

# Sohar Aluminium **VENDOR REGISTRATION**

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Version: October 2009



SOHAR سحر  
ALUMINIUM أَلْمِنْبُوم

# Vendor Registration Check List

**The Following document must be signed and returned by email to:**

vendor.registration@sohar-aluminium.com

Please Complete the Check List prior to submission

- |  | Tic                      |
|--|--------------------------|
| 1. Completed Vendor Registration Questionnaire           | <input type="checkbox"/> |
| 2. Completed Type of Supply Questionnaire                | <input type="checkbox"/> |
| 3. Attached Commercial Registration Documents            | <input type="checkbox"/> |
| 4. Signed Confidentiality and Non-disclosure undertaking | <input type="checkbox"/> |
| 5. Signed General Terms and Conditions                   | <input type="checkbox"/> |
| 6. Initialed every page where indicated                  | <input type="checkbox"/> |
| 7. Attached Computer Papers (OMAN BASED COMPANIES ONLY)  | <input type="checkbox"/> |

# Vendor Registration Questionnaire

## 1. General Information:

Name of the Supplier / Company (Full Legal Name):	
Postal address:	Street Address:
	City:
Postal Code:	Country:
Website:	Tel.
	Fax.

## 2. Main Sales Person:

Salesperson Name	Salesperson Tel + Fax	Email to send RFQ & purchase orders:
	Tel:	
	Fax:	

## 3. Type of Business:

Corporation Company <input type="checkbox"/>	Subsidiary <input type="checkbox"/>	Division <input type="checkbox"/>	Partnership <input type="checkbox"/>
If a Division, enter name and location of Corporate Headquarter:			
Main Activity:			
Secondary activity:			

## 4. Authorised Representatives / Signatories:

Name	Position	Signature

## 5. Commercial Registration (issued by Chamber of Commerce & Industry):

Reg. No.	Date of Reg.
Attached a copy of the Registration Certificate ? <input type="checkbox"/>	

## 6. Agency Certificate/Local Company Certificate (issued by Ministry of Commerce & Industry):

Manufacturer's Name	
Cert. Issued Date	Cert. Expiry Date
Attached a copy of the Agency/Company Certificate? <input type="checkbox"/>	

## 7. Trading Currency:

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## 8. Financial Information:

Bank Name:	
Account Name:	
Bank Address:	
Bank Phone No:	Bank Fax No:
Account No:	Bank Swift Code:
Payment Address: (The address to send the payment's status to your company)	
Contact Person:	
Tel:	Email Address:
Fax:	

## Terms & Conditions

- The vendor information shall be kept confidential and only used for business purposes between Sohar Aluminium and the applying company.
- The applying company shall be responsible for any in-correct information

# Type of Supply Questionnaire

## Material

- |                   |   |   |   |
|-------------------|---|---|---|
| <b>AUTOMATION</b> | <input type="checkbox"/> PLC and accessories    | <input type="checkbox"/> Communications       | <input type="checkbox"/> Electronics & Cards            |
| <b>CHEMICAL</b>   | <input type="checkbox"/> Acid                   | <input type="checkbox"/> Solvents             | <input type="checkbox"/> Cleaning Chemicals             |
| <b>CONSUMABLE</b> | <input type="checkbox"/>                        |   |   |
| <b>ELECTRICAL</b> | <input type="checkbox"/> Motor, Generator       | <input type="checkbox"/> Trafo / Switchgear   | <input type="checkbox"/> Cables / accessories           |
|                   | <input type="checkbox"/> Control / Instruments  | <input type="checkbox"/> Meters / Testers     | <input type="checkbox"/> Lighting and Earthing          |
| <b>HVAC</b>       | <input type="checkbox"/> Package / ducting      | <input type="checkbox"/> Window / Split       | <input type="checkbox"/> Automobile / Cranes            |
| <b>MECHANICAL</b> | <input type="checkbox"/> Belts                  | <input type="checkbox"/> Gear box, pulley     | <input type="checkbox"/> Bearings, bushings             |
|                   | <input type="checkbox"/> Filters                | <input type="checkbox"/> Seals, O-rings,      | <input type="checkbox"/> Valves                         |
|                   | <input type="checkbox"/> Pneumatics / Hydraulic | <input type="checkbox"/> Steel / Welding      | <input type="checkbox"/> Lifting                        |
|                   | <input type="checkbox"/> Gasses                 | <input type="checkbox"/> Fasteners            | <input type="checkbox"/> Lubricants                     |
| <b>LABORATORY</b> | <input type="checkbox"/> Weighing               | <input type="checkbox"/> Lab equipments       |   |
| <b>MEDICAL</b>    | <input type="checkbox"/>                        |   |   |
| <b>OFFICE</b>     | <input type="checkbox"/> Computers & acc        | <input type="checkbox"/> Xerox, Fax, Printers | <input type="checkbox"/> Stationary                     |
| <b>REFRACTORY</b> | <input type="checkbox"/> Bricks                 | <input type="checkbox"/> Cement / Compound    | <input type="checkbox"/> Carbon Products                |
| <b>SAFETY</b>     | <input type="checkbox"/> PPE / PPC              | <input type="checkbox"/> Plant protection     | <input type="checkbox"/> Fire Extinguisher / Blanket    |
| <b>TOOLS</b>      | <input type="checkbox"/> Hand tools             | <input type="checkbox"/> Power tools          |   |
| <b>VEHICLES</b>   | <input type="checkbox"/> General / pickup       | <input type="checkbox"/> MTV / APTV/ Tanker   | <input type="checkbox"/> Forklift / High reach / Loader |
| <b>OTHERS</b>     | <input type="checkbox"/>                        |   |   |

OR

## Services

- |                  |                                     |                                     |                                     |
|------------------|-------------------------------------|-------------------------------------|-------------------------------------|
| <b>CATERING</b>  | <input type="checkbox"/>            |                                     |                                     |
| <b>CLEANING</b>  | <input type="checkbox"/>            |                                     |                                     |
| <b>FINANCIAL</b> | <input type="checkbox"/>            |                                     |                                     |
| <b>IT</b>        | <input type="checkbox"/>            |                                     |                                     |
| <b>MAN POWER</b> | <input type="checkbox"/> Labourers  | <input type="checkbox"/> Consultant |                                     |
|                  |                                     | <input type="checkbox"/> Specialist |                                     |
| <b>MEDICAL</b>   | <input type="checkbox"/>            |                                     |                                     |
| <b>RENTAL</b>    | <input type="checkbox"/> Vehicle    | <input type="checkbox"/> Equipment  |                                     |
| <b>TECHNICAL</b> | <input type="checkbox"/> Project    | <input type="checkbox"/> Mechanical | <input type="checkbox"/> HVAC       |
|                  | <input type="checkbox"/> Electrical | <input type="checkbox"/> Civil      | <input type="checkbox"/> Automation |
|                  | <input type="checkbox"/> Laboratory | <input type="checkbox"/> Mobile     | <input type="checkbox"/> Refractory |
| <b>TRAINING</b>  | <input type="checkbox"/>            |                                     |                                     |
| <b>OTHERS</b>    | <input type="checkbox"/>            |                                     |                                     |

### For Office Use Only:

Approved for Registration:	
SAP Vendor Number:	

# Confidentiality and Non-Disclosure Undertaking

**THIS UNDERTAKING** is dated \_\_\_\_\_

Between:

**Sohar Aluminium Company L.L.C.**, a limited liability company organized and existing under the laws of the Sultanate of Oman under the commercial registration number 1/76671/6 and having its registered business address at P.O. Box 80, Postal Code 327, Sohar Industrial Estate, Sultanate of Oman (hereinafter referred to as "SA" which expression shall, unless contrary to the context, include the successors and permitted transferees of SA);

and

\_\_\_\_\_, the Signee, [insert full name, ID/passport number/labour card number, employed as \_\_\_\_\_ by \_\_\_\_\_ at \_\_\_\_\_ if an individual or full company name, registration number and registered business address for a corporate entity and represented by the signatory].

WHEREAS

- SA is an aluminium smelter with an associated power plant producing 360,000mt of aluminium per year (the "business");
- SA wishes to procure certain services from the Signee during the course and scope of its business;
- the Signee is prepared to provide such services and share information with SA; and
- SA desires to receive from the Signee certain undertakings relating to the non-disclosure of confidential information, which the Signee may receive or become exposed to and privy to, during the provision of services to SA.

