

## GENERAL CONDITIONS OF PURCHASE

### 1 DEFINITIONS

1.1 The following terms shall have the meaning below:

**"Affiliate"** means, with respect to any person, any other person that, directly or indirectly, through one or more intermediaries, controls or is controlled by or is under common control with such person. For purposes of this definition, "control" means direct or indirect ownership of more than 40% of the outstanding capital stock or other equity interests having ordinary voting power;

**"Company"** means National Central Cooling Co. (PJSC) (TABREED) or any of its Affiliate as stipulated in the PO, as applicable;

**"Company's Site"** shall have the meaning as described in the PO;

**"Conditions"** means the general conditions of purchase set out in this document;

**"Contract"** means the contract for supply of Goods and/or the performance of Services, which shall comprise of the PO and these Conditions;

**"Contract Personnel"** means all persons, whether employees or agents of the Contractor or any of its subcontractors and their respective legal successors and permitted assigns, engaged in or for the performance of the Contract;

**"Contract Price"** means the price as set out in the PO which is payable to the Contractor for the supply of Goods and/or performance of the Services in accordance with this Contract and shall be fixed subject only to adjustments expressly provided in the Contract;

**"Contractor"** means the person or organisation that has entered into the Contract with the Company;

**"ERP"** means the enterprise resource planning software used by the Company;

**"Goods"** means the goods and materials (including any instalment of the goods or any part of them) and including any technical documentation which the Contractor is required to supply under the Contract in the quantity, having the quality and meeting the specification as described in the PO;

**"IP"** means intellectual property and shall include patents, copyright, industrial design, registered designs and models, integrated circuit topography and trademarks; and applications for any of the foregoing and the rights to apply for any of the foregoing, ownership of inventions, copyrights, proprietary information and/or technical know-how and any other similar rights;

**"OV"** (or Order Voucher) means the transaction performed by the Company authorized personnel in the Company ERP system to confirm that the Goods and/or Services procured via the PO have been received in full satisfaction subject to the inspection and warranties requirement set-out in Clause 6 of this General Conditions of Purchase;

**"Party"** shall mean either the Company or the Contractor and **"Parties"** shall mean both the Company and the Contractor;

**"Purchase Order"** or **"PO"** shall mean the purchase order, contract or any agreement to which these Conditions are annexed or mentioned by reference in the foregoing purchase order, contract or agreement;

**"Services"** means the services which the Contractor is required to perform under the Contract as described in the PO.

1.2 The Contract constitutes the entire understanding between the Parties and supersedes all previous oral or written understandings of any kind.

1.3 No amendment to the Contract shall be effective unless agreed to in writing by the Parties, unless otherwise specifically provided for in this Contract.

1.4 Unless otherwise expressly stated, expressions used in all documents comprising the Contract shall have the same meanings as those given in these Conditions.

1.5 No failure on the part of the Company at any time to enforce or require the strict adherence and performance of any of the terms or conditions of the Contract, shall constitute a waiver of such terms or conditions or affect or impair the effect of such terms and conditions or prejudice the rights or remedies of the Company at any time to avail itself of such rights or remedies as it may have for any breach of such terms or conditions.

1.6 No right or remedy conferred upon or reserved to the Company by the Contract, nor any single or partial exercise of any right or remedy under this Contract by the Company, shall be exclusive of any other right or remedy under the Contract or at law, and all rights and remedies of the Company conferred by the Contract or by law shall be cumulative and in addition to every other right and remedy available to the Company under this Contract, or under any written law, common law or in equity, including the right to specific performance, injunctive relief and/or direct monetary damages.

1.7 The Contract shall be construed in accordance with and be subjected to the laws of the Emirate of Abu Dhabi and the federal laws of the United Arab Emirates as applicable in the Emirate of Abu Dhabi and all disputes arising in connection with this Contract shall be subject to the exclusive jurisdiction of the Abu Dhabi courts (in accordance with the procedure in clause 22.1). A person who is not a party to this Contract shall have no rights to enforce any terms of this Contract, unless expressly stated otherwise.

1.8 References in the Contract to any law written or otherwise shall be construed as references to such law as may be amended from time to time.

