

STANDARD TERMS AND CONDITIONS
FOR
SUPPLIES & SERVICES

2017 - V1

1. Definitions and Interpretation

In these terms and conditions of contract for supplies ("Conditions"):

"**the Contract**" means the agreement concluded between SGP and the Contractor for the supply of Goods or Services, including the Purchase Order, all specifications, plans and drawings which are relevant to the Contract and these Conditions;

"**the Contract Price**" means the price exclusive of any Value Added Tax, payable to the Contractor by SGP under the Contract for the full and proper performance by the Contractor of the Contract;

"**the Contractor**" or "**Supplier**" means the person who agrees to supply the Goods & Services and includes any person to whom all or part of the Contractor's obligations.

"**the Goods**" mean the goods to be supplied under the Contract;

"**the Services**" mean the services to be supplied under the Contract;

"**Acceptance Certificate- AC**" or "**Goods Received Notes- GRN**" means the certificate or document issued by SGP to the Contractor in respect of accepting any goods or services, it indicates that the contractor obligations was fulfilled – unless some notes are written in the document as observations to be completed by the Contractor/ supplier.

"**Contractor's Proposal**" means the Contractor's proposal as accepted by SGP, including any variations thereof as agreed between the parties;

"**Contract Sum**" means the agreed purchase price or sum total of the purchase price of the Equipment respectively set out in the Contract, LOA or PO;

"**Defect Liability Period**" means the period of not less than **twelve (12) months** from the date of acceptance i.e. the Date of the Acceptance Certificate, during which the Contractor shall guarantee that work accomplished will be in good operational order to the satisfaction of SGP.

"**Force Majeure**" means any event not within the reasonable control of either party which prevents or delays such party's performance or observance of its obligations under this Contract, including any act of God, war, hostilities, invasion, act of foreign enemies, rebellion, revolution, civil war, strike or lock-out;

"**LOA**" means SGP's "Letter of Acceptance" or "Letter of Award" accepting Contractor's Proposal issued under the main award or any of the options as the case may be;

"**Law**" means the law of Kingdom of Saudi Arabia;

"**Government**" means the Government of Saudi Arabia;

"**Intellectual Property Rights**" means patents, trade marks, service marks, design rights (whether registrable or not), applications for any of those rights, copyright, database rights, trade or business names and other similar rights or obligations whether registrable or not, in any country, around the World.

"**loss**" means: Not delivered, short landed, and includes destruction.

"**SGP**" means the Saudi Global Port Company operating the 2nd Container Terminal at Dammam

Port, and is considered the “**Buyer**” in these Terms and Conditions.

“**SGP’s premises**” shall mean The 2nd Container Terminal in Dammam, and any of SGP offices, and areas located outside of the Terminal, in all Saudi Arabia.

“**SGP Property**” means anything issued or otherwise furnished in connection with the Contract by or on behalf of SGP including but not limited to equipment, information, schedules, documents, papers, softcopy, and other materials provided in whatever form.

“**Specifications**” means the specifications as stipulated in the RFQ, PO, or LOA (where applicable) including any alterations and/or variations thereto as may from time to time be furnished or approved in writing by SGP;

“**Sub-Contractor**” means the party engaged by the Contractor.

“**Tender Document**” means the form provided to the Contractor for the purpose of providing a quotation to SGP in respect of the works required, either Goods or Services.

“**Purchase Order- PO**” or “**LOA**” or “**Contract**” means the SGP order for Goods or Services, which specifies inter alia the Contract Price, the time and place of delivery and the quantity and a brief description of the Goods or Services or consignments of Goods required by SGP.

The term “**or equivalent**” means applicability of the “or equivalent” component, where its installation does not adversely affect any other part of the system in service and where total performance of the “or equivalent” component enables it to function as effectively with no increase in required maintenance or need for premature replacement.

