

# **GENERAL CONDITIONS OF PURCHASE OF PRODUCTS**

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## 1. INTERPRETATION

In these General Conditions of Purchase, unless inconsistent with the context or otherwise specified, the following words shall have the following meanings: -

"Affiliate"	means a company, partnership or other legal entity which is controlled by a Party, or which is controlled by an entity which controls a Party. A company shall be deemed to control another company if such company possesses, directly or indirectly, the power to (i) vote fifty percent (50%) or more of the stock having ordinary voting power for the election of directors of such company, or (ii) direct or cause the direction of the management and policies of such company, whether through the ownership of stock, common members of board of directors, by contract or otherwise.
Authorised Representative	Means, for the purpose of Clause 30, the individual selected who has requisite authority to enter into the relevant negotiations.
"Buyer"	means International Maritime Industries, under license number [xxxxxxxxxx and further details];
"Buyer Group"	means Buyer, its client and any end-user of the Product, Buyer's other Vendor s and subcontractors, the Affiliates of all of them, and their respective directors, officers, employees, advisors and agents;
"Confidential Information"	has the meaning assigned to it in Clause 25.1 below.
"Consequential Loss"	means any indirect or consequential losses and/or damage, including, but not limited to, loss of production, loss of product, loss of use, loss of revenue or profit or anticipated revenue or profit, loss of savings, economic loss and loss of business opportunities (including all costs and expenses arising out of any action, claim, suit, demand or judgment resulting from or arising out of any of the foregoing) and overhead costs, howsoever arising, under contract, tort, equity, breach of duty (statutory or otherwise);
"Contract"	has the meaning assigned to it in Clause 3.2 below.
"Delivery Date"	has the meaning assigned to it in Clause 6.1 below.
"Effective Date"	means the date of the Order as written on the face of the Order or in the absence of any such date means the date notified in writing by Buyer to Vendor ;
"Force Majeure"	has the meaning assigned to it in Clause 16.1 below.
"General Conditions of Purchase"	means the terms and conditions contained herein;
"Material Safety Data Sheet or MSDS" "	means a form completed by the Product manufacturer containing data regarding the hazardous, health, environmental and safety properties of the Products and the procedures for the safe handling and use thereof, including, but not limited to, physical data (e.g., melting point, boiling point, flash point, etc.), toxicity, health effects, reactivity, storage, disposal, protective equipment.
"Order"	means Buyer's purchase order received by Vendor corresponding to these General Conditions of Purchase which is hereby incorporated into and forms part of the Contract;
"Order Number"	means Buyer's purchase order number stated on the face of its Order issued to Vendor ;
"Party"	means Buyer or Vendor individually;

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|--------------------------------|---|
| "Parties"                      | means Buyer and Vendor collectively;  |
| "Place of Delivery"            | means the designated lay-down area of the Buyer's premises in Ras-Al-Khair, unless otherwise stated in the Special Terms and Conditions.  |
| "Products"                     | means those goods or materials ordered by Buyer from Vendor as detailed on the face of the Order in accordance with the terms and conditions of the Contract.   |
| "Project/Contract Manager"     | means the person named as such in the Special Terms and Conditions or as agreed in writing by the Parties from time to time or his or her successor or superior notified in writing to the other Party relating to the Order; |
| "Security"                     | means either or both of the security documents forming Exhibit A.1 and Exhibit A.2 as may be required from the Vendor as per the terms of the Special Terms and Conditions.   |
| "Special Terms and Conditions" | means the Special Terms and Conditions that seek to enhance or amend these General Terms and Conditions as appended to and forming part of the Order.   |
| "Vendor "                      | means the company named on the face of the Order as Vendor ;  |
| "Warranty"                     | has the meaning assigned to it in Clause 13 below.  |
| "Working Day"                  | means those days when Buyer is open for business being Saturday to Thursday (inclusive) and excluding public holidays announced for the Kingdom of Saudi Arabia.  |
- 1.1. Clause headings are for ease of reference only and are not intended to be part of or to affect the meaning, interpretation or construction of any of the terms and conditions of the Contract.
  - 1.2. References to any gender includes any other gender, the plural shall include the singular and bodies corporate shall include unincorporated bodies and (in each case) vice versa.
  - 1.3. Reference to any statute, enactment, ordinance, order, regulation or other similar instrument shall be construed to include a reference to the statute, enactment, ordinance, order, regulation or instrument as from time to time amended, extended, re-enacted or consolidated and all statutory instruments, orders, regulations or instruments made pursuant to it.
  - 1.4. Reference to any calendar shall mean the Gregorian calendar.
  - 1.5. Clauses referenced by name shall refer to the Clause having the title referred to.
  - 1.6. References to currency in the Contract, denoted by: "US \$" and "\$" are references to US Dollars and "SR" is reference to Saudi Arabian Rials.

## **2. APPLICATION AND ACKNOWLEDGEMENT OF ORDER**

- 2.1. Subject to any variation under Clause 2.4 below, these General Conditions of Purchase and any referenced hereto Order are the only conditions upon which Buyer is prepared to deal with Vendor and they shall govern the Contract to the entire exclusion of all other terms or conditions.
- 2.2. Each Order for Products by Buyer from Vendor shall be deemed to be an offer by Buyer to buy Products subject to these General Conditions of Purchase and no Order shall be accepted until Vendor either expressly by giving notice of acceptance, or impliedly by fulfilling the Order, in whole or in part accepts the offer in accordance with Clause 2.6 below.
- 2.3. No terms or conditions endorsed upon, delivered with or contained in Vendor's quotation, acknowledgement or acceptance/acknowledgement of order, specification, invoice or similar document shall form part of the Contract and Vendor waives any right which it otherwise might have to rely on such terms and conditions.

- 2.4. Any variation to these General Conditions of Purchase shall have no effect unless expressly agreed in writing and signed by Buyer.
- 2.5. To purchase Products, Buyer shall each time it elects to do so, submit an Order to Vendor. Orders may be submitted by fax, post or personal email of the individual submitting the Order or hand delivered. Each Order shall be governed by these General Conditions of Purchase.
- 2.6. Subject to Clause 3 below, acknowledgement of this Order must be made in writing by return of post to Buyer's office at 11<sup>th</sup> Floor, Al Turki Business Park, 7244 King Saud Road, Doha Al Janubiyah, Dhahran, 34455, Kingdom of Saudi Arabia, or by email quoting the relevant Order Number. Acceptance of the Order entails acceptance of the Contract and in the event of such Contract conflicting with any conditions or instructions of Vendor then Vendor's conditions and instructions shall be deemed to have no application whatsoever and the Contract shall prevail. Failure by Vendor to acknowledge the Order within Seven (7) calendar days from the date of the Order shall be deemed as automatic unconditional acceptance by Vendor of the Contract without limitation.

### **3. FORMATION AND CONTENT OF CONTRACT**

- 3.1. Notwithstanding Clause 2 above, commencement of any design, manufacture, delivery, start of invoicing or supply of the Products implies acceptance of the Order by Vendor under these General Conditions of Purchase.
- 3.2. Buyer's Order shall consist of the following items and the order of precedence shall be as follows: -
  - (a) Type of the Products,
  - (b) Quantity of the Products,
  - (c) Price of the Products;
  - (d) required date of delivery of the Products;
  - (e) Special Terms and Conditions.
  - (f) These General Conditions of Purchase;
  - (g) Security as may be applicable as per Special Terms and Conditions; and
  - (h) Any other referenced documents on the face of the Order.

The items referred to in this Clause 3.2 shall be referred to herein as the "**Contract**".

