



GENERAL TERMS AND CONDITIONS FOR PURCHASE OF GOODS AND/OR SERVICES
July 2019 Edition

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1. DEFINITIONS AND INTERPRETATION

1.1. In this Agreement unless the context otherwise requires:

Agreement means this agreement including the Contract documents as may be amended, modified, varied or supplemented from time to time in accordance with its terms.

Confidential Information means the Contract and all information, in any form, or documentation of a confidential nature or which the Vendor and its personnel ought reasonably to know to be confidential which relates to the business of SPMP and which SPMP discloses to the Vendor or is generated or discovered by the Vendor in performing the Contract or otherwise comes to the Vendor's knowledge.

Contract means a contract for the purchase of the Goods and/or Services by SPMP from the Vendor, as defined, in accordance with SPMP's Purchase Order, any other documentary form of contract, these General Terms and Conditions for Purchase of Goods and/or Services and any other documents attached thereto.

Deducted Amount is defined in clause 13.

Defects Liability Period means the period identified in the Purchase Order or Contract or the period of one (1) calendar year after receipt and acceptance of the particular Goods and/or Services.

Delivery Point means the place identified in the Purchase Order for delivery of any Goods, but if no place is identified, then to SPMP's plant in the Sohar FreeZone.

Force Majeure Event means an event or cause beyond the control of the Party relying on force majeure and which could not have been reasonably foreseen, avoided by the exercise of reasonable care, precautions or viable alternatives and which materially and directly impairs that Party's ability to discharge its obligations and includes:

- explosion, fire, flood, lightning, earthquake, epidemic, cyclone or other catastrophic event caused by forces of nature;
- war, whether declared or not, blockade, act of foreign enemy, insurrection, hostilities, acts of terrorism, rebellion, or public disorder;
- entry of an injunction or restraining order or judgment by a court or governmental officer or body; and
- any other event or circumstance beyond the reasonable control of the affected Party.

General Terms and Conditions means the terms, conditions and provisions contained in this Contract.

Good Industry Practice means practices and procedures, methods and techniques as are in accordance with best standards of prudence and consistent with internationally recognised reliability, safety, expedition and efficiency standards.

Goods means the goods, equipment and/or materials identified in SPMP's Purchase Order or in terms of the Contract including the replacement and renewals thereof and all accessories and additions thereto whether added or made before or after the date of the relevant Purchase Order.

Government Authorisations means licences, authorisations, consents, decrees, permits, approvals, privileges and waivers from and filings with any Government Body necessary for or required in connection with provision of the Goods and/or Services in accordance with this Contract.

Government Body means the Government of the Sultanate of Oman and any ministry or department thereof and any body, commission, authority, agency or entity exercising executive, legislative, judicial, regulatory, fiscal or administrative functions and any successor to or assignee of any of the

foregoing and includes any official or employee of a Governmental Body acting in an official capacity on behalf of such Body.

Liabilities means liabilities, damages, claims, losses, costs and expenses incurred by SPMP.

Intellectual Property Rights means all industrial and intellectual property rights including all copyright in works or any subject matter, rights relating to inventions including patents and patent applications, trade secrets and know-how, rights relating to designs, rights relating to registered or unregistered trademarks and, in respect of any of the foregoing, similar rights in any other jurisdiction.

Legal Requirements means all laws, Royal Decrees, regulations, Government Authorisations and other decrees, orders, rules, codes, treaties or directives to the extent of having the force of law or any interpretation of any of the same, as enacted, issued or promulgated by any Government Body including amendments, modifications, extensions, replacements and re-enactments of any of the same and any injunction or final non-appealable judgment, decision or order of any Government Body having jurisdiction over the issue in question.

Notice means any notice, demand, consent or other communication given in terms of the Contract.

Party means either SPMP or the Vendor and **Parties** means both SPMP and the Vendor.

Price means the price payable for the Goods and/or Services by SPMP as set out in SPMP's Purchase Order or otherwise in the Contract.

Purchase Order means an individual order for Goods and/or Services issued by SPMP which is subject to the provisions of the Contract.

Services all services, works, supplies, obligations and any other acts to be performed and undertaken by the Vendor in terms of the Contract including those more particularly set out in the Purchase Order.

Site means SPMP's premises identified in the Purchase Order and includes its plant and Sohar Port or as otherwise notified in writing.

Specification means the specification setting out SPMP's requirements in respect of the Goods and/or Services and any modification as directed by SPMP's authorised representative in accordance with the Contract.

SPMP means Strategic and Precious Metals Processing LLC (FZC) a company registered in the Sultanate of Oman, with registration number 1199095.

Sub-contractor means any person or company the Vendor engages to perform all or part of the Contract on behalf of the Vendor.

Tender means the Vendor's written offer or counter-offer to perform the Contract, if any.

Term shall mean the duration of this Contract set out in clause 2.

Termination Notice is defined in clause 26.1.

VAT means value added tax or any similar or substituted turnover or sales tax, imposed or administered in the Sultanate of Oman.

VAT Law means the relevant laws passed, or to be passed to implement VAT.

Vendor means the vendor, supplier, seller, or contractor identified on the applicable Purchase Order or other documentation, responsible for the performance of this Contract.

Work Completion Certificate means, the standard form work completion certificate issued by SPMP Template of the same to be provided upon request

Interpretation

- 1.2. Unless the context requires otherwise the following rules apply:
 - 1.2.1. singular words include the plural and vice versa;
 - 1.2.2. any gender includes all genders;
 - 1.2.3. the other grammatical forms of defined words or phrases have corresponding meanings;
 - 1.2.4. any words following the words “including”, “include”, “in particular”, “for example”, “such as” or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or provision preceding those terms;
 - 1.2.5. a reference to a clause is to the relevant clause of these General Terms and Conditions;
 - 1.2.6. a reference to any Royal Decree includes ministerial decrees, regulations, instruments or other subordinate legislation issued under it and includes any amendments, extensions, consolidations, substitutions or re-enactments;
 - 1.2.7. a reference to a person, firm, company, corporation, body corporate, trust, foundation, unincorporated body, partnership, association or other entity includes all of them;
 - 1.2.8. a reference to a person or a Party includes their executors, administrators, successors, substitutes, including those taking by way of novation and permitted assigns; and
 - 1.2.9. Clause headings are for reference only and do not affect interpretation.

Precedence of Documents

- 1.3. In the event of conflict, inconsistency, error or omission between any of the following documents that may constitute this Contract then the following order of priority shall apply in its interpretation:
 - 1st the Purchase Order;
 - 2nd any other documentary form of contract attached to or in replacement of a Purchase Order;
 - 3rd any special or additional contractual provisions included in other documents attached to, but not included in, the Purchase Order;
 - 4th these General Terms and Conditions;
 - 5th any definition of Goods and Services separately stated and attached to the Purchase Order; and
 - 6th any drawings, Sites, materials list, bill of quantities, Vendor’s quotation or offer document, or work criteria attached to the Purchase Order and the Work Completion Certificate.