1.9 To the extent permitted by applicable law, the validity of the remaining provisions of the Contract shall not be affected by the introduction of a law or a decision by a court, governmental or regulatory body to the effect that any provision of the Contract is illegal, unenforceable or contrary to law or public policy. In the event that as a result of such a law or a decision any of the rights or obligations of a Party are materially affected, then such Party may notify the other Party in writing that it wishes mutual consultations to be held with respect thereto, and thereupon the Parties shall promptly meet and negotiate in good faith in order to arrive at an amendment of the provision of the Contract so affected, in such manner as will most closely and accurately reflect the intents and purposes including but not limited to financial and commercial consequences of the Contract without causing such provision to be illegal, unenforceable or contrary to law or public policy.

1.10 Unless the context otherwise dictates, words importing the singular shall include the plural and references to the male gender shall include the female and neuter genders and vice versa. References to a person shall be construed as references to an individual, proprietorship, firm, corporation, company, unincorporated body of persons or any state or agency thereof.

1.11 In the event of inconsistencies between the terms in the PO and the terms in the Conditions, the terms in the PO shall prevail to the extent of the inconsistencies, unless directed otherwise in writing by the Company.

1.12 The headings are for convenience only and not for the purpose of interpretation.

### 2 SCOPE OF CONTRACT

2.1 The Contractor shall carry out and complete the supply of all items of Goods and/or perform the Services in accordance with the terms and conditions of the Contract, which shall govern the Contract to the exclusion of any other terms and conditions on which any quotation has been given to the Company or subject to which the PO is accepted or purported to be accepted by the Contractor.

2.2 The Company agrees to purchase the Goods and/or acquire the Services subject to the terms and conditions of the Contract.

2.3 The Contractor shall carry out and complete the supply of Goods and/or the performance of the Services in accordance with the Contract in every respect and with the directions and to the satisfaction of the Company. Without prejudice to the generality of the aforesaid, the Contractor shall, without limitation:-

- (a) provide everything including but not limited to equipment, materials, personnel and transportation required for the proper performance and completion of the Contract whether or not particularly described in the PO. Unless expressly stated otherwise in the PO, the scope of the Contract shall be inclusive of all ancillary, reinstatement (where applicable) and other works and expenditure, whether separately or specifically mentioned or described in the PO or not, which are either indispensably necessary to carry out or bring to completion by the Contractor of its obligations under the Contract, or which may contingently become necessary to overcome difficulties before completion;
- (b) carry out and complete the supply of Goods and/or the performance of Services with due diligence, efficiency, skill and workmanship expected of a competent and properly qualified international supplier of goods and services of a similar nature;
- (c) comply with the practices and standards of the industry of the Contractor; and
- (d) comply with all laws and governmental and other statutory requirements.

2.4 The time of delivery of the Goods and/or performance of the Services is of the essence of the Contract.

### 3 CONTRACT PRICE

3.1 In consideration of the performance and completion of the Contract, the Contractor shall be entitled to the Contract Price as set out in the PO in accordance with the Contract. The Company shall have the option to increase or decrease the number of Goods to be supplied by the Contractor and/or the scope of Services (which includes the time of performance) of this Contract (the "Scope"). In the event the Company makes a non-material variation in the Scope (that is that the variation would represent, as reasonably determined by the Company, an addition or reduction to the Contract Price of less than ten percent (10%)), the price for such variation shall be based on unit rates as stated in the PO, or in the absence of the same, on rates to be mutually agreed by the Company and the Contractor.

3.2 In the event that the Company makes a material variation in the Scope (that is that the variation would represent, as reasonably determined by the Company, an addition or reduction to the Contract Price of ten percent (10%) or more), the Company shall issue to the Contractor a variation order. Such variation order shall be headed or clearly include the words "variation order". The Company reserves the right to negotiate for a lump sum settlement price with the Contractor, which shall be lower than the price if unit rates are applied, and shall provide detail of such pricing in the variation order. The Parties shall discuss and negotiate in good faith any schedule and Contract Price adjustments arising from such material variation order. In the event that the Parties cannot agree to schedule and Contract Price adjustments to this Contract, the Company may nevertheless at anytime instruct the Contractor to immediately comply with the variation order including the Company's determination of the schedule and Contract Price adjustments. The Contractor shall comply with such variation order and any disputed adjustments arising out of such variation order shall be addressed in accordance with paragraph 22.1 hereof.