## ARTICLE 1: INTERPRETATION

### 1.1 Definitions

In this Undertaking the words and phrases set forth below shall have the following meanings, namely: "Proprietary Information" means confidential information relating to SA and the business that is in the possession of the Signee or that will be developed during the course of the Signee's relationship with SA, as well as all technical/commercial information communicated by the Signee to SA including without limitation:

- a. trade secrets and confidential or proprietary information, knowledge, documents or materials, whether in tangible or intangible form; and
- b. information pertaining to SA's research, operations, customers including identities of customers and prospective customers, identities of individual contacts at business entities which are customers or prospective customers, and its respective preferences, businesses or habits, business relationships including those with suppliers and others, products including prices, costs, markets, sales or contents, mailing lists, marketing or sales strategies, financial information or measures, business methods, future business plans, databases, matters of a technical nature including know-how, data, formulae, secret processes and designs and models, operating procedures,

Initial Here

# Confidentiality and Non-Disclosure Undertaking

- knowledge of SA's organization, and other information pertaining to SA or the business; and
- c. information concerning the Signee's know-how, technology and process, product performances, market analysis and product prices or strategy.

Excluded from the ambit of this Article is information already in the public domain or disclosure to comply with an applicable law or legally binding order of a court or governmental agency or is independently developed by a party as evidenced by that party's records compiled prior to the date of disclosure by the other party. This exclusion is subject to the proviso that prior to such disclosure the disclosing party notifies the other party with full details of the proposed disclosure.

## 1.2 Rules of Construction

- a. Unless the context requires otherwise the following rules apply:
- b. singular words include the plural and vice versa;
- c. any gender includes all genders;
- d. the word "including" means including without limitation;
- e. the word "or" may be conjunctive or disjunctive as the context may require;
- f. reference to a person or a party includes their executors, administrators, successors, substitutes, including those taking by way of novation and permitted assigns;
- g. reference to an Article, Section or subsection refers to the specified Article, Section or subsection of this Undertaking; and
- h. headings are for reference only and do not affect interpretation.

## ARTICLE 2: PROPRIETARY AND CONFIDENTIAL INFORMATION

### 2.1 Proprietary Information

- a. The parties acknowledge and agree that:
- b. in the course of providing services to SA, the parties may be exposed to and become privy to Proprietary Information;
- c. the Proprietary Information is unique and valuable to the parties;
- d. the parties would suffer injury if the Proprietary Information, or any portion thereof, was divulged to those in competition, whether directly or indirectly, with either party or those who may wish to be in competition, whether directly or indirectly, with either party; and
- e. they shall keep in strict secrecy and confidence the Proprietary Information.

### 2.2 Confidentiality

Except with the prior written approval of the affected party, the disclosing party shall not:

- a. directly or indirectly, disclose any Proprietary Information to any natural or juristic person and its representatives other than in accordance with section 2.3 below or as required by law; nor
- b. publish or make use of any Proprietary Information in any manner whatsoever or make use of any Proprietary Information other than in connection with the provision of the services.

### 2.3 Disclosure to Representatives

The parties agree to disclose the Proprietary Information only to those of its representatives who, in all cases, need to know the Proprietary Information for the purposes of rendering the

Initial Here

# Confidentiality and Non-Disclosure Undertaking

services. The disclosing party shall inform its representatives of the confidential nature of the Proprietary Information and they shall agree to be bound by the terms of this Undertaking. At all times both parties shall be responsible for the actions of their representatives who become privy to the Proprietary Information disclosed to them.

## 2.4 Disclosure of Proprietary Information

Prior to any mandatory disclosure of the Proprietary Information required by law, the disclosing party shall give the affected party reasonable prior notice of any such disclosure and the reason therefore, and, if requested by the affected party, and at the affected party's expense, shall use reasonable efforts to obtain a protective order or similar protection and shall permit and co-operate with any effort by the affected party to obtain such an order. The affected party shall reimburse the disclosing party for all costs it incurs in seeking or assisting the affected party in seeking such an order.

## 2.5 Term of Undertaking

This Undertaking shall remain in force for a period of fifteen (15) years and shall survive the termination or expiration of the parties' underlying contract.

## ARTICLE 3: INJUNCTIVE RELIEF

The parties agree that the provisions of Article 2 are essential and reasonable for the protection of the parties and their respective businesses, and, if breached, will result in irreparable harm, and that injunctive relief is the only sufficient relief for a breach of the parties' covenants under Article 2. Without prejudice to any and all remedies which may be available to the parties, at law or in equity, the parties hereby agree that the affected party shall be entitled to injunctive relief, including an interim injunction, in any court of competent jurisdiction, to enforce any of the parties' covenants in this Undertaking, upon the breach thereof.

## ARTICLE 4: MISCELLANEOUS

### 4.1 Further Assurances

Each party agrees to execute and deliver all further instruments and documents and take all further action reasonably necessary to give effect to any provisions of this Undertaking.

### 4.2 Governing Law

This Undertaking is governed by and construed in accordance with the laws of the Sultanate of Oman.

### 4.3 Entire Undertaking

This Undertaking represents the parties' entire agreement and supersedes all previous communications, written or verbal representations and agreements.

### 4.4 No Waiver

The waiver of any obligation or breach thereof of this Undertaking shall not be valid unless reduced to writing and signed by the party's duly authorized representative. Such waiver shall not effect a waiver of any obligation or breach except as therein specified. To clarify, a party's failure to or delay in exercising any right or remedy or a party's failure to insist on the other party's strict

Initial Here

# Confidentiality and Non-Disclosure Undertaking

performance of any terms and conditions does not constitute a waiver nor will termination hereunder operate as a waiver of these terms.

## 4.5 Counterparts

This Undertaking may be executed in counterparts, including facsimile transmissions, each of which shall be an original and shall together constitute the same instrument.

## 4.6 Indemnity

The Signee shall indemnify SA and keep it indemnified regarding any liabilities sustained or incurred by SA as a result of a breach of this Undertaking by the Signee and its personnel.

## 4.7 Notices

All notices to be furnished shall be in English, in writing, signed by the notifying party's duly authorized representative and delivered by hand or sent by prepaid registered mail or reputable courier or by facsimile transmission or e-mail to the SA focal point.

All notices are deemed given, when delivered for hand deliveries; three (3) business days after the date of posting for local postal deliveries including to GCC countries or seven (7) business days after the date of posting for international postal deliveries; when the sender receives a facsimile transmission report confirming that all the pages were sent, without error, to the correct destination fax number for facsimile; and on the date of receipt in other cases and if that be an Omani week-end, public holiday or after 16:30 (local time) at the commencement of the next business day.

Signed for and on behalf of \_\_\_\_\_ by:

Name: \_\_\_\_\_

Designation: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Initial Here

# Annexure 'C'

## General Terms and Conditions

Version: June 2009

### CONTENTS

1	DEFINITIONS AND INTERPRETATION
2	COMMENCEMENT AND TERM
3	ACCURACY OF INFORMATION
4	PERFORMANCE BY CONTRACTOR
5	CONTRACTOR'S WARRANTIES
6	DEFECTS LIABILITY
7	SA AND CONTRACTOR REPRESENTATIVES
8	DELIVERY, TITLE TO GOODS AND RISK OF LOSS
9	EXPEDITING
10	PRICE
11	TAXES
12	PAYMENT
13	DEDUCTIONS AND WITHHOLDINGS
14	RECORDS AND AUDIT
15	CONTRACTOR PERSONNEL
16	PACKING, TRANSPORT AND DESPATCH
17	INSPECTION
18	TESTING
19	ENVIRONMENT, HEALTH AND SAFETY
20	ACCESS TO SITE
21	COMPLIANCE WITH LAWS
21	FORCE MAJEURE
22	INSURANCE
23	INDEMNITIES
24	TERMINATION FOR CONVENIENCE
25	CONTRACTOR DEFAULT
26	INSOLVENCY OF THE CONTRACTOR
27	DISPUTE RESOLUTION
28	CONFIDENTIALITY
29	PUBLICITY
30	INTELLECTUAL PROPERTY RIGHTS
31	NOTICES
32	LANGUAGE REQUIREMENTS
33	STATUS OF THE CONTRACTOR
34	ASSIGNMENT AND SUB-CONTRACTING
35	GIFTS AND PAYMENT OF COMMISSION
36	OMANISATION
37	GENERAL
38	GOVERNING LAW