2. COMMENCEMENT AND TERM

This Contract shall commence on the earlier of, the date specified in the Contract, or the date of acknowledgment of receipt of the Purchase Order by the Vendor, or the date the Vendor commences performance and it shall remain in effect until either the date set out in the Contract, or until the Vendor fulfils all its contractual obligations; unless terminated earlier pursuant to this Contract.

3. ACCURACY OF INFORMATION

- 3.1. While SPMP will strive, without obligation, to ensure the accuracy of information provided to the Vendor, during a guided Site visit, in a pre-bid conference or otherwise as provided, before the Contract is awarded, SPMP does not guarantee the accuracy or sufficiency such information.
- 3.2. The Parties acknowledge that any information provided is solely for the Vendor's convenience and that any Tenders or proposals it submits are based on its own investigations and conclusions drawn from such information which does not form part of any subsequent Contract, unless otherwise agreed to in writing between by the Parties.

4. PERFORMANCE BY VENDOR

The Vendor will perform in accordance with the provisions of the contract in consideration for which SPMP will pay the contracted price.

5. VENDOR'S WARRANTIES

- 5.1. The Vendor represents that it is properly organised, registered, licensed, financed, qualified, experienced and equipped to undertake the work in terms of this Contract.
- 5.2. The Vendor warrants that:
 - 5.2.1. all Goods supplied and/or Services rendered shall be:
 - a) efficiently provided in accordance with all applicable Governmental Authorisations and Legal Requirements;
 - b) of the highest standard and accord with SPMP's Sites as provided or in accordance with Good Industry Practice; and
 - c) in accordance with manuals, instructions and recommendations issued by manufacturers so as not to invalidate, revoke, or reduce the scope of manufacturer warranties and guarantees.
 - 5.2.2. with regard to performance of supply of Good and/or Services:
 - a) the Vendor and its personnel will exercise the standard of diligence, skill and care usually exercised by similarly qualified and competent persons performing comparable work; and
 - b) any equipment used on Site will be in a safe working and serviceable condition, comply with any applicable regulations and Legal Requirements and be operated by appropriately licensed and trained personnel.
 - 5.2.3. with regard to the provision of Goods:
 - a) all Goods will be new, of merchantable quality in terms of design, quality, material and workmanship;
 - b) all Goods will be free of defects including in particular, without limitation, in respect of the Goods' design and functionality and fit for SPMP's intended purpose; and
 - c) all Goods will be received free of all liens, claims, demands, encumbrances and other defects in title and SPMP will receive good and marketable title to the Goods.
 - 5.2.4. it will assign, on completion of the supply of Goods and/or Services, the balance of any unexpired warranties offered by manufacturers of equipment, Goods, materials and

supplies including all usual trade warranties and those from the Vendor's Sub-Contractors. Such warranties must be furnished at the time invoices are submitted to SPMP;

5.2.5. it has not withheld from SPMP material information including, but not limited to, information relating to its commercial standing, experience and expertise which may reasonably influence SPMP's decision whether or not to contract with the Vendor or at the proposed price and contractual provisions; and

5.2.6. that any information furnished is true, accurate and not intended to mislead or deceive SPMP.

6. DEFECTS LIABILITY

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

7. SPMP AND VENDOR REPRESENTATIVES

- 7.1. If Services are to be rendered the Vendor must perform the Services in terms of the Contract and in accordance with the directions of an authorised SPMP representative.
 - 7.1.1. Only an authorised SPMP representative may issue binding directions to the Vendor.
 - 7.1.2. Directions to the Vendor on behalf of SPMP by any other person must first be ratified by an authorised SPMP representative.

- 7.2. The Vendor must designate, in writing, an authorised, fluent English-speaking representative with the authority to bind the Vendor and who will be the focal point to liaise with the authorised SPMP representative for matters arising in terms of the Contract.
- 7.2.1. The Vendor representative, depending on the nature of the Contract, may be required to be available on a 24-hour basis for any required emergency work.
- 7.3. Any direction given by an authorised SPMP representative to the Vendor representative is deemed given on behalf of SPMP to the Vendor and must be complied with.
- 7.4. Likewise, any communication given or document signed by the Vendor representative is deemed given or signed, as applicable, by the Vendor and binds the Vendor.
- 7.5. Matters within the Vendor representative's knowledge are deemed to be within the Vendor's knowledge.
- 7.6. Either Party may, on Notice to the other Party, change its designated representative and appoint a substitute.

8. DELIVERY, TITLE TO GOODS AND RISK OF LOSS

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

9. EXPEDITING

If SPMP requires any Goods to be furnished and/or Services to be rendered expedited the Vendor hereby agrees to fully cooperate by affording SPMP authorised representatives' access to the shops, factories and other places of business of the Vendor and those of its suppliers and Sub-Contractors and by providing detailed schedules and progress reports for expediting purposes.

10. PRICE

- 10.1. The Vendor shall not make any alteration in the Price and any purported alteration shall not be binding on SPMP unless and until confirmed and accepted, in writing, by SPMP.

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

11. TAXES

- 11.1. The Price payable for taxable supplies made by a Vendor to SPMP is to be treated as inclusive of all taxes and duties but exclusive of VAT. In addition to the Price, where applicable, the Vendor may add VAT, which SPMP will pay following delivery of a valid Invoice under the Contract. The addition of VAT will be effective from the date VAT Law comes into force.
- 11.2. Should the Price be subject to withholding taxes, SPMP is entitled to deduct the amount of withholding tax payable under the laws of the Sultanate of Oman from the amounts due to the Vendor and pay those amounts to the relevant authorities in the name and on behalf of the Vendor. Where a double tax treaty has concluded between the Sultanate of Oman and the Vendor's country of tax residence that provides for exemption, refund or reduction of the withholding tax amount, SPMP shall deduct the full amount of withholding tax according to the laws of the Sultanate of Oman from amounts payable to the Vendor. SPMP will provide any reasonably available tax certificate or other tax form enabling the Vendor to obtain relief from double taxation when filing tax returns in their country of tax residence. For the avoidance of doubt, in no event shall the Vendor be entitled to gross up any withholding taxes to which they are subject.
- 11.3. The Vendor shall indemnify SPMP on a continuing basis against any liability, including interest, penalties or costs incurred, that is levied, demanded or assessed against SPMP (whether before or after demand is made under this clause) in respect of:
- 11.3.1. the Vendor's failure to account for or pay VAT under this Contract and VAT Law; or
- 11.3.2. any withholding tax obligation; and
- any amounts due shall be promptly paid to SPMP in cleared funds by the Vendor, and if not already due by SPMP, not less than five (5) days before the date upon which the tax or other liability is payable by SPMP.
- 11.4. In addition, the Vendor is solely responsible for all corporate, registration charges and payments relating to sponsorship levied by the Omani Government to permit the Vendor and its personnel to legally work in the Sultanate of Oman.