3.3 The Contractor is deemed to have satisfied itself as to the correctness of the documents, specifications and descriptions, quantity, unit price and sufficiency of the

total Contract Price as specified in the PO. The Contract Price shall cover all of the Contractor's obligations under this Contract and all things necessary for the proper execution and completion of this Contract and the remedying of any errors in the Goods and/or Services.

3.4 The Contract Price shall be deemed to:

- (a) include all taxes, charges, duties and fees payable arising out of or in connection with the Contract, for which taxes, charges, duties and fees (including in respect of customs and imports) the Contractor shall assume full and exclusive liability;
- (b) cover all costs and expenses which will be incurred by the Contractor (including but not limited to cost of equipment, materials, transportation, labour, mobilisation and demobilisation) in performing and completing the Contract; and
- (c) be sufficient remuneration for the performance of all of the Contractor's obligations under the Contract. Where any part of the Contract Price is on a cost-reimbursable basis, the Contractor shall give the Company access at all reasonable times to and the right to reproduce the Contractor's records so as to allow the Company to audit and verify the costs constituting part of the Contract Price. Such right of the Company shall subsist, and the Contractor shall preserve its records for this purpose, for at least twelve (12) months after termination of the employment of the Contractor.

### 4 PAYMENT TERMS

4.1 The Contractor shall submit to the Company and attention to the Finance Department (unless requested otherwise by the Company) its invoice for the Contract Price at times as set out in the Contract unless otherwise agreed in writing between the Parties.

4.2 The invoice shall:

- (a) be in such detail as may be reasonably requested by the Company;
- (b) at least contain information on the PO number, OV number, description of the Goods and/or Services that match the description in the PO, the amount and currency payable that match the amount and currency as set-out in the PO, payee details that is consistent with the details of the Contractor as set-out in the PO, and where applicable accounts details of the payee of which the Company to transfer the payment; and
- (c) be supported by all relevant documents which shall include but not limited the delivery note, service completion report, approved payment certificate, certificate of origin and copy of the PO as may be applicable.

4.3 Within the period specified in the PO of the Company's receipt of an invoice, the Company shall:

- (a) if the invoice is correctly prepared, adequately supported by all relevant documents and undisputed by the Company, pay the amount stated in the invoice to the Contractor; or
- (b) if the invoice is not correctly prepared or not adequately supported by all relevant documents; or if the Company disputes any item in an invoice, notify the Contractor orally or in writing and return the invoice. The Contractor shall prepare a fresh, correct and current dated invoice, supported by all relevant documents in respect of the undisputed items, which the Company shall pay in accordance with the Contract. The Company shall be entitled to withhold payment in respect of items in dispute until settlement of the dispute.

4.4 Payment by the Company of the Contract Price or any part thereof shall not constitute acceptance by the Company, that the part of the Goods for which payment is made and/or that part of the Services to which such payment relates, has been supplied in every respect in accordance with the Contract.

4.5 The Contractor shall be responsible for arranging foreign exchange clearance and bear the costs in the country to which funds are being remitted.

4.6 Payment under this Contract shall be made in the manner specified in the PO.

4.7 The Company may set off or deduct from any amounts due to the Contractor any amounts due, or which may become due, from the Contractor to the Company

4.8 Withholding or deduction under Clause 4.3(b) or 4.7 shall not constitute a breach of the Contract by the Company.

## 5 ASSIGNMENT & SUBCONTRACTING

5.1 The Contractor shall not assign this Contract or any payment due or to be due to it hereunder, without the prior written consent of the Company. The Company shall be entitled to assign and/or transfer its rights and obligations under this Contract without the prior written consent of the Contractor.

5.2 The Contractor shall not be entitled to subcontract its obligations under the Contract or any part thereof without the written consent of the Company, which consent may be subject to such conditions as the Company may stipulate, including but not limited to, the provision of security and the choice of subcontractor. The Company shall be entitled to terminate the employment of the Contractor in the event of any breach of this Clause by the Contractor.

5.3 The Contractor shall remain solely responsible for the performance and completion of its liabilities and obligations under the Contract. Any act, omission, breach or non-compliance of the Contract by the subcontractors shall be deemed to be the act, omission, breach or non-compliance, as the case may be, by the Contractor whether or not authorised by the Contractor.