2. Terms Applicable

1. These Conditions shall apply to all contracts for the purchase of goods and services by SGP to the exclusion of all other terms and conditions including any terms or conditions which the Contractor may purport to apply under any sales offer, standard terms of sale, acknowledgement of order or similar documentation.
2. SGP will not be liable for any orders for goods or amendments thereto other than those issued or confirmed on the Purchase Order and signed by a representative of SGP with authority to enter into contracts on behalf of SGP.
3. All SGP Property shall remain the property of SGP and shall be provided and used by the Contractor solely for the purpose of performing the obligations under the Contract and for no other purpose whatsoever except with the prior agreement in writing of SGP.
4. All SGP Property shall be deemed to be in good condition when received by or on behalf of the Contractor unless he notifies SGP to the contrary within 14 days or such other time as is specified in the Contract.
5. The Contractor undertakes to return any and all SGP Property upon the Contract ending (howsoever terminated) or on any earlier request by SGP.

6. The Contractor shall, except as otherwise provided for in the Contract, repair or replace or, at the option of SGP, pay compensation for all loss, destruction or damage occurring to any SGP Property caused by the acts or omissions of the Contractor, or by its employees, agents or sub-contractors, whether or not arising from their performance of the Contract and wherever occurring

3. Assignment and Sub-contracting

(1) The Contractor shall not give, bargain, sell, deal, charge, transfer, assign, sub-contract or otherwise dispose of the Contract or any part thereof (or purport to do any of the foregoing) without the previous agreement in writing of SGP.

(2) Subject to Condition 3(1) if the Contractor uses a sub-contractor for the purpose of performing the Contract or any part of it, the Contractor shall include in the relevant contract a provision which requires the Contractor to pay for those goods or services within 30 days of the Contractor receiving a correct invoice from the sub-contractor.

(3) The Contractor shall be responsible for the acts and omissions of its sub-contractors as if they were its own.

4. Service of Notice

Any notice that either party gives under the Contract shall be made by hand-delivered or e-mail message. A notice shall be deemed to be duly given or made in the case of a hand-delivered letter on delivery, and in the case of facsimile or e-mail - on the day of receipt if transmitted during the normal hours or on the next working day if transmitted after normal business hours

5. Waiver

- (1) The failure or delay by either party to exercise any right or remedy under the Contract or these Conditions shall not constitute a waiver of that right or remedy.
- (2) No waiver shall be effective unless it is communicated to the other party in writing.
- (3) A waiver of any right or remedy arising from a breach of the Contract shall not constitute a waiver of any right or remedy arising from any other breach of the Contract.

6. Severability

If any Condition, clause or provision of the Contract not being of a fundamental nature is held to be unlawful, invalid or unenforceable by a court in any proceedings relating to the Contract, the validity or enforceability of the remainder of the Contract shall not be affected.

7. Confidentiality

- (1) The Contractor undertakes to treat as confidential all information which may be derived from or obtained in the course of performing the Contract, or in connection with it, in whatever form and howsoever provided, and to take all necessary precautions to

ensure that all such information is strictly treated as confidential by the Contractor, its staff, agents and sub-contractors.

- (2) Except with the prior consent in writing of SGP, the Contractor shall not :
- (a) Disclose the Contract or any provision thereof to any person other than a person employed by the Contractor in carrying out the Contract or any sub-contractor, supplier or other person concerned with the same. Such disclosure shall be made in confidence and shall extend so far only as may be necessary for the purposes of the Contract;
 - (b) Make use of the Contract or any information issued or furnished by or on behalf of SGP otherwise than for the purposes of the Contract; or
 - (c) Handle or examine or use or remove from SGP's premises any SGP Property or any other document or information which relates to SGP's functions or activities without the prior written consent of SGP.
 - (d) Any samples or patterns or any specifications, plans, drawings, or other documents issued by or on behalf of SGP for the purposes of the Contract remain the property of SGP and must be returned on completion or earlier termination of the Contract.

8. Amendments and Variations

No amendment or variation to the terms of the Contract shall be valid unless previously agreed in writing between SGP and the Contractor.

9. Invoices and Payment

- (1) Notwithstanding any other provision of this Contract, SGP shall not be liable to pay for Goods or consignments of Goods or Services which has not ordered or which are not otherwise in accordance with the terms of the Contract.
- (2) Invoices may only be submitted by the Contractor after delivery of the Goods or Services..
- (3) Invoices shall quote the SGP Purchase Order reference number, and set out the Contract Price, the quantity of Goods, the number of consignments of Goods, or Services and the date of delivery to SGP.
- (4) Subject to Condition (2), after receiving a correctly submitted invoice SGP shall pay the Contract Price to the Contractor and such payment shall normally be made within 15 days of receipt by SGP of the invoice.