### **4. INSPECTION AND TESTING**

- 4.1. Representatives of Buyer shall be entitled at all reasonable hours to inspect, test and to enquire by any reasonable means at any stage of manufacture or fabrication of the Products, any materials and/or component parts the subject of the Contract, at Vendor's facility or any of its sub-vendor facilities, in order to determine the status and compliance of the works with the Contract. This shall include, but shall not be limited to the conducting of pre-load surveys or inspections. Buyer and/or its representative shall also have the right to verify and confirm the acceptability of procurement, manufacture, assembly and/or fabrication of such materials, component parts or Products covered by the Contract. Any and all enquiries and concerns of Buyer and/or its representative shall be promptly and fully answered by Vendor to the reasonable satisfaction of Buyer and failure by Vendor to meet this obligation may result in the cancellation of the Contract by Buyer without any liability to Buyer. If it is found on inspection, that the works for the Products or any Products is defective or otherwise not in accordance with the conditions of the Contract, Buyer may reject any such Products and cancel the Contract without any liability to Buyer or at its discretion notify Vendor to promptly make good the defect and ensure that the rejected items complies with the Contract at Vendor's cost.
- 4.2. Where Vendor performs tests in the normal course of its business or as may be specified in the Contract it shall give at least five calendar days' advance notice in writing of such tests, and Buyer and any properly interested third party authorised by Buyer shall be entitled to attend the tests. Vendor shall provide Buyer with such test certificates as Buyer may reasonably require.
- 4.3. All Products furnished must be as specified and will subject to final inspection and approval of Buyer after arrival at destination with the right reserved to reject such portion of any shipment which may be defective or fail to comply with the specifications without invalidating the remainder of the Order. If rejected it will be held for disposition at the expense and risk of Vendor.
- 4.4. Inspection and testing in accordance with this Clause 4 or failure or waiver thereof shall not relieve Vendor of any liability nor imply acceptance of the Products or any portion thereof by Buyer.

## 5. APPROVAL OF DESIGNS AND SUBSTITUTION OF SUPPLY

- 5.1. When the Products to be delivered are to be manufactured in accordance with Vendor's designs plans or drawings or when samples are to be submitted for approval by Buyer, the approval by Buyer shall in no way relieve Vendor from the obligations to comply with the specification or any other requirements that may be detailed in the Contract.
- 5.2. If for justifiable reason, a Product is no longer manufactured and Vendor is unable to supply the requested item and an alternative item is proposed for supply, Vendor shall immediately contact Buyer and request that a Change Order to supply the substitute Clause is issued.
- 5.3. Vendor shall not supply Products with any other product, part or model numbers until such time as the item description(s) are changed to reflect new or revised product, part or model numbers. Vendor shall not assume automatic product, part or model number supersession or assume data error in descriptive wording, product numbers, or model numbers.
- 5.4. For any proposed new or revised Product, part or model numbers Vendor shall either:
- Provide a statement from the manufacturer on the manufacturer's stationery that certifies that the part or model number being offered:
- (a) Is physically interchangeable with the one being ordered by Buyer in form, fit, and function;
  - (b) Is only a part or model number update;
  - (c) Does not require any modification of existing Buyer equipment;
- Or
- Provide a statement from the manufacturer on the manufacturer's stationery that certifies that the product being offered is an alternate that performs the same functions as the item being ordered by Buyer. In this case, Vendor must provide the following:
- (a) A full technical description;
  - (b) A detailed specification sheet;
  - (c) Detailed drawings (when appropriate)'
  - (d) A detailed statement describing any differences in form and fit between the product specified by Buyer and the product that Vendor proposes to supply;
  - (e) Details of modifications that Buyer will be required to make to install the alternate part and a list of the associated material requirements; and
  - (f) a list of other part numbers affected by installing the alternate part.
- In addition, if Vendor is proposing a different product because the Item is obsolete, Vendor shall also provide a letter from the manufacturer on the manufacturer's stationery that certifies that the product is obsolete.
- 5.4 Buyer shall not be under any obligation to approve or accept new or revised Products, parts or models proposed by Vendor.

## 6 DELIVERY AND ACCEPTANCE

- 6.1 The delivery date of the Products ordered shall be that specified in the Order or as otherwise agreed in writing by Buyer and Vendor ("**Delivery Date**"). Vendor shall furnish such programmes of manufacture and delivery as Buyer may reasonably require. If the Contract includes the carrying out of tests on the Products after their receipt by Buyer, then delivery shall not be deemed complete until such tests have been passed to the unconditional satisfaction of Buyer.
- 6.2 Unless otherwise specified, all Products shall be packed, marked and otherwise prepared for shipment in a manner which: (i) complies with applicable regulations, (ii) is acceptable to common carriers, (iii) provides necessary lifting, handling, and shipping information (and other relevant information identified by Buyer), (iv) is adequate for storage and protection against weather, and (v) is appropriate to ensure safe arrival of the Products at the Place of Delivery, in good condition (the foregoing includes as required, the use of cushioning material or vacuum packing to prevent damage during transportation). In addition, the following requirements apply: (i) if specific export packing requirements exist for a particular Product (i.e. said requirements result from the type/characteristics of the Product concerned), Vendor should ensure that adequate documentation reflecting the same is furnished, and (ii) wooden packaging or

packing of any kind including wooden boxes, materials or pallets must only be made of heat-treated timber. If Vendor requires Buyer to return any packaging material to Vendor that fact must be clearly stated on any delivery note delivered to Buyer and any such packaging material shall only be returned to Vendor at the cost of Vendor.

- 6.3 Should Buyer or Vendor determine that any of the Products have a shelf-life Vendor shall ensure that the following shelf-life information is clearly marked on each label or indented on each container of the Products. In addition, if Products are provided in a "kit" form (for example, epoxy cement); the shelf-life of each item in the kit must be clearly marked or indented with the required Buyer shelf-life data:
- (a) Date of manufacture and the expiry date; or
  - (b) Date of manufacture and the manufacturer's warranted shelf-life period; or
  - (c) Expiry date and the manufacturer's warranted shelf-life period; or
  - (d) All of the above.
- 6.4 Additionally, Vendor shall advise conditions under which Products are to be stored.
- 6.5 When received by Buyer at the Place of Delivery, such Products must have a minimum remaining shelf-life of three-quarters of the total shelf-life period (the period from the date of manufacture to the warranted expiration date). Buyer shall be entitled to reimbursement (or offset) from Vendor for Goods received that do not conform to the conditions specified above as follows:
- (a) Purchase price of the nonconforming Products; and
  - (b) When applicable, cost of transportation including ocean freight or airfreight.
- 6.6 Buyer reserves the right to select the means of transport of the Products, notwithstanding anything herein to the contrary. Vendor shall obtain the approval in writing from Buyer on the carrier for shipment of the Products.
- 6.7 All deliveries shall be made during normal business hours on the scheduled Delivery Date at the Place of Delivery. Instalment deliveries shall not be accepted without Buyer's prior written authorization as stated in the Special Terms of Conditions Vendor acknowledges that time is of the essence in relation to the timing of all Product deliveries under the Contract.
- 6.8 Where Buyer consents to delivery by instalments subject to Clause 6.7 above, the Contract shall be construed as a single contract in respect of each instalment. Nevertheless, failure by Vendor to deliver any one instalment in accordance with the Contract shall entitle Buyer at its option to treat the whole Contract as repudiated.
- 6.9 Without prejudice to Clauses 6.7 and 6.8 above, Vendor shall notify Buyer if any delivery or performance under the Contract is likely to be delayed beyond the specified Delivery Date. Failure by Vendor so to notify any likely delay shall entitle Buyer to terminate without liability all or part of the Contract and/or to compensation for its losses in consequence of the failure and delay. Buyer shall be entitled to claim liquidated damages in respect of any delay of the Products at the rate of 0.2 % per day up to a maximum of 10% of the Contract price, unless stated otherwise in the Special Terms and Conditions, in which case, the rate specified in the Special Terms and Conditions shall apply. Such liquidated damages are a genuine, pre-determined and agreed rate of compensation incurred by Buyer resulting from delay and are not pecuniary in nature.
- 6.10 In the event of a delayed delivery, Buyer shall have the right to prefer an accelerated transportation method like air freight possible at the cost of Vendor. This cost shall be in addition to the application of the liquidated damages under which such charges were not considered.
- 6.11 Vendor agrees that it shall not allow any liens to attach to the Products or any property of Buyer, and that it shall furnish, upon request, receipts and releases with respect to the Products showing that all related costs and expenses have been paid (and thus, that no third-party claims, liens, or rights of liens exist against Buyer or its property or the Products). Vendor shall indemnify and hold Buyer harmless from said liens and claims.
- 6.12 Unless stated to the contrary in the Special Terms and Conditions, if the Products are delivered to Buyer in excess of the quantities ordered as detailed on the face of the Order Buyer shall not be bound to pay

for the excess and any excess shall be and shall remain at Vendor's risk and shall be returnable to Vendor at Vendor's expense.

