



**PURCHASE ORDER GENERAL TERMS & CONDITIONS**

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## **PURCHASE ORDER GENERAL TERMS & CONDITIONS**

### **1. INSTRUCTION**

This purchase order ('Purchase Order') is subject to this Purchase Order Terms and Conditions and its attachments,

And by accepting the Purchase Order, the vendor (Vendor) agrees to, and accepts the aforementioned terms and conditions, to the exclusion of all others.

For the purpose of this Purchase Order General Terms and Conditions the 'Company' or 'KNPC' shall mean Kuwait National Petroleum Company and the 'Vendor' shall mean the successful bidder to whom the Purchase Order has been awarded.

### **2. ACKNOWLEDGEMENT**

The Vendor should sign and return the acknowledgement copy of the Purchase Order as acceptance thereof. Non return of this copy may cause the Purchase Order to be cancelled without liability to the Company.

### **3. ASSIGNMENT**

The Vendor shall not assign the Purchase Order or any part thereof without the prior written consent of the Company nor shall the Vendor without the prior written consent of the Company assign any benefit or interest in or under the Purchase Order, except where an official assignment of any monies due or to become due under this Purchase Order is made in favor of the Vendor's bankers. In case of assignment of the Purchase Order the Vendor shall be jointly responsible with the assignee for the performance of the Purchase Order.

### **4. PRICE**

The price shown on the Purchase Order cannot be varied unless by duly executed supplement to the Purchase Order.

### **5. PURCHASE ORDER NUMBER**

The Purchase Order number must appear on all invoices, airway bill, bill of lading packages, cases, packing list and correspondence.



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### **6. MODIFICATION**

No modification whatsoever must be made to the design or details as indicated or specified on the Company's drawings and / or specifications without Company's prior approval in writing.

### **7. PACKING**

All goods must be carefully and properly prepared, secured and packed and protected by transit-worthy professional packing by the Vendor as prescribed by international conventions to ensure adequate protection until delivery at the destination specified in the Purchase Order. In the case of any damage which is attributable to defective and / or insufficient packing, the Vendor will be held fully responsible for any loss, damage, cost and expenses incurred or suffered by the Company. Hazardous goods must not be packed with those of non-hazardous nature.

Vendors to supply ordered material with clearly visible tag consisting of – item number, ordered quantity, unit and short description. Materials such as 'Cotton Rags', 'Refractory and Insulation materials' and materials packed in Bags that are supplied in huge quantities (especially, if material is shipped through 20/40 feet containers) shall be palletized.

For shelf life material the 'date of Manufacture' and ' date of expiry' should be clearly indicated on the material.

### **8. SHIPPING**

The goods must be shipped as per the written instructions contained in the Purchase Order. Any extra handling charges, not authorized in writing will not be reimbursed by the Company.

Shipment shall be arranged as one lot and Partial shipment is not recommended. However, if partial shipment is mandated due to critical circumstances, prior approval of KNPC shall be obtained before proceeding with shipment.



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### **9. DOCUMENTATION**

A notice of shipment shall be sent directly to the Company at the time goods leave the Vendor's premises or shipping port. This notice should state the Purchase Order number, kind, amount of material and route by which shipment is being made. All goods shall be suitably marked and shipped in accordance with instruction furnished in the Purchase Order and the requirements of the carrier. Documents should be submitted in accordance with the shipping instructions stipulated in the Purchase Order.

Any demurrage sustained due a mistake by the Vendor in documents, including shipping documents, as may be mandated by customs authorities ( either that of the Country of origin or of Kuwait ) will be back-charged to the Vendor's account.

### **10. ORIGIN OF GOODS**

- a) A declaration is required on every commercial invoice stating the country of origin. Full details of shipping instructions are enclosed herewith.
- b) The certificate of origin and invoice should show the name of manufacturer and the country of origin of goods.

### **11. DELIVERY**

Delivery of the goods by the Vendor shall be effected at the place or places and at the time or times and in the manner specified in the Purchase Order. In the event of Vendor's failure to deliver, as and when specified, the Company reserves the right to cancel the Purchase Order or any part thereof, without prejudice to Vendor's other obligations and the Vendor agrees that the Company may return part or all of any shipment made and may charge the Vendor with any loss or expense sustained as a result of such failure to deliver.