Customs Duties

- 11.5. Where Goods are supplied on a Duty Delivered Paid basis or other similar shipping term basis (Incoterms 2010) the Vendor is responsible to:
- 11.5.1. remit payment of all applicable customs duties assessed as payable to any governmental agency including any other foreign shipping charges; and



11.5.2. ensure that where applicable any supply or part thereof may be imported free of customs duties in terms of relevant bilateral trade agreements.

11.6. The Vendor will, on request, irrespective of the applicable shipping term furnish SPMP with all the necessary information and documentation for SPMP to comply with the requisite laws relating to applications or certifications for customs duties concessions or relevant bilateral trade agreements.

12. Delivery of materials on DDP basis into Sohar Industrial Free Zone

- All shipments need to be declared prior to enter Free Zone, Supplier can preferably use SPMP Authorized Clearing Agent (ALSI Clearing Office) at Free Zone Gate. Cost of declaration & bayan cost to be borne by supplier in case of DDP shipments
- Supplier can use their own Certified Clearing Agent to declare the shipment. However, supplier needs to obtain prior authorization from SPMP logistics before proceeding.
- Supplier should possess a clear copy of PO, delivery note and commercial invoice at the time of delivering material at free zone including certificate of origin and HS Code
- Supplier should use their own dedicated vehicle to deliver the load. Material cannot be consolidated with other supplier materials under one vehicle.
- Supplier should request SPMP to obtain Gate Passes at least 48 hours prior to delivering the materials

13. PAYMENT

13.1. The Price shall be set out in accordance with SPMP's Purchase Order or as otherwise in the Contract.

13.2. SPMP may set-off from its payments to the Vendor any amount(s) payable by SPMP on behalf of the Vendor as required by any applicable law or owed to SPMP by the Vendor pursuant to this Agreement.

13.3. Payments by SPMP to the Vendor in terms of the Contract for Services rendered or Goods supplied, as applicable, will be, unless otherwise agreed, in Omani Rials, the legal currency of the Sultanate of Oman, by way of electronic funds transfer to the Vendor's designated bank account.

13.4. At each month-end, for the relevant period, the Vendor must submit to SPMP an original invoice in respect of the Services rendered or Goods supplied, calculated by reference to the prices, fees or other amounts reflected in, SPMP's Purchase Order or as otherwise in the Contract.

13.4.1. The original stamped and signed invoice by an authorised signatory must contain the following information:

- a) SPMP's relevant Purchase Order number, and where relevant, the corresponding line number in the Purchase Order against the invoice line number;
- b) invoice date;
- c) Vendor name, contact and other information, including VAT information;
- d) be properly addressed to SPMP;
- e) the currency being charged;
- f) relevant bank information;

- g) a brief description of the Services rendered, or Goods supplied for the relevant period;
 - h) with respect to Services, a fully completed Work Completion Certificate; and
 - i) any additional information or documentation that SPMP may reasonably require e.g. inspection reports, material certification, timesheet, etc.
- 13.5. The Price shall be payable as per the Purchase Order provisions subject to clauses 13.8, 14 and 27 and any special payment provisions.
- 13.6. All invoices must be submitted to payables@SPMP.co.om with a copy to the SPMP representative named on the Purchase Order.
- 13.7. A payment shall not be construed as acceptance of substandard work and/or defective Goods.
- 13.8. Should SPMP dispute any amount shown on an invoice SPMP will, within 90 calendar days of receipt of the invoice, notify the Vendor accordingly and attend to pay the undisputed portion, if any, as due in terms of clause 13.5 subject to the proviso that such part payment does not constitute acceptance of the disputed amount or SPMP's liability for the full amount.
- 13.8.1. The Vendor is obliged to, after the Parties jointly review any errors or exceptions on the Vendor's invoice, correct and adjust the relevant invoice to account for same and/or refund overpayments.
- 14. DEDUCTIONS AND WITHHOLDINGS**
- 14.1. SPMP may deduct from money due or to be due to the Vendor all:
- 14.1.1. debts and monies due to SPMP from the Vendor and/or its personnel;
 - 14.1.2. Liabilities SPMP has incurred or paid and for which the Vendor and/or its personnel is or are liable to bear or reimburse; and
 - 14.1.3. costs of remedying any defective Services rendered or damaged Goods supplied to accord with SPMP's Sites.
- 14.2. Without prejudice to SPMP's rights in terms of the Contract, SPMP may, without notice, where the Vendor fails to perform any of its contractual obligations withhold all or part payment of any amount due until the matter has been satisfactorily remedied.
- 14.3. If SPMP is required by law to deduct or withhold any amount from the amount payable in terms of the Contract, the Deducted Amount will be deemed paid to the Vendor at the time it is deducted or withheld and SPMP will not be liable to the Vendor for any additional amounts.
- 14.4. To recover amounts SPMP failed to deduct or withhold from the amount payable in terms of the Contract SPMP may:
- 14.4.1. demand, on written notice, from the Vendor the amount to be deducted and the Vendor shall pay the amount within 30 calendar days of receipt of such notice; and/or
 - 14.4.2. deduct the amount to be deducted from any other monies due to the Vendor and the Deducted Amount will be deemed paid to the Vendor at the time it is deducted or withheld and SPMP will not be liable to the Vendor for any additional amounts.
- 14.5. If SPMP fails to timely withhold or deduct the Deducted Amount as a result of the Vendor's act, omission or oversight SPMP shall, in addition, deduct the amount of any fines, penalties or interest levied and payable by it in respect of the Deducted Amount.

14.6. SPMP is obliged to notify the Vendor, with full details, of any amounts withheld or deducted in terms of clauses 14.4 or 14.5.

15. RECORDS AND AUDIT

15.1. The Vendor is obliged to, for a period of three (3) years calculated from the expiry of its warranty, maintain records of all accounts which accurately document all incurred costs relating to performance of the Contract.

15.2. SPMP and its authorised representatives are entitled to, at all reasonable times, on prior Notice, examine and copy these records to verify payments or requests for payment or to evaluate the reasonableness of proposed contract price adjustments and claims.

16. VENDOR PERSONNEL

16.1. The Vendor must obtain and maintain, at its cost, all visas, resident and work permits for its personnel from the applicable governing authority.

16.2. The Vendor is required to supply appropriately qualified, competent and skilled personnel to ensure proper performance of its contractual obligations.

16.3. The Vendor is responsible for ensuring that its personnel comply with clauses 30 and 32 relating to Confidential Information and Intellectual Property Rights respectively.