## 6 INSPECTION AND WARRANTY

6.1 Final inspection and acceptance of Goods by the Company will be at the Company's Site unless otherwise specified or directed by the Company.

6.2 Notwithstanding the above, the Contractor shall not unreasonably refuse any request by the Company to inspect and test the Goods during manufacture, processing or storage at the premises of the Contractor or any third party prior to despatch, and the Contractor shall provide the Company with all facilities reasonably required for inspection and testing.

6.3 If as a result of inspection or testing the Company is not satisfied that the Goods will comply or comply in all respects with the Contract, and the Company so informs the Contractor, the Contractor shall take such steps as are necessary to ensure compliance.

6.4 The Contractor warrants that any Goods supplied by the Contractor under this Contract shall conform to the specifications, drawings, samples or other descriptions or instructions furnished or adopted by the Company and that the Goods are of good material and workmanship, free from defects, merchantable and fit for their intended purpose. The initial inspection performed by the Company on receipt of the Goods is a conditional acceptance and shall not waive the right of the Company to return Goods to the Contractor which develops defects due to latent causes during installation and tests of the end product. The Contractor will repair, replace or reinstall any Goods at its own cost within the time instructed by the Company in accordance with any notification received from the Company. If the Contractor fails to rectify the defect in full within the time determined by the Company, the Company may rectify the defect not rectified or engage another party to do so at the Contractor's risk and cost.

6.5 The Contractor warrants to the Company that any Services performed by the Contractor under the Contract will be performed by appropriately qualified and trained personnel, with due care and diligence and to such high

standard of quality as it is reasonable for the Company to expect in such circumstances.

6.6 The Contractor agrees that shipment of Goods against this Contract constitutes certification that all Goods included in this shipment conform in all respects to the applicable specifications and drawings and other terms of the Contract. Inspection and test reports (if applicable) covering the Goods and their parts are available for review and subject to examination by the Company or the Company's authorised representative to verify conformance to such applicable specifications and drawings.

6.7 The duration of the warranties set forth in Clause 6.4 for the Goods shall extend for a period of twenty-four (24) months from the date of delivery of the Goods to the Company's Site ("**Goods Warranty Period**"). However, the duration of the warranties with respect to the Goods, and any associated services, that is repaired, replaced, modified, or otherwise altered after handing over shall extend for a further period of six (6) months from the date of completion of such repair, replacement, modification or alteration.

6.8 If any Service performed is found within a period of eighteen (18) months from the date of acceptance of Services by the Company ("**Services Warranty Period**") to be deficient, the Contractor shall at the written notification of the Company, re-perform the same, at the expense of the Contractor within the time determined by the Company. If the Contractor fails to so re-perform within the time determined by the Company, the Company may engage another party to do so at the Contractor's risk and cost. The Services Warranty Period for the re-performed Service shall be extended by a period equivalent to the period commencing from the date of the said notification to the date of completion of the re-performed Service.

6.9 Nothing herein shall prejudice or limit the Company's rights to claim for loss and damage as may be allowed under any law.

## 7 CONFIDENTIALITY

7.1 "Confidential Information" shall mean any knowledge or information at any time disclosed to the Contractor by or on behalf of the Company in writing, in drawings or in any other way, or acquired by the Contractor from the Company, and all data derived therefrom, in connection with the Contract, whether of a scientific, commercial, technical, procedural nature or otherwise except to the extent that such knowledge or information:

- (a) is or becomes part of public knowledge or literature as evidenced by printed publication or otherwise provided this is not through the act or default of the Contractor; or
- (b) is or has been disclosed or furnished or lawfully made known to the Contractor by any third party without restriction on disclosure.

7.2 Confidential Information shall continue to be the property of the Company.

7.3 The Contractor shall ensure that the Confidential Information is not:-

- (a) divulged to or placed at the disposal of any third party; or
- (b) reproduced, copied or used;

in whole or in part, during or after the currency of the Contract, or upon termination of the Contract by either the Company or the Contractor, except to the extent required for the performance of the Contract.

7.4 The Contractor shall not without the Company's prior written consent disclose to any third party that it is supplying the Goods and/or performing the Services or any provision of the Contract for the Company.

7.5 For the purposes of this Clause 7, reference to:

- (a) the Company includes any related companies and any third party with whom the Company has a contract (in writing or otherwise); and
- (b) the Contractor, where the context permits, includes its subcontractors.

