

General Terms and Conditions for Supply of Services



Karachi Electric Supply Company Ltd

ARTICLE 1 PRICE

- 1.1 In consideration of the execution and completion of Services performed by the Service Provider in accordance with the terms of this Purchase Order, the Company shall pay the Service Provider the amount as mentioned in Purchase Order ("Purchase Order Price"). The Purchase Order Price shall constitute the Service Provider's entire compensation for the Services performed under this Purchase Order.
- 1.2 The Purchase Order Price shall be paid to the Service Provider through monthly invoices after verification of Services for which the invoice is raised. Invoices submitted by the Service Provider must be in accordance with the rates and in the form specified by the Company. All invoices of the Service Provider shall be first submitted to the Company's Representative for verification.
- 1.3 The Service Provider shall submit its final invoice within ninety (90) days of the Completion Date. Should the Service Provider fail to submit the final invoice within the stipulated time, the Company shall determine the final payment and such determination shall be final and binding on the Service Provider.
- 1.4 The Purchase Order Price shall not be subject to escalation on any grounds whatsoever. The Purchase Order Price includes all applicable taxes, income and sales taxes and stamp duties payable to the Central and Provincial Governments or local bodies and no claims on this account shall be entertained by the Company. All such levies and taxes are to be paid by the Service Provider, to the complete exclusion of the Company, except for deductions of withholding tax under the Income Tax Ordinance 2001.
- 1.7 Foreign currency payments, if any, under this Purchase Order shall be made directly to the Service Provider in foreign currency upon receipt of corrected and verified invoices. All payments in Pakistani Rupee shall be made to the Service Provider in Pakistani Rupees upon receipt of verified invoices.

ARTICLE 2 SURETY

- 2.1 If the successful Bid's value is greater than Five Hundred Thousand Rupees (Rs 500,000) the successful Bidder shall submit a performance bond for an amount equivalent to ten (10%) percent of the total Bid value in the shape of an unconditional pay order or bank guarantee as per the Company's approved format ("Performance Bond"). In order to be acceptable, the Performance Bond must be issued by any scheduled bank of Pakistan with minimum long term rating of "A" as appearing on website of State Bank of

Pakistan. Upon receipt of Performance Bond, after verification from issuing bank, Bid Bond shall be returned to Bidder.

- 2.2 The Performance Bond should be submitted within a period of thirty (30) days from the date of execution of a Contract and shall remain valid for twelve (12) months after completion of Services. The Bidder shall cause the validity period of the Performance Bond to be extended for such period(s) as required for the Contract performance.
- 2.3 If the successful Bidder fails to submit a Performance Bond within the specified time, a grace period of four (4) weeks shall be given to Bidder. However, during such grace period, a penalty of half a percent (0.5%) of total Bid value (including GST and all other taxes) per week shall be imposed on the Bidder. This penalty may be deducted from the Bid Bond, security deposit or any other amount payable to the Bidder by the Company. If the Bidder does not provide a Performance Bond within the grace period, the Company may reject its Bid or cancel the Contract, as the case may be, at the Bidder's risk and cost and Bid Bond may be forfeited.
- 2.4 The Company's right to recover damages from the successful Bidder for breach of Contract shall not be limited to the value of the Performance Bond. In the event the Bidder fails to execute a formal Contract or to submit the Performance Bond in the manner aforesaid and in the period specified, the Company shall be entitled to appropriate the Bidder's Bid bond 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 Contract is actually executed for the purpose of such claims.
- 2.5 The Performance Bond may be returned to the successful Bidder twelve (12) months after completion of Services and/or fulfillment of all contractual obligations by the Bidder.
- 2.6 The Company may, at its sole discretion, decide not to obtain a Performance Bond from the successful Bidder and in lieu thereof retain an amount equal to ten (10) percent of each invoice for the Services which shall be released after the warranty period after deduction of appropriate amounts on account of penalties, cost of remedying defects and any other charges under the Contract.

