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# Ma'aden General Terms & Conditions for Procured Services

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# PROCUREMENT SERVICES [GENERAL]

## TERMS & CONDITIONS

### 1. DEFINITIONS:

In these General Terms and Conditions:

**'Business Day'** means a day other than Thursday and Friday and during which banks are open in the Kingdom to the general public for transactions over the counter.

**'Day'** or **'Week'** means a calendar day or week unless otherwise specified. The Gregorian calendar shall be followed for the purpose of the Purchase Order.

**'Services'** means those services, commodities, materials, ancillary goods or other articles described in the Purchase Order, including the constituent parts or materials of which the Services are comprised.

**'Kingdom'** means the Kingdom of Saudi Arabia.

**'Party'** or **'Parties'** means in singular either the Purchaser or Supplier and in the plural both the Purchaser and Supplier.

**'Price'** means the total value and in the currency noted in the Purchase Order.

**'Purchaser'** means Saudi Arabian Mining Company or the entity named in the Purchase Order being an affiliate or subsidiary of Saudi Arabian Mining Company.

**'Purchase Order'** or **'PO'** means the written agreement for the supply of Services issued by the Purchaser on the terms and conditions set out in these General Terms and Conditions and in any Specification.

**'Supplier'** means the person, firm or company named as such in the Purchase Order.

**'Site'** means all the places as designated by the Purchaser where the Services are to be performed.

**'Special Terms'** means a written document signed by the Parties reflecting any deviation from these Procurement General Terms and Conditions.

**'Specification'** or **'SOW'** means the Purchaser's written description of the Services to be supplied by the Seller set out in the Purchase Order or in any other document or documents referred to therein as part of the Specification. Such Specification shall incorporate all information necessary to comprehensibly and fully define the Services to be supplied and shall include where necessary technical data, plans, drawings, relevant standards, quality requirements, etc.

## **2. THE PURCHASE ORDER**

- 2.1 All agreements for the supply of Services by a Supplier shall be entered into only by means of the issue of a formal PO which will be effective when sent to Supplier.
- 2.2 The PO and any documents referred to in it as forming part of the supply shall constitute the entire agreement of the Parties in respect of the Services. No other conditions, warranties, guarantees, representations or verbal or written exchanges with the Supplier shall be of any force or effect unless Purchaser amends the PO in writing. The Purchaser will not be bound by any standard or printed terms presented by Supplier in any quotation, delivery note or other document, unless such terms are expressly incorporated in Special Terms.
- 2.3 Subject to the provisions of clause 2.4 below, when used in a PO, any Incoterms mode/term shall have the meaning set out in the ICC Incoterms 2010 and the meaning of and responsibilities/obligations under the particular term shall be deemed to be incorporated into these General Terms and Conditions.
- 2.4 In the event of any conflicting provisions in any applicable document the order of precedence shall be: the PO, followed by any Special Terms, then by these General Terms and Conditions and then by the Specifications, then the ICC Incoterms 2010 and finally by any other documents in most recent date sequence.
- 2.5 Headings in the various documents referred to in these General Terms and Conditions are inserted for convenience only and shall not affect construction.

## **3. SCOPE**

- 3.1 Supplier shall supply the Services in conformance with the highest professional standards.
- 3.2 Prior to shipment of any part of the Services, the Purchaser may request changes in respect to the Services, including but not limited to changes in the mode of delivery or increase or decrease in the quantity, in which case such changes and the agreed cost and time of delivery will be recorded in the Special Terms.

## **4. PRICE**

- 4.1 As full compensation for the successful and complete performance of all of Supplier's obligations, Purchaser shall pay the Supplier the Price. The Price shall not be subject to any fluctuations or adjustments.
- 4.2 The Supplier shall be responsible for paying all customs duties, import and export duties, levies and the like in respect of the Services, all demurrage costs and port fees (including all offloading costs and the like) in respect of all Services and without any right to reimbursement by the Employer. The Supplier shall be responsible for obtaining customs clearance in respect of all Services.

