

JIGPC



## ***JIGPC GENERAL CONDITIONS OF PURCHASE***

### **1. DEFINITIONS**

1.1 In these Conditions, the following definitions apply:

Conditions: these terms and conditions as amended from time to time.

Contract: the contract between the Purchaser and the Vendor for the supply of Goods and/or Services in accordance with these Conditions and the Order.

Deliverables: all documents, products and materials developed by the Vendor or its agents, contractors and employees as part of or in relation to the Services in any form or media, including without limitation drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts).

Goods: the goods (or any part of them) set out in the Order.

Goods Specification: any specification for the Goods, including any related plans and drawings, that is agreed in writing by the Purchaser and the Vendor.

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Order: The Purchaser's order for the supply of Goods and/or Services, as set out in the Purchaser's purchase order.

Purchaser: Jazan Integrated Gasification and Power Company

Purchaser Materials: has the meaning set out in clause 5.3(j). Services: the services, including without limitation any Deliverables, to be provided by the Vendor under the Contract asset out in the Service Specification.

Service Specification: the description or specification for Services agreed in writing by the Purchaser and the Vendor.

Vendor: the person or entity from whom the Purchaser purchases the Goods and/or Services.

1.2 In these Conditions, a reference to writing or written includes by e-mail.

## **2. BASIS OF CONTRACT**

2.1 The Order constitutes an offer by the Purchaser to purchase Goods and/or Services from the Vendor in accordance with these Conditions.

2.2 The Order shall be deemed to be accepted on the earlier of (i) the Vendor issuing written acceptance of the Order; or (ii) any act by the Vendor consistent with fulfilling the Order, at which point and on which date the Contract shall come into existence.

2.3 These Conditions apply to the Contract to the exclusion of any other terms that the Vendor seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing even in the case where Purchaser is aware that such other terms conflict with these Conditions.

2.4 All of these Conditions shall apply to the supply of both Goods and Services except where the application to one or the other is specified.

## **3. SUPPLY OF GOODS**

3.1 The Vendor shall ensure that the Goods shall:

(a) correspond with their description and any applicable Goods Specification in all respects and, where applicable, to any samples or drawings;

(b) be of satisfactory quality and fit for any purpose held out by the Vendor or made known to the Vendor by the Purchaser, expressly or by implication, and in this respect the Purchaser relies on the Vendor's skill and judgment;

(c) be free from defects in design, materials and workmanship and remain so until the earlier of (i) 12 months after operation; or (ii) 24 months from the delivery date of the Goods;

(d) comply with all applicable statutory and regulatory requirements relating to the manufacture, sale, labelling, packaging, storage, handling and delivery of the Goods; and

(e) be new and unused and of sound materials and workmanship.

3.2 Where a defect has arisen during the warranty period set out in clause

3.1(c) above, or existed at the date of delivery, but is not apparent, the Vendor's liability will not cease merely because notice of such defect was not given to the Vendor within such period.

3.3 The Vendor shall ensure that at all times it has and maintains all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under the Contract in respect of the Goods.

3.4 The Purchaser shall have the right to inspect and test the Goods at any time before delivery at the Vendor's premises or at any other location.

3.5 If, following such inspection or testing, the Purchaser considers that the Goods do not conform or are unlikely to comply with the Vendor's undertakings at clause 3.1, the Purchaser shall inform the Vendor and the Vendor shall immediately take such remedial action, at the Vendor's own expense, as is necessary to ensure compliance with the Goods Specification and delivery schedule.

3.6 Notwithstanding any such inspection or testing, the Vendor shall remain fully responsible for the Goods and any such inspection or testing shall not reduce or otherwise affect the Vendor's obligations under the Contract, and the Purchaser shall have the right to conduct further inspections and tests after the Vendor has carried out its remedial actions.

3.7 The Purchaser has the right to require certificates of raw materials, country of origin and test certificates for materials used in the sourcing and manufacturing of the Goods. The Vendor shall provide such certificates within 5 days after receipt of such request.

#### **4. DELIVERY OF GOODS**

4.1 Unless otherwise specified in the Order, the goods shall be delivered by the Vendor DDP to the destination named by the Purchaser when and in a manner specified by the Purchaser. Any delivery term in the Order shall have the meaning given to it by the latest version of the Incoterms currently in force.