# Annexure 'C'

## General Terms and Conditions

### 1 DEFINITIONS AND INTERPRETATION

#### 1.1 In this Agreement unless the context otherwise requires:

- "Agreement" means this agreement including the Form of Agreement and Annexures as may be amended, modified , varied or supplemented from time to time in accordance with its terms .
- "Annexures" means all Annexures to this Agreement, including (a) Annexure A – Definition of Goods and/or Services; (b) Annexure B – Price and Price Adjustments; (c) Annexure C – General Terms and Conditions; and (d) Annexure D – Special Terms & Conditions.
- "Business Day" means any day on which banks are open for bu siness in the Sultanate of Oman.
- "Confidential Information" means the Contract and all information, in any form, or documentation of a confidential nature or which the Contractor and its personnel ought reasonably to know to be confidential which relates to the business of Sohar Aluminium Company LLC (SA) and which SA discloses to the Contractor or is generated by the Contractor in performing the Contract or otherwise comes to the Contractor's knowledge .
- "Contract" means a contract for the purchase of the Goods and/or Services by SA from the Contractor, as defined, in accordance with SA's Purchase Order, this Annexure C – General Terms and Conditions for Purchase of Goods and/or Services and any other documents attached thereto.
- "Contractor" means the Contractor, supplier, seller, or vendor identified on the applicable Purchase Order or Form of Agreement, responsible for performing the Contract.
- "Contractor Default Notice" is defined in Clause 26.
- "Contractor Insurances" is defined in Clause 23.
- "Contractor Representative" means the Contractor's authorized representative.
- "Deducted Amount" is defined in Clause 13.
- "Defects Liability Period" means the period identified in the Purchase Order or Contract or the period of one (1) calendar year after receipt and acceptance of the particular goods and/or services.
- "Delivery Point" means the place identified in the Purchase Order for delivery of any goods.
- "Effective Date" means the commencement date of this Contract set out in Clause 2.

Initial Here

# Annexure 'C'

## General Terms and Conditions

“Force Majeure Event”	means an event or cause beyond the control of the Party relying on force majeure and which could not have been reasonably foreseen, avoided by the exercise of reasonable care, precautions or viable alternatives and which materially and directly impairs that Party's ability to discharge its obligations and includes: <ul style="list-style-type: none"><li>(a) explosion, fire, flood, lightning, earthquake, epidemic, cyclone or other catastrophic event caused by forces of nature;</li><li>(b) war, whether declared or not, blockade, act of foreign enemy, insurrection, hostilities, acts of terrorism, rebellion, or public disorder;</li><li>(c) entry of an injunction or restraining order or judgment by a court or governmental officer or body;</li><li>(d) and any other event or circumstance beyond the reasonable control of the affected Party.</li></ul>
“Good Industry Practice”	means practices and procedures, methods and techniques as are in accordance with best standards of prudence and consistent with reliability, safety, expedition and efficiency.
“Goods”	means the goods, equipment and/or materials identified in SA's Purchase Order or in terms of the Contract including the replacement and renewals thereof and all accessories and additions thereto whether added or made before or after the date of the relevant Purchase Order .
“Government Authorizations”	means licences, authorisations, consents, decrees, permits, approvals, privileges and waivers from and filings with any Government Body necessary for or required in connection with provision of the Goods and/or Services in accordance with this Contract.
“Government Body”	means the Government of the Sultanate of Oman and any ministry or department thereof and any body, commission, authority, agency or entity exercising executive, legislative, judicial, regulatory, fiscal or administrative functions and any successor to or assignee of any of the foregoing and includes any official or employee of a Governmental Body acting in an official capacity on behalf of such Body.
“Liabilities”	means liabilities, damages, claims, losses, costs and expenses incurred by SA.
“Intellectual Property Rights”	means all industrial and intellectual property rights including all copyright in works or any subject matter, rights relating to inventions including patents and patent applications, trade secrets and know-how, rights relating to designs, rights relating to registered or unregistered trade marks and, in respect of any of the foregoing, similar rights in any other jurisdiction.

Initial Here

# Annexure 'C'

## General Terms and Conditions

“Legal Requirements”	means all laws, regulations, Government Authorisations and other decrees, orders, rules, codes, treaties or directives to the extent of having the force of law or any interpretation of any of the same, as enacted, issued or promulgated by any Government Body including amendments, modifications, extensions, replacements and re-enactments of any of the same and any injunction or final non-appealable judgment, decision or order of any Government Body having jurisdiction over the issue in question.
“Notices”	means any notice, demand, consent or other communication given in terms of the Contract.
“Party”	means either SA or the Contractor; “Parties” means both SA and the Contractor.
“Price”	means the price payable for the Goods and/or Services by SA as set out in SA's Purchase Order or Annexure B – Price and Price Adjustments.
“Purchase Order”	means an individual order for Goods and/or Services issued by SA which is subject to the terms and conditions of the Contract.
“SA Representative”	means the person referred to on the face of the Purchase Order and includes his authorized substitute or delegate as advised, in writing.
“Services”	all services, works, supplies, obligations and any other acts to be performed and undertaken by the Contractor in terms of the Contract including those more particularly set out in the Purchase Order or Annexure A – Definition of Goods and/or Services.
“Specification”	means the specification setting out SA's requirements in respect of the Goods and/or Services and any modification as directed by SA's authorized representative in accordance with the Contract.
“Site”	means SA's premises identified in the Purchase Order and includes the Smelter, Power Plant and Port or as notified, in writing.
“Sub-contractor”	means any person or company the Contractor engages to perform all or part of the Contract on behalf of the Contractor.
“Tender”	means the Contractor's written offer or counter - offer to perform the Contract.
“Term”	shall mean the duration of this Contract set out in Clause 2.
“Termination Notice”	is defined in Clause 25.
“Terms and Conditions”	means the terms and conditions contained in this Contract.

Initial Here

# Annexure 'C'

## General Terms and Conditions

### 1.2 Interpretation

Unless the context requires otherwise the following rules apply:

- 1.2.1 singular words include the plural and vice versa;
- 1.2.2 any gender includes all genders;
- 1.2.3 the other grammatical forms of defined words or phrases have corresponding meanings;
- 1.2.4 the meaning of general words is not limited to the specific examples introduced by the words including or for example;
- 1.2.5 reference to a Clause is to the relevant clause of these General Terms and Conditions;
- 1.2.6 reference to any Royal Decree includes ministerial decrees, regulations, instruments or other subordinate legislation issued under it and includes any amendments, extensions, consolidations, substitutions or re-enactments;
- 1.2.7 reference to a person, firm, company, corporation, body corporate, trust, foundation, unincorporated body, partnership, association or other entity includes all of them;
- 1.2.8 reference to a person or a Party includes their executors, administrators, successors, substitutes, including those taking by way of novation and permitted assigns; and
- 1.2.9 Clause headings are for reference only and do not affect interpretation.

### 1.3 Precedence of Documents

- 1.3.1 In the event of conflict, inconsistency, error or omission between any of the following documents constituting this Contract then the following order of priority shall apply in its interpretation:

Firstly, the Purchase Order;

Secondly, Form of Agreement;

Thirdly, Annexure D - Special Terms & Conditions;

Fourthly, Annexure C – General Terms & Conditions;

Fifthly, Annexure B – Price and Price Adjustments;

Sixthly, Annexure A – Definition of Goods and Services ; and

Seventhly, Drawings and Specifications .

## 2 COMMENCEMENT AND TERM

- 2.1 This Contract shall commence on the earlier of, the date set out in the Form of Agreement or the date of acknowledgment of receipt of the Purchase Order by the Contractor or the date the Contractor commences performance and shall remain in effect until the date set out in the Form of Agreement or the Contractor fulfils all its contractual obligations unless terminated earlier pursuant to this Contract.

## 3 ACCURACY OF INFORMATION

- 3.1 While SA will strive, without obligation, to ensure the accuracy of information provided to the Contractor, during a guided Site visit, in a pre -bid conference or otherwise provided, before the Contract is executed SA does not guarantee the accuracy or sufficiency thereof.

- 3.2 The Parties acknowledge that any information provided is solely for the Contractor's convenience and that any tenders it submits are based on its own investigations and conclusions drawn from such information which does not form part of any subsequent Contract, unless, agreed to, in writing, by the Parties.

