

General Terms and Conditions for Supply of Goods



Karachi Electric Supply Company Ltd

1. Definitions

- 1.1** In this Tender document (as hereinafter defined) the following words and expressions shall have the meaning hereby assigned to them except where the Tender requires otherwise:
- i. Bid** shall mean the offer tendered by the Bidder for the supply of goods or services in accordance with the terms and conditions specified by the Company.
 - ii. Bidder** shall mean any person, firm or company that submits a bid for the supply of goods or services on the terms and conditions specified by the Company.
 - iii. Bonds** shall mean bid bond, performance bond and other instruments of security furnished by the Bidder as surety for its obligation to comply with the terms and conditions of the tender documents or the Purchase Order, as the case may be.
 - iv. Purchase Order** shall mean the purchase order issued by the Company to the Supplier for the supply of certain goods.
 - v. Purchase Order Price** shall mean the total amount that the Company shall pay to the Supplier for the supply of all goods or services under the Purchase Order.
 - vi. Company** shall mean the Karachi Electric Supply Company Limited or its successors-in-interest or assignees.
 - vii. Supplier** shall mean the person, firm or company whose bid has been accepted by the Company and shall include the Supplier's representatives, successors and assignees
 - viii. Day** shall mean a period of twenty four (24) hours from mid night to mid night.
 - ix. Delivery Date** shall mean the date on which the goods are to be delivered in accordance with the terms of the Purchase Order.
 - x. Goods** shall mean the goods, material or equipment to be provided by the Supplier in accordance with the Purchase Order.
 - xi. Specification(s)** shall mean the standard codes of practice and other specifications issued with the Tender and any notification such as specifications approved in writing by the Company, and other specifications as may, from time to time, be furnished or approved in writing by the Company.
 - xii. Tender** shall mean the terms and conditions on which the Company solicits bids for the supply of goods or services.

2. Performance Bond

- 2.1** If the Purchase Order Price is greater than Five Hundred Thousand Rupees (Rs.500, 000), the successful Bidder shall submit a Performance Bond equivalent to ten (10%) percent of Purchase Order Price and in the form of a pay order or unconditional bank guarantee as per the Company's approved format. The Performance Bond must be issued by a scheduled Pakistani bank that has a minimum "A" rating (long term) as indicated on the website of State Bank of Pakistan. Upon verification of the Performance Bond from the issuing bank, the Bid Bond shall be returned to the Bidder.
- 2.2** The Supplier shall submit the Performance Bond within thirty (30) days before the date of execution of the Purchase Order and it shall remain valid for one (1) year after delivery of the last item (including installation and commissioning thereof) under the Purchase Order and fulfillment of all contractual obligations. In the event that the term of the Purchase Order is extended, the Bidder shall extend the validity of the Performance Bond accordingly.
- 2.3** If the Supplier fails to submit Performance Bond within specified time, a grace period of four (4) weeks shall be given to the Supplier. During grace period, a penalty of half a percent (0.5%) of total Purchase Order Price (including GST and all other taxes) per week shall be imposed on the Supplier. Penalty shall be deducted from the security deposit or any other amount payable to the Supplier by the Company. If even after four (4) weeks, the Supplier fails to submit Performance Bond to the Company shall have the discretion to cancel the Purchase Order at the Supplier's risk and cost and forfeit its Bid Bond.
- 2.4** The Company's right to recover damages from the Supplier for breach of Purchase Order shall not be limited to the value of the Performance Bond. In the event of the Bidder failing to execute a formal Purchase Order or to submit the Performance Bond in the manner aforesaid and in the period specified, the Company shall be entitled to forfeit any earnest money or bid bond submitted by the Bidder with its Bid, without prejudice to the Company's right to claim any further loss or damage which may result to it by reason of the aforesaid default of the Bidder as if Purchase Order is actually executed for the purpose of such claims.

3. Delivery of Goods

- 3.1** The Company shall accept delivery of Goods only in the presence of Supplier or its authorized representative.
- 3.2** The Supplier shall deliver the Goods strictly according to the delivery terms prescribed by the Company that shall form an integral part of the Purchase Order.

3.3 Delivery of Goods shall be made to the Company's authorized representative at the location specified for the purpose in the Purchase Order. A prior written notice specifying the exact time and date of delivery shall be given to the Company's authorized representative. The Company may refuse any Goods delivered without prior notice. Any manual or mechanical labor required to affect the delivery shall be arranged by the Supplier at its own cost.