### **12. VENDOR'S DEFAULT**

If the Vendor shall fail or neglect to execute the Purchase Order with all due diligence and expeditiously or shall refuse or neglect to comply with the instructions given to the

Vendor in writing by the Company in connection with the Purchase Order or shall contravene any of the provisions or conditions of the Purchase Order, the Company

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may give notice in writing to the Vendor requesting him to make good such failure, neglect, refusal or contravention. In the event of the Vendor failing to comply with such request within such time, as may in the opinion of the Company be reasonably necessary, having regard to all circumstances, the Company shall be at liberty forthwith to execute such part of the Purchase Order as the Vendor may have failed, neglected or refused to execute or, if Company shall think fit, to take the Purchase Order totally or in part out of the Vendor's hands and place a further Purchase Order for the goods with another firm or company. Any balance of the purchase price which may be otherwise due on Purchase Order of such part or this price, as necessary may be retained and applied to the payment of the cost of the said further purchase order. In event of the said balance or part thereof being insufficient to meet the cost of the said further purchase order, the Vendor shall pay any such difference on demand.

Notwithstanding to any other rights in the Purchase Order, the Company maintain the right to cancel the Purchase Order for the following reasons through notice by registered mail or fax or courier without any need to judicial proceedings :-

- a) If the Vendor has abandoned / breached any conditions of the Purchase Order or practice an action ( he or his representatives) that is considered as a fraudulent behavior.
- b) If the Vendor, Vendor's representatives or any of Vendor's employees bribes either in direct or indirect way any Company employee.
- c) If the Vendor has become bankrupt, or have a receiving order made against the Vendor, or have presented petition for bankruptcy.
- d) If the Vendor delays supplying the goods in such a way that it deems not to be able to execute the deliveries as in the Purchase Order.

As consequences of the cancellation of Purchase Order for the above reasons the Company may at its option shall:-

- a) En cash the Performance Bond without need to any judicial proceedings.
- b) Purchase the required good on the Vendor's account in a way deemed appropriate to the Company, without prejudice to any other rights available to the Company.

### **13. CANCELLATION**

Without prejudice to any of the conditions herein contained, the Company may, for any reason whatsoever, by notice in writing to the Vendor and with immediate effect cancel



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the Purchase Order or any part thereof. In the event of a cancellation as aforesaid, the Vendor shall:

- a) Use its best endeavors to cancel orders and terminate contracts which the Vendor may have placed with others in connection with the execution of the Purchase Order, and
- b) Receive payment for all materials used and work executed by him pertinent to the Purchase Order but unpaid for at the time of such cancellation. The Vendor shall, upon receiving notice of cancellation as aforesaid, notify the Company within a reasonable time of the amounts unpaid as aforementioned. These shall be agreed in writing between the Company and the Vendor and upon payment of the amount agreed as aforesaid, all materials and work to which these amount relate shall immediately become the property of the Company.

### **14. MATERIALS**

- a) The goods should be of the best quality and in all respects in strict accordance with Company's specification.
- b) Material / equipment covered by the Purchase Order should be supplied / manufactured in accordance with KNPC original Tender Specification and subsequent clarifications / deletions / additions accepted after submission of original offer.
- c) This Purchase Order is placed with the Vendor for the supply of subject goods and is conditional that it should be of your manufacturer or of the company specified in your Proforma Invoice or as called for in our inquiry.

### **15. SUB-ORDERS**

No sub-order for assembly or manufacturer of the goods, other than for the supply of materials, or minor details of any part of the goods, shall be placed by the Vendor without the written permission of the Company. Three copies of all sub-contracts permitted, as aforesaid, are to be submitted to the Company's office within seven days.



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### **16. INSPECTION**

#### **16.1 THIRD PARTY INSPECTION**

16.1.1. KNPC may appoint TPI agency thru the existing long term contract and fee for third party inspection service shall be paid by KNPC. However, the Vendor shall bear any additional third party inspection charges due to Vendor's failure or non-compliance of material with the Purchase Order requirements.