10. Accounts

- (1) The Contractor shall keep full and proper accounts, records and vouchers relating to any expenditure which the parties agree in writing shall be reimbursed by SGP and all payments made by SGP in respect of the Goods or Services.
- (2) The Contractor shall ensure that the said accounts, records and vouchers are

available for a period of two years after; completion, termination or expiry of the Contract.

11. Recovery of Sums Due

- (1) Whenever under the Contract any sum of money shall be recoverable from or payable by the Contractor, such sum may be deducted from any amount then due from SGP, or which at any time thereafter may become due, to the Contractor under the Contract or any other agreement or arrangement with SGP.
- (2) Any over-payment by SGP to the Contractor whether in respect of the Contract Price or Value Added Tax shall be a sum of money recoverable from the Contractor pursuant to Condition 11(1) above or otherwise.

12. Value Added Tax

- (1) SGP shall pay to the Contractor, in addition to the Contract Price, a sum equal to any Value Added Tax chargeable on the value of the Goods or Services provided in accordance with the Contract.
- (2) The Contractor shall, if so requested by SGP, furnish such information as may reasonably be required by SGP relating to the amount of Value Added Tax chargeable on the Goods or Services.

13. Packaging

- (1) Unless otherwise provided by the Contract, all containers (including packing cases, boxes, tins, drums and wrappings) supplied by the Contractor shall be considered as non-returnable, and their cost as having been included in the Contract Price.
- (2) The Contractor will ensure that all hazardous, toxic, noxious, fragile or similar Goods are properly labelled as such and that this is drawn to the attention of SGP, its employees, agents or contractors where appropriate

14. Specifications and Quality Assurance

- (1) The Contractor warrants that :
 - (a) the Goods or Services shall be delivered in accordance with the specifications in the Purchase Order;
 - (b) the Goods or Services shall be fit for the purpose for which they were ordered taking account of all requirements to install and integrate the Goods or Systems with or into SGP existing systems and procedures (where appropriate) and be of satisfactory quality and free from defects;
 - (c) the quantity and quality of the Goods and Services shall be as described and shall correspond to any samples, patterns, specifications, plans, drawings or other documents, individually or collectively, which may have been given in relation to the Goods or Services; and

- (d) any installation or other work carried out in relation to the Goods or Services shall be of the highest standards and otherwise comply with the specified Standard mentioned in the Contract, and other legal requirements applicable to such Goods or Services, and the Contractor agrees that it will be fully responsible to make good and repair any SGP Property, or fixtures or fittings into or onto which the Goods or Services may be installed.
- (2) Except in so far as may otherwise be indicated by a sample, pattern, specification, plan, drawing or other document, the Goods or Services shall strictly adhere to the latest relevant Standards mentioned in the contract, or equivalent, where such exist, published before the date of the Contract, or otherwise shall be to the satisfaction of SGP.
- (3) The Contractor shall, if so requested by SGP, furnish details of his quality management system and produce evidence, if appropriate, of certification to the required Standards by the Contract or equivalent.

15. Delivery, Title and Risk

- (1) The Goods or Services shall be delivered by the Contractor at such times, at such places, and in such manner as is specified in the Purchase Order, or as otherwise advised in writing by SGP.
- (2) Unless the Contract specifically otherwise provides, time of delivery shall be of the essence and failure to deliver within the specified time shall entitle SGP, at its option, and without prejudice to its other rights and remedies, to treat such failure as a fundamental breach of Contract so as to release SGP from any obligation to accept the Goods or Services or pay for them, or entitle it to cancel by notice in writing to the Contractor all or part of any order in relation to the Goods or Services.
- (3) Title and risk in the Goods or Services shall pass to SGP on delivery of the Goods or Services to SGP or on payment of the Contract Price whichever is earlier.
- (4) Any access to premises and any labor and equipment provided by SGP in connection with delivery shall be provided without acceptance by SGP of any liability in respect of any actions, claims, demands, costs and expenses incurred by the Contractor or any third parties (including any agent of SGP) for any loss or damages to the extent that such loss or damage is not attributable to the negligence or other wrongful act of SGP, or any employee or agent thereof.
- (5) Where any access to premises owned or occupied by SGP is necessary in connection with delivery or installation of the Goods or Services, the Contractor and/or his sub-contractors shall at all times comply with the reasonable requirements of SGP's relevant Manager for the Goods or Services per the contract.
- (6) Delivery/Postponement Requested by SGP; SGP reserves the right to delay the delivery of Goods or Services by up to two (2) months without any cost increase to SGP.