7.6 The Contractor shall ensure that any third party who pursuant to Clause 7.3 comes to know or possess any Confidential Information abides by Clause 7.

7.7 This Clause 7 shall survive the termination or expiry of the employment of the Contractor for whatever reason and shall continue and survive for a period of five (5) years after such termination or expiry.

## 8 FORCE MAJEURE

8.1 A "Force Majeure Event" means any cause which is not reasonably foreseeable and is beyond the reasonable control and not due to the fault or negligence of the Party affected and which could not have been avoided by due diligence and the use of reasonable efforts. A Force Majeure Event includes, without limitation, Acts of God, drought, flood, earthquakes, storm, fire, lightning, epidemic, war, riot, civil disturbance, sabotage, explosions, strikes or labour disputes (excluding any strikes, labour disputes or other labour difficulties in which the employees of the affected Party (or its subcontractors, if any), are involved). A Force Majeure Event includes the failure of a subcontractor to furnish labour, services, materials or equipment in accordance with its contractual obligations only if such failure is itself due to a Force Majeure Event.

8.2 A Party shall not be liable for failure or delay in performing any of its obligations under the Contract to the extent that the failure or delay is due to a Force Majeure Event PROVIDED ALWAYS THAT:

- (a) immediately upon knowing that it will not be able to fulfil its obligations, it notifies the other Party in writing, giving full particulars of the Force Majeure Event and of how the performance of the Contract has been affected;
- (b) the Party uses its best endeavours to mitigate or overcome the negative effect of the Force Majeure Event;
- (c) the suspension of performance is of no greater scope and of no longer duration than is reasonably required by the Force Majeure Event;
- (d) no obligations of the Party which arose before the occurrence of the Force Majeure Event causing the suspension of performance are excused as a result of the occurrence; and
- (e) when the Party is able to resume performance of its obligations under the Contract, such Party gives the other Party written notice to that effect and promptly resumes performance hereunder.

8.3 If performance is prevented or delayed by a Force Majeure Event and cannot be resumed within one (1) month from the date the same was first prevented or delayed, either Party may be entitled to terminate the Contract by giving the other Party seven (7) days' written notice after expiry of the one (1) month period.

## 9 BUSINESS ETHICS

9.1 The Contractor shall maintain such business standards, procedures and controls as are necessary to avoid any adverse consequences on the interest of the Company.

9.2 The Contractor shall not take any action that may subject the Company to liability or penalty under any law or contract.

## 10 LIABILITIES AND INDEMNITIES

10.1 The Contractor shall be liable for and shall indemnify the Company from and against any and all claims, liabilities, damages, loss, judgments, suits, proceedings, actions and all costs (including legal costs on a full indemnity basis), expenses, penalties, fines, fees suffered by or claimed against the Company in relation to

the Contract including but not limited to those resulting from, or in any way connected with:

- (a) loss of or damage of any kind to the property (real or personal) of the Contractor, any third party or the Company;
- (b) injuries to, or sickness or death of any person (including any employee employed by the Contractor or any third party) in and for the performance of the Contract;
- (c) breach of or failure to perform the Contract whether in whole or in part by the Contractor; or
- (d) non-compliance with the law by the Contractor,

as a result of or arising from any act or omission of the Contractor, except to the extent that such injury, sickness, death, loss or damage resulted from any negligent act or default of the Company.

10.2 The Company shall not under any circumstances whatsoever be liable to the Contractor for any loss of profit, loss of anticipated earnings or savings, loss of revenue, loss of use, loss of contract, loss of goodwill or for indirect, consequential or special damages arising out of or in connection with the Contract, irrespective of whether such claims for such damages be based on contract, tort or otherwise at law.

## 11 INSURANCES

11.1 The Contractor shall provide for adequate insurance cover on :

- (a) any insurance which the Contractor is required by law to have;
- (b) any insurance which the Company deems fit and notifies in writing to the Contractor; and
- (c) any insurance which a reasonable and prudent operator within such similar industry as the Contractor and in line with prevailing market practice would take.

11.2 In addition, the Contractor shall provide for adequate insurance cover for the Goods while in transit and until acceptance by the Company.