4. Variation

The Company reserves the right to increase, decrease, delete or modify quantities of any item or Goods to be delivered under the Purchase Order.

5. Testing

5.1 Samples provided by Supplier may be tested at a Company approved local or foreign laboratory. Testing charges shall be borne by the Supplier at actual, and Supplier shall deposit laboratory testing charges in advance upon being intimated by the Company's representative.

5.2 Supplier shall bear laboratory testing charges for two (2) samples from each and every lot of Goods to be delivered under the Purchase Order.

5.3 Supplier shall print the following words on each item supplied under the Purchase Order to the Company:

<p style="text-align: center;">COMPANY PROPERTY – NOT FOR SALE</p> <p>Purchase Order No. _____</p> <p>Serial Number: _____ (if required)</p> <p>Item Code No.: _____</p> <p>Year of Manufacture: _____</p>

6. Inspection

6.1 The Company shall only accept the Goods after they have been duly inspected by the Company's representative in presence of the Supplier.

- 6.2** The Company reserves the right to reject Goods that do not conform to the specifications provided by the Company. In the event of rejection of all or any item, the Supplier shall collect such rejected items within one (1) week from date of inspection, failing which, the Company shall be entitled to dispose of these items. The Supplier shall be liable for any costs that the Company may incur on storing or disposing the rejected items.
- 6.3** The Supplier shall provide an undertaking that it has pre-inspected the entire lot of Goods for compliance with the Company's quality standards and that they are fully compliant.
- 6.4** The Supplier shall send a prior notice of inspection to the Company's designated representatives at least one (1) week before the inspection. The Company's representative shall carry out the inspection and, if so empowered by the Company, accept the Goods and issue an acceptance certificate.
- 6.5** All expenses of the Company's inspection team including, but not limited to ticketing, boarding, lodging, travelling, etc. of Company's personnel shall be borne by the Company.

7. Remedies for default

- 7.1** If the Supplier fails to deliver the Goods either wholly or partially, within the specified delivery period or delivery of Goods that do not comply with the prescribed specifications, the Company may take any or all of the following actions at its sole discretion:
- i. Impose liquidated damages on the Supplier at the rate of half a percentage point (0.5%) for each week of the default up to a maximum limit of ten percent (10%) of the Purchase Order Price. Liquidated damages shall be recovered only for Goods delivered late. In case of delay in delivery attributable to the Company, no penalty shall be charged.
 - ii. Purchase the Goods not delivered according to the Purchase Order from another source, at Supplier's risk and cost without any prior notice to the Supplier and without cancelling the Purchase Order in respect of other Goods to be delivered under the Purchase Order.
 - iii. Without prejudice to the foregoing provisions, cancel the Purchase Order at Supplier risk and cost and purchase either the Goods or substitute goods, as the case may be, either from open market or by inviting tenders. In all such cases, Supplier shall be liable for loss or damages suffered by the Company which may be recovered from any dues payable by the Company to the Supplier.

- iv. Recover up to a ten percent (10%) value of Goods ordered or short supplied towards the penalty from the Supplier's due amounts.

8. Warrantee/Guarantee

- 8.1** The Supplier shall submit Warrantee and Guarantee Certificate from the manufacturer of the Goods in the name of the Company, if so instructed by the Company. At the time of delivery of Goods, the Supplier shall furnish Warrantee/Guarantee certificate certifying that the Goods are brand new and conform to technical specifications provided by the Company.
- 8.2** The Company may ask the Supplier to submit documentary evidence from Original Equipment Manufacturer ('OEM') to substantiate that the Supplier is the authorized agents/representatives of the OEM.
- 8.3** The Supplier shall furnish a warrantee/guarantee certificate, certifying that Goods supplied conform exactly to the specification laid down in the Purchase Order and the technical data provided by the Supplier. If Goods are found defective or non-conforming to the technical specifications within a period of one (1) year from date of delivery of the last item under the Purchase Order, the Supplier shall be liable for all losses and cost of replacement of defective Goods.
- 8.4** A foreign Supplier's principal shall furnish along with the bid, a guarantee to the effect that the Goods dispatch shall be in exact accordance with the Company's specifications.