4.2 Risk of loss of the Goods shall pass to the Purchaser upon delivery. Title to the Goods shall pass upon the earlier of (i) the Purchaser's acceptance of the Goods; or (ii) payment for such Goods or part thereof.

4.3 All deliveries are to be made as specified in the Order, and where no specification is given, then when and as specified by the Purchaser. Immediately upon shipment, the Vendor is to provide shipping information to the Purchaser's Supply Chain Department advising detailed packing list and complete shipping and routing information. Acceptance of any part of the Order shall not bind the Purchaser to accept future shipments, nor deprive it of the right to return goods already accepted.

4.4 The Goods and all required or necessary documentation shall be completed and delivered at the time(s) specified in, and otherwise in accordance with, the Order. The Vendor shall not (i) deliver any part of the Goods before the specified delivery date or (ii) partially ship the Goods, unless the Purchaser agrees in writing. The Vendor shall inform the Purchaser immediately in, or confirm in, writing if it becomes apparent that the specified delivery date will not, or is unlikely to, be met.

4.5 The Vendor shall ensure that the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition. The cost of protection and packing, transportation or storage is deemed included in the purchase price unless expressly agreed otherwise. Any specific packing specifications or requirements will be stated in the Order or attachments.

4.6 All packing material shall be deemed to be non-returnable unless otherwise stated in the Order. Any such packing material shall be returned to the Vendor at the Vendor's cost.

4.7 The Vendor shall immediately upon being aware notify the Purchaser of all product defects and non-conformances that could result in a failure of a component resulting in an unsafe operating condition or reduction in the specified performance. Notification shall include, at a minimum, a clear description of the defect including all parts affected, serial numbers, part numbers, quantity, date delivered and Order number. The Vendor shall also propose for Purchaser's approval a remedy to the defect including the repair or replacement of the defective product, and a specific timeline for the remedial works.

## **5. SUPPLY OF SERVICES**

5.1 The Vendor shall from the date set out in the Order and for the duration of this Contract provide the Services to the Purchaser in accordance with the terms of the Contract.

5.2 The Vendor shall meet any performance dates for the Services specified in the Order or notified to the Vendor by the Purchaser.

5.3 In providing the Services, the Vendor shall:

(a) co-operate with the Purchaser in all matters relating to the Services, and comply with all instructions of the Purchaser;

(b) perform the Services with the best care, skill and diligence in accordance with best practice in the Vendor's industry, profession or trade;

(c) use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Vendor's obligations are fulfilled in accordance with this Contract;

(d) ensure that the Services and Deliverables will conform with all descriptions and specifications set out in the Service Specification, and that the Deliverables shall be fit for any purpose expressly or impliedly made known to the Vendor by the Purchaser;

(e) provide all equipment, tools and vehicles and such other items as are required to provide the Services;

(f) use the best quality goods, materials, standards and techniques, and ensure that the Deliverables, and all goods and materials supplied and used in the Services or transferred to the Purchaser, will be free from defects in workmanship, installation and design;

(g) obtain and at all times maintain all necessary licenses and consents, and comply with all applicable laws and regulations;

(h) observe all health and safety rules and regulations and any other security requirements that apply at any of the Purchaser's premises.

(i) upon the request of the Purchaser, promptly remove from the Purchaser's premises or from any involvement with the Services any personnel, subcontractors or agents of the Vendor who, in Purchaser's reasonable opinion, are unsuitable; and

(j) hold all materials, equipment and tools, drawings, specifications and data supplied by the Purchaser to the Vendor (Purchaser Materials) in safe custody at its own risk, maintain the Purchaser Materials in good condition until returned to the Purchaser, and not dispose or use the Purchaser Materials other than in accordance with the Purchaser's written instructions or authorization.

## **6. REMEDIES**

6.1 If the Vendor fails to perform the Services in accordance with the Contract, the Purchaser shall, without limiting its other rights or remedies under the Contract or in law, have one or more of the following rights:

- (a) to require the Vendor to re-perform the Services free of charge and as soon as reasonably practicable;
- (b) to terminate the Contract with immediate effect by giving written notice to the Vendor;
- (c) to refuse to accept any subsequent performance of the Services which the Vendor attempts to make;
- (d) to recover from the Vendor any costs incurred by the Purchaser in obtaining substitute services; (e) where the Purchaser has paid in advance for Services that have not been provided by the Vendor, to have such sums refunded by the Vendor; and
- (f) to be indemnified by the Vendor for any additional costs, loss or expenses incurred by the Purchaser which are in any way attributable to the Vendor's failure to perform the Services in accordance with the Contract.