- 6.13 Buyer shall not be deemed to have accepted the Products until it has had a reasonable period of time to inspect them following delivery and subject to Clause 13 below, Buyer shall also have the right to reject the Products as though they had not been accepted.
- 6.14 Depending on the nature of the Products, additional liquidated damage regimes (over and above that detailed in Article 6.12 above) may be applicable to the Vendor, and where applicable, the nature and rate of such shall be indicated in the Special Terms and Conditions. Such liquidated damages are a genuine, pre-determined and agreed rate of compensation incurred by Buyer resulting from delay and are not pecuniary in nature.

## **7. TITLE AND RISK**

- 7.1 Full and beneficial legal title to the Products ordered shall pass to Buyer on the earlier of (i) payment to Vendor; or (ii) delivery to Buyer in accordance with the Contract.
- 7.2 Risk in compliant Products delivered in accordance with the Contract shall pass to Buyer on safe delivery in good condition and acceptance thereof by Buyer.
- 7.3 Such passing of title and risk as described in this Clause 7 shall be without prejudice to any right of rejection by Buyer arising under the Contract.
- 7.4 Vendor shall ensure that all Products and any materials used for the manufacture of the Products to which title has passed to Buyer under Clause 7.1 above are clearly marked as belonging to Buyer and Vendor shall store the same separately from any goods or materials belonging to Vendor or any third party to the extent reasonably practicable. Vendor shall also clearly identify the location of such Products and materials and provide such information to Buyer upon request.
- 7.5 Goods, materials, equipment, tools, dies, moulds, copyright, design rights or any other forms of intellectual property rights in all drawings, specifications and data supplied by Buyer to Vendor or not so supplied but used by Vendor specifically in the manufacture of the Products shall at all times be and remain the exclusive property of Buyer but shall be (i) held by Vendor in safe custody at its own risk, (ii) clearly identified and recorded by Vendor as belonging to Buyer or Buyer's client (as notified by Buyer), (iii) maintained and kept in good condition by Vendor until returned to Buyer and such items shall not be (i) disposed of other than in accordance with Buyer's written instructions; nor (ii) used otherwise than as authorised by Buyer in writing. Vendor hereby grants Buyer the right and Buyer hereby reserves the right at its discretion at any time to enter Vendor's premises and any other location where such items are located to take possession of the same.

## **8. INVOICING PROCEDURE AND DOCUMENTATION**

- 8.1 All invoices for payment must be submitted to Buyer's Accounts payable in accordance with the following invoicing procedure: -

Invoice header information:

- Vendor name and address
- Vendor's Tax ID number
- Buyer's Tax ID number – in cases where the Buyer will self-account for VAT, with a relevant information
- Vendor's unique invoice number
- Date of invoice
- Order number (If singular)

Each invoice item shall state:

- Order number (If multiple Orders in same invoice)
- Order item number
- Shipment date
- Quantity and nature of goods shipped
- Unit price



- Unit price exclusive of VAT
- VAT rate applied
- Total item value
- Amount of VAT payable in Saudi Arabian Riyals

Invoice footer information:

- Total invoice value
- Authorized signature

Notes:

- The unit of measure stated in the Order is the pricing unit.
- The currencies and unit prices stated in Vendor's invoices must match the currencies and unit prices in Buyer's Orders in effect at the time of Product shipment.

8.2 One original invoice is required per Order or per agreed payment schedule;

8.3 Invoices must be submitted to Buyer at the end of the calendar month following final delivery of the Products or in the case of instalment delivery on the date agreed by Buyer;

8.4 All invoices for payment must be signed on behalf of Vendor and delivered to Buyer together with all supporting documentation as detailed in this Clause 8 by post to Buyer's office at 11th Floor, Al Turki Business Park, 7244 King Saud Road, Doha Al Janubiyah, Dhahran, 34455, Kingdom of Saudi Arabia or such other address which Buyer may specify from time to time, whereupon receipt of which the invoice will be date and time stamped by Buyer evidencing receipt by Buyer. Invoices issued to any location not specified by Buyer shall be disregarded and will not be paid;

8.5 Receipt of invoice by Buyer as evidenced in accordance with 8.4 above does not constitute approval of invoice for payment.

8.6 The original bill of lading and for local deliveries signed Delivery Orders or transportation receipt must be attached to the invoice. In the case of delivery by instalments separate packing lists and bills of lading are required covering the contents of each shipment showing part number and number of packages;

8.7 In the event of a discrepancy between Vendor's invoice and the Order Vendor shall provide Buyer with a detailed reconciliation statement validating such discrepancy for Buyer's approval prior to payment by Buyer.

8.8 Invoices not properly supported in accordance with this Clause 8 shall be rejected by Buyer unpaid.

## **9. PRICE AND PAYMENT**

9.1 Unless otherwise stated in the Special Terms and Conditions, the Contract price shall be inclusive of the costs of delivery DDP (named location) (as defined in Incoterms 2010) to the Place of Delivery.

9.2 Subject to Clause 8 above and unless otherwise detailed in the Special Terms and Conditions, payment shall be made by Buyer against delivery of compliant Products together with all documentation required under the Contract within sixty (60) days from the date of receipt of an acceptable invoice that was issued in line with the VAT law.

9.3 Any payment made by Buyer under the Contract including the final payments under the Contract shall not prevent Buyer from recovering any amount over paid or wrongfully paid however such payment may have arisen including but not limited to those paid to Vendor by mistake of law or of fact. Buyer shall be entitled to withhold such amount from any sums due or which may become due to Vendor from Buyer or Buyer may recover such amount as a debt.

9.4 No payment of any kind shall be made to Saudi Arabian Vendors until Vendor has presented Buyer with an interim certificate from the Saudi Arab General Authority for Zakat and Tax ("GAZT"), which confirms that all applicable Zakat and company income tax obligations have been paid by Vendor through the previous year or fiscal period. Vendor shall also present a final certificate from GAZT for the same year or period within twelve (12) months of the end of such year or period.

- 9.5 Any and all invoices for payment under a Contract shall be submitted within ninety (90) days acceptance of the Products. Buyer reserves the right to reject, and shall not be obligated to make any payments towards any invoice submitted after such period. Buyer shall charge Vendor the additional costs of processing invoices received later than six (6) months after acceptance of the Products according to the following schedule:

Invoice Value (SR)	Charge
0 - 1,000	Value of invoice
1,001 - 20,000	SR 1,000
20,001 - 100,000	5% of invoice amount
More than 100,000	SR 5,000

- 9.6 If Buyer is ordered by any governmental authority in Saudi Arabia to pay any sum of money in satisfaction of any debt or obligation in Saudi Arabia of Vendor any contractor or sub-contractor, or the personnel of any of them, Buyer shall give Vendor written notice of its payment. Vendor shall reimburse Buyer for the amount paid upon receipt of Buyer's billing and evidence of the governmental order that required Buyer to make the payment.

## 10 AUDIT

Buyer shall have the right, at any time up to six (6) years after completion or cancellation of any Order pursuant to the Contract, to request an independent audit of Vendor's books, records and data in any form to verify the compliance with the terms hereof and the correctness of any invoice submitted by Vendor. Said right shall be exercised solely for the purposes of this Contract.

## 11 WARRANTY, COMPLIANCE, AND REPRESENTATIONS

- 11.1 Products shall conform to the requirements of the Contract and shall be (i) new (unless such requirement is stated as inapplicable in the Special Terms and Conditions) (ii) fit for the purpose they are intended as specified in the Order, (iii) of acceptable quality, (iv) free from defects in workmanship, materials, design, and (v) in accordance with the agreed specification, including any technical specification referred to in the Special Terms and Conditions. The Products shall be manufactured in accordance with good industry practice and all applicable standards and legislation (including without limitation environmental and safety laws rules and regulations) and, as applicable, Buyer's quality, health, safety and environmental policies and procedures notified in writing to Vendor. Products shall be delivered complete with all instructions, warnings and other data necessary for safe and proper operation. Products which do not comply with all of the above shall be considered to be defective.
- 11.2 If for any reason Vendor is uncertain as to whether the Products to be supplied by it will comply with any of the above, it must promptly and before despatch inform Buyer in writing with full details of the possible non-compliance for consideration. Written acceptance or rejection of Vendor's application will then be provided by Buyer in as timely a manner as possible.
- 11.3 Vendor hereby represents and warrants that: -
- 11.3.a.1.1 It has the necessary express authorisation to distribute and/or sell to Buyer in the location, country, state or region where Buyer conducts its business operations the Products ordered by Buyer under the Contract and if requested by Buyer at any time Vendor shall promptly provide to Buyer satisfactory documentary evidence in support of such authorisation;
- (b) The Products sold by it to Buyer under the Contract shall be genuine original equipment manufactured and shall not be forgeries, counterfeits or misrepresentations of other products produced by a third party who owns the design right, patent right, trademark right, copyright and/or other intellectual property rights in the Products;
  - (c) The Products ordered by Buyer under the Contract will not be manufactured in or supplied from, whether directly or indirectly, any country or state which is subject to a prevailing trade embargo or like restriction by the United Nations or by any country of Buyer's clients, including, but not limited to, the United States of America; and
  - (d) That all Products delivered to Buyer under the Contract shall be free from and clear of any liens or encumbrances.
  - (e) Vendor represents and warrants that no applicable laws or regulations shall be violated in the manufacture or sale of the Products contemplated hereunder, and that Vendor shall comply with

and adhere to all applicable laws and regulations which may apply to Vendor in connection with the Contract.