Initial Here

### 4 PERFORMANCE BY CONTRACTOR

- 4.1 The Contractor will perform in accordance with the terms of the contract in consideration for which SA will pay the contracted price.

### 5 CONTRACTOR'S WARRANTIES

- 5.1 The Contractor represents that it is properly organized, registered, licensed, financed, qualified, experienced and equipped to undertake the work in terms of this Contract.
- 5.2 The Contractor warrants that:
- 5.2.1 all goods supplied and/or services rendered shall be:
- 5.2.1.1 efficiently provided in accordance with all applicable governmental authorizations and legal requirements;
- 5.2.1.2 of the highest standard and accord with SA's specifications as provided or in accordance with Good Industry Practice ; and
- 5.2.1.3 in accordance with manuals, instructions and recommendations issued by manufacturers so as not to invalidate, revoke, or reduce the scope of manufacturer warranties and guarantees.
- 5.2.2 with regard to performance of the supply and/or services:
- 5.2.2.1 the Contractor and its personnel will exercise the standard of diligence, skill and care usually exercised by similarly qualified and competent persons performing comparable work; and
- 5.2.2.2 any equipment used on site will be in a safe working and service able condition, comply with any applicable regulations and legal requirements and be operated by appropriately licensed and trained personnel.
- 5.2.3 with regard to the provision of Goods:
- 5.2.3.1 all Goods will be new, of merchantable quality in terms of design, quality, material and workmanship;
- 5.2.3.2 all Goods will be free of defects including in particular, without limitation, in respect of the Goods' design and functionality and fit for SA's intended purpose; and
- 5.2.3.3 all Goods will be received free of all liens, claims, demands, encumbrances and other defects in title and SA will receive good and marketable title to the Goods .
- 5.2.4 it will assign, on completion of the supply and /or services, the balance of any unexpired warranties offered by manufacturers of equipment, goods, materials and supplies including all usual trade warranties and those from the Contractor's sub -contractors. Such warranties must be furnished at the time invoices are submitted to SA;
- 5.2.5 it has not withheld from SA material information including, but not limited to, information relating to its commercial standing, experience and expertise which may reasonably influence SA's decision whether or not to contract with the Contractor or at the proposed price and terms; and
- 5.2.6 that any information furnished is true, accurate and not intended to mislead or deceive SA.

### 6 DEFECTS LIABILITY

- 6.1 For the duration of the defects liability period the Contractor warrants all goods against any defect arising.
- 6.2 The defects liability period runs from the date on which SA accepts, in writing, the goods.

Initial Here

# Annexure 'C'

## General Terms and Conditions

- 6.3 During this period SA will notify the Contractor of any defect in any goods including, but not limited to, defective design, materials, workmanship, not of merchantable quality or not functional for intended purposes.
- 6.4 For the duration of the Contract SA will notify the Contractor of any deficient services , if applicable.
- 6.5 On receipt of such a notice the Contractor, at its sole cost, shall redesign, repair or replace, as applicable, the affected items or parts or rectify or re -perform, as applicable, rejected services within the period of time stipulated in the notice including, but not limited to providing additional services.
- 6.6 Failing the redesign, repair or replacement of the goods or rectification or re -performance of the identified services and failing the appropriate corrective action within the stipulated time period SA may, at the Contractor's risk, undertake the necessary appropriate action or in lieu of corrective action the Parties may agree an equitable reduction in the contract price .
- 6.7 Any costs and expenses incurred will be for the Contractor's account, recoverable as a debt due.
- 6.8 The Contractor warrants all corrective action it performs against defects in design, materials and workmanship for a period of twelve (12) months, in addition to any existing warranty period, from the date of SA's acceptance.

### 7 SA AND CONTRACTOR REPRESENTATIVES

- 7.1 If services are to be rendered the Contractor must perform the services in terms of the contract and in accordance with the directions of an authorized SA representative.
- 7.1.1 Only an authorized SA representative may issue binding directions to the Contractor.
- 7.1.2 Directions to the Contractor on behalf of SA by any other person must first be ratified by an authorized SA representative.
- 7.2 The Contractor must designate, in writing, an authorized , fluent English-speaking representative with the authority to bind the Contractor and who will be the focal point to liaise with the authorized SA representative for matters arising in terms of the Contract.
- 7.2.1 The Contractor representative, depending on the nature of the Contract, may be required to be available on a 24-hour basis for any required emergency work.
- 7.3 Any direction given by an authorized SA representative to the Contractor representative is deemed given on behalf of SA to the Contractor and must be complied with.
- 7.4 Likewise, any communication given or document signed by the Contractor representative is deemed given or signed, as applicable, by the Contractor and binds the Contractor.
- 7.5 Matters within the Contractor representative's knowledge are deemed to be within the Contractor's knowledge.
- 7.6 Either Party may, on notice to the other Party, change its designated representative and appoint a substitute.

### 8 DELIVERY, TITLE TO GOODS AND RISK OF LOSS

- 8.1 The Contractor shall deliver the Goods to SA at the designated delivery point.

Initial Here

# Annexure 'C'

## General Terms and Conditions

- 8.2 Time shall be of the essence and in the event of any delay in delivery of the Goods the Contractor must notify SA, in writing, along with an explanation for such delay as soon as the Contractor becomes aware of the delay.
- 8.2.1 SA shall, without prejudice to any other rights and remedies available to it, be entitled to, approve a revised delivery schedule or request delivery via air or expedited routing, at the Contractor's cost, or rescind the Contract without any further obligations.
- 8.3 The Contractor shall transfer full unencumbered title to each Good to SA upon the earlier of:
- 8.3.1 payment, in full, to the Contractor ; or
- 8.3.2 delivery to the specified delivery point and inspection and acceptance by SA's authorized representative.
- 8.4 The risk of loss, damage or destruction in each Good shall pass to SA when delivered to and accepted by SA's authorized representative.

### 9 EXPEDITING

- 9.1 If SA requires any goods to be furnished and/or services to be rendered expedited the Contractor hereby agrees to fully cooperate by affording SA authorized representatives access to the shops, factories and other places of business of the Contractor and those of its suppliers and subcontractors and by providing detailed schedules and progress reports for expediting purposes.

### 10 PRICE

- 10.1 The Contractor shall not make any alteration in the Price and any purported alteration shall not be binding on SA unless and until confirmed and accepted, in writing, by SA.
- 10.2 Where the Contractor is to perform any act or provide any thing at its cost such cost is deemed to be included in the Price without any additional compensation.
- 10.3 Where the Price is said to be inclusive, including but not limited to, costs relating to labour requirements, management, equipment, consumable items, materials, transport, delivery, storage, invoicing process, packing, insurances, royalties and Contractor travel and subsistence expenses will be deemed included.
- 10.4 The Price is fixed for the Term and shall not be subject to escalation or adjustment due to inflation or foreign exchange fluctuation unless SA provides its prior written consent.

### 11 TAXES

- 11.1 The Contractor is solely responsible for all taxes, duties, levies and assessments due and for making the necessary deductions and withholdings required by law.
- 11.2 In addition, the Contractor is solely responsible for all corporate, registration charges and payments relating to sponsorship levied by the Omani Government to permit the Contractor and its personnel to legally work in the Sultanate of Oman.
- 11.3 Customs Duties where goods are supplied on a Duty Delivered Paid basis or other similar shipping term basis (Incoterms 2000) the Contractor is responsible to:
- 11.3.1 remit payment of all applicable customs duties assessed as payable to any governmental agency including any other foreign shipping charges; and

Initial Here

# Annexure 'C'

## General Terms and Conditions

- 11.3.2 ensure that where applicable any supply or part thereof may be imported free of customs duties in terms of relevant bilateral trade agreements.
- 11.4 The Contractor will, on request , irrespective of the applicable shipping term furnish SA with all the necessary information and documentation for SA to comply with the requisite laws relating to applications or certifications for customs duties concessions or relevant bilateral trade agreements.