6.2 Time is of the essence in this Contract. If the Goods are not delivered by the applicable date, the Purchaser may, without prejudice to any other rights or remedies that it may have, at its sole option, claim or deduct 1% per cent of the price of the Goods for each week's (or part of a week's) delay in delivery by way of price reduction, up to a maximum of ten per cent (10%) of the total price of the Goods.

6.3 If any Goods are supplied that are not in accordance with the Contract then, without limiting its other rights or remedies under the Contract or in law, the Purchaser shall be entitled, in its sole option:

- (a) to reject the Goods (in whole or in part) whether or not title has passed and to return them to the Vendor at the Vendor's own risk and expense;
- (b) to terminate the Contract with immediate effect by giving written notice to the Vendor;
- (c) to require the Vendor to repair or replace, at the Vendor's cost, the rejected Goods within 7 days, or to provide a full refund of the price of the rejected Goods (if paid);
- (d) to refuse to accept any subsequent delivery of the Goods which the Vendor attempts to make;
- (e) to recover from the Vendor any expenditure incurred by the Purchaser in obtaining substitute goods; and
- (f) to be indemnified by the Vendor for any additional costs, loss or expenses incurred by the Purchaser arising from the Vendor's failure to supply Goods in accordance with the Contract.

6.4 These Conditions shall extend to any substituted or remedial services and/or repaired, or replacement goods supplied by the Vendor.

## **7. PRICE AND PAYMENT**

7.1 The price for the Goods and/or Services shall be the price set out in the Order and, unless expressly stated otherwise, shall be deemed to include any and all taxes arising from the design, manufacture, transport, delivery and sale of the Goods and/or Services, including without limitation, taxes, duties, fees, excises, assessments and similar governmental charges howsoever described and howsoever denominated imposed by any governmental entity having jurisdiction over the transactions contemplated by the Order. Such taxes, duties, etc. whether

they are part of the price or are separately stated in the Order shall be separately stated on any invoice submitted by the Vendor to the Purchaser. If the Purchaser furnishes the Vendor with an exemption certificate, or any other similar proof of exemption, with respect to any tax, duty, etc. then the Vendor shall not include such tax on the invoice. Failure to comply with this requirement will result in the Vendor's invoice being rejected.

7.2 The price for the Goods shall be inclusive of the costs of packaging, insurance and carriage of the Goods. The price for the Services shall be the full and exclusive remuneration of the Vendor in respect of the performance of the Services unless agreed otherwise in writing by the Purchaser.

7.3 Payments will be made as specified in the Order.

7.4 The Vendor shall maintain complete and accurate records of the time spent and materials used by the Vendor in providing the Services, and the Vendor shall allow the Purchaser to inspect such records at all reasonable times on request.

7.5 The Purchaser may withhold payment of any disputed or insufficiently documented amounts included in any invoice. The Purchaser may also at any time, without limiting any of its other rights or remedies, set off any liability of the Vendor to the Purchaser against any liability of the Purchaser to the Vendor, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the Contract.

## **8. INTELLECTUAL PROPERTY RIGHTS**

8.1 In respect of the Goods and any goods that are transferred to the Purchaser as part of the Services under this Contract, including without limitation the Deliverables or any part of them, the Vendor warrants that it has full, clear and unencumbered title to all such items, and that at the date of delivery of such items to the Purchaser, it will have full and unrestricted rights to sell and transfer all such items to the Purchaser.

8.2 The Vendor assigns to the Purchaser, with full title guarantee and free from all third party rights, all Intellectual Property Rights in the products of the Services, including for the avoidance of doubt the Deliverables.

8.3 The Vendor shall, promptly at the Purchaser's request, do (or procure to be done) all such further acts and things and the execution of all such other documents as the Purchaser may from time to time require for the purpose of securing for the Purchaser the full benefit of the Contract, including all right, title and interest in and to the Intellectual Property Rights assigned to the Purchaser in accordance with clause 8.2.