11.4 In the event of: -

- (a) A misrepresentation or breach of warranty under Clause 11.3 above by Vendor; or
- (b) If Vendor refuses or fails to provide Buyer with satisfactory documentary evidence of its authorisation to distribute and/or sell the Products to Buyer under the Contract in accordance with sub clause 11.3.a.1.1 above; or
- (c) If Buyer has reasonable cause to deem that Vendor's evidence provided to Buyer in accordance with sub clause 11.3.a.1.1 above is unsatisfactory

Buyer shall be entitled without prejudice to any other rights it may have in law or otherwise to terminate the Contract in whole or in part with immediate effect and without any liability whatsoever to Vendor and Buyer shall be entitled to claim compensation from Vendor for any losses incurred by Buyer resulting from such misrepresentation, breach of warranty and/or termination.

11.5 The foregoing representations and warranties contained in this Clause 11 shall apply to the benefit of Buyer Group and shall not be affected by delivery to, or inspection, acceptance or payment by Buyer. If any Products delivered pursuant to the Contract are found not to be as warranted and represented, Buyer may return the same to Vendor, at Vendor's expense and risk, for correction, replacement or credit, as Buyer may direct. Any Products repaired or replaced shall be warranted and represented to the same extent as the Products initially furnished. The remedies set forth in this Clause 11 do not apply in lieu of, but in addition to, all other remedies available at law, in contract, in equity or otherwise.

## 12 CHANGE ORDERS

- 12.1 Buyer shall have the right at any time to make changes in an Order including type of Products and time, method and Place of Delivery ("**Change Order**"). If said change(s) trigger(s) increased or decreased costs or a longer or shorter period for delivery, or impacts any of the other conditions applicable to the Order as originally submitted, Vendor shall so notify Buyer within four (4) calendar days from Change Order receipt. Failure by Vendor to do so shall constitute an unconditional waiver by Vendor to make a claim for adjustment, and be deemed acceptance to perform the Change Order under the original applicable conditions. If Vendor so notified Buyer, the Parties shall agree on the applicable changes in the original conditions, based upon the supporting documentation submitted by Vendor, and Buyer shall elect whether to proceed or not.
- 12.2 Vendor shall not have the right at any time to make changes in any Order, unless Buyer expressly agrees thereto.

## 13 REJECTION & REMEDY OF DEFECTS & NON COMPLYING PRODUCTS

- 13.1 Buyer reserves the right to reject the Products within Sixty (60) days of delivery if they are defective, do not comply with Clause 11 non-conforming or unfit to be used as per the Contract. Buyer reserves the right to require replacement of the rejected Products at Vendor's expense. Rejected Products shall be promptly collected by Vendor at its own cost. Vendor shall, at Buyer's option, either (i) promptly repair or replace the defective Product at Vendor's cost within such time as may be stipulated by Buyer or (ii) issue a full refund (including shipping and any other expenses incurred by Buyer). If Vendor does not repair or replace the rejected Product within a reasonable time, Buyer may purchase substitute products elsewhere. If the cost of purchasing such substitute products exceeds the price stated in the Order, then Vendor shall pay the difference to Buyer.
- 13.2 Notwithstanding Clause 13.1 above, upon request by Buyer, Vendor shall at its own expense promptly repair or replace any Products which are discovered to not comply with the Contract within eighteen (18) months of putting into commercial use, or as may be detailed otherwise within the Special Terms and Conditions. Repairs and replacements shall themselves be subject to the foregoing obligations from the date of such repair and replacement.
- 13.3 If Vendor fails to remedy any defect as above provided, Vendor shall return any money paid by Buyer in respect of the defective items and Buyer shall be entitled to terminate the Contract without prejudice to its other rights and remedies in law or otherwise and without any liability to Vendor.
- 13.4 Vendor represents and warrants that it shall exercise its best efforts to obtain the same level of warranty as detailed in Clauses 11.1 and 13.2 (as may be amended by the Special Terms and Conditions) above from its subcontractors, Vendor s and manufacturers. Vendor hereby agrees to assign to Buyer the full benefit of all guarantees and warranties given to Vendor by its subcontractors, Vendor s or manufacturers insofar as the same relate to the Products ordered by Buyer under the Contract

- 13.5 Vendor shall continue to be responsible for the remedy of any latent defects as if such defects were found during the period detailed in Article 13.2. For the avoidance of doubt, latent defects shall include, without limitation, existing defects not found within the period detailed in Article 13.2 since Buyer could not reasonably perform inspections during such period or because such defects were hidden and not capable of being identified by routine inspection.

#### **14 FREE-ISSUE MATERIALS AND TOOLING**

- 14.1 Where tooling (including patterns, dies, moulds, jigs and fixtures and the like) is manufactured or acquired by Vendor specially for the purpose of the Contract, title to it shall pass to Buyer upon its creation or acquisition. Vendor shall deliver up such tooling to Buyer on Buyer's demand.
- 14.2 Where Buyer for the purpose of the Contract issues materials (including equipment, components, tooling, patterns, dies, moulds, jigs and fixtures and the like) free of charge to Vendor, Vendor shall maintain all such materials in good order and condition subject, in the case of tooling, patterns and the like, to fair wear and tear. Vendor shall use such materials solely in connection with the Contract. Any surplus materials shall be returned to or disposed of at Buyer's discretion. Damage to or waste of such materials arising from faulty workmanship or negligence of Vendor shall be made good at Vendor's expense. Without prejudice to any other rights of Buyer, Vendor shall deliver up such materials, whether further processed by Vendor or not, to Buyer on demand.
- 14.3 Vendor warrants and undertakes to fully insure any materials (as specified in Clause 14.2 above) that Buyer may from time to time issue to Vendor pursuant to Clause 14.2 above. Vendor will ensure that Buyer's interest is noted on such policy of insurance on a joint beneficiary basis and shall provide Buyer with evidence of such insurance cover immediately on request from Buyer. Vendor shall fully indemnify and hold harmless Buyer against any losses and damages that Buyer may incur or that may be reasonably foreseeable as a result of Vendor's failure to maintain insurance as required by this Clause 14.3.

#### **15 INTELLECTUAL PROPERTY RIGHTS**

- 15.1 Vendor hereby grants to Buyer, without further cost to Buyer, an irrevocable, nonexclusive, royalty-free, worldwide and freely assignable license (with the right to grant sub-licenses) to make, have made, copy, modify, use the Product in connection with the performance of an Order in order to receive the benefit of the Product.
- 15.2 If Buyer furnishes specifications, requirements, designs and the like to Vendor for the manufacture of the Products, Vendor acknowledges and expressly agrees that Buyer is and remains the sole and exclusive owner of all such specifications, requirements, designs and the like, and of all improvements, modifications, derivative works and intellectual property rights therein.