16. Inspection

- (1) SGP may inspect or arrange for the inspection of all or any of the Goods or Services in the course of production at the Contractor's premises, or the premises where the Goods are being produced, at any reasonable time.
- (2) Without prejudice to SGP's right of inspection under Condition 16(1), SGP may inspect or arrange for the inspection of all or any of the completed Goods or Services at the Contractor's premises or premises where the Goods have been produced, or after delivery, or as otherwise provided in the Contract.
- (3) When SGP wishes to exercise its right of inspection under this Condition, the Contractor shall give SGP full and free access to the said premises as and when required for that purpose and shall provide at his own expense all such accommodation and facilities in connection with the inspection and all appliances, materials and labor required for inspection purposes as SGP may reasonably require.

17. Payment

All payments shall be made in the currency and at the price as stipulated in the Contract, LOA, or PO and all bank charges, if any, shall be borne by the Contractor. No adjustments shall be allowed for fluctuations in exchange rates or variations in cost of materials, labour or any other factors affecting the prices.

18. Payment Delay

If SGP fails to commit to payment according to contract terms, Contractor shall not stop work and has the right to claim any losses due to delay of payment.

19. Defect Liability Period

The Contractor shall guarantee that each of the Services delivered will be in good operational order to the satisfaction of SGP for the Defect Liability Period of 12 months;

20. Liquidated Damages for Late Delivery

- (1) Notwithstanding the clause on "Delivery/Postponement Requested by SGP", the date stipulated in the Contract for the successful commissioning of the Equipment or Services or Goods or the revised date due to postponement by SGP, shall be strictly adhered to,
- (2) Failing to adhere with the Delivery date, the Contractor shall be liable to pay liquidated damages of a sum equivalent to 0.20 per cent of the contract price of for each day or part thereof up to the date on which the Service is delivered and Acceptance Certificate or GRN is signed by SGP.
- (3) Provided that, the total amount of liquidated damages that may be imposed for the delay shall not exceed ten per cent (10%) of the contract price.

21. Rejection of the Goods or Services

- (1) SGP may reject any Goods or Services which on inspection are found not to conform

with the requirements of the Contract.

- (2) SGP may reject the whole of any consignment of the Goods or Services if an inspection shows that:
 - (a) such proportion or percentage of the Goods in that consignment or Services as the Contract may specify being appropriate for the purposes of this Condition; or
 - (b) such samples taken from that consignment by SGP, or a part Service tested by SGP, do not conform with the requirements of the Contract.
- (3) When under this Condition SGP rejects any Goods or consignment, or Services after delivery, the Contractor shall, subject at his own expense remove the rejected Goods or Services and shall do so within such period as is provided by the Contract or, if the Contract makes no such provision, within 8 working days from receipt of notification of rejection.
- (4) If the Contractor fails to remove the Goods or any of them in accordance with Condition (3), SGP may dispose of the Goods as it sees fit.
- (5) When under this Condition SGP rejects any Goods or consignment after delivery, SGP may in its sole discretion:
 - (a) immediately cancel subsequent consignments of similar Goods or similar Services that were due for delivery under the Contract; or
 - (b) require the Contractor at his own expense to deliver in the place of the rejected Goods or Services, goods and services which conform with the requirements of the Contract and shall do so within the period for delivery stipulated in the Contract or within such further reasonable period as SGP may allow.
 - (c) If any Goods or Services whether completed or in the course of production are rejected on inspection by SGP, the same shall, if SGP so requires, be marked in a manner satisfactory to SGP to ensure their subsequent identification as rejected Goods or Services.