### 12 PAYMENT

- 12.1 The Price shall be set out in accordance with Annexure B – Price and Price Adjustments or, if applicable, SA's Purchase Order.
- 12.2 SA may set-off from its payments to the Contractor any amount(s) payable by SA on behalf of the Contractor as required by any applicable law or owed to SA by the Contractor pursuant to this Agreement.
- 12.3 Payments by SA to the Contractor in terms of the Contract for services rendered or goods supplied, as applicable, will be, unless otherwise agreed, in Omani Rials, the legal currency of the Sultanate of Oman, by way of electronic funds transfer to the Contractor's designated bank account.
- 12.4 At each month-end, for the relevant period, the Contractor must submit to SA an original invoice in respect of the services rendered or goods supplied , calculated by reference to the prices, fees or other amounts reflected on Annexure B – Price and Price Adjustments or, if applicable, SA's Purchase Order.
- 12.4.1 The original stamped and signed invoice by an authorized signatory must state the following information:
- 12.4.1.1 SA's relevant Purchase Order number;
- 12.4.1.2 a brief description of the services rendered or goods supplied for the relevant period; and
- 12.4.1.3 any additional information or documentat ion that SA may reasonably require e.g. inspection reports, material certification, etc.
- 12.5 The Price shall be payable as per the Purchase Order terms subject to Clauses 12.7, 13 and 26 and any special payment terms.
- 12.6 A payment shall not be construed as acceptance of substandard work and/or defective goods.
- 12.7 Should SA dispute any amount shown on an invoice SA will, within 21 calendar days of receipt of the invoice, notify the contractor accordingly and attend to pay the undisputed portion, if any, as due in terms of Clause 12.5 subject to the proviso that such part payment does not constitute acceptance of the disputed amount or SA's liability for the full amount.
- 12.7.1 The Contractor is obliged to, after the Parties jointly review any errors or exceptions on the Contractor's invoice, correct and adjust the relevant invoice to account for same and/or refund overpayments.

### 13 DEDUCTIONS AND WITHHOLDINGS

- 13.1 SA may deduct from money due or to be due to the Contractor all:
- 13.1.1 debts and monies due to SA from the Contractor and/or its personnel;
- 13.1.2 liabilities SA has incurred or paid and for which the Contractor and/or its personnel is or are liable to bear or reimburse; and

Initial Here

# Annexure 'C'

## General Terms and Conditions

- 13.1.3 costs of remedying any defective services rendered or damaged goods supplied to accord with SA's specifications.
- 13.2 Without prejudice to SA's rights in terms of the Contract , SA may, without notice, where the Contractor fails to perform any of its contractual obligations withhold all or part payment of any amount due until the matter has been satisfactorily remedied.
- 13.3 If SA is required by law to deduct or withhold any amount from the amount payable in terms of the Contract, the deducted amount will be deemed paid to the Contractor at the time it is deducted or withheld and SA will not be liable to the Contractor for any additional amounts.
- 13.4 To recover amounts SA failed to deduct or withhold from the amount payable in terms of the Contract SA may:
- 13.4.1 demand, on written notice, from the Contractor the amount to be deducted and the Contractor shall pay the amount within 30 calendar days of receipt of such notice; and/or
- 13.4.2 deduct the amount to be deducted from any other monies due to the Contractor and the deducted amount will be deemed paid to the Contractor at the time it is deducted or withheld and SA will not be liable to the Contractor for any additional amounts.
- 13.5 If SA fails to timely withhold or deduct the deducted amount as a result of the Contractor's act, omission or oversight SA shall, in addition, deduct the amount of any fines, penalties or interest levied and payable by it in respect of the deducted amount.
- 13.6 SA is obliged to notify the Contractor, with full details, of any amounts withheld or deducted in terms of Clauses 13.4 or 13.5.

### 14 RECORDS AND AUDIT

- 14.1 The Contractor is obliged to, for a period of three (3) years calculated from the expiry of its warranty, maintain records of all accounts which accurately document all incurred costs relating to performance of the Contract.
- 14.2 SA and its authorized representatives are entitled to, at all reasonable times, on prior notice, examine and copy these records to verify payments or requests for payment or to evaluate the reasonableness of proposed contract price adjustments and claims.

### 15 CONTRACTOR PERSONNEL

- 15.1 The Contractor must obtain and maintain, at its cost, all visas, resident and work permits for its personnel from the applicable governing authority .
- 15.2 The Contractor is required to supply appropriately qualified, competent and skilled personnel to ensure proper performance of its contractual obligations.
- 15.3 The Contractor is responsible for ensuring that its personnel comply with Clauses 29 and 31 relating to Confidential Information and Intellectual Property Rights respectively.
- 15.4 SA's authorized representative shall, on notice to the Contractor, be entitled to require the removal of any insufficiently qualified or skilled, incompetent or negligent Contractor personnel or those guilty of misconduct, including but not limited to, by reason of consumption of alcohol or drugs or dishonesty.
- 15.5 Where any Contractor personnel are to be removed, the Contractor shall promptly arrange for a suitably qualified, competent and skilled replacement.

Initial Here

### 16 PACKING, TRANSPORT AND DESPATCH

- 16.1 Where the Contractor is responsible to pack and transport the Goods to the designated delivery point it shall do so at its cost.
- 16.2 If SA is to transport the Goods the Contractor is required to notify SA's authorized representative with details of the despatch in sufficient time to arrange for transport.
- 16.3 Goods shall always be packed for transportation to account for methods of transportation, handling and weather conditions so as to prevent damage during transport to the designated delivery point.
- 16.4 The Contractor must promptly notify SA's authorized representative of the date of despatch of the Goods and their estimated date of arrival at the designated delivery point.

### 17 INSPECTION

- 17.1 While the Contractor is responsible to properly inspect all goods furnished and/or services rendered SA's authorized representative may inspect the equipment, materials or workmanship, at any time, to determine whether they conform to the requisite specifications.
- 17.2 The Contractor is obliged to, on notice, permit access to the equipment, materials or work, at all times, for purposes of quality surveillance and audit either at its site or the location they are stored at or being manufactured, as applicable.
- 17.3 The Contractor, its suppliers and subcontractors are to provide, on request, adequate facilities, drawings, documents, samples, assistance and cooperation including reasonable stoppage of work for purposes of inspection.
- 17.4 If SA has advised the Contractor that it purposes to conduct a quality surveillance or test and prior to the inspection the Contractor covers any work the Contractor shall uncover and replace same, at its expense, where such covering obstructs or interferes with the inspection.
- 17.5 If SA's authorized representative conducts an inspection and directs the Contractor to dismantle or open up any part of a Good and the Good conforms to the specification SA shall bear the expense of dismantling, opening up and reassembly.
- 17.5.1 However, if the Good does not conform or is unlikely to conform to the specifications and warranties of the Contract, the Contractor shall, without limitation, bear the full costs incurred including those costs necessary to ensure conformity to the specification.
- 17.5.2 SA is entitled to deduct such costs, as a debt due, from any amounts due to the Contractor.
- 17.5.3 In addition, SA shall have the right to require and witness further inspections as necessary.
- 17.6 The Contractor will not be relieved of its contractual obligations if SA fails to conduct such quality audit or to discover a defect of design, equipment, materials or workmanship.
- 17.6.1 Nor will SA's rights in terms hereof to subsequently reject or require the correction of defective work be prejudiced.

### 18 TESTING

- 18.1 The Contractor, at its expense, must conduct tests on the equipment, materials, work or parts thereof in accordance with the specified relevant standard or any applicable industry codes, failing which, in accordance with generally accepted practices.
- 18.2 The Contractor is obliged to, on request, provide samples, assistance and cooperation including reasonable stoppage of work for purposes of testing.

Initial Here

# Annexure 'C'

## General Terms and Conditions

- 18.3 Should SA require any additional tests conducted it will give the Contractor reasonable notice to permit such tests.
- 18.3.1 The additional tests are for SA's account.
- 18.3.2 If, such additional tests indicate that any equipment, materials or workmanship is defective or does not conform to the specifications and warranties of the Contract the costs will be at the Contractor's expense and SA is entitled to deduct such costs, as a debt due, from any amounts due to the Contractor.