ARTICLE 3 SERVICES

The Services to be performed hereunder are mentioned in the Purchase Order. The Service Provider shall perform the Services in accordance with the terms and conditions of this Purchase Order, the applicable laws and generally recognized professional standards.

ARTICLE 4 VARIATION IN SERVICES

- 4.1 The Company may instruct the Service Provider in writing to perform additional services during the term of this Purchase Order. Such additional services shall be performed with the prior written agreement of the Parties. The Service Provider shall submit an estimate of the additional time and costs, if any, for such services which shall be effective upon being approved in writing by the Company before the commencement of the additional services.
- 4.2 The Company may vary the Services without assigning any reason therefor to the Service Provider who shall have no claim of any nature whatsoever against the Company for exercising this right. The Service Provider shall then submit a revised proposal based on the variance in the Services. The Service Provider shall not have any claim for compensation on account of loss of profit or advantage which the Service Provider could not derive as a consequence of reduction in the scope of Services by the Company; neither shall the Service Provider have any claim for compensation on account of any alteration or modification in the original instructions given by the Company to the Service Provider with respect to the Services. Detailing of, or refining the scope of Services under the Purchase Order shall not constitute a variation.
- 4.3 The Service Provider shall not have the right to vary, alter and/or modify the scope of Services without obtaining the consent of the Company in writing prior to undertaking the variation, alteration or modification, as the case may be. The Service Provider shall provide all information that the Company may reasonably request in respect of a variation or the Company's request for a proposal for a variation.
- 4.4 In case the Company varies the scope of Services, the Parties shall determine and agree upon necessary adjustments to the Purchase Order Price and Completion Date accordingly. The Service Provider shall carry out the variation as if such variation was part of the original scope of Services under the Purchase Order. The Service Provider shall not delay or suspend performing any of its obligations under this Purchase Order pending the Company's approval of an extension in time or an adjustment to the

Purchase Order Price in respect of a variation. Where the Company instructs the Service Provider to proceed with a variation prior to the determination of the adjustment to the Purchase Order Price in respect thereof, the Service Provider shall keep records of the cost of undertaking the variation and of time expended thereon. Such records shall be open to inspection by the Company at all reasonable times.

- 4.5 Upon the Company approving a variation in writing, the Parties shall, as soon as practicable thereafter, sign the variation order in the form of an amendment to this Purchase Order. The amendment shall include the revised scope of Services, Completion Date, Purchase Order Price and schedule of Payments.

ARTICLE 5 SUSPENSION OF SERVICES

- 5.1 The Company may, at any time during the term of this Purchase Order, instruct the Service Provider in writing to suspend either partially or wholly, the Services till further instructions from the Company if the Company is not satisfied with the quality or manner of performance of the Services. The Company's Representative shall meet with the Service Provider as soon as practicable after serving the notice of suspension and the Parties shall review the Services performed till the time of suspension. Furthermore, the Parties shall meet and review the Company's concerns regarding Service Provider's performance of the Services and discuss how to address the same so that the Services may commence.
- 5.2 Upon receiving written instructions from the Company to re-commence Services, the Service Provider shall inform the Company of a date and time when both Parties may inspect and review the extent to which the Services have been affected by the suspension.

ARTICLE 6 OBLIGATIONS OF THE SERVICE PROVIDER

- 6.1 The Service Provider shall perform Services as an independent consultant in accordance with recognized international standards, applicable laws and regulations. The Service Provider shall carry out the Services with due diligence and efficiency and in conformity with sound engineering practices.
- 6.2 The Service Provider shall appoint one of its employees as its authorized representative to coordinate with the Company with respect to all matters regarding this Purchase Order ("Service Provider's Representative"). The Service Provider's Representative shall

represent the Service Provider for purposes of Services under this Purchase Order and shall be responsible for the administration of all Services hereunder. He shall remain in contact with Company's Representative and keep him fully informed on all matters relating to the provision of Services by the Service Provider. The Service Provider shall communicate its representative's name to the Company within one week of the Effective Date.