22. Loss of or Damage to the Goods

- (1) The Contractor is responsible for the Goods and any materials, equipment, fittings or things acquired or allocated by it for incorporation into the Goods until delivery has been effected. The Contractor shall make good any loss of or damage to the Services or the Goods or any such materials, equipment, fittings or things however occasioned which may occur before such delivery.
- (3) Condition (1) shall apply notwithstanding that the Goods or Services concerned may have been inspected in accordance with the Contract or that the title in the Goods or Services may have passed, in accordance with provisions specifically made in the Contract, from the Contractor to SGP or its agent earlier than upon delivery.
- (4) Unless the Contract specifically otherwise provides, the Contractor is not responsible for the Goods or Services after delivery, and SGP acceptance. If the

contractor delivered the Goods to SGP site without SGP inspection, then any findings of damage or loss of the Goods to be rejected after delivery, such responsibility shall take effect upon the Contractor:

23. Acceptance of the Goods or Services

Acceptance of the Goods or a consignment of Goods, or Services shall take place when SGP confirms acceptance of the Goods or Services in accordance with the procedure specified in the Contract, and if none is so specified, SGP shall be deemed to have accepted the Goods or a consignment of Goods, or Services without prejudice to any remedies, upon the happening of any of the following:

- (a) SGP takes the Goods or Services into use;
- (b) SGP fails to exercise its right of rejection of the Goods or Services under Condition 21 within any period specified for that purpose in the Contract; or
- (c) Where no period for exercising the right of rejection is specified in the Contract where SGP fails to exercise its right of rejection within such reasonable time since delivery of the Goods or Services was effected as may be necessary to inspect the Goods in accordance with Condition 16 or in accordance with the Contract.

24. Marking of Goods

If so required by the Contract, the Contractor shall at its own expense mark or permit the representative of SGP to mark all approved materials, Goods or parts thereof with recognized SGP marks. In the case of materials, Goods or parts, Services thereof which cannot be so marked, the same shall, if so required by SGP, be packed in suitable packages or cases, each of which shall be sealed and shall have the SGP mark placed on the seals.

25. Indemnity

The Contractor shall hold harmless and indemnify SGP on demand from and against all claims, demands, proceedings, actions, damages, costs (including legal costs), losses, charges, expenses and any other liabilities arising from claims made by SGP's staff or agents, or by third parties, in respect of any death or personal injury, or loss or destruction of or damage to property, or any other loss, destruction or damage, including but not limited to financial losses which are caused, whether directly or indirectly, by the Goods or their use following delivery or by the Contractor's, its employee's, agent's or sub-contractors, breach of contract or breach of duty (whether arising in negligence, tort, statute or otherwise).

26. Termination due to Change of Control

The Contractor shall notify SGP in writing immediately upon the occurrence of any of the following events:

- (a) where the Contractor is an individual, if a petition is presented for his/her bankruptcy, or he/she makes any composition or arrangement with or for the benefit of creditors,
- (b) or makes any conveyance or assignment for the benefit of creditors, or if an administrator is appointed to manage his/her affairs.

- (c) the Contractor undergoes a change of control,
- (d) After receipt of the notice under Condition 26 or on earlier discovery by SGP of the occurrence of any of the events described in Condition 26, SGP may, by notice in writing to the Contractor, terminate the Contract with immediate effect without compensation to the Contractor and without any prejudice to any right or action or remedy which may accrue to SGP thereafter. SGP's right to terminate the Contract under Condition 26 will exist until the end of a period of six calendar months starting from receipt of the notice provided by the Contractor pursuant to Condition 26, or such other period as is agreed by the parties.

27. Termination for Breach of Contract

- (a) If either party commits a material breach of the Contract which is either not capable of remedy, or, if it is capable of remedy, it fails to remedy such breach within 28 days of being notified by the other party in writing to do so, that other party shall be entitled to terminate the Contract with immediate effect by notice in writing to the party that committed the material breach and without prejudice to any other rights or remedies of either party in respect of the breach concerned or any other breach of the Contract.
- (b) Termination of the Contract, howsoever caused, shall be without prejudice to any accrued rights or obligations of either party.

28. Cancellation

SGP shall be entitled to terminate the Contract at any time by giving to the Contractor not less than 14 days' notice in writing to that effect.