### 19 ENVIRONMENT, HEALTH AND SAFETY

- 19.1 The provisions of this clause apply to the Contractor and its personnel to the extent that they are required to enter SA's site, being the premises identified in the Form of Agreement or the Purchase Order.
- 19.2 The Contractor and its personnel including those of Contractor suppliers and sub-contractors shall apply at the Site all such environmental, health and safety practices as required by prevailing applicable laws, health and safety codes, SA's Scope of Work, SA's policies, related standards and procedures, as amended and notified from time to time, Good Industry Practice and the provisions of this Clause 19 to avoid the risk of endangerment to health, bodily harm to persons and damage to or loss of property by theft, vandalism, sabotage or any other means.
- 19.20 The Contractor must immediately report to SA any death, injury or damage to property suffered or caused by Contractor personnel including those of Contractor suppliers and sub-contractors.
- 19.21 The Contractor agrees to, at all reasonable times, on request, allow SA and its authorized representatives access to its premises, its personnel, documentation and data, including in electronic form, to audit the Contractor's compliance with the provisions of this Clause 19, the Contractor's EHSMP and SA's rules and policies as notified.
- 19.22 If an audit reveals any deficiencies the Contractor shall immediately take corrective action and promptly notify SA.
- 19.23 Such corrective action does not limit SA's right to exercise any other remedies available to it.
- 19.3 The Contractor is required, within seven (7) days of signature of the contract and prior to commencing work, to submit its proposed environmental, health and safety management plan (EHSMP) to SA's authorized representative for review and amendment as deemed necessary.
- 19.4 The Contractor and its personnel may not commence work on-site unless SA's authorized representative has approved its EHSMP and any amendments thereto.
- 19.5 With regard to the operating rules of certain areas of the site Contractor personnel are obliged to attend SA's applicable induction and training courses prior to commencing work in those areas.
- 19.6 The Contractor shall take all environmental, health and safety precautions necessary and continually inspect all equipment, materials and work to discover, determine and correct any conditions which might result in any of the aforementioned risks.
- 19.7 Approval of an EHSMP or attendance of induction and training courses does not relieve the Contractor of its duty to ensure the health and safety of its personnel.

Initial Here

# Annexure 'C'

## General Terms and Conditions

- 19.8 If the Contractor breaches this Clause 19 SA may require the Contractor and its personnel to immediately vacate the site or remove, at its cost, any material or substance and the Contractor and its personnel shall forthwith comply and fully co-operate with SA's authorized representatives including following their properly given orders and requests to initiate corrective actions for any deficiencies.
- 19.9 The Contractor shall maintain and furnish, at SA's request, accurate written records of any incident at the Site that results in injury to any person, damage to any property or man hours lost to work-related injuries and all other records required by applicable laws or by SA.

### 20 ACCESS TO SITE

- 20.1 SA will grant the Contractor access to the site from the date of the Contract and the Contractor must give SA reasonable notice of commencement of the supply and/or services.
- 20.2 Where it is envisaged that such supply and/or services will interfere with SA's normal operations the parties must consult and agree, in writing, the period of work.
- 20.3 SA's authorized representative will grant access as deemed necessary for performance of the supply and/or services and may in its discretion deny access to Contractor personnel or permit access subject to appropriate terms and conditions.
- 20.4 The Contractor acknowledges that it will not enjoy exclusive possession of the Site.

### 21 COMPLIANCE WITH LAWS

- 21.1 For the duration of the contract the Contractor and its personnel are responsible for complying with any applicable legislation, laws and governmental agency requirements affecting their contractual obligations by obtaining and giving all necessary notices and paying the requisite fees, deposits and taxes and satisfying SA, on request, of such compliance.

### 22 FORCE MAJEURE

- 22.1 Where a Party's performance of its obligations under the Contract has been, is being or will be prevented or delayed as a result of a Force Majeure Event, as defined, the affected Party shall within five (5) calendar days after the occurrence of such Force Majeure Event notify the nonaffected Party, in writing, of the occurrence of such event stating its effect on the relevant affected obligations, the anticipated duration of the Force Majeure Event and the interim measures to be adopted to mitigate the effect thereof so as to be excused for any delay or failure to perform its obligations.
- 22.2 The affected Party must resume performance of its obligations as soon as reasonably possible and where reasonably practicable take action to mitigate the effect of its non-performance.
- 22.3 Where a Force Majeure Event has a continuous duration of more than three (3) months this Contract may be terminated by either Party.

### 23 INSURANCE

- 23.1 The Contractor shall, at its cost, purchase and maintain, in effect, at all times, during the Term of this Agreement the following insurance policies relating to risks which may arise out of performance of the Contract:

Initial Here

# Annexure 'C'

## General Terms and Conditions

- 23.2 All risk property insurance of physical loss of or damage to any of the Contractor's machinery, equipment and all other personal property on the Site for the full replacement value of such items without deduction for physical depreciation or obsolescence with limits of liability of Rials Omani 100,000.000 for each occurrence;
- 23.3 Third party and public liability insurance covering all liabilities for personal injury, disease, sickness or death of any person or damage to or loss of any property arising from the goods and/or services with the minimum sum insured being Rials Omani 200,000.000 and no limit on the number of claims;
- 23.4 Workmen's compensation insurance as required by any applicable Omani Law or regulation covering injury, disease, sickness or death of any Contractor employee and provide cover for each claim for not less than the minimum statutory limit ;
- 23.5 Motor vehicle insurance covering all liability for death, bodily injury and property damage arising from the use of motor vehicles used by the Contractor to provide the goods and/or perform the services with limits of liability of Rials Omani 100,000.000 for each occurrence;
- 23.6 Professional indemnity insurance if performance of the Contract requires the provision of professional advice or services to cover any negligent acts, errors or omissions in the advice or services provided up to an amount of not less than Rials Omani 100,000.000 for each claim; and
- 23.7 Any other insurance required by law.
- 23.8 The Contractor's insurances are to be effected with insurers of good financial standing, on terms consistent with prudent risk management practice and shall be in the joint names of the Company and the Contractor for all their respective rights and interest except all risk property insurance which shall be in SA's name, workmen's compensation which shall be in the name of the Contractor and motor vehicle insurance which shall be in the name of the vehicle owner.
- 23.9 All insurances not in the Parties' joint names shall include in the policy terms and conditions or by endorsement a waiver, by the insurer, of all express or implied rights of subrogation against SA or its shareholders, directors, officers, employees or agents.
- 23.10 At SA's request the Contractor must furnish certificates of insurance as evidence that policies providing such coverage and limits of insurance are in effect.
- 23.11 Contractor insurances may not be varied, cancelled or allowed to lapse without SA's prior written consent.
- 23.12 SA may effect and maintain any insurance the contractor fails to effect and keep in force and deduct the costs thereof, as a debt due, from any amounts due to the Contractor.
- 23.13 The Contractor is to ensure that its sub -contractors procure and maintain similar insurance covers.
- 23.14 The Contractor is solely responsible for the payment of any excess or deductible where SA claims under the Contractor's policy having determined that the Contractor and/or its personnel were responsible for the loss or damage and may not look to SA for reimbursement.
- 23.15 This Clause survives termination or expiry of the Contract.

## 24 INDEMNITIES

- 24.1 The Contractor and its personnel acknowledge that they enter SA's site at their own risk.
- 24.2 The Contractor shall keep SA, its personnel and any customer indemnified, in full, against all direct, indirect or consequential liability, loss, damage including Environmental Damage, legal and other professional fees and expenses arising from:

Initial Here

# Annexure 'C'

## General Terms and Conditions

- 24.2.1 any breach of the terms of the Contract and/or the Purchase Order, including any warranty, by the Contractor and its personnel including sub-contractor or assignee; and
- 24.2.2 any negligent act, omission or wilful misconduct by the Contractor and its personnel including sub-contractor or assignee stemming from performance of the Contract and/or Purchase order.
- 24.3 Each indemnity is a continuing obligation and survives termination of the Contract.
- 24.4 The Contractor is not liable for liability caused or contributed to by SA's and its personnel's negligent acts or omissions or wilful misconduct.

