shall not collude with government organs, public institutions, or large enterprises to falsely claim status as a small or medium-sized enterprise for the purpose of enjoying the preferential treatment under these Regulations.

Article 7 — Industry associations and chambers of commerce shall, in accordance with their articles of association, improve industry self-regulation, regulate, guide, and urge their members to make timely payment to small and medium-sized enterprises, protect the lawful rights and interests of small and medium-sized enterprises, and encourage large enterprises to set shorter payment terms than those prescribed by these Regulations.

Chapter II — Payment Terms and Methods

Article 8 — Government organs and public institutions that purchase goods, construction works, or services from small and medium-sized enterprises shall make payment within 30 days from the date on which the goods, construction works, or services are delivered. Where the contract provides otherwise, the payment term shall not exceed 60 days.

Article 9 — Where government organs, public institutions, or large enterprises purchase goods, construction works, or services from small and medium-sized enterprises through installment payment, deferred payment, or other means, the duration of any deferred payment shall not exceed the provisions of Article 8 of these Regulations.

Article 10 — The payment term agreed upon in a contract between a government organ, public institution, or large enterprise and a small or medium-sized enterprise shall be calculated from the date of delivery of the goods, construction works, or services. Where the parties agree to conduct inspection or acceptance, the payment term shall be calculated from the date on which the inspection or acceptance is completed. Where the government organ, public institution, or large enterprise delays in conducting inspection or acceptance, the payment term shall be calculated from the date on which the agreed inspection or acceptance period expires.

Article 11 — Government organs, public institutions, and large enterprises shall not compel small and medium-sized enterprises to accept commercial bills of exchange or other non-cash payment methods, nor shall they use commercial bills of exchange or other non-cash payment methods to extend the payment term in disguised form.

Article 12 — Where government organs, public institutions, or large enterprises make payment using commercial bills of exchange or other non-cash payment methods, they shall specify such payment method and the payment term in the contract. They shall not require small and medium-sized enterprises to bear the discount interest.

Article 13 — Where government organs, public institutions, or large enterprises settle accounts with small and medium-sized enterprises by means of construction in progress or unfinished projects, items to be inspected and accepted, or other forms, they shall not use such means to extend the payment term in disguised form.

Article 14 — Small and medium-sized enterprises shall settle accounts with government organs, public institutions, or large enterprises based on the actually performed progress, completed work volume, or delivered goods, and may submit a settlement application to the government organ, public institution, or large enterprise. The government organ, public institution, or large enterprise shall handle the settlement within 20 days from the date of receipt of the settlement documents submitted by the small or medium-sized enterprise. Where the contract provides otherwise, such provisions shall prevail.

Article 15 — Where government organs, public institutions, or large enterprises delay in making payment to small and medium-sized enterprises, they shall pay overdue interest. The interest rate shall be determined by agreement between the parties; where there is no agreement, the loan prime rate (LPR) for the corresponding term as published by the National Interbank Funding Center on the date on which the payment becomes overdue shall apply.

Article 16 — Government organs and public institutions shall not use the internal procedures of the entity, delays in internal approval, or failures to complete internal procedures as grounds for refusing or delaying payment to small and medium-sized enterprises.

Article 17 — Where small and medium-sized enterprises, in performing contracts with government organs, public institutions, or large enterprises, are required to provide security deposits, they shall not be compelled to do so unless otherwise provided by law. The security deposit shall be set at a reasonable amount and shall not be set at an excessively high amount. Upon expiration of the guarantee period, the government organ, public institution, or large enterprise shall verify and return the security deposit in a timely manner.

Chapter III — Acts Prohibited

Article 18 — When entering into contracts with small and medium-sized enterprises, government organs, public institutions, and large enterprises shall not use their superior bargaining position to set unreasonable or excessively long payment terms and conditions.

Article 19 — Government organs, public institutions, and large enterprises shall not use the internal rules and regulations, contracts, or any other form to exempt or limit their liability for delayed payment to small and medium-sized enterprises.

Article 20 — Government organs, public institutions, and large enterprises shall not force small and medium-sized enterprises to accept unreasonable transaction conditions such as designated suppliers or designated subcontractors, nor shall they extend payment terms or delay payment on such grounds.

Article 21 — Government organs, public institutions, and large enterprises shall not require small and medium-sized enterprises to accept settlement methods that extend the payment term, such as making payment conditional upon an audit conclusion or final account settlement, unless otherwise provided by law or agreed by the parties.

Article 22 — Government organs, public institutions, and large enterprises shall not refuse or delay payment to small and medium-sized enterprises on the grounds that the legal representative or principal responsible person has changed, that internal performance of duties has been adjusted, or that they are awaiting the completion of completion acceptance and final account settlement.

Article 23 — Where any department, unit, or individual requires a government organ, public institution, or large enterprise to make an advance payment for a construction project or to make a capital contribution in disguise, the government organ, public institution, or large enterprise shall not use such requirement as

grounds for delaying payment to small and medium-sized enterprises.

Article 24 — Where government organs, public institutions, or large enterprises enter into contracts with small and medium-sized enterprises, they shall not require small and medium-sized enterprises to use security deposit deductions as a method to offset accounts payable without justification.

Chapter IV — Supervision and Administration

Article 25 — The comprehensive coordination departments of the people's governments at or above the provincial level shall, by means of circulation of notices, discussions and meetings, evaluation and inspection, and other methods, urge government organs, public institutions, and large enterprises to make timely payment to small and medium-sized enterprises.