16.1.2. The location (place with address) for inspection activities as per the scope of TPI shall be specified by the Vendor to the Company for informing TPI agency.

16.1.3. Also, if the material is not ready for Inspection, despite issuance of material readiness written notification by the Vendor, the fee for TPI agency for any additional inspection visit shall be borne by the Vendor.

16.1.4. Material shall not be shipped until KNPC approves the third party inspection report along with mill test certificates. The Vendor shall be liable to replace the complete material if any shipment is made without KNPC advice for shipment / approval of TPI report.

16.1.5. For any deviation indicated in the Inspection reports / submittals by the TPI Agency, the Vendor shall be responsible to carry out necessary corrective actions/modifications/replacement and offer to the TPI Agency immediately for re-inspection of material at his cost.

16.1.6. Acceptance of material by the TPI Agency does not relieve the Vendor from the responsibility to replace the delivered material if not found in full compliance to the Purchase Order specification upon inspection at KNPC warehouse. In addition to any of the stipulated inspection requirements, the supplied material shall be inspected by the Company at Company's warehouse/stores to ensure its conformity to applicable specifications.

16.1.7 If inspection by third party inspection (TPI) agency is not specified in the Tender, but, mill test certificates (MTC) is specified, then Material shall not be shipped until KNPC approves the mill test certificates. The Vendor shall be liable to replace the complete material if any shipment is made without KNPC advice for shipment / approval of mill test certificates (MTC).

The Heat Numbers stated on the MTCs approved by KNPC must be reflected / marked up on materials to avoid rejection after order delivery.



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### **16.2 WAREHOUSE INSPECTION**

16.2.1 Vendor shall comply with the technical specifications, quantities and the supply schedule (Date, Venue) stated in the Purchase Order and all materials delivered pursuant to the Purchase Order shall be free from defects, deficiencies, failures and damage.

Upon inspection by the Company, if any materials are rejected due to any defects, deficiency, failure, damage or inconsistency with the required specifications, Vendor shall take back the materials immediately or, in any event, no later than one month from the date of notice. In the event the vendor fails to collect the rejected materials within the aforesaid period of one month, the Company shall treat the un-collected rejected materials as scrap and dispose without any liability or other obligation on the Company, and the Vendor expressly agrees not to claim any amount or compensation for such disposed materials. In addition, the company shall not make any payment for these rejected materials and shall deduct any amount paid to the Vendor prior to delivery from any monies due or becoming due to the Vendor under this Purchase Order or any other contract with the Company. The Company shall not be responsible for any damage, loss or shortage that may occur to those materials under its storage and the vendor shall take back the stored materials on, as is basis.

16.2.2 In case of rejection of goods upon inspection, Company shall have the following alternative rights:-

i. Purchase the required goods in Vendor's account in a way deemed appropriate to the Company and demand from the Vendor the price differences and Liquidated Damages (10 % of the purchased goods) without necessity for any legal or other formality or recourse to judicial proceedings.

ii. Request the Vendor to supply the goods as per the required specification within specified time limit, without prejudice to apply the stipulated liquidated damages for delay.

### **17. PERFORMANCE BOND**

If Performance Bond is stipulated in the Purchase Order then the Vendor must submit a Performance Bond in the value specified. This Bond shall be an unconditional and



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irrevocable bank guarantee issued by a bank licensed to carry out banking business in Kuwait, made payable to Kuwait National Petroleum Company.

The wording of the Performance Bond shall be generally in accordance with the specimen of "GENERAL INSTRUCTION TO BIDDERS – FOR SUPPLY OF MATERAILS" document.

The Performance Bond shall be valid for the Purchase Order delivery period plus 90 days. The Company shall hold the Performance Bond during this period and will have the right to deduct any demurrages and /or any monies due or to become due under the Purchase Order from the performance Bond.

The Company will notify the Vendor to increase the Performance Bond Value in case of

- I. applying deduction for demurrages and/or any monies due or to become due.
- II. increase the Purchase Order value due to increase in scope of work.