16.4. SPMP's authorised representative shall, on Notice to the Vendor, be entitled to require the removal of any insufficiently qualified or skilled, incompetent or negligent Vendor personnel or those guilty of misconduct, including but not limited to, by reason of consumption of alcohol or drugs or dishonesty.

16.5. Where any Vendor personnel are to be removed, the Vendor shall promptly arrange for a suitably qualified, competent and skilled replacement, acceptable to SPMP.

17. PACKING, TRANSPORT AND DESPATCH

17.1. Where the Vendor is responsible to pack and transport Goods to the designated delivery point it shall do so at its cost.

17.2. If SPMP is to transport Goods the Vendor is required to notify SPMP's authorised representative with details of the despatch in sufficient time to arrange transport.

17.3. Goods shall always be packed for transportation in accordance with international shipping norms and to account for methods of transportation, handling, all weather conditions, road conditions and long term storage of Goods to prevent damage during transport to the Delivery Point and storage prior to use.

17.4. The Vendor must promptly notify SPMP's authorised representative of the date of despatch of the Goods and their estimated date of arrival at the Delivery Point.

18. INSPECTION

18.1. While the Vendor is responsible to properly inspect all Goods furnished and/or Services rendered SPMP's authorised representative may inspect the equipment, materials or workmanship, at any time, to determine whether they conform to the Specifications.

- 18.2. The Vendor is obliged to, on Notice, permit access to the equipment, materials or work, at all times, for purposes of quality surveillance and audit either at its site or the location they are stored at or being manufactured, as applicable.
- 18.3. The Vendor, its suppliers and Sub-Contractors are to provide, on request, adequate facilities, drawings, documents, samples, assistance and cooperation including reasonable stoppage of work for purposes of inspection.
- 18.4. If SPMP has advised the Vendor that it proposes to inspect, conduct a quality surveillance or test Goods and, if prior to that time the Vendor covers any work or Goods, where such covering obstructs or interferes with the inspection, the Vendor shall uncover and replace the same, at its expense.
- 18.5. If SPMP's authorised representative conducts an inspection and directs the Vendor to dismantle or open up any part of a Good and the Good conforms to the Specification.
- 18.6. If the Good do not conform or are unlikely to conform to the Specifications or warranties of the Contract or arrive damaged, the Vendor shall, without limitation, bear the full costs incurred, including those costs necessary to ensure conformity to the Specification, or of loss, damage or destruction.
- 18.7. SPMP is entitled to deduct such costs, as a debt due, from any amounts due to the Vendor.
- 18.8. SPMP shall have the right to require and witness further inspections as it reasonably requires.
- 18.9. The Vendor will not be relieved of its contractual obligations if SPMP fails to conduct such quality audit or in order to discover a defect of design, equipment, materials or workmanship. Nor will SPMP's rights in terms hereof to subsequently reject or require the correction of defective work be prejudiced.
- 18.10. No invoice for works may be issued to SPMP until a Work Completion Certificate has been approved by SPMP's authorised representative as matching the quantity, quality and value of work duly invoiced by the Vendor for the relevant period.

19. TESTING

- 19.1. The Vendor, at its expense, must conduct tests on the equipment, materials, work or parts thereof in accordance with the specified relevant standard or any applicable industry codes, failing which, in accordance with generally accepted international good practice.
- 19.2. The Vendor is obliged to, on request, provide samples, assistance and cooperation including reasonable stoppage of work for purposes of testing.
- 19.3. Should SPMP require any additional tests to be conducted it will give the Vendor reasonable Notice to permit such tests.
 - 19.3.1. The additional tests are for SPMP's account.
 - 19.3.2. If, such additional tests indicate that any equipment, materials or workmanship is defective or does not conform to the Specification or warranties of the Contract the costs will be at the Vendor's expense and SPMP is entitled to deduct such costs, as a debt due, from any amounts due to the Vendor.

20. ENVIRONMENT, HEALTH AND SAFETY

- 20.1. The provisions of this clause apply to the Vendor and its personnel to the extent that they are required to enter SPMP's Site.
- 20.2. The Vendor and its personnel including those of Vendor suppliers and Sub-Contractors shall apply at the Site all such security, environmental, health and safety practices as required by prevailing applicable laws, health and safety codes, Sohar FreeZone, SPMP's policies, directives, related standards and procedures, as amended and notified from time to time, Good Industry Practice and the provisions of this clause 19 to avoid the risk of endangerment to health, bodily harm to persons and damage to or loss of property by theft, vandalism, sabotage or any other means.
- 20.3. The Vendor is required (where applicable), within seven (7) days of signature of the Contract and prior to commencing work, to submit its proposed environmental, health and safety management plan (EHSMP) to SPMP's authorised representative for review and amendment as deemed necessary.
- 20.4. The Vendor and its personnel may not commence work on Site unless SPMP's authorised representative has approved its EHSMP and any amendments thereto.
- 20.5. The Vendor's personnel are obliged to attend SPMP's applicable induction and training courses prior to commencing work.
- 20.6. The Vendor shall take all environmental, health and safety precautions necessary and continually inspect all equipment, materials and work to discover, determine and correct any conditions that may result in any of the aforementioned risks.
- 20.7. Approval of an EHSMP or attendance of induction and training courses does not relieve the Vendor of its duty to ensure the health and safety of its personnel.
- 20.8. If the Vendor, or any of its personnel, breaches this clause 20 SPMP may require the Vendor and its personnel to immediately vacate the Site or remove, at its cost, any material or substance and the Vendor and its personnel shall comply and fully co-operate with SPMP's authorised representatives including following their orders and requests to initiate corrective actions for any deficiencies.
- 20.9. The Vendor shall maintain and furnish, at SPMP's request, accurate written records of any incident at the Site that results in injury to any person, damage to any property or man hours lost to work-related injuries and all other records required by SPMP or Legal Requirements.
- 20.10. The Vendor must immediately report to SPMP any death, injury or damage to property suffered or caused by Vendor personnel including those of Vendor suppliers and Sub-Contractors.
- 20.11. The Vendor agrees to, at all reasonable times, on request, allow SPMP and its authorised representatives access to its premises, its personnel, documentation and data, including in electronic form, to audit the Vendor's compliance with the provisions of this clause 20, the Vendor's EHSMP and Sohar FreeZone or SPMP's rules and policies as notified.
- 20.12. If an audit reveals any deficiencies the Vendor shall immediately take corrective action and promptly update SPMP of actions taken.
- 20.13. Such corrective action does not limit SPMP's right to exercise any other remedies available to it.