#### **16 FORCE MAJEURE**

- 16.1 "**Force Majeure**" means the effective occurrence or subsistence after the Effective Date, of any act or event which is unforeseeable, insurmountable and outside the control of the Party which invokes it, and which renders said Party unable to comply totally or partially with its/his obligations under the Contract. Provided the foregoing criteria are met altogether, Force Majeure includes flood, lightning, storm, typhoon, tornado, earthquake, landslide, soil erosion, subsidence, washout, radioactive contamination or epidemic, hostilities or acts of war (whether declared or not), riots (other than among employees of Vendor and/or its sub-vendor s or employees of Buyer), civil or military disturbances, national, regional or professional strikes (excluding strikes, lock-outs and other industrial disputes or actions by between or originated among employees of Vendor and/or its subcontractors or employees of Buyer) and acts of any government or public authority or any representative thereof whether or not legally valid. Force Majeure does not include events such as insolvency or financial distress of any Party, the occurrence of any shortage of personnel, equipment or other resources, the occurrence of any inclement weather condition, failure to obtain or maintain any permit, licence or consent, where such failure is due to the act or omission of the affected Party and failure or inability to perform attributable to market prices or currency devaluation.
- 16.2 Neither Party shall be considered in default of the performance of its obligations under the Contract to the extent that performance of such obligations is prevented, hindered or delayed by Force Majeure and a Party affected by Force Majeure shall be entitled to an extension to the Commencement Date and/or the Delivery Date (as applicable) for the number of days that provision of the Products have been prevented, hindered or delayed by Force Majeure, provided that:
- a) there is a causal relation between the prevention or delay claimed and the Force Majeure events invoked;

- b) the affected Party promptly notifies the other Party in writing of the cause of the delay or non-performance and the likely duration of the delay or non-performance;
- c) the affected Party has complied with Clause 16.3; and
- d) the affected Party shall bear the burden of proving that an event of Force Majeure has occurred and that it is so affected.

16.3 In the event of Force Majeure, the affected Party shall take all reasonable measures available (at its own expense) to mitigate the effect of such Force Majeure, including cooperating with the other Party to develop and implement a plan of remedial action and reasonable alternative measures to remedy the effects of such Force Majeure .

## 17 TERMINATION AND SUSPENSION

17.1 The Contract may be terminated as follows: -

- (a) Either Party may terminate the Contract, in whole or in part, by serving a written notice to the other Party if a Force Majeure event lasts for more than Thirty (30) consecutive days.
- (b) Buyer may terminate the Contract, in whole or in part, effective immediately upon written notice to Vendor, if Vendor becomes bankrupt or insolvent, or if Vendor's business is placed in the hands of a receiver, assignee, or trustee, whether by voluntary act of Vendor or otherwise, or if Vendor undergoes any proceeding analogous to the foregoing.
- (c) Buyer may terminate the Contract, in whole or in part, effective immediately upon written notice to Vendor, if (i) Vendor is in breach of its obligations hereunder, and fails to remedy said breach within a period of Thirty (30) days after having received written notice thereof, or (ii) repeatedly breaches its obligations hereunder, or (iii) if Vendor abandons the Contract, or (iv) commits a breach which is incapable of being remedied.
- (d) Buyer may terminate the Contract for convenience in whole or in part by serving written notice to Vendor at any time after Vendor's acceptance of the Order in accordance with Clause 2.6. The termination notice shall specify the extent to which the Contract is terminated and the time at which such termination becomes effective.

17.2 If the Contract is terminated pursuant to Clause 17.1(b) or 17.1(c), Buyer may:

- (a) Reject the Products (in whole or in part) and return them to Vendor at the risk and cost of Vendor on the basis that a full refund for the Products so returned shall be paid forthwith by Vendor; and/or
- (b) Require Vendor to (i) to the extent that title has not passed to Buyer under Clause 7, transfer title to, and deliver to Buyer, in the manner, time, and extent directed by Buyer, any completed Products, or such partially completed Products and materials, parts, tools, designs, fixtures, plans, drawings and information, and transfer contract rights that Vendor has acquired for the performance of the terminated part of the Contract, and (ii) grant Buyer a royalty-free, assignable and non-exclusive license to use and permit others to use, Vendor's designs, processes, drawings, and technical data to permit completion by Buyer of the terminated part of the Order.

17.3 If the Contract is terminated pursuant to Clause 17.1 (a) or 17.1(d) the following shall apply: -

- (a) With respect to standard/non-customised Products not manufactured according to Buyer's proprietary specifications, no payment shall be owed by Buyer if said termination occurs prior to shipment/delivery of the concerned Products. Conversely, if said termination occurs after shipment/delivery of the concerned Products which are accepted by Buyer, Buyer shall pay to Vendor the price of the said Products as per the Contract.
- (b) With respect to non-standard/customised Products manufactured according to Buyer's proprietary specifications, Vendor shall be paid a reasonable termination charge reflecting the work actually performed prior to termination, not to exceed the applicable price for the terminated part of the Contract reduced by the price of work not completed (and as the case may be, by the amounts already paid in respect thereof). The Parties shall determine said termination charge in good faith, at the time of receipt of the Termination notice by Vendor.

17.4 Buyer may suspend performance of the Contract if any corresponding contract relating to the Order between Buyer and a third party is suspended for whatever reason. In such event, and provided that Vendor is in compliance with its obligations under the contract, Buyer shall compensate Vendor for costs reasonably and properly incurred until then in performing the Contract which would otherwise represent an irrecoverable direct loss to Vendor, subject to Vendor taking all reasonable steps to minimise its losses and subject to reasonable proof being provided. Compensation shall not in any event exceed the

Contract price or relevant portion of the Contract price if the Contract is terminated in part. Vendor shall promptly recommence the works required pursuant to the Order following receipt of Buyer's written notification of cessation of the said suspension and such dates for performance shall be extended by a period not greater than the corresponding period of suspension.

- 17.5 The rights and remedies of Buyer under this Clause 17 (and the remainder of the Contract) are not exclusive, and apply in addition to any other rights and remedies available at law, in contract, in equity or otherwise.
- 17.6 If either Party exercises its rights under this Clause 17, under no circumstances shall it become liable for the Consequential Loss which may be sustained by the other Party as a result thereof.

## **18 LIABILITIES AND INDEMNITIES**

- 18.1 Regardless of where/when title to the Products is transferred, but subject to Clauses 4 and 11, the risk of loss of, or damage to, the Products shall pass to Buyer at the time and Place of Delivery in accordance with Clause 7.2 above.
- 18.2 SUBJECT TO CLAUSE 18.1 WITH RESPECT TO LOSS OF, OR DAMAGE TO, THE PRODUCTS, VENDOR SHALL DEFEND, INDEMNIFY AND HOLD BUYER, ITS AFFILIATES AND ITS AND THEIR EMPLOYEES, OFFICERS, DIRECTORS, REPRESENTATIVES, AGENTS AND INVITEES HARMLESS AGAINST ANY CLAIMS, DEMANDS, CAUSES OF ACTION, JUDGMENTS, PROCEEDINGS, AWARDS, DAMAGES, LOSSES, FINES, PENALTIES, COSTS, EXPENSES AND LIABILITIES, INCLUDING LITIGATION COSTS AND REASONABLE ATTORNEY'S FEES ("CLAIM(S)") ARISING OUT OF DEATH, ILLNESS OR INJURY, OR PROPERTY LOSS OR DAMAGE, OR LOSS, DAMAGE OR COST, AS A RESULT OF OR IN CONNECTION WITH (I) THE NEGLIGENT ACT OR OMISSION OF VENDOR OR ANY OF ITS EMPLOYEES UNDER THE CONTRACT OR ANY ORDER, OR (II) VENDOR'S (OR ANY OF ITS EMPLOYEES') BREACH OF VENDOR'S OBLIGATIONS UNDER THE CONTRACT OR ANY ORDER, INCLUDING WITHOUT LIMITATION AS A RESULT OF DEFECTS IN ANY GOOD(S).
- 18.3 VENDOR SHALL DEFEND, INDEMNIFY AND HOLD BUYER, ITS AFFILIATES AND ITS AND THEIR CLIENTS, EMPLOYEES, OFFICERS, DIRECTORS, REPRESENTATIVES, AGENTS AND INVITEES HARMLESS AGAINST ANY CLAIMS ARISING OUT OF ANY ACTUAL OR ALLEGED INFRINGEMENT OF ANY PATENT, COPYRIGHT, TRADEMARK OR OTHER INTELLECTUAL PROPERTY OR PROPRIETARY RIGHT, OR ANY LITIGATION BASED THEREON, WITH RESPECT TO ANY PRODUCTS (OR PART THEREOF), OR USE THEREOF, EXCEPT TO THE EXTENT THAT SUCH INFRINGEMENT RESULTS SOLELY FROM THE MANUFACTURE OF THE PRODUCTS PURSUANT TO DETAILED PROPRIETARY DESIGNS FURNISHED BY BUYER. THE FOREGOING INDEMNITY IS CONDITIONAL UPON (I) PROMPT WRITTEN NOTICE OF ANY CLAIM TO VENDOR, (II) VENDOR'S CONTROL OF THE DEFENSE AND SETTLEMENT OF ANY CLAIM, AND (III) REASONABLE COOPERATION AND ASSISTANCE BY BUYER IN THE DEFENCE AND SETTLEMENT OF SUCH CLAIM AT THE EXPENSE OF VENDOR. VENDOR SHALL NOT BE RESPONSIBLE FOR ANY COMPROMISE MADE BY BUYER WITHOUT VENDOR'S PRIOR WRITTEN CONSENT.