8.4 All Purchaser Materials are the exclusive property of the Purchaser.

## **9. INDEMNITY**

9.1 The Vendor warrants that the manufacture, supply or use of the Goods, or receipt, use or supply of the Services will not infringe or contribute to the infringement of a third party's intellectual property rights and agrees to defend, indemnify and hold harmless the Purchaser, its successors, assigns, customers and users of the Goods and/or Services against any claim, demand, loss and costs, including attorneys' fees and other legal costs, arising out of such

infringement; and after notice of any infringement the Vendor shall defend, at its own expense, any claims at law or in equity arising therefrom.

9.2 The Vendor shall keep the Purchaser and its employees, officers, agents, customers and successors and assigns indemnified against all liabilities, costs, expenses, damages and losses (including but not limited to costs for its own employees, attorneys' fees and other legal costs) suffered or incurred by the Purchaser as a result of or in connection with personal injury, death or damage due to

- (a) Goods and/or Services that do not meet the applicable Specification;
- (b) any breach by the Vendor or its suppliers or subcontractors of the Contract (including late delivery of Goods or performance of Services); or
- (c) any negligence, willful default or wrongful act or omission of the Vendor or its suppliers or subcontractors.

9.3 This clause 9 shall survive termination of the Contract.

## **10. INSURANCE**

10.1 During the term of the Contract and for a period of 12 months thereafter, the Vendor shall maintain in force, with a reputable insurance company, professional indemnity insurance, product liability insurance and/or public liability insurance, as appropriate for the type of activities conducted by Vendor but at a minimum as mandated by law, to cover the liabilities that may arise under or in connection with the Contract, and shall, on the Purchaser's request, produce the insurance certificate giving details of cover.

10.2 When performing Services at the Purchaser's premises, the Vendor shall have in force the following insurances which shall indemnify the Purchaser against any claim for which the Vendor may be legally liable under the Contract:

- (a) Workmen's Compensation;
- (b) Public Liability insurance for minimum sum insured U.S. Dollar 1,000,000 per occurrence; and as applicable:
- (c) Professional Indemnity Insurance for the minimum sum insured U.S. Dollar 1,000,000 per occurrence; and Contractors' All Risks (CAR) Insurance with a Sum Insured US\$100,000.

## **11. CONFIDENTIALITY**

11.1 The Vendor shall not make use of drawings, specifications, data and other information furnished by the Purchaser except in performance of the Order. Upon completion, cancellation or termination of the Order, the Vendor shall promptly furnish to the Purchaser all Deliverables and shall return to the Purchaser all information furnished by the Purchaser in connection with the Order and shall not retain or permit others to retain any reproduction or copy thereof. The Vendor shall not disclose any Deliverable, information furnished by the Purchaser or the Purchaser's name to any third party and shall make no further use thereof, either directly or indirectly, without the Purchaser's prior written consent, except in connection with the Order. The Vendor shall not in any manner advertise, publish or use the fact that the Vendor has provided, or contracted to provide, the Goods and/or Services ordered hereunder.

11.2 This clause 11 shall survive termination of the Contract.

## **12. TERMINATION AND SUSPENSION**

12.1 Without limiting its other rights or remedies, the Purchaser may terminate the Contract, in whole or in part, at any time and for any reason by giving written notice to the Vendor whereupon the Vendor shall immediately cease all work under the Contract. The Purchaser shall pay the Vendor fair and reasonable compensation for any work in progress on the Goods or Services at the time of termination, but such compensation shall not include loss of anticipated profits or any consequential loss and shall never be greater than the price of the Goods or Services. At the Purchaser's option, the Vendor shall assign to the Purchaser any outstanding sub-orders to the Purchaser and the Purchaser shall have the right to receive promptly all Deliverables and any Goods, all in their then current state of completion.

12.2 Without limiting its other rights or remedies, the Purchaser may terminate the Contract without liability to the Vendor, with immediate effect by giving written notice to the Vendor if:

(a) the Vendor commits a material breach of the terms of the Contract and (if such a breach is remediable) fails to remedy that breach within 5 days of receipt of notice in writing to do so;

(b) the Vendor repeatedly breaches any of the terms of the Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Contract; or

(c) the Vendor files a petition in bankruptcy or has such a petition filed against it or is subject to an insolvency proceeding or a proceeding giving protection against creditors, or if an order is issued appointing a receiver or trustee or a levy or attachment is made against a substantial portion of its assets, or if any assignment for the benefit of its creditors is made.