## **5. PAYMENT TERMS**

Payment terms shall be as specified in the Purchase Order, subject to any deductions imposed by law or in terms of these terms and conditions.

## **6. ACCESS & NON-CONFORMANCE**

- 6.1 The Purchaser and his representatives shall be afforded free access during working hours to the Supplier's plants and working places to examine work in progress or the completed Services. The Supplier shall procure a similar right for the Purchaser from Supplier's contractors or vendors.
- 6.2 Such examination shall not be deemed as Purchaser's acceptance of the quality or the state of the Services.
- 6.3 In the event that the examination shows that the Services do not conform to the Specifications or generally the requirements of the PO, whether at the Purchaser's premises or elsewhere, Purchaser shall be entitled at its sole discretion to reject the delivery and cancel the PO forthwith. In such event the Purchaser shall be entitled to make other arrangements that it considers fit to receive the Services properly performed. Any additional expenditure incurred by the Purchaser in connection therewith shall be reimbursed by the Supplier upon demand.

## **7. DOCUMENTATION**

Supplier shall furnish Purchaser with all the required and customary certificates, test data, manuals and technical information and documentation relating to the Services, including (but not limited) to any test certificates, Non-Destructive Testing (NDT), pressure test, etc. when applicable.

## **8. DELIVERY & LATE DELIVERY**

- 8.1 The mode and the completion date/schedule specified in the PO is firm and Supplier shall be obliged to timely deliver the Services at the point of performance.
- 8.2 The time of completion is of the essence, and Supplier undertakes to complete the Services strictly within the agreed time.
- 8.3 Supplier is obliged to notify Purchaser in writing if the delivery of any Services or any other scheduled activity shall be later than the schedule set out in the PO.
- 8.4 Should Supplier fail to complete the Services according to the agreed date(s) and/or schedule set out in the PO, Purchaser may in its sole discretion, with or without prior notice to the Supplier:
- [a] Cancel the PO or part of the Services and procure other services of similar description from another supplier; and/or
  - [b] Allow Supplier to proceed and claim from Supplier as liquidated and genuine pre-estimate of damages that it will suffer as a result of such a breach, an amount of 0.1% (zero point one percent) of the PO value of each item of the Services not conforming to the PO for every day (or part thereof) that the Services is delayed beyond the PO delivery date subject to a maximum of 10% of the PO value; and/or
  - [c] Claim from Supplier the damages actually suffered (including the amount by which the cost of replacements exceeds the Price) and to the extent allowed under the law, in lieu of the agreed liquidated damages provided for above.

## **9. PASSING OF TITLE & RISK**

- 9.1 The title and ownership in the material forming part of the Services shall pass to Purchaser either upon part payment or on completion. Nevertheless the risk of damage or loss caused through rendering the Services will remain vested in Supplier until such time that the completed Services has been accepted by or on behalf of the Purchaser, as provided for in Clause 10.
- 9.2 Supplier represents and warrants that it will have the right to sell the Services and that the upon completion the rightful title in and to the Services will be passed to the Purchaser free from any encumbrance or charge, in order that Purchaser will have the full benefit of and enjoy quiet possession of the Services performed. The Supplier shall indemnify the Purchaser against any claim by any third party claiming any right to the mode, manner, method or type of the Services or part of the Services.
- 9.3 Title to all Specifications (including drawings, patterns or designs, formula and forms) supplied by the Purchaser or developed by the Supplier for the Services shall vest in the Purchaser and will be kept strictly confidential by the Supplier.