IF ANY PRODUCTS (OR PART THEREOF), OR USE THEREOF, BECOME(S), OR IN VENDOR'S OPINION, IS/ARE LIKELY TO BECOME, THE SUBJECT OF AN INFRINGEMENT CLAIM, VENDOR SHALL (I) PROCURE FOR BUYER THE RIGHT TO CONTINUE THE USE THEREOF, OR (II) REPLACE OR MODIFY THE SAME SO THAT IT BECOMES NON-INFRINGEMENT (PROVIDED THE SAME LEVEL OF FUNCTIONALITY IS MAINTAINED). VENDOR SHALL ALSO BE LIABLE FOR ANY DAMAGES ASSESSED AGAINST BUYER, ITS AFFILIATES OR ITS OR THEIR CLIENTS ARISING OUT OF THE USE OF THE SAME PRIOR TO THE DATE UPON WHICH VENDOR PERFORMED ANY OF THE FOREGOING REMEDIAL ACTIONS, AS SET FORTH ABOVE.

- 18.4 NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY PUNITIVE OR CONSEQUENTIAL LOSS SUSTAINED BY THE OTHER (OR ITS GROUP) IN CONNECTION WITH THE PERFORMANCE OF THE CONTRACT.
- 18.5 IT IS THE EXPRESS INTENT OF THE PARTIES THE INDEMNITIES AND LIABILITY EXCLUSIONS CONTAINED IN THIS CLAUSE 18 (OR THE REMAINDER OF THE CONTRACT) SHALL, UNLESS EXPRESSLY STATED OTHERWISE, APPLY REGARDLESS OF WHETHER (I) THE CLAIMED LIABILITY IS BASED ON BREACH OF CONTRACT, WARRANTY OR DUTY, NEGLIGENCE OF ANY PERSON (GROSS, SOLE, CONCURRENT, ACTIVE OR PASSIVE), PRE-EXISTING CONDITIONS, STRICT PRODUCT LIABILITY, FAILURE OF ESSENTIAL PURPOSE OR ANY OTHER LEGAL OR EQUITABLE THEORY, OR ANY OTHER CAUSE, AND/OR (II) A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF THE CORRESPONDING LIABILITY.

## 19 INSURANCE

- 19.1 Unless stipulated otherwise by Buyer on the face of the relevant Order or unless Vendor is otherwise obligated to maintain higher levels of insurance cover by any law, statute, regulation or safety standard or any other standard in relation to the manufacture, sale and delivery of the Products in Vendor's country of operations or Buyer's country of operations (whichever country imposes the higher obligation) in which case Vendor shall take out and maintain such insurance cover in connection with the Contract, Vendor's indemnity obligations set forth in the Contract shall be supported by appropriate insurance policies, acceptable to Buyer, including at least the following policies: -
- (a) Comprehensive General Liability including but not limited to Contractual Liability and Products Liability Cover, with limits in respect of bodily injury and/or property damage of not less than US\$5,000,000 (US\$ five million) per occurrence;
  - (b) Workmen's Compensation in compliance with local statutory requirements, and Employer's Liability with limits of not less than US\$2,000,000 (US\$ two million per occurrence; and
  - (c) As applicable, Automobile Liability as may be required by statute or similar regulations in the country of operations; and
  - (d) Marine Cargo and Transit insurance of an adequate value to cover all Products, effective from the place of manufacture to the Place of Delivery.
- 19.2 Said policies shall be taken out by Vendor at its cost, with a reputable insurance company, and shall be evidenced by insurance certificates to be provided upon Buyer's request. Said policies shall when requested by Buyer name Buyer as an additional insured to the extent of the liabilities assumed by Vendor under the Contract (except for Workman's Compensation), and shall be endorsed to provide that (i) no insurance policy shall be cancelled or materially changed without Thirty (30) days prior written notice to Buyer, and (ii) Vendor's insurers shall waive their rights of subrogation against Buyer and its insurers to the extent of the liabilities assumed by Vendor under the Contract.

## 20 HAZARDOUS PRODUCTS AND HEALTH, SAFETY AND ENVIRONMENT

- 20.1 Should Buyer or Vendor determine that any item listed could be considered hazardous according to the definition of hazardous substances stated in the United States Occupational Safety and Health Act (OSHA), section 1910.1200, or according to a more restrictive national or international standard acceptable to Buyer, Vendor shall:
- (a) Include one (1) copy of the appropriate OSHA, national or international Material Safety Data Sheet in English, indicating the applicable Buyer material number, with each shipping container/package.
  - (b) Ensure all shipping units comply with the packing/packaging provisions of the International Maritime Dangerous Goods (IMDG) or International Air Transport Association (IATA) code, as appropriate to the mode of transportation.
  - (c) Mark and label all shipping units in English in compliance with the labeling and warning provisions of the IMDG or IATA code, as appropriate to the mode of transportation.
  - (d) Mark and label each usage unit in English in compliance with the labeling and warning provisions of the OSHA, section 1910.1200, or more restrictive national or international standards acceptable to Buyer.
  - (e) Ensure that hazardous materials, especially liquids, are in suitable containers that will allow use without spillage and can be satisfactorily resealed after a portion of the material has been extracted. (Re-closed containers should allow normal handling and transport without significant escape of liquids or vapors. Containers of five (5) liters or more of hazardous, low-viscosity liquids such as paint thinners, chlorinated solvents, and insecticides should have a retractable metal or plastic spout or a similar design that will meet the stated objective.)
  - (f) Ensure that a copy of the Material Safety Data Sheet corresponding to the tanker cargo is placed in the vehicle cab. The vehicle must display applicable warning signs (placards) in Arabic and English with the correct United Nations ID number placed on both sides and each end of the vehicle. Each placard shall be laid out and include information in accordance with the Saudi Arabian Standards Organization (SASO) regulations SSA 1285/1997 "Transportation of Dangerous Substances by Road - Part 1 General Safety Requirements" and SSA 1287/1997 "Transportation of Dangerous Substances by Road - Part 3 Transportation of Petroleum Liquid." Additionally, Vendor's name and emergency telephone

number in Arabic and English must be displayed on both sides and rear of the vehicle. If the vehicle is transporting more than one chemical (multiple tanks) each tank must be properly identified.

- (g) If the vehicle is constructed with more than one transport tank, Vendor shall ensure that the United Nations ID numbers are placed on the sides of each tank and not on the rear or the front.
- (h) The construction material(s) of the tank, tank container and any devices, coverings, hoses or fittings that are expected to come into contact with the contents shall be compatible and non-reactive with the substance to be transported and must be fire resistant. Steel or any other suitable material giving equivalent safe performance.

20.2 Unless agreed otherwise in writing by Buyer, Vendor shall not sell or offer for sale to Buyer any Products which contain any substance as Buyer may classify as a restricted substance.

20.3 Vendor warrants and covenants that it will at all times ensure that: -

- (a) Any persons who may be required to perform services pursuant to the Contract as agent, sub-contractor or servant for and on behalf of Vendor will be suitably qualified, trained and experienced for the purpose required; and
- (b) Such persons will at all times carry out the work as required using equipment and clothing suitable for the purpose required and in compliance with all appropriate legislation, including but not limited to, health, safety and environmental rules, laws and regulations, with respect to the workplace and further in accordance with Buyer's or its client's own health, safety and environmental procedures and rule prevailing at the time of performance.

20.4 Vendor agrees to fully indemnify and keep indemnified Buyer against any and all liabilities, damages, claims and expenses which may arise as a result of Vendor's (including any agent, sub-contractor or servant of Vendor) negligence and / or breach of this Clause 20.