### 25 TERMINATION FOR CONVENIENCE

- 25.1 SA may, at its option, at any time, in writing, on 30 calendar days notice to the Contractor , terminate the Contract or any part thereof for convenience.
- 25.2 On receipt of a termination notice the Contractor shall:
  - 25.2.1 cease performance of the supply and/or services on the date and to the extent specified;
  - 25.2.2 not place further purchase orders or subcontracts relating to the terminated portion of the Contract;
  - 25.2.3 act, at its cost, so as to protect the safety of all personnel and goods;
  - 25.2.4 take all possible steps to mitigate any liabilities it may incur because of the termination including, but not limited to, promptly obtaining cancellation of applicable purchase orders, subcontracts, rentals or other agreements ;
  - 25.2.5 carry out any action SA reasonably requires to effect the termination including, but not limited to, assignment of any applicable agreements as directed by SA; and
  - 25.2.6 complete that portion of the Contract which is not terminated.
- 25.3 On the date specified in the termination notice the Contractor is required to:
  - 25.3.1 submit a report to SA detailing the supply performed or services rendered up to and including the date of receipt of the termination notice;
  - 25.3.2 deliver to SA any items issued to it by SA or paid for by SA and in its possession;
  - 25.3.3 offer SA the first right of refusal to purchase, at the depreciated value or such other agreed amount, the equipment, if any, used to perform the contract; and
  - 25.3.4 carry out any action SA reasonably requires to effect the termination and ensure that the handover is achieved with minimum disruption.
- 25.4 Where the contract is terminated in terms of Clause 25 the Contractor is entitled to recover from SA, the contract price for work performed up to the date specified in the termination notice and no more than, its at cost out -of-pocket expenses, incurred or to be incurred and which it cannot mitigate or otherwise recoup, including, but not limited to, costs of removing its equipment and personnel off Site and reasonable administrative costs of settling and paying claims arising from terminated purchase orders and sub-contracts.
- 25.5 The Contractor hereby waives any claim for damages including loss of profits.
- 25.6 On receipt of the Contractor's written statement claiming only the costs detailed above SA will review, verify and negotiate an equitable adjustment of the contract price.

### 26 CONTRACTOR DEFAULT

- 26.1 Where the Contractor breaches any term of the Contract, SA may serve the Contractor with a notice of default stating:
  - 26.1.1 the material details of the breach;
  - 26.1.2 that the breach is incapable of remedy, if applicable;

Initial Here

# Annexure 'C'

## General Terms and Conditions

- 26.1.3 that the breach is to be remedied within 30 calendar days of receipt of the default notice or immediately on receipt if safety is involved; and
- 26.1.4 that if the Contractor fails to satisfactorily remedy the breach complained of within the time stipulated or if the breach is incapable of remedy SA may on notice:
- 26.1.4.1 elect to suspend payment in terms of the Contract, in whole or part, pending remedy of the breach to its satisfaction;
- 26.1.4.2 advise that it will carry out, at the Contractor's cost, any action deemed necessary to rectify the breach;
- 26.1.4.3 advise that SA reserves the right to claim from the Contractor and its sureties the cost of damages, if any, as a debt due, sustained by the Contractor's breach; or
- 26.1.4.4 terminate the contract, in its entirety or part thereof, as of a specified date being the cancellation date, without notice to the Contractor's sureties.
- 26.2 On receipt of a notice from SA in terms of Clause 26.1.4.4 terminating the Contract from the cancellation date the Contractor must:
- 26.2.1 promptly cease performance of the supply and/or services to the extent specified;
- 26.2.2 not place any purchase orders or sub-contracts relating to the terminated portion of the Contract;
- 26.2.3 act, at its cost, so as to protect the safety of all personnel and goods;
- 26.2.4 take all possible steps to mitigate any liabilities it may incur because of the termination including, but not limited to, promptly obtaining cancellation of applicable purchase orders, subcontracts, rentals or other agreements ;
- 26.2.5 offer SA the first right of refusal to purchase, at the depreciated value or such other agreed amount, the equipment, if any, used to perform the contract;
- 26.2.6 carry out any action SA reasonably requires to effect the termination including, but not limited to, assignment of any applicable agreements as directed by SA; and
- 26.2.7 cooperate with SA to transfer all data, designs, licenses and information so as to mitigate any damages.
- 26.3 No action taken by SA in terms of Clause 26 prejudices any existing rights or remedies in terms of the Contract SA may have as a result of the breach complained of.
- 26.4 Should the Contract be terminated in terms hereof and it subsequently transpires that the Contractor was not in default the Parties rights and obligations will be the same as if the termination notice had been issued for convenience as per Clause 25.
- 26.5 All provisions expressed to have effect after termination of this Agreement or by implication having effect after its termination or necessary to give effect to any such provisions after termination or to give effect to termination and its consequences shall continue in force notwithstanding termination of this Agreement.

### 27 INSOLVENCY OF THE CONTRACTOR

- 27.1 If the Contractor commits an act of insolvency such as entering into any voluntary arrangement with its creditors or if the Contractor's estate is sequestered or has a Receiver, Administrator or Liquidator appointed to administer its affairs, the Contract will be deemed rescinded forthwith without written notice and without compensation to the Contractor but without prejudice to the Contractor's right to receive payment for any goods supplied or services rendered up to the date of such rescission.

Initial Here

# Annexure 'C'

## General Terms and Conditions

- 27.2 Upon rescission the Contractor or the Contractor's Receiver, Administrator or Liquidator shall deliver to SA any goods in its possession that SA has paid for and shall be liable to SA for failure to do so.

### 28 DISPUTE RESOLUTION

- 28.1 The Parties shall make every effort, in good faith, to reach an amicable solution, by negotiation, to any claim or difference of opinion between them, arising out of or in connection with the interpretation or performance of this Contract.
- 28.2 Failing resolution, in terms of Clause 28.1 within seven (7) working days of the difference or claim arising, either Party may give to the other Party a Dispute Notice, identifying the Dispute, nominating its management representative and calling for the other Party to nominate its management representative to jointly resolve the Dispute.
- 28.2.1 Prior to meeting for negotiations at a mutually agreed venue and time the Parties will promptly exchange correspondence stating the material facts, the salient issues in dispute, their respective positions supported by a contractual basis, a proposal for equitable resolution and attaching any relevant documentation.
- 28.3. Failing resolution in terms of Clause 28.2 within thirty (30) working days of the commencement of such negotiations either Party may refer the Dispute to arbitration.
- 28.3.1 Each Party shall appoint one arbitrator and the arbitrators appointed by the Parties shall appoint a third arbitrator by mutual consent.
- 28.3.2 In the event of failure by either Party to appoint an arbitrator or in the absence of mutual consent in respect of the appointment of the third arbitrator within thirty (30) days of the reference to arbitration, the International Court of Arbitration of the International Chamber of Commerce (ICC) shall appoint an arbitrator on behalf of the Party which has failed to make such appointment and/or the third arbitrator as the case may be.
- 28.3.3 All arbitration proceedings will be held within the Sultanate of Oman and the award in the arbitration will be issued within the Sultanate of Oman.
- 28.3.4 The proceedings will be conducted in English, except to the extent that compliance with the laws of the Sultanate of Oman may otherwise require.
- 28.3.5 The arbitration shall be conducted in accordance with the prevailing Rules of Arbitration of the ICC and as required by the laws relating to arbitration in the Sultanate of Oman.
- 28.4 The existence of a Dispute does not relieve any Party from performance of its obligations under this Contract unless the Parties have agreed otherwise.
- 28.5 The provisions of this Clause 28 do not bar any Party from seeking urgent interlocutory relief required in terms of the Contract.

### 29 CONFIDENTIALITY

- 29.1 The Parties shall, at all times, ensure that the other Party's confidential information shall not be used for any purposes other than those required or permitted by this Contract and shall remain confidential and shall not be disclosed to any third party including the Contractor's approved sub-contractor except with SA's prior written approval.

Initial Here

# Annexure 'C'

## General Terms and Conditions

- 29.2 Excluded from the ambit of Clause 29.1 is information already in the public domain or disclosure to comply with an applicable law or legally binding order of a court or governmental agency.
- 29.2.1 This exclusion is subject to the proviso that prior to such disclosure the disclosing party notifies the other party with full details of the proposed disclosure.
- 29.3 The Parties shall restrict access to confidential information to such of the Parties' personnel who need to know such confidential information and on terms similar to those set out in this Clause 29.
- 29.4 The Contractor shall at SA's request promptly deliver to SA all confidential information in its custody, possession or under its control and of its personnel.
- 29.5 A breach of the confidentiality undertaking constitutes a breach of the Contract.
- 29.6 Further, the Contractor shall indemnify SA and keep it indemnified regarding any liabilities sustained or incurred by SA as a result of a breach of the confidentiality undertaking by the Contractor and its personnel.
- 29.7 The terms of this Clause 29 shall survive the termination or expiration of this Contract for a period of fifteen (15) years.

### 30 PUBLICITY

- 30.1 The Contractor may not publish any photographs, make any disclosures or announcements about the contract and its subject matter, including the wording of such release and manner of publication, to the general public or to the media, any business entity or official body without SA's prior written approval.