9. Submission of Invoices

The Supplier shall submit the original invoice along with all supporting documents to the Company's GM C&A (Bill Management Cell) within ninety (90) days of the delivery of Goods, failing which, the invoice may not be entertained.

10. Payment

- 10.1** In case of local purchase, payment for the Goods shall be made to the Supplier in accordance with the payment terms prescribed in the Purchase Order. In case payment is made through Local LC, all bank charges relating to opening of LC including amendments, if any, shall be borne by the beneficiary. A copy of the General Sales Tax ('GST') invoice showing the amount of sales tax must be submitted along with the

invoice. In case GST is not applicable on the Goods to be procured, Supplier shall provide the documentary evidence.

- 10.2** Payment to a foreign Supplier shall be made through an irrevocable and confirmed letter of credit (“LC”) to be opened in favor of the Supplier’s principal and in the currency specified in its Bid. All local bank charges & commission for opening & handling of LC shall be to the opener’s account, where as all banking charges out of Pakistan shall be borne by the beneficiary. Any additional confirmation of LC from the foreign bank, if required by the Company, shall be arranged at beneficiary’s cost.
- 10.3** In order to open the LC, the name, complete address and details of principal’s bank, proforma invoice and acceptance of the Purchase Order shall be intimated by the Supplier within seven (07) days from the date of issuance of the Purchase Order, to the Company’s General Manager (Procurement) with a copy to Manager (Import & Clearance) at the address specified in clause 13 hereof.
- 10.4** All payments under the Purchase Order to a foreign Supplier shall be made as per agreed Incoterms. Payments in favor of Supplier’s principal shall be made upon submission of documents along with copies of the following documents:
- i. Bill of Lading / Airway Bill
 - ii. Original Invoice mentioning item-wise price
 - iii. Certificate of origin (if required)
 - iv. Packing list
 - v. Guarantee certificate as per guarantee clause of Purchase Order
 - vi. Declaration of dispatch to insurance company as per insurance clause of Purchase Order
- 10.5** Two sets of documents mentioned above shall be dispatched to the Company’s Manager (Import & Clearance) at the address listed in clause 13 hereof. In order to avoid demurrage charges, these documents must reach the Manager (Import & Clearance), five (5) days prior to the arrival of shipment by sea and three (3) days prior to arrival of shipment by air at Karachi port. In case demurrage charges are incurred because of any delay in dispatch of the documents, the same shall be recovered by the Company from Supplier. Should the Supplier fail to provide any of the specified documents, the Company shall not be obligated to pay until such documents are provided.

11. Insurance

For foreign procurement, the Principal of Supplier shall furnish a declaration of dispatch to the Company’s designated insurance company at least fourteen (14) days before the date of shipment. Declaration of dispatch shall contain particulars of the consignment

including without limitation, the number of packages, description of consignment, dimension, and name of vessel, sailing date and value of consignment. In case of delay, declaration of dispatch must be communicated to the insurance company with a copy to the Company's General Manager (Procurement). The insurance for a consignment from port to the Company's site shall be arranged by the Company.

12. Shipment of Foreign Procurement

- 12.1** As soon as Goods are ready for shipment, but in no event later than eight (8) weeks before the expiry of the delivery period, the Supplier's principal shall request the designated/agreed shipping line/agents for shipping space, and give the following information under intimation to the Company's General Manager (Procurement):
- i. Number of packages.
 - ii. Net weight of each package with item-wise break up of Goods in the packages.
 - iii. Gross weight of each package with item-wise list and details of Goods in each package.
 - iv. Volume of each package including dimensions/measurement of each package.
- 12.2** The Supplier shall dispatch the consignment in sea or air worthy packing, as the case may be, and be addressed to the Company's identified location. When the Goods are ready for shipment, Supplier's principal should intimate the Company's Manager (Imports & Clearance). The Company shall arrange for clearance of the Goods upon arrival.

13. Marking of Consignment

The Supplier shall advise its principal to provide the following marking on the consignment. The marking should be suitably done in the approved manner in accordance with the standard practice.