- 6.3 The Service Provider shall act at all times so as to protect the interests of the Company and shall take all reasonable steps to keep all expenses to a minimum consistent with sound economic and industry practices.
- 6.4 The Service Provider shall furnish the Company with such information relating to the Services as the Company may from time to time reasonably request.
- 6.5 The Service Provider shall not disclose to third parties any proprietary and confidential information that it receives from the Company without the prior written permission of the Company.
- 6.6 The Service Provider shall be solely responsible for its employees and sub-contractors in their performance of the Services and for their safety during such performance. The Service Provider shall be responsible for all necessary precautions for the safety of Service Provider's personnel, and shall comply with all applicable safety laws and codes to prevent accidents or injuries. Service Provider shall comply with all applicable HSO laws, rules, orders and regulations during the execution and performance of the Services. Service Provider shall immediately remove its personnel who violate safety provisions and replace them without delay.
- 6.7 The Service Provider shall obtain all applicable permits and consents for the purposes of performing the Services.
- 6.8 The Service Provider shall make arrangements to engage all staff, whether local or otherwise, required for the Services and to arrange for their salaries, transportation, accommodation and meals, as necessary.
- 6.9 The Service Provider shall pay all applicable taxes and duties to the complete exclusion of the Company.
- 6.10 Service Provider shall complete the Services within the stipulated period. If the Service Provider fails to complete the Services in accordance with this Purchase Order, the

Company may, at the expense of the Service Provider, undertake the same Services and the Service Provider shall forthwith pay the amount of all expenses so incurred and shall have no claim in this respect.

ARTICLE 7 OBLIGATIONS OF THE COMPANY

- 7.1 The Company shall provide to the Service Provider all data and/or documents that may be necessary for the performance of Services under this Purchase Order.
- 7.2 The Company shall designate an employee to act as its representative on all matters pertaining to this Purchase Order and to fully cooperate with the Service Provider ("Company's Representative").
- 7.3 The Company shall take all necessary measures to make timely payments to the Service Provider as stipulated herein.

ARTICLE 8 RELATIONSHIP OF THE PARTIES

- 8.1 The Service Provider is an independent contractor retained for the purpose of the Services under this Purchase Order. Nothing in this Purchase Order shall be construed as creating an employer-employee or principal-agent relationship, or a joint venture or partnership between the Parties. The Service Provider shall be solely responsible for all contractual, legal and statutory obligations on its own part and on the part of its employees and any one claiming under it.
- 8.2 The Service Provider represents and warrants to the Company that its employees, agents or representatives do not have any existing affiliations or employment with the Company nor do they have any financial interest in the Company's profits and losses, and vice versa. The Service Provider also represents and warrants that it shall not allow any employee, agent or representative of the Company to have a financial interest in this Purchase Order and that it shall promptly inform the Company should any such relationship exist between the employees, representative or agents of the Parties. In the event of a breach of this provision or if any representation of the Service Provider is found to be false, the Company shall have the right to terminate the Purchase Order without prior notice to the Service Provider without prejudice to any other remedies at law and equity available to the Company.