11.3 Within fourteen (14) days from the date of the Contract, the Contractor shall cause its insurers or insurance brokers to provide the Company with certificates of insurance indicating that the insurances referred to above have been effected by the Contractor stated in such certificates. Thereafter, the Contractor shall, whenever required by the Company, provide the Company with a copy of the policies for such insurances, together with a certificate from insurers certifying that the insurances are in force and the last premium due in respect thereof has been paid.

## 12 INTELLECTUAL PROPERTY

12.1 Unless expressly authorised by the Company, the Contractor shall not be entitled to use any IP owned or used by the Company or any related company.

12.2 Rights, title and interests in IP which results from or are generated pursuant to or created for the purposes of this Contract shall vest in the Company. The Contractor shall assign or do all things necessary to procure the assignment of such IP to the Company absolutely and bear all costs and expenses of such assignment.

12.3 For the avoidance of doubt, any IP in any results, report, data or information generated or produced by the Company or another person on behalf of the Company as a result of this Contract shall be owned by the Company.

## 13 TITLE AND RISK

13.1 In addition to the warranties specified under clause 6, the Contractor represents and warrants that the Contractor has good title to the Goods and that the Goods and performance of the Services do not infringe any IP. Notwithstanding the above, the Contractor shall defend, protect, indemnify and hold the Company harmless against all IP infringement claims, any costs, charges and expenses in respect thereof, including against any action, suit, claim or proceeding which is based upon a claim,

whether rightful or otherwise, that the Goods and/or Services, or any part thereof, constitutes an infringement of any IP and the Contractor shall pay all resulting damages and costs. In case the Goods and/or Services, or any part thereof, are in such suit or action held to constitute infringement and/or use is enjoined, the Contractor shall, at its own expense, either procure for the Company an irrevocable, royalty-free license to continue using such Goods and/or Services, or with the Company's prior written approval, replace the same with substantially equal but non-infringing Goods and/or Services, provided that no such replacement shall in any way relieve or amend the Contractor of its warranty obligations hereunder.

13.2 Title to the Goods shall pass when they are delivered (and unloaded, and such installation or adjustments as are required to make the goods fully operational) to the Company's Site and accepted by the Company. Risk of loss, injury, or destruction of the Goods shall be borne by the Contractor until title passes to the Company. If requested by the Company, the Contractor shall provide reasonable evidence that title in the Goods passed to the Contractor prior to passing to the Company.

#### **14 TERMINATION**

14.1 The Company shall be entitled to terminate the Contract immediately if:

- (a) the Contractor fails to carry out this Contract in accordance with its terms;
- (b) the Contractor abandons or without reasonable cause fails to commence or continue the performance of the Contract;
- (c) the Contractor commits any act which is an offence at law, or which amounts to fraud, malpractice, dishonesty, wilful misconduct, or commits any act of gross negligence or any conduct which in the opinion of the Company is prejudicial to the Company's interests;
- (d) the Contractor takes any step or action in connection with its entering administration, bankruptcy, liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction; or
- (e) the Contractor fails to perform any other material provision of this Contract; or
- (f) the Contractor's financial position deteriorates to such an extent that in the Company's opinion the Contractor's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

Upon any such termination, Company shall have no further obligations to the Contractor.

14.2 In the event Company terminates this Contract under clause 14.1, the Company may procure, upon such terms and in such manner as the Company may deem appropriate to reasonably meet its requirements under the circumstances, the Goods and/or Services or those that are similar to those being provided under this Contract, and the Contractor shall be liable to the Company for the additional costs of such items.

14.3 Without prejudice to the aforesaid, the Company may terminate the Contract at any time and without any reason or ground whatsoever upon giving a thirty (30) days' written notice to the Contractor without prejudice to the Company's rights or remedies against the Contractor. The Company shall not be liable for any loss or damage arising out of or in connection with such termination.

14.4 For avoidance of doubt, at no time, including upon any termination, shall the Company have any liability to the Contractor for any loss of profit, loss of revenue, loss of contract, loss of opportunity, loss of goodwill, loss of production or down time costs or related losses.