<p>SUBJECT OF THE P.O. _____</p> <p>FOR</p> <p>KARACHI ELECTRIC SUPPLY COMPANY LIMITED, PROCUREMENT DEPARTMENT, 11TH FLOOR, STATE LIFE BUILDING NO. 11 ABDULLAH HAROON ROAD, KARACHI, PAKISTAN. CONTACT NUMBER: +92 21 99206567</p> <p>PURCHASE ORDER NO: _____</p>

14. Force Majeure

14.1 'Force Majeure Event' shall mean the occurrence of any of the following events or circumstances, or any combination thereof, which are (i) beyond the reasonable control of the affected party, (ii) could not have been foreseen or prevented by the use of or by the exercise of reasonable skill and care, and (iii) have a material adverse effect upon the performance by the affected party of its obligations under the Purchase Order including but not limited to:

- i. Strikes, lock-outs or other industrial action or labor disputes involving the affected party or its respective sub-contractors, employees or agents.
- ii. Invasion, act of war (whether declared or undeclared), armed conflict or act of foreign enemy, blockade, civil war, rebellion, riots, insurrection or civil commotion.
- iii. Sabotage, kidnapping, terrorism or credible threat of such acts.
- iv. Epidemics
- v. Explosions, chemical or radioactive contamination or ionizing radiation or other radioactive contamination risks in the common form that are not covered by the Supplier's approved insurance policies.
- vi. Unusual or extreme adverse weather or environmental conditions or action of the elements, meteorites, aircraft or object falling from aircraft or other aerial devices, the account of pressure waves caused by aircraft or other aerial devices traveling at supersonic speed or other natural disasters.

- vii. Act of God
- viii. Any event or circumstances of a nature analogous to the foregoing, provided that each of the events described shall constitute a Force Majeure Event to the extent that such events or circumstances are caused by an event or circumstance that is itself a Force Majeure Event, experienced directly by the Supplier.

14.2 Force Majeure Events shall not include the following:

- i. Late delivery or interruption in the delivery of Goods
- ii. Delay in the performance of the Purchase Order by the Supplier or its sub-contractor.
- iii. Breakdown in machinery or equipment
- iv. Normal wear and tear or random flaws in materials, machinery or equipment.

14.3 If, by reason of a Force Majeure Event a party is wholly or partially unable to carry out its obligations under this agreement, the affected party shall:

- i. give the other party notice of the Force Majeure Event(s) as soon as practicable, but in no event later than the later of forty-eight (48) hours after the affected party becomes aware of the occurrence of the Force Majeure Event(s), or six (6) hours after the resumption of any means of providing notice to the other party.
- ii. provide, wherever appropriate or when reasonably requested to do so by the other party, further information to the other party fully describing the Force Majeure Event(s) and its cause(s), and providing or updating information relating to the efforts of the affected party to avoid and/or to mitigate the effect(s) thereof; and estimates, to the extent practicable, of the time for which the affected party reasonably expects it shall be unable to carry out any of its affected obligations due to the Force Majeure Event(s).

14.4 The affected party shall notify to the other party of the cessation of the Force Majeure Event and of its ability to recommence performance of its obligations under this Purchase Order as soon as possible and in any event not later than seven (7) days after the cessation of the events described above.

15. Indemnification

15.1 The Supplier agrees to indemnify and hold harmless the Company from and against any and all claims, demands, suits, causes of action, proceedings, judgments, damages cost, expenses and liabilities (including reasonable attorney fees and costs) for bodily injury and property damage to third parties to the extent such claims arise from the acts or omissions of the Supplier, its employees, officers, agents or subcontractors.

- 15.2** The Company agrees to indemnify and hold harmless the Supplier from and against any and all claims, demands, suits, causes of action, proceedings, judgments, damages cost, expenses and liabilities for bodily injury and property damage to third parties to the extent such claims arise from the acts or omissions of the Company, its employees, officers, agents or subcontractor.
- 15.3** As soon as practicable after receipt by an indemnified party of any claim or notice of the commencement of any action or administrative or legal proceeding or investigations as to which the indemnity provided for in this clause 15 may apply, the indemnified party shall notify the indemnifying party of such fact. In the event that an indemnified party is entitled to indemnification under this clause 15 as a result of a claim by a third party, but the indemnifying party fails to assume the defense of such claim, within thirty (30) days after receiving notification thereof, then such indemnified party may, at the expense of the indemnifying party contest or, with the prior consent of the indemnifying party, settle such claim. The indemnities contained in this Purchase Order shall survive for one (1) year after the term of this Purchase Order.