Vendor shall increase the value of the Performance Bond within (7) seven days from notification. If Vendor fails to increase the value of the Performance Bond then;

- I. Company shall have the right to adjust the monies due or to become due under the subject Purchase Order or any other Purchase Order(s) or Contract(s) between the Company and the Vendor.
- II. If there is no amount due under the subject Purchase Order and the Vendor fails to increase the value of the Performance Bond, then the Company has the full right to terminate the Purchase Order due to Vendor's default without need to any judicial measures and Company maintain the right to claim on Vendor for all consequent compensations in this regard.

The Company has the right to deduct all monies owed to it by the Vendor such as liquidated damages, compensation or any other amount(s) from the above Performance Bond submitted to the Company or from any monies due or to become due to the Vendor under this Purchase Order or any other Purchase Order(s) or Contract(s) with the Company, without the need to any notice or recourse to any judicial proceedings against the Vendor.

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### **18. LIQUIDATED DAMAGES**

The Vendor, should supply the items in accordance with Purchase Order conditions at the agreed upon location within the agreed upon period as from the Award Notification date of the Purchase Order. For Delays in supply of the required quantities or part thereof the Company will have the right to impose Liquidated Damages of 0.5% of the value of unsupplied items or incomplete batches, for each week of delay or part thereof on prorata basis, but not exceeding 10% of total Purchase Order value unless otherwise provided for under the Purchase Order.

In case of non delivery of material the Company has the right to take action as deemed necessary considering, but not limited to the following options :-

- I. Purchase the required goods in the Vendor's account in a way deemed appropriate to the Company. The price differences and Liquidated damages (10 % of the purchased goods) shall be imposed on Vendor without necessity for any legal or other formality or recourse to judicial proceedings.
- II. Terminate the Purchase Order and encash the Performance Bond without prejudice to any other rights of the Company under the Purchase Order.

### **19. PRODUCTION PROGRAMME**

Where specified in the Purchase Order, the Vendor shall within 14 days from receipt thereof, send to the Company a general programme covering

- a) Drawing status
- b) Engineering Status
- c) Shop Program
- d) Sub-order position and delivery schedule.



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### **20. LICENCES AND PERMITS**

If the performance of this Purchase Order requires any Government or other permit, it shall be responsibility of the Vendor to ensure that such licenses or permits are obtained at the relevant time.

### **21. PATENT RIGHTS**

The Vendor will indemnify and hold the Company harmless for any or all loss, cost, damages or expenses on account of any and all claims, suits or judgments arising out of the use or sale of goods supplied in violation or alleged violation of rights under any patent, industrial design or application thereof.

### **22. INDEMNITY AND INSURANCE**

- a) The Vendor shall hold the Company free and harmless against all claims for default or injury to employee of the Vendor or loss or damage to property of the Vendor (including the goods until delivery thereof), the Vendor's employees and against all claims by third parties in respect of default or injury or damage to property arising out of the execution of the Purchase Order.
- b) The Vendor shall take out and maintain Employer's liability insurance or workmen's compensation or similar insurance required by applicable laws covering Vendor's employees which also shall be extended to protect the Company against all claims for death or injury of the Vendor's employees.
- c) All plant, equipment and other goods supplied by the Vendor under the Purchase Order shall be at Vendor's risk until delivered and accepted by the Company in accordance with the conditions of the Purchase Order.

### **23. CLAIMS**

All cost / damages / expenses for which the Vendor is liable to the Company may be deducted from any monies due to the Vendor or may be reserved by action at law or otherwise from the Vendor.



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### **24. PUBLICITY**

No advertising, publicity matter or other literatures in relation to the goods on this Purchase Order are to be published or utilized by the Vendor except with prior written permission of the Company.

### **25. OWNERSHIP OF TENDER DOCUMENTS**

The Vendor acknowledges that the Company is the author of all documents of tenders it issues and the copyright in all such documents vests with the Company. The Vendor shall not use, reproduce, transmit or store the tender documents in any form or by any means without the Company's prior written permission except where reasonable necessity exists for Purchase Order administration purposes.