14.5 The Contractor shall immediately upon the termination of Contract, or, if there is a date specified in the notice, on or before that date:

- (a) discontinue its performance of the Contract or the portion of the Contract specified in the notice;
- (b) deliver to the Company:
  - (i) the vehicle and/or installation passes;
  - (ii) all Confidential Information in the possession of the Contractor;
  - (iii) all Goods delivered and/or Services completed up to the date of termination, including but not limited to any document prepared for the performance of the Contract;
  - (iv) any equipment or material, custody or control of which have been given by the Company to the Contractor for performing the Contract; and
  - (v) any other documents, equipment, information or assets as reasonably requested by the Company.
- (c) transfer to the Company, or its nominee, to the extent required by the Company, the benefit of all subcontracts and other obligations, rights and titles, and terminate those which are not so transferred to the Company;
- (d) remove from the Company's Site all materials and equipment brought thereon by the Contractor, subcontractor or contract personnel; and
- (e) notify the Contract Personnel of the termination of their employment/engagement in connection with the Contract and move them out of the Company's Site.

14.6 Upon termination of the Contract, the Contractor shall be entitled to such sums as are due in accordance with the Contract for the Goods delivered and/or Services performed up to the date of termination. On or after such date, the Contractor shall invoice the Company for such sums, if not already invoiced in accordance with the Contract. Such sums shall be paid in accordance with Clause 4 whereupon they shall be deemed to be the full and final payment to the Contractor who shall not be entitled to any other payment whatsoever in respect of the termination.

14.7 Termination of Contract shall not relieve the Contractor of its obligations accrued before such termination or of any obligation provided to extend beyond or to be performed after the termination of the Contract.

14.8 The Contractor acknowledges that the Company is entitled to exercise its right to terminate under this Contract without the need to obtain a court order in accordance with clause 271 of UAE Federal Law No. 5 of 1985.

#### **15 DELIVERY AND INSTALLATION**

15.1 Unless otherwise stated, delivery and installation of Goods shall be made to the Company's Site and in the manner as directed by the Company, and the cost is deemed to be inclusive in the prices stated. The Company further reserves the rights to procure the Contractor to expedite the delivery and installation of the Goods at the Contractor's expenses (including the option to air-freight) if the Company has reasonable grounds to believe the Goods would not be delivered or installed by the delivery and installation date(s) specified in the PO, and upon the Contractor failure to do so, the Company reserves the rights to procure alternative means to mitigate such delay at the cost and expenses of the Contractor.

15.2 The delivery and installation date(s) specified in the PO shall be strictly adhered to. The Contractor shall give the Company notice in writing immediately if any delay is foreseen.

15.3 The Contractor will deliver and install such quantity as stipulated in the PO and the Company reserves the right to return any excess delivery at the Contractor's expense unless prior written consent has been given to the Contractor by the Company.

## **16 PACKAGING**

16.1 The Contractor must provide proper and adequate packaging in accordance with best commercial practice, to ensure that the material being shipped to the Company will be free of damage. Packaging must be adequate to allow for normal and acceptable handling practices, including palletising, with consideration for the type of material and transportation mode. The Company reserves the right to reject any shipment that is deemed by the Company not to have been packaged adequately.

## **17 CANCELLATION OR REJECTION OF GOODS**

17.1 The Company reserves the right to, without penalty or liability, cancel or reject all or any part of the undelivered portion of the Contract if the Contractor does not make deliveries as specified in the Contract delivery schedule or as otherwise directed by the Company; or in the event it becomes apparent that delivery or completion cannot be accomplished within the time specified or otherwise directed; or if the Contractor breaks any of the other terms or conditions of the Contract .

17.2 If the Goods supplied do not conform to the terms and conditions of the Contract, including but not limited to description, quantity or quality of the Goods, the Company may (a) reject the Goods and require the Contractor to repair or replace the rejected Goods at its risk and expense within a timeframe determined by the Company; (b) reject the Goods and require the Contractor to repay the part of the Contract Price that relates to the rejected Goods in full; (c) obtain substitute Goods from another supplier and recover from the Contractor any resultant costs and expenses; (c) payment from the Contractor of any resulting costs, losses, damages, liabilities or expenses; (d) refuse to accept any further Goods; and (e) terminate the Contract.

17.3 All Goods rejected by the Company shall:

- (a) remain the property and at the risk of the Contractor; and
- (b) be collected by the Contractor without delay, on receipt of notice of rejection.

## **18 CONTRACT PERSONNEL**

18.1 Neither the Contractor, nor the Contract Personnel shall be considered at any time to be either expressly or by implication employees of the Company.