Article 26 — The departments responsible for accepting complaints from small and medium-sized enterprises under the State Council and the local people's governments at or above the county level shall establish and improve a complaint handling mechanism for matters involving overdue payments, and shall make public the methods and channels for accepting complaints.

Article 27 — Where small and medium-sized enterprises consider that government organs, public institutions, or large enterprises have violated these Regulations by refusing or delaying payment, they may file a complaint with the department responsible for accepting complaints from small and medium-sized enterprises. The department accepting the complaint shall handle the matter in a timely manner and inform the complainant of the result in writing within 30 days from the date of acceptance; where the matter is complex or there are other special circumstances, the handling period may be appropriately extended, but the extension shall not exceed 30 days. Where the complaint handling department needs to consult with the department with supervisory and management authority or verify relevant information, the relevant department shall cooperate.

Article 28 — The departments responsible for accepting complaints from small and medium-sized enterprises shall urge the parties involved to resolve the dispute through negotiation or mediation in accordance with law. Where a complaint is accepted, the complaint handling department may circulate a notice of criticism to the government organ, public institution, or large enterprise that has failed to make timely payment. Where the circumstances are serious, the department accepting the complaint may, in accordance with law, transfer the matter to the relevant departments for handling.

Article 29 — For government organs and public institutions, the audit authorities shall lawfully conduct audit supervision over matters including the expenditures of government organs and public institutions that use fiscal funds to purchase goods, construction works, or services from small and medium-sized enterprises and their compliance with the provisions of these Regulations on ensuring payment.

Article 30 — The financial authorities shall supervise and inspect the compliance with the relevant provisions on ensuring payment when government organs and public institutions use fiscal funds to purchase goods, construction works, or services from small and medium-sized enterprises, and shall restrict or cancel the fiscal funding of government organs and public institutions that refuse to make timely payment in accordance with law.

Article 31 — The departments of industry and information technology, development and reform, finance, housing and urban-rural development, transport, water resources, commerce, state-owned assets supervision and administration, and market regulation of the people's governments at or above the provincial level shall, in accordance with their respective functions and duties, strengthen supervision and management of the relevant work within their respective sectors.

Article 32 — Government organs and public institutions shall disclose to the public information on their overdue payments to small and medium-sized enterprises on an annual basis. Large enterprises shall

include in their annual reports information on their overdue payments to small and medium-sized enterprises, and disclose such information to the public through enterprise credit information publicity systems or other means in accordance with law.

Chapter V — Legal Liability

Article 33 — Where government organs or public institutions violate these Regulations by refusing or delaying payment to small and medium-sized enterprises, the organ with the power of appointment and removal or the supervisory organ shall, in accordance with law, impose sanctions on the directly responsible person in charge and other directly responsible personnel.

Article 34 — Where government organs or public institutions have any of the following circumstances, the organ with the power of appointment and removal or the supervisory organ shall, in accordance with law, impose sanctions on the directly responsible person in charge and other directly responsible personnel:

- (1) using commercial bills of exchange or other non-cash payment methods to extend the payment term in disguised form;
- (2) compelling small and medium-sized enterprises to accept commercial bills of exchange or other non-cash payment methods;
- (3) requiring small and medium-sized enterprises to bear discount interest without a basis in the contract;
- (4) setting unreasonable payment terms, conditions, or transaction forms by abusing their superior bargaining position;
- (5) forcing small and medium-sized enterprises to accept unreasonable transaction conditions such as designated suppliers or designated subcontractors;
- (6) failing to disclose information on overdue payments to small and medium-sized enterprises as required; or
- (7) using internal rules and regulations, contracts, or any other form to exempt or limit their liability for delayed payment to small and medium-sized enterprises.

Article 35 — Where government organs or public institutions refuse or delay payment to small and medium-sized enterprises, they shall be subject to restrictions on their official expenditures, office premises renovation, and the procurement of official vehicles, and restrictions on their official travel abroad. The departments responsible for handling expenditure budgets for such entities at the same level of government shall not arrange the relevant budgetary funds.

Article 36 — Where a large enterprise violates these Regulations by refusing or delaying payment to small and medium-sized enterprises, the relevant departments shall, in accordance with law, include such enterprise in the list of enterprises with untrustworthy conduct, and impose administrative penalties in accordance with law, take restrictive measures against such enterprise in matters such as government procurement, project bidding, and administrative licensing in accordance with law, and impose joint sanctions for untrustworthy conduct. The directly responsible person in charge and other directly responsible personnel shall also be subject to sanctions in accordance with law.

Article 37 — Where a government organ, public institution, or large enterprise fails to make payment within the time limit in violation of these Regulations, and small and medium-sized enterprises suffer losses as a result, the government organ, public institution, or large enterprise shall bear civil liability in accordance with law. Where a crime is constituted, criminal liability shall be pursued in accordance with law.

Chapter VI — Supplementary Provisions

Article 38 — These Regulations shall come into force on September 1, 2020.

Disclaimer: This English translation is provided for reference purposes only. While every effort has been made to ensure accuracy, the original Chinese text of the Regulations on Ensuring Payment to Small and Medium-sized Enterprises (State Council Decree No. 728) shall prevail in all legal matters. For matters requiring legal interpretation or application, readers are advised to consult the official Chinese text and seek professional legal advice. Dan Young Business Consultancy makes no warranty as to the accuracy or completeness of this translation and accepts no liability for any reliance placed upon it.