### **26. TAXES**

- 26.1 The Vendor undertakes to pay all taxes and fees of whatsoever nature, either at present or in the future that are prescribed or may be prescribed as per the provisions of the Kuwaiti laws or the laws of any other country pertaining to the completion of Purchase Order or that may be imposed on the supplier without the Company being obliged to compensate him for such taxes and fees.
- 26.2 Notwithstanding any provision herein to the contrary, the Company shall withhold 5% from each payment due to the Vendor under the Purchase Order pending the submission by the Vendor of a valid certificate from the Income Tax Control Office of Kuwait to the effect that the Vendor has discharged its tax liability. Company would pay the all withheld amount after submission of the said certificates or against a written permission from Ministry of Finance declaring that the Vendor have submitted a Bank Guarantee of 5 % of total Purchase Order value in favor of Ministry of Finance from a local approved Kuwaiti bank.
- 26.3 The Vendor, in the event of an Purchase Order for duty exempted materials / goods, shall obtain the required duty exemption document from the Company (custom clearance section) for further processing by the Vendor with the concerned authorities and obtain relevant duty exemption.



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### **27. GOVERNING LAW AND DISPUTE RESOLUTION**

Purchase Order is considered concluded in Kuwait and any dispute arising hereunder shall be construed in accordance and will be governed by laws of the State of Kuwait.

In the event any dispute or difference of any kind shall arise between Company and the Vendor as regard to the Purchase Order or as regard to any matter of whatsoever nature hereunder or in connection herewith, then such dispute or difference shall be referred to the competent courts in the State of Kuwait which shall have exclusive jurisdiction.

### **28. APPLICABILITY WITH STATE LAWS**

28.1 The Vendor, insofar as applicable, shall comply with all relevant laws, rules and regulations of the State of Kuwait regarding any matter affecting the Purchase Order.

28.2 In the event air travel of Vendor's employees or air freight of goods is required or becomes necessary for the performance of the Vendor's obligations under the Purchase Order, the Vendor shall use Kuwait Airways Corporation (herein "KAC") or other airlines which have the right to transport passengers and goods according to the mutual agreement signed by State of Kuwait in accordance with the instructions specified in Ministerial Decree No. 21/1985 and revised in their meeting 18/1987 held on 13/4/1987.

28.3 Vendor shall purchase goods, materials or appliances from National products or products of National origin as dictated by the Ministry of Trade's decree number 6/87. In case such products are not available, priority shall be given to products from the Gulf Cooperation Council (GCC) countries provided that they fully comply in all aspects to the required specifications. Violation of this condition is considered as a violation of the Purchase Order, leading to the application of a penalty equal to 20% of the value of the purchases in violation in addition to any other proceedings specified in the Purchase Order and other relevant bye-Laws.

28.4 Vendors have to abide by the Council of Ministers' decision # 5 issued in the session # 27/86 dated 08/04/1984 regarding activation of the economy cycle.

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### **29. OVERSUPPLY**

Vendor has to ensure that delivery of goods is as per quantities specified in the Purchase Order. In the event of delivery of excess quantity, the Company will accept the excess quantity without any compensation to the supplier.

### **30. STORAGE CONDITIONS**

- a) Vendor shall provide along with shipped materials the related Material Safety Data Sheet (MSDS) approved by KNPC wherever applicable specified in PO.
- b) Vendor shall provide clear instruction/literature about the storage requirement, condition, handling guidelines and incompatibilities while storing for the supplied materials.
- c) Non-availability of above documents will lead to the rejection of supplied materials.

### **31. GREEN PROCUREMENT POLICY**

KNPC is adopting Green Procurement Policy attached in the P.O. The Policy is an international approach for procurement of products and services while ensuring minimal adverse environmental impacts. Vendors should adhere with the following elements:

- a) The Vendor, should comply with KNPC Green Procurement Policy in accordance with any business activity affecting the purchased material / equipment that can harm the environment.
- b) The Vendor, as applicable, should reduce environmental impact in Procurement of materials by effectively utilizing the available HSE documents in Compliance with all relevant regulatory requirements.
- c) The Vendor, as applicable, should involve or encourage lesser consumption of resources such as energy, water and other natural resources.
- d) The Vendor, as applicable, should encourage using extended product life, reusability, recyclability and recycled content
- e) The Vendor, as applicable, should promote use of internationally identified Environmentally Preferable Products.