## **10. ACCEPTANCE OF SERVICES**

- 10.1 The Purchaser shall not be deemed to have accepted the Services until such time as the Purchaser notifies the Supplier in writing that it has accepted the Services.
- 10.2 Notwithstanding the fact that the Services may have passed the inspection provided for in Clause 7 above or have been received, Purchaser will have the right to reject any part of the Services within forty five (45) days from the time it is determined that the Services is defective or does not conform to the requirements of the PO ("Rejected Services").
- 10.3 Unless the Parties otherwise agree on the rectification thereof, the Rejected Services will be refused at Supplier's sole cost and risk. Where Supplier has already been paid (fully or partly) for such Rejected Services, the Supplier shall forthwith replace the Rejected Services and issue a credit note in respect of the Rejected Services.
- 10.4 In the event that Purchaser, in its sole discretion, elects to accept and correct any Rejected Services, the Supplier shall be liable for and promptly reimburse Purchaser for all reasonable cost and expenses actually incurred by Purchaser in connection with the correction or repair.

## **11. QUALITY AND WARRANTY**

- 11.1 The Services shall conform in all respects to the quality requirements and specifications set out in the PO and if not specified, in accordance with accepted industry practices and any applicable professional standards and codes. Supplier may not change the Specifications, material or agreed methods without the prior written consent of Purchaser.

- 11.2 Supplier warrants and guarantees that the Services will be free of fault, defects (whether patent or latent), in method and workmanship (and fit for the intended purpose for at least eighteen (18) months after acceptance or twelve (12) months from use, installation or commissioning of any goods it is intended to support (whichever is the latest) ["Warranty Period"].
- 11.3 If any such defects or failure is discovered or occur within the Warranty Period, Purchaser shall notify Supplier accordingly, and Supplier shall promptly, and at its sole cost and risk re-perform the Services which is found to be defective. In addition, Supplier shall compensate Purchaser for all costs and expenses reasonably incurred or suffered in connection with the defect and the re-performance of the Services (or part thereof).
- 11.4 The re-performed Services will carry the same warranty as from the date of re-performance.
- 11.5 This warranty is additional to and without prejudice to any further or specific terms of warranties offered by Supplier or applicable in respect of the Services.

## **12. BOOKS AND RECORDS**

Supplier shall maintain and keep (and shall procure that its affiliates and sub-contractor maintain and keep) proper books and records in respect of the PO and the Services in accordance with general accepted accounting practices for a period of at least three (3) years of execution of the requirements of the of the PO. Within this period and with reasonable prior notice, PURCHASER shall have the right to inspect such books and records and to audit them in respect of all POs executed. If an audit shows any error(s) in Suppliers invoices and/or over payments, appropriate adjustments in payments still due by Purchaser or repayment by Supplier (as the case may be) will be made.

## **13. COMPLIANCE WITH LAWS AND ETHICS**

- 13.1 In the performance of any Services, the Supplier shall ensure full compliance with all laws and regulations of the Kingdom as well as any other applicable laws or international obligations. The Supplier must comply with Saudization requirements by hiring Saudi personnel and using Saudi Arabian services as far as practical.
- 13.2 The Purchaser subscribes to high health, safety and environmental standards and during the execution of any PO, Supplier shall conform to all applicable standards and regulations.
- 13.3 To the extent that the Services includes dealing with hazardous materials, Supplier shall provide Purchaser with all information and data sheets as may be required under the applicable occupational health and safety laws and regulations of the Kingdom.

- 13.4 Purchaser conducts its business in a highly ethical manner, and Suppliers shall take all necessary steps and precautions to prevent their employees or representatives from making, offering and/or receiving any gifts (other than promotional material of a nominal value featuring the Supplier's name in a prominent place) fee, rebate and/or any other consideration or advantage of any nature to any employee or representative of Purchaser, which could in any way influence a Purchaser employee to act (or refrain from acting) in a manner which may will give Supplier an unfair advantage. These terms are subject to Ma'adens Suppliers' Code of Ethics a copy of which may be obtained from Ma'aden upon request.
- 13.5 Supplier shall promptly notify Purchaser if and when any of its employees or representative may obtain any interest (whether directly or indirectly) by way of a shareholding , partnership or in any other form of association in the Supplier, its affiliates or sub-contractor.
- 13.6 Any breach of any of the above provisions shall entitle Purchaser to, without prejudice to any other rights or remedies it may have under these General Terms and Conditions or the law, cancel the PO summarily, without prior notice to Supplier.