18.2 The Contractor shall be solely responsible for payment of the Contract Personnel's wages and any payment in respect of the Contract Personnel required by law to be paid, of whatever nature and by whatever name called, including but not limited to contributions to pension funds, end of service benefits and any taxes.

18.3 The Contractor shall ensure that the Contract Personnel are adequate in competence and number for the performance of the Contract.

18.4 The Contractor shall terminate the services of any Contract Personnel upon a written request by the Company (for which no reason need be given) and shall forthwith provide a suitable replacement therefor. For the avoidance of doubt, the Contractor shall bear the demobilization cost of the Contract Personnel whose services are terminated, and the mobilization cost of the replacement.

18.5 Any act, omission, breach or non-compliance with the Contract by any Contract Personnel shall be deemed to be the act, omission, breach or non-compliance, as the case may be, of the Contractor, regardless of whether or not it was :

- (a) authorized by the Contractor or its subcontractor; or
- (b) done in the course of employment.

18.6 The Contractor shall comply with the Company's rules with respect to illegal workers and all applicable labour and immigration laws. The Contractor shall ensure that no illegal workers are used for the Company's projects.

## **19. STRICT COMPLIANCE WITH THE COMPANY'S DIRECTIONS**

19.1 Notwithstanding any other provision of this Contract, the Company shall in the supply of Goods and/or in the performance of the Services comply with the directions of the Company and/or the Company's authorised representative.

## **20. NOTICE**

20.1 Any notice required to be given by either Party shall be in writing addressed to that other Party at the address stated in the PO or such other address as may at the relevant time have been notified pursuant to this provision to the Party giving the notice.

## **21. SAFETY REGULATION**

21.1 The Contractor shall ensure that its employees, subcontractors and agents comply with the Company's prevailing health, safety and environmental rules and regulations and all applicable health, safety and environmental laws in relation to the Contract.

## **22. MISCELLANEOUS**

22.1 The Parties shall endeavour to settle by good faith negotiation any dispute, difference, controversy or claim of any kind arising between them out of or in connection with this Contract. In case of failure to settle the dispute, difference, controversy or claim by such negotiation within thirty (30) days or such other period as the Parties may agree, the dispute shall be referred to the Abu Dhabi Courts.

22.2 The Contractor shall act as an independent contractor in performing this Contract and shall in no event represent the Company or act in the Company's name without approval. Nothing in this Contract shall create an association, joint venture or partnership between the Parties or grant any right, power or authority to a Party to enter into any agreement or act on behalf of or otherwise bind the other Party without that Party's prior written consent.

22.3 If the Contractor is comprised of more than one person or company in joint venture, consortium or other unincorporated or incorporated grouping of two or more persons: (i) these persons shall be jointly and severally liable to the Company for all obligations and liabilities of the Contractor as set out in this Contract; and (ii) these persons shall notify the Company of such natural person or persons who shall have authority to bind Contractor and each of these persons, and shall not be entitled to change the authority of such person without the written permission of the Company.

22.4 In addition to those provisions of this Contract that by their nature are to be deemed to survive the termination or expiry hereof, the provisions of the following paragraphs shall also survive the termination or expiry of this Contract: 6, 7, 10, 13, 14.

22.5 When used in the Contract, 'Incoterms' means the international rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when the Contract is made. Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of Incoterms shall have the same meaning in the Contract, but if there is any conflict between the provisions of Incoterms and the Contract, the latter shall prevail.

22.6 The Contractor shall, at its own cost, apply for, obtain and maintain all consents, approvals, certificates, permits, licences, statutory agreements and authorisations required by law and any third parties in order to perform its obligations under the Contract.

22.7 In connection with the performance of its obligations under the Contract, the Contractor acknowledge that the import and customs laws and regulations of the UAE shall apply to the furnishing and shipment of any products and components to the UAE.

22.8 Where there are inconsistencies of the terms between the documents forming the Contract, the terms in the documents of higher order of precedence shall prevail to the extent of the inconsistencies. The documents forming the Contract are listed in order of precedence as follows (as may be applicable):

- (a) PO and any special terms referred to in the PO;
- (b) This General Conditions of Purchase;
- (c) Company request for quotation; and
- (d) Contractor's documents (inclusive of Contractor's quotation and terms and conditions for sales);

- End of General Conditions of Purchase -