21. ACCESS TO SITE

- 21.1. SPMP will grant the Vendor access to Site from the date of the Contract or within a reasonable time after the Vendor has supplied documents and the Sohar FreeZone has issued entry permits. The Vendor must give SPMP reasonable Notice of commencement of the supply.
- 21.2. Any Vendor providing service in SPMP premises must at their own cost have possession of the "Service Provider License", in accordance with the rules and regulations of the free zone. Vendor can obtain this license from the One-Stop-Shop department at Sohar Freezone Authority. SPMP can assist by providing contacts of free zone customs for overseas suppliers
- 21.3. Where it is envisaged that such supply will interfere with SPMP's normal operations the parties must consult and agree, in writing, the period of work.
- 21.4. SPMP's authorised representative will grant access as deemed necessary for performance of the supply and may in its discretion deny access to Vendor personnel or permit access subject to appropriate restrictions.
- 21.5. The Vendor acknowledges that it will not enjoy exclusive possession of the Site.

22. COMPLIANCE - ANTI-CORRUPTION, ANTI-BRIBERY, HUMAN RIGHTS AND HEALTH AND SAFETY

- 22.1. For the duration of the Contract the Vendor and its personnel are responsible for complying with any Legal Requirements affecting their contractual obligations, including, regarding bribery and corruption, by obtaining and giving all necessary notices and paying the requisite fees, deposits and taxes and satisfying SPMP, on request, of such compliance.
- 22.2. Notwithstanding any other provision of this Agreement the Vendor shall:
 - 22.2.1. comply with all Legal Requirements relating to anti-bribery and anti-corruption;
 - 22.2.2. not engage in any activity, practice or conduct which would constitute an offence under any anti-bribery and anti-corruption Legal Requirements which are applicable to the Vendor or SPMP;
 - 22.2.3. comply with the SPMP's ethics and anti-bribery policy as SPMP or any relevant industry body may update from time to time (**Relevant Policies**);
 - 22.2.4. have and shall maintain in place throughout the Term its own policies and procedures to ensure compliance with Legal Requirements and Relevant Policies and shall enforce them where appropriate;
 - 22.2.5. promptly report to SPMP any request or demand for any undue financial or other advantage of any kind received by the Vendor in connection with the performance of this Agreement; and
 - 22.2.6. immediately notify SPMP in writing if a public official becomes an officer or employee of the Vendor or acquires a direct or indirect interest in the Vendor.
- 22.3. The Vendor warrants and represents that in relation to this Agreement:
 - 22.3.1. to the best of the Vendor's knowledge none of its personnel, Vendor suppliers and Sub-contractors have given or offered to give (directly or indirectly) to any person any bribe, gift, gratuity, commission or other thing of value, as an inducement or reward:
 - a) for doing or forbearing to perform any action in relation to the Agreement; or
 - b) for showing or forbearing to show favour or disfavour to any person in relation to the Contract;
 - 22.3.2. it shall ensure that no monies paid to it by SPMP under this Agreement shall be used by the Vendor for bribery or similar illegal activity;

- 22.3.3. it does not employ, engage or otherwise use any child labour;
- 22.3.4. it does not use forced labour in any form (including prison, indentured, bonded or otherwise);
- 22.3.5. it shall provide a safe and healthy workplace to the Vendor's workforce, presenting no unusual hazards given the nature of its operations. Any housing provided by the Vendor shall be safe for habitation;
- 22.3.6. it shall not discriminate against any personnel on any ground (including race, religion, disability or gender);
- 22.3.7. it shall not engage in or support the use of corporal punishment, mental, physical, sexual or verbal abuse and does not use cruel or abusive disciplinary practices in the workplace;
- 22.3.8. it shall pay each employee at least a minimum wage or a fair representation of the prevailing industry wage (whichever is the higher) and provides each employee with all legally mandated benefits;
- 22.3.9. it shall comply with the laws on working hours and employment rights (if any) in all countries in which it operates (including in the Sultanate of Oman);
- 22.3.10. it shall be respectful towards its personnel' right to join and form independent trade unions and freedom of association.
- 22.4. The Vendor shall comply with the United Nations Declaration of Human Rights and shall maintain ethical and human rights policies which implement the Voluntary Principles on Security and Human Rights. The policies shall incorporate an appropriate complaints procedure which caters for any breaches of those policies. Any breach of the Vendor's ethical and human rights policies shall be reported to SPMP as soon as practicable.
- 22.5. The Vendor shall ensure that:
- 22.5.1. its personnel and Sub-contractors undertake the supply of Goods and Services in accordance with the Vendor's ethical and human rights policies, and
- 22.5.2. its ethical and human rights policies and procedures are supported by a training package made available to all the Vendor's personnel and Sub-contractors.
- 22.6. SPMP shall be entitled to undertake an audit of the Vendor and the Vendor's personnel and Sub-contractors to ensure compliance with the provisions of this clause 22 and the Vendor shall promptly provide such information as SPMP or its representative may require.
- 22.7. The Vendor's representative(s) shall notify SPMP as soon as practicable of any health and safety hazards at Site. SPMP shall instruct required actions in connection with any necessary associated safety measures or remedies.
- 22.8. The Vendor shall ensure that any person associated with the Vendor who is performing Services or providing Goods in connection with this Agreement (including Sub-contractors) does so only on the basis of a written contract which imposes on and secures from such person provisions equivalent to those imposed on the Vendor in this clause 21. The Vendor shall be responsible for the observance and performance by such persons of the Legal Requirements and the Relevant Policies, and shall be directly liable to SPMP for any breach by such persons of any of the Legal Requirements and the Relevant Policies.
- 22.9. The rights and remedies of SPMP provided in this or any other clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

22.10. The Vendor and its personnel may report SPMP's suspected infringements under this clause 22 to SPMP as follows:

Phone:	+968 2664 1500
E-mail:	notice@SPMP.co.om

23. FORCE MAJEURE

- 23.1. Where a Party's performance of its obligations under the Contract has been, is being or will be prevented or delayed as a result of a Force Majeure Event, as defined, the affected Party shall within seven (7) calendar days after the occurrence of such Force Majeure Event notify the non-affected Party, in writing, of the occurrence of such event stating its effect on the relevant affected obligations, the anticipated duration of the Force Majeure Event and the interim measures to be adopted to mitigate the effect thereof so as to be excused for any delay or failure to perform its obligations.
- 23.2. The affected Party must resume performance of its obligations as soon as reasonably possible and where reasonably practicable take action to mitigate the effect of its non-performance.
- 23.3. Where a Force Majeure Event has a continuous duration of more than three (3) calendar months this Contract may be terminated by either Party.