### 31 INTELLECTUAL PROPERTY RIGHTS

- 31.1 The Contractor warrants that it has or will, at its cost, procure the requisite licences and consents to use a third party's intellectual property rights in supplying goods and/or rendering services or for SA to use and enjoy the goods supplied and/or services rendered.
- 31.2 The Contractor hereby indemnifies SA and its representatives from and against all claims, actions, losses, damages and expenses, including attorney's fees, arising from an alleged claim that any concept, product, design, equipment, material, process, copyrighted material, confidential information or part thereof provided by the Contractor in terms of the Contract constitutes an infringement of any third party's patent or copyrighted material or a theft of trade secrets.
- 31.3 If SA's use of any part of such concept, product, design, equipment, material, process, copyrighted material or confidential information is limited or prohibited the Contractor must, at its sole cost, speedily obtain the necessary licences to use the infringing or a modified but non-infringing concept, product, design, equipment, material, process, copyrighted material or confidential information or with SA's written consent replace it with a substantially equal but non-infringing concept, product, design, equipment, material, process, copyrighted material or confidential information.
- 31.3.1 This is subject to the proviso that any substituted or modified concept, product, design, equipment, material, process, copyrighted material or confidential information shall comply with the terms of this Contract and that the Contractor is not thereby relieved of its contractual obligations.

Initial Here

# Annexure 'C'

## General Terms and Conditions

- 31.3.2 If alteration or replacement or re-performance, as applicable, is not possible the Contractor must discontinue provision of the services or remove the affected goods and reimburse SA for monies paid and any expenses SA incurs with regard to such discontinuance or removal.
- 31.4 All intellectual property rights in any specifications, plans, drawings, process information, patterns or designs supplied by SA, to the Contractor in connection with the Contract, shall remain the property of SA, and any information derived there from or otherwise communicated to the Contractor, in connection with the Contract, shall be kept secret and shall not, without the consent, in writing, of SA, be published or disclosed to any third party or made use of by the Contractor except for the purpose of implementing the Contract or where such information is in the public domain or disclosure is required by law or any recognised stock exchange.
- 31.5 Any specification, plans, drawings, process information, patterns or designs supplied by SA must be returned to SA on fulfilment or termination of the Contract.

### 32 NOTICES

- 32.1 All notices to be furnished shall be in English, in writing, signed by the notifying party's duly authorized representative and delivered by hand or sent by prepaid registered mail or reputable courier or by facsimile transmission or e-mail to the addressee at the address specified in the Form of Agreement; and acknowledged, in writing, on receipt, by the addressee.
- 32.2 All notices are deemed given, as follows:
- 32.2.1 when delivered for hand deliveries;
- 32.2.2 three (3) business days after the date of posting for local postal deliveries including to GCC countries or seven (7) business days after the date of posting for international postal deliveries;
- 32.2.3 when the sender receives a facsimile transmission report confirming that all the pages were sent, without error, to the correct destination fax number for facsimile; and
- 32.2.4 on the date of receipt in other cases and if that be an Omani week -end, public holiday or after 16:30 (local time) at the commencement of the next business day.

### 33 LANGUAGE REQUIREMENTS

- 33.1 All notices, correspondence, communications and submittals between the Parties relating to this Contract will be in the English language.
- 33.2 The Contractor is responsible for providing translation services as necessary for written and oral communications including a qualified translator.

### 34 STATUS OF THE CONTRACTOR

- 34.1 The Contractor shall discharge its obligations under this Agreement as an independent contractor and may not act as, or be regarded as, SA's agent.
- 34.2 Where the Contractor enters into, and is party to, the Contract for and on behalf of joint venturers under a joint venture or a partnership they will be jointly and severally bound and accept joint and several liability for any loss suffered, damage occasioned and any amount payable to SA in terms of the Contract.

### 35 ASSIGNMENT AND SUB-CONTRACTING

- 35.1 The Contractor shall not assign or sub -contract the Contract, in whole or part, without SA's prior written consent.

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# Annexure 'C'

## General Terms and Conditions

- 35.2 SA may require that the proposed assignee or sub -contractor be bound by the provisions of the Contract including those relating to delivery and specification of the Goods and /or Services.
- 35.3 If SA permits such assignment or sub -contract the Contractor acknowledges that it is not thereby relieved of its contractual obligations.
- 35.4 SA will consider the sub-contractor as the Contractor's agent and employee and the sub-contractor's acts and omissions and those of its personnel will be deemed to be the Contractor's acts and omissions.

### 36 GIFTS AND PAYMENT OF COMMISSION

- 36.1 The Contractor shall not, and shall ensure that its approved sub -contractors do not, pay any commission, fees or grant any rebates to any employee, officer or agent of SA nor favour any employee, officer or agent of SA with gifts or entertainment of significant cost or value nor enter into any business arrangement with an employee, officer or agent of SA other than as a representative of SA.
- 36.2 Breach of this Clause shall entitle SA to terminate this Agreement and any other contracts between the Parties.

### 37 OMANISATION

- 37.1 The Contractor, where applicable, shall comply with and adhere to all Omani legal requirements governing the engagement and employment of personnel and, in particular, those related to Omanisation by utilizing Omani labour and providing advancement training where reasonably practicable.
- 37.2 The Contractor is to ensure that its sub-contractors comply with this Clause 37.1.
- 37.3 SA may require the Contractor, on request, to demonstrate through labour and training records or otherwise the number of Omani nationals employed in the positions and in such numbers as required by law.
- 37.3.1 If the Contractor fails to comply SA reserves the right to terminate this Agreement without prejudice to its other rights under this Agreement.
- 37.3.2 In addition, the Contractor is obliged to use Omani sub -contractors and resources where practicable, available and pricing is competitive.
- 37.3.3 All costs of Omanisation shall be included in the Price, including but not limited to, salaries, work/leave schedules, allowances, transportation costs, merit increases, promotions, final settlements, training, as well as social security contributions , etc.

### 38 GENERAL

- 38.1 The Contract represents the Parties entire agreement in relation to its subject matter and supersedes all previous communications and negotiations relating thereto;
- 38.2 Only written amendments or variations of this Contract signed by the Parties duly authorised representatives shall be valid and binding.

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# Annexure 'C'

## General Terms and Conditions

- 38.2.1 To clarify, the Contractor's terms and conditions contained in any quotation, invoice, purchase order acknowledgment, confirmation, acceptance, bill of lading or other instrument and which are in addition to, different from or inconsistent with these terms and conditions shall not bind either Party unless expressly agreed to, in writing, and signed by the Parties' duly authorised representatives;
- 38.3 The waiver of any obligation or breach thereof of this Agreement shall not be valid unless reduced to writing and signed by SA's duly authorised representative.
- 38.3.1 Such waiver shall not effect a waiver of any obligation or breach except as therein specified.
- 38.3.2 To clarify, SA's failure to or delay in exercising any right or remedy or SA's failure to insist on the Contractor's strict performance of any terms and conditions does not constitute a waiver nor will termination hereunder operate as a waiver of these terms ;
- 38.4 Any provision declared void or unenforceable by any court or competent authority shall , to the extent of such invalidity or unenforceability, be deemed severable and shall not affect the validity of the other provisions of this Contract.
- 38.4.1 The Parties shall negotiate in good faith to agree upon a valid and enforceable replacement provision which resembles their original intent;
- 38.5 All remedies for which this Contract provides are cumulative and not exclusive of any rights or remedies provided by law;
- 38.6 This Contract may be executed in counterparts each of which shall be an original and shall together constitute the same instrument;
- 38.7 The Contractor acknowledges that this Contract is not evidence of an exclusive relationship between the Parties and that SA is not obliged to procure a minimum level of supply from it;
- 38.8 Each Party agrees to execute and deliver all further instruments and documents and take all further action reasonably necessary to give effect to any provisions and contemplated transactions of this Contract;
- 38.9 For the duration of the Contract the Contractor and its Personnel shall comply with all SA rules and policies as notified by SA, in writing, from time to time;
- 38.10 Each Party shall bear its own costs incurred in the negotiation, preparation and execution of this Contract;
- 38.11 All Attachments are deemed to be part of this Contract and shall have effect as if set forth in the body of this Contract; and
- 38.12 All provisions independent of the period of performance survive the termination or cancellation of this Contract.

### 39 GOVERNING LAW

- 39.1 This Contract is governed by and construed in accordance with the laws of the Sultanate of Oman.

Name: \_\_\_\_\_

Designation: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