16. Arbitration

- 16.1** In case of any dispute, difference or disagreement between the Company and the Supplier in connection with or arising out of this Purchase Order, the same shall be referred to a joint resolution committee, comprising of two executive director level officers of both parties and the Chief Executive Officer of the Company shall give the final decision on the dispute.
- 16.2** In case a dispute, difference or question cannot be settled amicably or satisfactorily within a period of thirty (30) days, it shall be referred to mediation before a CEDR accredited Mediator at the Karachi Centre for Dispute Resolution (KCDR). Mediation proceedings shall be held at Karachi and shall be governed by the mediation rules of the Centre. The Supplier shall bear all costs with respect to the same.

17. Confidentiality

The Company and the Supplier shall both maintain complete confidentiality of all information and data exchanged between the parties in whatever form whether electronic, written or verbal communication, for the purposes of this Purchase Order or in respect of negotiation and preparation of the Purchase Order. However information that is already in the public domain, or disclosed by a third party in a lawful manner to either of the parties hereto shall not be deemed confidential.

18. Assignment

The Supplier shall not assign, in whole or in part, its obligations under the Purchase Order except with the Company's prior written consent. The Company may assign the Purchase Order upon prior written notice to the Supplier. The assignee shall take the place of Company and succeed to its rights and duties as from the date of assignment. Supplier shall obtain all necessary insurance policy endorsements relating to the Purchase Order so that the assignee has the same rights under such policies as Company.

19. Termination of Purchase Order

19.1 The Company may terminate the Purchase Order for any of the following reasons:

- (i) The Company may terminate the Purchase Order, in whole or in part, without prejudice to any other remedy under law for breach of Purchase Order, if:
 - (a) the Supplier fails to complete the supply the Goods within the time period(s) specified in the Purchase Order or any extension thereof granted by the Company;
 - (b) the Supplier fails to perform any other obligation(s) under the Purchase Order; or
 - (c) the Company has reason to believe that the Supplier lacks the ability or the resources to fulfill its obligations under the Purchase Order.

Prior to the exercising of any right by the Company to terminate the Purchase Order for cause, the Company shall issue written notice to the Supplier specifying the default(s) and the Supplier shall remedy the default within seven (07) days of receipt of such notice. If the Supplier fails to remedy within the stipulated time the Purchase Order may be terminated by the Company without incurring any liability on account of doing so towards the Supplier.

- (ii) The Company may terminate the Purchase Order by giving written notice to the Supplier, without incurring any liability on account of doing so towards the Supplier, if the Supplier becomes bankrupt or otherwise insolvent. Such termination shall not prejudice or affect any right of action or remedy which has accrued to the Company or available to it under law or equity.

20. Independent Supplier

The Supplier is an independent supplier with exclusive authority over its equipment, materials and personnel. This Supplier shall not hold itself out as a partner, joint venturer, employee or agent of the Company. The Supplier does not have the authority to act on behalf of Company or enter into a legally binding obligation on behalf of the Company. In the event of that the Supplier violates this provision; the Company shall have the right to terminate this Purchase Order.

21. Price Escalation

The price for the Goods to be delivered under this Purchase Order shall remain fixed and firm as specified in this Purchase Order and shall not be subject to escalation for any reason whatsoever.

22. Governing Law

This Purchase Order shall be governed by the laws of Pakistan.

23. Correspondence

- 23.1** All correspondence under and/or in connection with this Purchase Order shall be in English and shall be delivered to the Company or the Supplier, as the case may be, at the following addresses:

Company:

Attention:

KESC

11th Floor, State Life Building No. 11

Abdullah Haroon Road, Karachi, Pakistan

Email:

Facsimile:

Supplier:

Attention:

Supplier's name:

Supplier's address:

Email:

Facsimile:

- 23.2** Correspondence between the parties regarding this Purchase Order shall clearly and conspicuously state the Purchase Order number, Name of project (where applicable), and the address of the recipient.
- 23.3** All notices given with respect to the Purchase Order shall be sent through courier service, registered mail acknowledgment due, electronic mail or facsimile and shall be deemed effective as of the date of receipt by the party to whom it is addressed.
- 23.4** A Party may change its address for the purpose of correspondence under this Purchase Order by giving prior written thereof to the other party at least fifteen (15) days in advance.