24. INSURANCE

- 24.1. The Vendor shall, at its cost, purchase and maintain, in effect, at all times, during the Term the following insurance policies relating to risks which may arise out of performance of the Contract:
- 24.1.1. All risk property insurance for physical loss of or damage to any of the Vendor's plant, machinery, equipment and all other personal property on the Site for the full replacement value of such items without deduction for physical depreciation or obsolescence with limits of liability of Omani Rials 100,000.000 for each occurrence;
- 24.1.2. Third party and public liability insurance covering all Liabilities for personal injury, disease, sickness or death of any person or damage to or loss of any property arising from the Goods and/or Services with the minimum sum insured being Omani Rials 200,000.000 and no limit on the number of claims;
- 24.1.3. Workmen's compensation insurance as required by any applicable Omani Law or regulation covering injury, disease, sickness or death of any Vendor employee and provide cover for each claim for not less than the minimum statutory limit;
- 24.1.4. Motor vehicle insurance covering all liability for death, bodily injury and property damage arising from the use of motor vehicles used by the Vendor to provide the Goods and/or perform the Services with limits of liability of Omani Rials 100,000.000 for each occurrence;
- 24.1.5. Professional indemnity insurance if performance of the Contract requires the provision of professional advice or services to cover any negligent acts, errors or omissions in the advice or services provided up to an amount of not less than Omani Rials 100,000.000 for each claim; and
- 24.1.6. Any other insurance required by law.

- 24.2. The Vendor's insurances are to be effected with insurers of good financial standing, on terms consistent with prudent risk management practice and shall be in the joint names of the Company and the Vendor for all their respective rights and interest except all risk property insurance which shall be in SPMP's name, workmen's compensation which shall be in the name of the Vendor and motor vehicle insurance which shall be in the name of the vehicle owner.
- 24.3. All insurances not in the Parties' joint names shall include in the policy terms and conditions or by endorsement a waiver, by the insurer, of all express or implied rights of subrogation against SPMP or its shareholders, directors, officers, employees or agents.
- 24.4. At SPMP's request the Vendor must furnish certificates of insurance as evidence that policies providing such coverage and limits of insurance are in effect.
- 24.5. Vendor insurances in clause 24.1 may not be varied, cancelled or allowed to lapse without SPMP's prior written consent.
- 24.6. SPMP may effect and maintain any insurance the Vendor fails to effect and keep in force and deduct the costs thereof, as a debt due, from any amounts due to the Vendor.
- 24.7. The Vendor is to ensure that its Sub-contractors procure and maintain similar insurance covers.
- 24.8. The Vendor is solely responsible for the payment of any excess or deductible where SPMP claims under the Vendor's policy having determined that the Vendor and/or its personnel were responsible for the loss or damage and may not look to SPMP for reimbursement.
- 24.9. This clause 24.1 survives termination or expiry of the Contract.

25. INDEMNITIES

- 25.1. The Vendor and its personnel acknowledge that they enter SPMP's Site at their own risk.
- 25.2. The Vendor shall keep SPMP, its personnel and any customer indemnified, in full, against all direct, indirect or consequential liability, loss, damage including environmental damage, legal and other professional fees and expenses arising from:
- 25.2.1. any breach of the provisions of the Contract and/or the Purchase Order, including any warranty, by the Vendor and its personnel, Sub-contractor or assignee; and
- 25.2.2. any negligent act, omission or wilful misconduct by the Vendor and its personnel, Sub-contractor or assignee stemming from performance of the Agreement.
- 25.3. Each indemnity is a continuing obligation and survives termination of the Contract.
- 25.4. The Vendor is not liable for liability caused or contributed to by SPMP's and its personnel's negligent acts, omissions or wilful misconduct.
- 25.5. In any event, and save as specifically provided to the contrary in the relevant Purchase Order or Contract, neither Party shall have any liability whatsoever or howsoever arising for any loss of profit, loss of use, loss of goodwill, loss of revenue, loss of contract, loss of production, loss of reputation, increased cost of working or business interruption or indirect, consequential or special loss or damage..

26. TERMINATION FOR CONVENIENCE

- 26.1. SPMP may, at its option, at any time, in writing, on 30 calendar days' Notice to the Vendor, terminate the Contract or any part thereof for convenience.

- 26.2. On receipt of a Termination Notice the Vendor shall:
- 26.2.1. cease performance of the supply of Goods and/or Services on the date and to the extent specified;
 - 26.2.2. not place further purchase orders or subcontracts relating to the terminated portion of the Contract;
 - 26.2.3. act, at its cost, to protect the safety of all personnel, property and Goods;
 - 26.2.4. take all possible steps to mitigate any liabilities it may incur because of the termination including, but not limited to, promptly obtaining cancellation of applicable purchase orders, subcontracts, rentals or other agreements;
 - 26.2.5. carry out any action SPMP reasonably requires to effect the termination including, but not limited to, assignment of any applicable agreements as directed by SPMP; and
 - 26.2.6. complete that portion of the Contract which is not terminated.
- 26.3. On the date specified in the Termination Notice the Vendor is required to:
- 26.3.1. submit a report to SPMP detailing the supply of Goods performed or Services rendered up to and including the date of receipt of the Termination Notice;
 - 26.3.2. deliver to SPMP any items issued to it by SPMP or paid for by SPMP and in its possession;
 - 26.3.3. offer SPMP the first right of refusal to purchase, at the depreciated value or such other agreed amount, the equipment, if any, used to perform the Contract; and
 - 26.3.4. carry out any action SPMP reasonably requires to effect the termination and ensure that the handover is achieved with minimum disruption.
- 26.4. Where the contract is terminated in terms of clause 26 the Vendor is entitled to recover from SPMP, the contract price for work performed up to the date specified in the Termination Notice and no more than, its, at cost, out-of-pocket expenses, incurred or to be incurred and which it cannot mitigate or otherwise recoup, including, but not limited to, costs of removing its equipment and personnel off Site and reasonable administrative costs of settling and paying claims arising from terminated purchase orders and sub-contracts.
- 26.5. The Vendor hereby waives any claim for damages including loss of profits.
- 26.6. On receipt of the Vendor's written statement claiming only the costs detailed above SPMP will review, verify and negotiate an equitable adjustment of the contract price.