#### **14. CONFIDENTIALITY**

- 14.1 The Supplier shall at all times during the execution of a Purchase Agreement and thereafter, treat and keep the details of the PO (including Specifications, drawings, patterns, designs etc) and all information received from the Purchaser in connection thereto or by virtue with its dealings with the Purchaser, confidential and agrees not to disclose such to any third parties without the Purchaser's prior written consent.
- 14.2 The Supplier shall not make any declarations or announcements regarding the award of the Services nor shall it use the Purchaser's name, logo or strap lines without first obtaining the Purchaser's written consent.
- 14.3 These obligations will survive the completion or early termination of the Purchase Agreement.

#### **15. INTELLECTUAL PROPERTY**

- 15.1 The Supplier represents that the delivery to and use of the Services by Purchaser will not in any way infringe or contribute to the infringement on any third parties' patent, design, trademark, copyrights or any other form of intellectual property, whether registered or not and the Purchaser shall have a free and perpetual license to use any IP related to the Services.
- 15.2 Notwithstanding the contents of clause 16.2 below, the Supplier indemnifies and undertakes to hold Purchaser, its Affiliates, directors and employees free and harmless from and against any demand or claim, cost and expense, whether for direct or indirect costs or consequential damages by incurred (including legal costs), in connection with such legal action in any jurisdiction in relation to an alleged infringement of intellectual property rights flowing from the performance and/or use of the Services.

- 15.3 In addition, the Supplier shall immediately upon allegations of an infringement of intellectual property rights, remove the offending result of the Services and, at its sole costs and risk, promptly replace same with other Services.

## **16. LIABILITIES AND INDEMNITY**

- 16.1 The Supplier shall solely be responsible for all equipment, material and persons used in the execution of the PO and indemnifies the Purchaser and shall hold it for ever harmless and free from and against all costs, expenses, demands and claims in respect of or flowing from loss of or damage to the property of the Supplier and in respect of injury or death of any employee or representative of the Supplier, however resulting in connection with the Services.
- 16.2 Notwithstanding the above and with the exclusion of claims for the infringement of a third party's rights, neither party shall under any circumstances be liable towards the other for consequential damages, including but not limited to loss of use, or loss and profit, excluding any liability arising from an indemnity undertaking.

## **17. INSURANCE**

The Supplier shall maintain and cause its subcontractors to maintain adequate insurance coverage that would cover the legal and contractual obligations by undertaking the Services in accordance with standard industry practice. The Purchaser shall be entitled at any stage throughout the performance of the supply of the Services to request the Supplier to deliver proof of insurance.

## **18. FORCE MAJEURE**

- 18.1 Subject to the below provisions, neither Party shall be liable for the non- or late performance of any of its obligations where such were caused by force majeure.
- 18.2 For purposes hereof "force majeure" shall mean an unforeseen and uncontrollable act or occurrence which has the effect of preventing a party from performing its obligations and/or from performing such obligation timely. These acts or occurrence shall mean strikes, blockages, earthquakes, sabotage, fires, floods or other acts of God or acts of Government enacted after the date of issue of the PO, but shall exclude among others piracy, strikes or lockouts, unavailability of manpower for whatever reason.
- 18.3 In the event that a Party experiences a force majeure event, it shall promptly, but not later than seven (7) days of becoming aware of such occurrence, notify the other in writing of the full detail, nature and anticipated duration and effect of the force majeure.
- 18.4 The Party experiencing the force majeure event shall use its best efforts to minimize its negative effect in the shortest time possible in the circumstances..
- 18.5 Except for laws enacted after the date of issue of the PO, the Supplier shall not claim any additional cost, but shall only be entitled to an extension of time to complete the delivery.
- 18.6 Where the period of delay is due to force majeure and exceeds three (3) months, the Purchaser shall be entitled in its sole discretion to terminate the PO.