## **21 ASSIGNMENT AND SUBCONTRACTING**

21.1 The Contract shall not be assigned or sub-contracted by Vendor as a whole. Vendor shall not assign or sub-contract any part of the work without Buyer's prior written approval, which shall not be unreasonably withheld, but the restriction contained in this Clause 21 shall not apply to sub-contract for materials, minor details, or any part for which the sub-contractor is named in the Order. Vendor shall be responsible for all Products and materials and parts that may form part of the final Products supplied by all sub-contractors.

21.2 Vendor hereby agrees that Buyer shall be entitled to assign its rights and obligations under the Contract in whole or in part to any of its Affiliates or to Buyer's nominated client.

## **22 EXPORT AND IMPORT**

22.1 The name of the manufacturer shown on the Order is utilized for customs clearance of Products into Saudi Arabia; it is therefore essential that the name of the manufacturer shown on the Order corresponds exactly to that shown on Vendor invoices that are submitted.

22.2 Vendor shall determine if SASO certificates of conformity requirements apply or/and import permits are required and shall arrange for and obtain all necessary documentation required for the movement, importation and delivery of the Products from the point of manufacture or origin to the Place of Delivery.

22.3 Neither the Products nor packaging shall bear any symbol prohibited in Saudi Arabia. Products bearing a medical cross or caduceus may be denied clearance by Saudi Customs authorities. Outer carton markings must not contain any reference to drugs, narcotics, or psychotropic substances.

22.4 Vendor shall arrange for and obtain export licenses for the Product from the country of origin as are applicable. Buyer shall have the right to immediately cancel the Order without liability to Vendor if the export license application is disapproved or unreasonably delayed in Buyer's sole judgment.

22.5 If a letter of assurance from Buyer as to the end use of the Products or to any future disposition of the Products is required, Buyer shall provide it to Vendor upon request.



- 22.6 Buyer and Vendor agree that Vendor shall reimburse Buyer for any loss (not to exceed the purchase price of the Products plus cost of transportation, including ocean freight or airfreight to Saudi Arabia) Buyer may sustain if the Products delivered or to be delivered are not permitted by Saudi Arab customs or other government authorities to be imported into Saudi Arabia in consequence of its laws or administrative practices.

## **23 DISPUTES WITH THIRD PARTIES**

If any third party makes any claim against Buyer arising from the performance of the Contract by Vendor, or in respect of Products supplied under it, Vendor shall at its own expense on request by Buyer join Buyer in defending the claim. The decision of any court or arbitration tribunal deciding upon the claim shall, so far as is relevant, be admitted as conclusive in any consequent claim made by Buyer against Vendor under the Contract.

## **24 PRIVACY OF CONTRACT**

The terms and conditions contained herein and any contract conditions as may be agreed between Buyer and Vendor are not intended to be for the benefit of, and shall not be enforceable by any other person.

## **25 CONFIDENTIALITY**

- 25.1 Vendor acknowledges that subject to the exclusions below information provided by or on behalf of Buyer to Vendor in relation of the performance of the Contract shall be deemed confidential and proprietary to Buyer ("**Confidential Information**"). In particular, Vendor acknowledges that (i) specifications, requirements, designs and the like provided by Buyer for the manufacture of the Products (as applicable), (ii) the content of any Order (whether accepted or not by Vendor), and (iii) the Contract, shall be deemed Confidential Information.
- 25.2 Vendor agrees (i) to treat the Confidential Information as secret and confidential, and (ii) not to, at any time within ten (10) years from the receipt of such Confidential Information disclose, or distribute, or publish, or copy, or reproduce, or sell, or lend, or manipulate, or otherwise make use of (except for the purpose of performing the Contract provided that the disclosure is made to the employees of Vendor on a need-to-know basis), or permit use to be made of, any Confidential Information, except with Buyer's express written consent.
- 25.3 The foregoing shall not apply to any Confidential Information that (i) can be shown by documentary evidence to have been previously known to Vendor at the time of disclosure, (ii) is independently developed by Vendor without breach of the Contract, (iii) is lawfully obtained from a third party without restriction on use or disclosure, (iv) is or becomes part of the public domain through no fault of Vendor, or (v) is disclosed pursuant to any judicial, governmental, administrative or supervisory body requirement or order, provided that (where legally permissible) Vendor takes reasonable steps to give Buyer sufficient prior notice in order to contest such requirement or order.
- 25.4 Vendor shall use the same degree of care to avoid unauthorized disclosure of the Confidential Information as it employs with respect to its own confidential/proprietary information of like quality and nature, but employing no less than a reasonable standard of care. Vendor shall include terms similar or more stringent to this Clause 25 in any subcontracts.
- 25.5 Vendor expressly acknowledges that the disclosure made by Buyer does not grant Vendor any right other than the limited right to use the Confidential Information for the performance of the Contract (and nothing contained herein shall be construed as granting or conferring any rights to Buyer's trademarks, inventions, copyrights, patents or the like).
- 25.6 Upon expiry or termination of the Contract for whatever reason, Vendor shall return all Confidential Information (except the one identified in (iii) of the second sentence of Clause 25.1) to Buyer, and shall not be entitled to make or retain copies thereof.
- 25.7 Vendor shall not advertise or publish the fact that Buyer has contracted with Vendor, nor use Buyer's name or logo in any advertisement, publication, brochure or website without Buyer's prior written consent which may be conditional if granted.
- 25.8 Vendor shall not publicise (for example by making press statements or by issuing press releases) or release any information in relation to or about the Contract except with Buyer's prior written approval.

## **26 ENTIRE AGREEMENT**

- 26.1 The Contract and any referenced hereto Order constitutes the entire agreement between the Parties with respect to the subject matter thereof. Except as agreed otherwise in writing by Buyer, the Contract

supersedes and cancels all prior agreements, statements, representations, understandings, negotiations and discussions whether oral or written between the Parties. Vendor acknowledges and agrees that in accepting the Contract in accordance with these General Conditions of Purchase it does not rely on any statement, representation, warranty or understanding made prior to the date of receipt of the Order from Buyer save to the extent that such statement, representation, warranty or understanding is incorporated into the Contract. The Contract in its entirety takes priority over anything to the contrary which Vendor may seek to impose on Buyer.

## **27 ETHICS**

Buyer is committed to the highest ethical and legal standards in the conduct of its business. Buyer requires all Vendors to acknowledge and agree to abide by the policies and principals set forth in Vendor Code of Conduct which is accessible at Buyer's office at 11th Floor, Al Turki Business Park, 7244 King Saud Road, Doha Al Janubiyah, Dhahran, 344455, Kingdom of Saudi Arabia.

## **28 NOTICES**

- 28.1 Notices issued pursuant to any provisions of the Contract shall be properly delivered to Buyer in writing to the following address of the Buyer: -

11th Floor,  
Al Turki Business Park,  
7244 King Saud Road,  
Doha Al Janubiyah,  
Dhahran, 34455  
Kingdom of Saudi Arabia

Notices issued pursuant to any provisions of the Contract shall be properly delivered to Vendor in writing to Vendor's principal place of business or such other address as Vendor shall notify Buyer of in writing.

- 28.2 Notwithstanding anything to the contrary in this Contract, notices under the Contract shall be deemed received (i) upon delivery if hand delivered, (ii) upon delivery if sent by registered post or registered courier, and (iii) upon recipient's confirmation of receipt if sent by facsimile. For the avoidance of doubt, any notice relating to any termination or suspension of the Contract shall only be valid if sent by non-electronic means and shall only be received in accordance with the foregoing.

## **29 MISCELLANEOUS**

- 29.1 Vendor agrees, in relation to the manufacture of the Products, to take diligent steps to protect the environment, which includes proper management and disposal of all waste generated in the course of providing the Products, in accordance with applicable laws and regulations and best industry practices. Furthermore, Vendor agrees to monitor its compliance with the foregoing.
- 29.2 Vendor agrees that before starting the performance of the Contract, it shall, as applicable, have implemented and documented a quality assurance program meeting the requirements of ISO 9001 or of an internationally recognized standard of the same level appropriate to Vendor's industry.
- 29.3 Any provision of the Contract which in any way contravenes applicable laws or regulations shall be deemed severable to the extent of such contravention, and the legality, validity or enforceability of the remaining provisions of the Contract shall not in any way be affected or impaired thereby. The Parties shall promptly negotiate to restore the Contract as near as possible to its original intent and economic effect.
- 29.4 The provisions of the Contract which by their nature are intended to survive the suspension, termination or expiry of the Contract (including without limitation warranty, indemnity/liability and confidentiality provisions) shall remain in full force and effect after said suspension, termination or expiry.
- 29.5 Failure or delay by either Party in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.
- 29.6 Any waiver by either Party of any breach of, or any default under, any provision of the Contract by the other Party shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.
- 29.7 The headings contained in the Contract are for convenience of reference only, and do not constitute a part of the Contract.