27. VENDOR DEFAULT

- 27.1. Where the Vendor breaches any provision of the Contract, SPMP may serve the Vendor with a Notice of default stating:
- 27.1.1. the material details of the breach;
 - 27.1.2. the breach is incapable of remedy, if applicable; or
 - 27.1.3. that the breach is to be remedied within 30 calendar days of receipt of the default Notice or immediately on receipt if safety is involved; and

- 27.1.4. that if the Vendor fails to satisfactorily remedy the breach complained of within the time stipulated or, if the breach is incapable of remedy, SPMP may on Notice:
- elect to suspend payment in terms of the Contract, in whole or part, pending remedy of the breach to its satisfaction;
 - advise that it will carry out, at the Vendor's cost, any action deemed necessary to rectify the breach;
 - advise that SPMP reserves the right to claim from the Vendor and its sureties the cost of damages, if any, as a debt due, sustained by the Vendor's breach; or
 - terminate the Contract, in its entirety or part thereof, as of a specified date being the cancellation date, without notice to the Vendor's sureties.
- 27.2. On receipt of a Notice from SPMP in terms of clause 27.1.4d) terminating the Contract from the cancellation date the Vendor must:
- 27.2.1. promptly cease performance of the supply of Goods and/or Services to the extent specified;
 - 27.2.2. not place any purchase orders or sub-contracts relating to the terminated portion of the Contract;
 - 27.2.3. act, at its cost, so as to protect the safety of all personnel, property and Goods;
 - 27.2.4. take all possible steps to mitigate any liabilities it may incur because of the termination including, but not limited to, promptly obtaining cancellation of applicable purchase orders, subcontracts, rentals or other agreements;
 - 27.2.5. offer SPMP the first right of refusal to purchase, at the depreciated value or such other agreed amount, the equipment, if any, used to perform the contract;
 - 27.2.6. carry out any action SPMP reasonably requires to effect the termination including, but not limited to, assignment of any applicable agreements as directed by SPMP; and
 - 27.2.7. cooperate with SPMP to transfer all data, designs, licenses and information so as to mitigate any damages.
- 27.3. No action taken by SPMP in terms of this clause 27 prejudices any existing rights or remedies in terms of the Contract SPMP may have as a result of the breach complained of.
- 27.4. Should the Contract be terminated in terms hereof and it subsequently transpires that the Vendor was not in default the Parties rights and obligations will be the same as if the Termination Notice had been issued for convenience as per clause 26.
- 27.5. All provisions expressed to have effect after termination of this Agreement or by implication having effect after its termination or necessary to give effect to any such provisions after termination or to give effect to termination and its consequences shall continue in force notwithstanding termination of this Agreement.
- 28. INSOLVENCY OF THE VENDOR**
- 28.1. If the Vendor commits an act of insolvency such as entering into any voluntary arrangement with its creditors or if the Vendor's assets are frozen or a similar order is placed on them, or has a receiver, administrator or liquidator appointed to administer its affairs, the Contract will be deemed rescinded forthwith without written Notice and without compensation to the Vendor

but without prejudice to the Vendor's right to receive payment for any Goods supplied or Services rendered up to the date of such rescission.

- 28.2. Upon rescission the Vendor or the Vendor's receiver, administrator or liquidator shall deliver to SPMP any Goods in its possession that SPMP has paid for and shall be liable to SPMP for failure to do so.

29. DISPUTE RESOLUTION

- 29.1. The Parties shall make every effort, in good faith, to reach an amicable solution, by negotiation, to any claim or difference of opinion between them, arising out of or in connection with the interpretation or performance of this Contract (**Dispute**).
- 29.2. Failing resolution, in terms of clause 29.1 not less than seven (7) days of the difference or claim arising, either Party may give to the other Party a notice advising of the dispute (**Dispute Notice**), identifying the Dispute, nominating its management representative and calling for the other Party to nominate its management representative to jointly resolve the Dispute.
- 29.2.1. Prior to meeting for negotiations at a mutually agreed venue and time the Parties will promptly exchange correspondence stating the material facts, the salient issues in dispute, their respective positions supported by a contractual basis, a proposal for equitable resolution and attaching any relevant documentation.
- 29.3. Failing resolution in terms of clause 29.2 within thirty (30) days of the commencement of such negotiations either Party may refer the Dispute to arbitration.
- 29.3.1. Each Party shall appoint one arbitrator and the arbitrators appointed by the Parties shall appoint a third arbitrator by mutual consent.
- 29.3.2. In the event of failure by either Party to appoint an arbitrator or in the absence of mutual consent in respect of the appointment of the third arbitrator within thirty (30) days of the Dispute Notice, the London Court of International Arbitration Dubai international Financial Centre Branch (**DIFC LCIA**) shall appoint an arbitrator on behalf of the Party which has failed to make such appointment and/or the third arbitrator as the case may be.
- 29.3.3. All arbitration proceedings will be held in Dubai, the seat of arbitration is DIFC..
- 29.3.4. The proceedings will be conducted in English, except to the extent that compliance with legal requirements may otherwise dictate.
- 29.3.5. The arbitration shall be conducted in accordance with the prevailing Rules of Arbitration of the DIFC LCIA .
- 29.4. The existence of a Dispute does not relieve any Party from performance of its obligations under this Contract unless the Parties have agreed otherwise.
- 29.5. The provisions of this clause 29 do not bar any Party from seeking urgent interlocutory relief required in terms of the Contract.

30. CONFIDENTIALITY

- 30.1. The Parties shall, at all times, ensure that the other Party's Confidential Information shall not be used for any purposes other than those required or permitted by this Contract and shall



remain confidential and shall not be disclosed to any third party including the Vendor's approved Sub-contractor except with SPMP's prior written approval.

- 30.2. Excluded from the ambit of clause 30.1 is information already in the public domain or disclosure to comply with an applicable law or legally binding order of a court or governmental agency. This exclusion is subject to the proviso that prior to such disclosure the disclosing Party notifies the other Party with full details of the proposed disclosure.
- 30.3. The Parties shall restrict access to Confidential Information to such of the Parties' personnel who need to know such Confidential Information and on provisions similar to those set out in this clause 30.
- 30.4. The Vendor shall at SPMP's request promptly deliver to SPMP all Confidential Information in its custody, possession or under its control and of its personnel.
- 30.5. A breach of the confidentiality undertaking constitutes a breach of the Contract.
- 30.6. Further, the Vendor shall indemnify SPMP and keep it indemnified regarding any Liabilities sustained or incurred by SPMP as a result of a breach of the confidentiality undertaking by the Vendor and its personnel.
- 30.7. The terms of this clause 30 shall survive the termination or expiration of this Contract for a period of fifteen (15) years.

31. PUBLICITY

The Vendor may not publish any photographs, make any disclosures or announcements about the contract and its subject matter, including the wording of such release and manner of publication, to the general public or to the media, any business entity or official body without SPMP's prior written approval, which may be given or refused at its sole discretion.

32. INTELLECTUAL PROPERTY RIGHTS

- 32.1. The Vendor warrants that it has or will, at its cost, procure the requisite licences and consents to use a third party's Intellectual Property Rights in supplying Goods and/or rendering Services or for SPMP to use and enjoy the Goods supplied and/or Services rendered.
- 32.2. The Vendor hereby indemnifies SPMP and its representatives from and against all claims, actions, losses, damages and expenses, including full legal fees, arising from an alleged claim that any concept, product, design, equipment, material, process, copyrighted material, Confidential Information or part thereof provided by the Vendor in terms of the Contract constitutes an infringement of any third party's patent or copyrighted material or a theft of trade secrets.
- 32.3. If SPMP's use of any part of such concept, product, design, equipment, material, process, copyrighted material or Confidential Information is limited or prohibited the Vendor must, at its sole cost, speedily obtain the necessary licences to use the infringing or a modified but non-infringing concept, product, design, equipment, material, process, copyrighted material or Confidential Information or with SPMP's written consent replace it with a substantially equal but non-infringing concept, product, design, equipment, material, process, copyrighted material or Confidential Information.
 - 32.3.1. Clause 32.3 is subject to the proviso that any substituted or modified concept, product, design, equipment, material, process, copyrighted material or Confidential



Information shall comply with the provisions of this Contract and that the Vendor is not thereby relieved of its contractual obligations.