12.3 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination. Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

12.4 On termination of the Contract for any reason, the Vendor shall immediately deliver to the Purchaser all Deliverables whether or not then complete, and return all Purchaser Materials. If the Vendor fails to do so, then the Purchaser may enter the Vendor's premises and take possession of them. Until they have been returned or delivered, the Vendor shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract.

12.5 Purchaser shall have the right, at any time and at its sole discretion, to direct Vendor to suspend performance of the Contract, in whole or in part, by giving written notice to Vendor specifying the extent to which the performance of the Contract is suspended and the effective date of such suspension. The suspension shall continue for the period of time specified in the written notice. If suspension is due to causes not related to Vendor's failure to perform its obligations under the Purchase Order, the scheduled date(s) for Vendor's performance of the suspended work, as set forth in this Purchase Order, shall be reasonably adjusted to reflect the length of the suspension, and Purchaser shall reimburse Vendor in relation to the suspension only for costs incurred for: a) the safeguarding or storing of the relevant physical assets, including Goods at Vendor's facilities or the facilities of its suppliers, or in transit; and b) any



resultant demobilization and remobilization at the project site in Jazan. Adjustment to Vendor's scheduled dates for performance and reimbursement of the aforementioned costs shall constitute Vendor's sole and exclusive remedies for any suspension directed by Purchaser.

### **13. COMPLIANCE**

13.1 The Vendor agrees to abide by the Purchaser's Code of Conduct in its dealing with the Purchaser. The Purchaser's Code of Conduct is available at [www.jigpc.com/code-of-conduct](http://www.jigpc.com/code-of-conduct). Noncompliance with the Purchaser Code of Conduct shall be considered a material breach of the Contract.

13.2 The Vendor undertakes to design, manufacture, transport, deliver and sell the Goods and Services in compliance with all applicable statutes, laws, regulations, codes, rules, ordinances and any other requirement of any governmental or quasi-governmental entity having jurisdiction over the Vendor's performance of the Order or the country in which the Goods are to be used or the Services are to be rendered.

### **14. GENERAL**

14.1 Assignment and subcontracting.

(a) The Vendor may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of the Purchaser.

(b) The Vendor shall not sub-let or subcontract all or any part of the Contract without the prior written consent of the Purchaser. Any such consent shall not relieve the Vendor of its obligations or liabilities under this Contract. The Vendor shall ensure that its subcontractors comply with all the provisions of this Contract.

14.2 Severance. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

14.3 Waiver. A waiver of any right or remedy under the Contract or law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by the Purchaser to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

14.4 Third parties. A person who is not a party to the Contract shall not have any rights to enforce its terms.

14.5 Variation. Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by the Purchaser.

14.6 Governing law. The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the laws of Saudi Arabia.

14.7 Venue. Any dispute arising under or in relation to the Contract shall be referred to and finally resolved by binding arbitration under the Rules of Arbitration of the International Chamber of Commerce (“ICC”) as currently in force (the “Rules”) which Rules are deemed to be incorporated by reference into the Contract. The number of arbitrators shall be one for disputes with a value of less than US\$ 1 million otherwise the number of arbitrators shall be three. Arbitrators are to be selected as provided in the Rules. The seat or legal place of the arbitration proceedings shall be Al Khobar, Saudi Arabia, and the language of the arbitration shall be English. All documents submitted in connection with the proceedings shall be in the English language, or, if in another language, accompanied by an English translation. Any award rendered in the arbitration shall be final and binding on the parties and judgment upon the award may be entered in any court having jurisdiction, or application may be made to such court for a judicial acceptance of the award and an order of enforcement, as the case may be. The award shall not be subject to appeal. For the avoidance of doubt, the parties agree that no party shall have the right to apply or appeal to a court of another jurisdiction. The Tribunal shall have the right and authority to grant injunctive, declaratory and other equitable relief. The parties agree that the party against whom the judgment is rendered shall be responsible for all reasonable costs incurred by both parties in relation to the arbitral proceedings, including the other party’s reasonable lawyers’ fees, ICC arbitration fees, and fees paid to the arbitrator(s), and the parties shall reimburse each other accordingly.