29.8 The terms and conditions contained in the Contract may not be discharged in whole or in part by waiver, renunciation, or failure of enforcement, unless specifically agreed to in writing by the Party to which said terms and conditions benefit.

### **30 LAW AND DISPUTE RESOLUTION**

30.1 The Contract shall be interpreted, construed and governed in accordance with the laws of Saudi Arabia.

30.2 In the event of any dispute between Buyer and Vendor arising out of or in connection with the Contract, Buyer and Vendor shall first use its respective best endeavours in good faith to resolve any such dispute by escalation as follows: -

- (a) Initially by negotiations between Buyer's Authorised Representative;
- (b) If the Authorised Representatives shall fail to resolve the dispute within thirty (30) days of the dispute being referred to them, by the referral to and negotiation between one statutory officer (director) of each of Buyer and Vendor; and
- (c) If Buyer and Vendor fail to resolve the dispute amicably as set forth in (a) and (b) above, or fail to resolve such in an extended time period agreed between the Parties, either may refer the dispute to arbitration in accordance with this Clause 30.3 below.

30.3 Any unresolved dispute arising out of or in connection with the Contract shall be finally settled by arbitration conducted in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law ("UNCITRAL Arbitration Rules") which Rules are deemed to be incorporated by reference into this Clause. The place of arbitration shall be Al-Khobar, Kingdom of Saudi Arabia. The number of arbitrators shall be three. Such arbitration shall be conducted in the English language. The award shall be final and binding upon the Parties.

30.4 The United Nations Convention on Contracts for the International Sale of Goods signed in Vienna in 1980 shall not apply to this Contract.

30.5 Nothing whatsoever herein constitutes or shall be construed as an explicit or implicit waiver of sovereign immunity or any related rights, defences, or objections.

### **31 TAXES AND DUTIES**

31.1 For the purpose of this Clause:

"Taxes" shall mean all forms of taxation, duties, levies, imposts, charges or withholdings, direct or indirect, created or imposed by any taxing, fiscal or other appropriate authority of the relevant government or administration and (without prejudice to the generality of the foregoing) as well as corporate tax, income tax, supplementary charges, sales tax, and other forms of taxation, duties, imposts, charges or withholdings similar to, or supplementing, or replaced by, or replacing, the foregoing or any one of them including all penalties, charges, interest, fines, costs and expenses, or claim for, taxation or other imposition;

"VAT" shall mean value added tax imposed by Applicable KSA Law, or similar charge as may be imposed from time to time.

"Applicable KSA Law" shall mean any published decree, law, regulations, ministerial resolution or order, implementing regulations, statute, act, ordinance, directive (to the extent having the force of law), order, treaty, code or rule, as enacted, issued or promulgated in the Kingdom of Saudi Arabia, in particular (i) Common VAT Agreement of the States of the Gulf Cooperation Council; (ii) Value Added Tax Law; (iii) Value Added Tax – Implementing Regulations, or any interpretation thereof, by a governmental entity having jurisdiction over the matter in question including any amendment thereof.

31.2 Vendor shall be fully liable for and pay, without reimbursement from Buyer, any and all taxes, Zakat, withholding taxes, levies, fines, penalties, assessments and fees of every kind and nature, or increases in the foregoing arising out of this transaction or in connection with income earned by Vendor under the Order. Vendor warrants that where applicable the purchase price is in accordance with government pricing regulations.

- 31.3 **(Saudi Arabian Vendors only)** If Buyer is notified in writing by the Saudi Government to withhold any taxes (including, but not limited to, company income taxes and the Zakat), fines or related obligations from any amounts due to Vendor pursuant to this Purchase Order, Buyer shall withhold such amounts and Vendor hereby agrees to release Buyer from and indemnify and hold Buyer harmless against any liability of any nature whatsoever arising out of or by reason of such withholding. Buyer will notify Vendor as soon as practicable upon receipt of any such notice. Should Buyer be requested to pay any of Vendor's taxes, fines or related obligations, Vendor shall reimburse Buyer for any payment so made, or alternatively, at Buyer's option, Buyer may set off any such sums it has paid to the Saudi Government against any sums due to Vendor or which hereafter may become due to Vendor under an Order or any other agreement, purchase order or contract which Vendor may have with Buyer at any time. The provisions of this paragraph are continuing ones and their continuing binding effect shall survive the completion or termination of the Order.
- 31.4 Buyer reserves the right to amend prices to reflect changes in Saudi Arabian Customs Duty rates prior to importation into Saudi Arabia.
- 31.5 Buyer and Vendor agree that should Applicable KSA Law require that VAT be imposed on amounts that Vendor may invoice to (or otherwise charge to) Buyer, then Buyer shall pay such VAT. Such VAT shall be included by Vendor in its invoices to Buyer and such VAT shall be separately identified in the invoices so that the amount of VAT invoiced is expressly identified. Buyer has the right to require (i) clarification of any VAT invoiced to (or otherwise charged to or claimed from) Buyer and (ii) further supporting documentation for any VAT invoiced to (or otherwise charged to) Buyer including without limitation customs documentation where VAT is applicable. If necessary or beneficial for VAT compliance purposes, Buyer may require that Vendor (i) provide to Buyer separate VAT or tax invoices, (ii) further break out, separate or identify amounts invoiced to Buyer or (iii) issue invoices to Buyer in a different form or format.
- 31.6 Vendor will include all the details outlined in Clause 8.1 on all invoices submitted to Buyer. And if the Vendor fails to do so, then without limit to any other right or remedy that Buyer may have under this Order or applicable law, Buyer may reject the invoice. No payments will be made to Vendor until a proper invoice with this information is submitted to Buyer.
- 31.7 Vendor will, in a timely manner, provide to Buyer valid and proper invoices (including without limitation VAT invoices issued pursuant to Value Added Tax – Implementing Regulations) or other documentation evidencing VAT chargeable to Buyer or otherwise related to VAT. Without limit to any other right or remedy that Buyer may have under this Order or applicable law, Vendor acknowledges that if it fails to provide such valid and proper invoices or other documentation or fails to do so in a timely manner, Buyer may withhold payments to Vendor until Buyer receives the valid or proper invoice or other documentation.
- 31.8 If required by Applicable KSA Law, Vendor will register for VAT compliance purposes with the applicable governmental authorities and will provide Buyer evidence of such registration. Without limit to any other right or remedy that Buyer may have under this Order or applicable law, Vendor acknowledges that if it fails to provide valid VAT registration details, Buyer may suspend or terminate this Order and may withhold payments to Vendor.
- Vendor shall confirm that goods and services used by Vendor in connection with Product and any Vendor-supplied materials have not been involved in VAT fraudulent transactions. For that purposes, Vendor shall affirm that no situation will occur where Vendor knew or should have known that it was participating in a purchase involving fraudulent evasion of VAT.
- 31.9 Certain services, materials and other items supplied to Buyer may be subject to zero-rated VAT (i.e., a VAT rate of zero) or be VAT exempt as provided by Applicable KSA Law. In this regard, if the services, materials or other items are eligible for zero-rating for VAT or an exemption from VAT under the Applicable KSA Law, Vendor shall use best efforts to (i) meet such zero-rating or exemption conditions and (ii) qualify the services, materials or other item as zero-rated VAT or VAT exempt.
- 31.10 In the event Vendor has incurred or will incur costs and expenses, and where these costs and expenses are or will be recharged to Buyer by Vendor as part of the purchase price of this Order, the value of the recharges shall be calculated net of VAT.

**32 ARABIC TRANSLATION**

Arabic translation of the Contract shall be provided upon request.

**33 SECURITY**

33.1 The Buyer reserves the right to request the Vendor to provide Security to the Buyer as detailed within the Special Terms and Conditions to be effective as at the Effective Date.

33.2 Vendor's failure to provide, adhere to the terms of and maintain such Security shall constitute a material breach of the Order under the provisions of Article 17.1(c).

33.3 All expense associated with procuring, executing and maintaining such Security shall be to the account of the Vendor.