32.3.2. If alteration or replacement or re-performance, as applicable, is not possible the Vendor must discontinue provision of the Services or remove the affected Goods and reimburse SPMP for monies paid and any expense (without limitation) SPMP incurs with regard to such discontinuance or removal.

32.4. All Intellectual Property Rights in any Specification, plans, drawings, process information, patterns or designs supplied by SPMP, to the Vendor in connection with the Contract, shall remain the property of SPMP, and any information derived there from or otherwise communicated to the Vendor, in connection with the Contract, shall be kept secret and shall not, without the consent, in writing, of SPMP, be published or disclosed to any third party or made use of by the Vendor except for the purpose of implementing the Contract or where such information is in the public domain or disclosure is required by law or any recognised stock exchange.

32.5. Any Specification, plans, drawings, process information, patterns or designs supplied by SPMP must be returned to SPMP on fulfilment or termination of the Contract.

33. NOTICES

34. Any communication by either Party to the other shall be sufficiently made if sent by post (by airmail where airmail is possible), postage paid, or by email or fax transmission or by courier to the address of the other Party specified for this purpose at the front of this Agreement and shall be deemed to have been received:

34.1. In the case of a communication sent by post from within the same jurisdiction as the delivery address, on the second local working day after it was posted;

34.2. In the case of a communication sent by registered airmail, on the fifth day after it was posted;

34.3. In the case of a communication sent by email: messages are only valid if and when actually received and the sender bears the risk of a failure in transmission;

34.4. In the case of a communication by fax transmission: if it is transmitted on a working day before 16:00 hours, then on that day; in any other case, on the next working day;

34.5. In the case of a communication by courier: if delivered on a working day before 16:00 hours, then on that day; in any other case, on the next working day.

35. The references to days, working days and times in clause 32.3 are references to such days, working days and times in the jurisdiction of the receiving Party's place of business.

36. Any alterations to the contacts and addresses specified in the Contract shall be notified in writing to the other Party.

37. LANGUAGE REQUIREMENTS

37.1. All Notices, correspondence, communications and submittals between the Parties relating to this Contract will be in the English language.

37.2. The Vendor is responsible for providing translation services as necessary for written and oral communications including a qualified translator.

38. STATUS OF THE VENDOR

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

39. ASSIGNMENT AND SUB-CONTRACTING

- 39.1. The Vendor shall not assign or sub-contract the Contract, in whole or part, without SPMP's prior written consent.
- 39.2. SPMP may require that the proposed assignee or Sub-contractor be bound by the provisions of the Contract including those relating to delivery and Specification of the Goods and/or Services.
- 39.3. If SPMP permits such assignment or sub-contract the Vendor acknowledges that it is not thereby relieved of its contractual obligations.
- 39.4. SPMP will consider the Sub-contractor as the Vendor's agent and employee and the Sub-contractor's acts and omissions and those of its personnel will be deemed to be the Vendor's acts and omissions.

40. OMANISATION

- 40.1. The Vendor, where applicable, shall comply with and adhere to all Omani Legal Requirements governing the engagement and employment of personnel and, in particular, those related to Omanisation by utilizing Omani labour and providing advancement training where reasonably practicable.
- 40.2. The Vendor is to ensure that its Sub-contractors comply with this clause 40.1.
- 40.3. SPMP may require the Vendor, on request, to demonstrate through labour and training records or otherwise the number of Omani nationals employed in the positions and in such numbers as required by law.
- 40.3.1. If the Vendor fails to comply SPMP reserves the right to terminate this Agreement without prejudice to its other rights under this Agreement.
- 40.3.2. In addition, the Vendor is obliged to use Omani Sub-contractors and resources where practicable, available and pricing is competitive.
- 40.3.3. All costs of Omanisation shall be included in the Price, including but not limited to, salaries, work/leave schedules, allowances, transportation costs, merit increases, promotions, final settlements, training, as well as social security contributions, etc.

41. GENERAL

- 41.1. The Contract represents the Parties entire agreement in relation to its subject matter and supersedes all previous communications and negotiations relating thereto;
- 41.1.1. Only written amendments or variations of this Contract signed by the Parties duly authorised representatives shall be valid and binding. To clarify, the Vendor's terms and conditions contained in any quotation, invoice, purchase order acknowledgment,



confirmation, acceptance, bill of lading or other instrument and which are in addition to, different from or inconsistent with these provisions shall not bind either Party unless expressly agreed to, in writing, and signed by the Parties' duly authorised representatives;

- 41.2. The waiver of any obligation or breach thereof of this Agreement shall not be valid unless reduced to writing and signed by SPMP's duly authorised representative.
- 41.2.1. Such waiver shall not effect a waiver of any obligation or breach except as therein specified.
- 41.2.2. To clarify, SPMP's failure to or delay in exercising any right or remedy or SPMP's failure to insist on the Vendor's strict performance of any provisions of this Agreement does not constitute a waiver nor will termination hereunder operate as a waiver of these provisions;
- 41.3. Any provision declared void or unenforceable by any court or competent authority shall, to the extent of such invalidity or unenforceability, be deemed severable and shall not affect the validity of the other provisions of this Contract. The Parties may negotiate in good faith to agree upon a valid and enforceable replacement provision which resembles their original intent;
- 41.4. All remedies for which this Contract provides are cumulative and not exclusive of any rights or remedies provided by law;
- 41.5. This Contract may be executed in counterparts each of which shall be an original and shall together constitute the same instrument;
- 41.6. The Vendor acknowledges that this Contract is not evidence of an exclusive relationship between the Parties and that SPMP is not obliged to procure a minimum level of supply from it;
- 41.7. Each Party agrees to execute and deliver all further instruments and documents and take all further action reasonably necessary to give effect to any provisions and contemplated transactions of this Contract;
- 41.8. For the duration of the Contract the Vendor and its Personnel shall comply with all SPMP rules and policies as notified by SPMP, in writing, from time to time;
- 41.9. Each Party shall bear its own costs incurred in the negotiation, preparation and execution of this Contract;
- 41.10. All provisions independent of the period of performance survive the termination or cancellation of this Contract.

42. GOVERNING LAW

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