29. Anti-Bribery

Without prejudice to other regulations, contractor undertakes not to pay any amount of money or benefits, or shall not promise any of the foregoing in order to obtain this contract. In addition, "Owner" may have the right to terminate this contract without any compensation, and contractor and his employees shall be responsible for the said conduct.

30. Dispute Resolution

- (1) The parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract.
- (2) If the parties cannot resolve the dispute pursuant to Condition 30(1), either party may at any time serve written notice on the other stating that a dispute exists and setting out the matters in dispute and the dispute may then, by agreement between the parties, be referred to mediation.
- (3) The performance of the Contract shall not cease or be delayed by the reference of a

dispute to mediation pursuant to Condition 30(2).

- (4) If the parties agree to refer the dispute to mediation :
- (a) in order to determine the person who shall mediate the dispute (the “Mediator”) the parties shall by agreement choose a neutral adviser or mediator within 30 days after agreeing to refer the dispute to mediation;
 - (b) the parties shall within 14 days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held
 - (c) failing agreement within 60 days of the Mediator being appointed, or such longer period as may be agreed between the parties, then the dispute or difference between them shall be referred to the Saudi Courts.

31. Conflict of Interest

- (1) The Contractor shall ensure that there is no conflict of interest as to be likely to prejudice its independence and objectivity in performing the Contract, and undertakes that upon becoming aware of any such conflict of interest during the performance of the Contract (whether the conflict existed before the award of the Contract or arises during its performance), it shall immediately notify SGP in writing of the same, giving particulars of its nature and the circumstances in which it exists or rises and shall furnish such further information as SGP may reasonably require..
- (2) Where SGP is of the opinion that the conflict of interest notified to it under Condition 31 is capable of being avoided or removed, SGP may require the Contractor to take such steps as will, in its opinion, avoid, or as the case may be, remove the conflict and:
- (a) if the Contractor fails to comply with SGP requirements in this respect; or
 - (b) if, in the opinion of SGP, compliance does not avoid or remove the conflict,

SGP may terminate the Contract immediately and recover from the Contractor the amount of any loss resulting from such termination.

32. Special Provisions

In the case of any conflict or inconsistency between these general Conditions and any specific conditions contained within the Contract, the latter shall prevail.

33. Intellectual Property Rights

SGP has the sole ownership of and sole right to the use of and intellectual property rights in any designs or document, article, process or invention or any other thing provided by the SGP to the Contractor, its servants or agents in connection with this Contract shall remain vested in SGP and SGP shall be entitled to effect and be responsible for securing such protection of such design or other document, article, process or invention in any way as it may see fit.

The Contractor shall not cause or permit anything which may damage or endanger any intellectual property rights of SGP or SGP's title to it or to assist or allow others to do so.

The Contractor shall fully defend, indemnify, and save SGP harmless from and against all claims, proceedings, damages, costs and expenses which may be brought or made against SGP or to which SGP may be put by reason of any infringement or alleged infringement caused directly or indirectly by the Contractor in the performance of this Contract of any patent, trademark, registered design, copyright or other intellectual property rights in any article, document, process or invention or any other thing used or provided in connection with the Equipment under this Contract.

34. Rights of Third Party

- (1) It is not intended by the Contract, to confer any benefit on any person/company who is not a party to the Contract, and accordingly the Contract gives no rights and benefits to a Third Party.
- (2) A person who is not a party to this Agreement has no right under the Contract to enforce any provision of this Contract.

35. Force Majeure

Neither SGP nor the Contractor shall be deemed to be in breach of any Contract or be liable to the other by reason of any failure to perform their respective obligations thereunder if such failure is caused, prevented or interfered with by any event of Force Majeure, and the time for performing the same shall be extended until the operation of such event has ceased.

36. Governing Law, Jurisdiction, and Arbitration

The Contract shall be governed, executed, interpreted, and construed in accordance with Saudi Law, unless otherwise agreed between the parties, and shall be subject to the exclusive Jurisdiction of the courts of Kingdom of Saudi Arabia.

Any dispute arising out of or in connection with this Contract, shall be resolved by arbitration in Saudi in accordance with the Saudi Arbitration Rules for settlement of disputes.

(END)