## **19. BREACH & CANCELLATION**

- 19.1 The Purchaser may cancel the PO for convenience.
- 19.2 If the Supplier is not executing the PO in accordance with its terms, and/or is in breach of any provision of these General Terms and Conditions and/or if Supplier becomes or is in jeopardy of becoming insolvent, Purchaser may give Supplier written notice to remedy such failure or default. Failure by Supplier to remedy the failure or default within a period of seven (7) days of the date of said notice, shall entitle the Purchaser to, without prejudice to any other rights and remedies it may have, cancel the PO.
- 19.3 In the event of a cancellation of the PO in terms of clause 19.1 or 19.2 above, Supplier shall not be entitled to claim for any compensation or damages other than reasonable compensation for that portion of the Services delivered and accepted by Purchaser prior to cancellation.

## **20. RELATIONSHIP**

Supplier is an independent contractor. Nothing in the PO or these General Terms and Conditions is intended or shall be construed as or shall operate to create a partnership, joint venture of any kind between the Parties, or to constitute either party the agent or employee of the other.

## **21. MISCELLANEOUS**

- 21.1 The Supplier shall be responsible for all acts and omissions of any sub-supplier or sub-vendor nominated or not by the Purchaser, including due payment of all such sub-suppliers' or sub-vendors' charges in supplying the Services, and the Supplier relinquishes any right of lien and shall procure such relinquishment from any of its sub-suppliers or its vendors. In the event that the Supplier does not pay any sub-supplier or sub-vendor with regard to the Services or their components, the Purchaser shall have the right to pay the sub-supplier and sub-vendor direct and charge such cost against the Supplier.
- 21.2 In the event any provision hereof should be declared invalid or unenforceable, it shall be severed from these General terms and Conditions, and such provision shall not affect the validity or enforceability of the remaining provisions hereof.
- 21.3 No Party shall be deemed to have waived any provision, breach, or remedy under these General Terms and Conditions, unless such waiver is specifically included in the Special Terms.
- 21.4 Supplier shall not be entitled to sub-contract, transfer and/or assign any part of the Services or its obligations under the PO, without the prior written consent of the Purchaser.
- 21.5 The following shall not apply to these General Terms and Conditions: (i) the United Nations Convention on Contracts for the International Sale of Goods of 1980 (Vienna Convention), (ii) the Uniform Law on Sales and the Uniform Law on Formation to which effect is given by Uniform Laws on International Sales Act 1967, and (iii) the United Nations Convention on Prescription (Limitation) in the International Sales of Goods of 1974 and the amending Protocol of 1980.

## **22. GOVERNING LAW & JURISDICTION**

- 22.1 These General Terms and Conditions and all aspects of the Services and the PO are governed by and shall be construed in accordance with the laws of the Kingdom without giving effect to any conflict of laws provisions.
- 22.2 In the event that a dispute arises between the Parties, they shall attempt to resolve such issue in an amicable manner.
- 22.3 In the event that a dispute remains unresolved for a period of thirty (30) days or more notwithstanding efforts to resolve the issue in an amicable manner, either party shall be entitled to refer the dispute to be settled in accordance the rules of arbitration of the Kingdom. The arbitration shall take place in Riyadh. Any award given by the Arbitration Tribunal shall be final.

## **23. NOTICES**

- 23.1 Any notice or other communication to be given in terms of these General Terms and Conditions shall be in writing and may be served by sending it by fax or delivering it by hand (or courier) to the relevant Party's address as set out in the PO (or at such address notified from time to time in writing). Any notice shall be deemed to have been received:
- [a] In case of delivery by hand, when delivered;
  - [b] In the case of fax at the time of dispatch verified by positive receipt of transmittal.
- 23.2 Service shall be deemed to occur during the first Business Day after delivery as per clause 25.1 above, if delivery or transmittal takes place during a non- Business Day.