ARTICLE 9 LIABILITIES AND INDEMNITIES

- 9.1 In the event that the Service Provider fails to complete the Services in accordance with the terms of this Purchase Order or the Company's instructions, and/or within the time specified in this Purchase Order, the Company may, at its sole discretion and without prejudice to any other remedies available to it, deduct from the Service Provider's guarantees, bills or any other payments due to it, any losses suffered or incurred by the Company as a result of such failure as well as liquidated damages at the rate of half a percentage point (0.5%) per week of the price of undelivered Services of Purchase Order, either up to a maximum of ten percent (10%) of the Purchase Order Price or until completion of the Services by the Service Provider, whichever occurs first. However if the delay continues for more than twenty (20) consecutive weeks, the Company reserves the right to terminate the Purchase Order at the Service Provider's risk and cost.
- 9.2 If the Service Provider fails to remedy a breach of any of its obligations under the Purchase Order within the time granted by the Company, it shall be liable to the Company for all costs that the Company may incur on account of making alternative arrangements for completing or rectifying the Services. The Company need not obtain the Service Provider's prior written permission for making alternative arrangements if the Service Provider fails to remedy a defect or complete Services on time despite receiving notice thereof from the Company.
- 9.3 The payment of liquidated damages shall not relieve the Service Provider from performing and fulfilling all its obligations under the Purchase Order and nor shall the rights and entitlements of the Company be affected or reduced by such payments in any manner.
- 9.4 The Service Provider shall at all times defend, indemnify and hold the Company harmless from and against any and all loss, damage, claim, suit, liability, judgment and expense (including attorney's fees and other costs of litigation) incurred, suffered, sustained or required to be paid directly or indirectly by, or sought to be imposed upon the Company for personal injury or death to persons or damage to property, or with respect to any Services, or with respect to any claim or legal action instituted by a third party in any context pertaining to the scope of Services under this Purchase Order.
- 9.5 Neither Party shall, without the other Party's prior written approval, incur any liability on behalf of such other Party nor make any representations other than those defined in this Purchase Order, nor give any warranty on behalf on the other Party.

ARTICLE 10 WAIVER

- 10.1 No Waiver of any right(s) by a Party under this Purchase Order, whether express or implied, shall be effective unless the same is reduced to writing and signed by the Parties hereto.
- 10.2 No waiver by either Party of any default by the other Party in complying with the provisions of this Purchase Order shall operate or be construed as a waiver of any other or further default, whether of a like or a different nature. A waiver shall not be effective unless in writing duly executed by an authorized representative of the Party granting the waiver.
- 10.3 The failure of a Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Purchase Order or the time or other indulgence granted by one Party to the other shall not act as a waiver of such breach or acceptance of any variation or the relinquishment of any such right or any other right hereunder, which shall continue in full force and effect.

ARTICLE 11 MONTHLY PROGRESS REPORT

The Service Provider shall submit a monthly progress report to the Company which shall include the following information:

- (i) progress achieved during the preceding month;
- (ii) description of all Services carried out since the last report;
- (iii) description of Services planned for the next month sufficiently detailed to enable the Company to determine the programme of inspection and testing;
- (iv) summary of daily job record for the preceding month;
- (v) colour photographs to illustrate progress.

ARTICLE 12 FINAL COMPLETION CERTIFICATE (Where Applicable)

Upon completion of the Services in accordance with the terms and conditions of this Purchase Order to the Company's satisfaction, the Company shall issue a Final Completion Certificate to the Service Provider. Prior to the issuance of the said certificate, the Service Provider shall make the Services available for assessment and inspection by the Company's Representative whose report in the matter shall be binding and conclusive.

ARTICLE 13 FORCE MAJEURE

13.1. A 'Force Majeure Event' shall mean any event or circumstance, or combination of events or circumstances (including the effects thereof) that is beyond the reasonable control of a Party, and that, on or after the Effective Date, materially and adversely affects the performance by such affected Party of its obligations under or pursuant to this Purchase Order. Provided however, that such material and adverse effect could not have been foreseen, prevented, overcome or remedied in whole or in part by the affected Party through the exercise of diligence and reasonable care, it being understood and agreed that reasonable care includes acts and activities that are reasonable in light of the probability of the occurrence of such event, the probable effect of such event if it should occur, and the likely efficacy of the protective measures. "Force Majeure Events" hereunder shall include without limitation each of the following events, including the effects thereof, but only to the extent that each satisfies the above requirements:

- i. acts of a public enemy, terrorist act or strike, war or threat of war (declared or undeclared) occurring in or involving Pakistan, revolution, riot, rebellion, insurrection, state of siege, declaration of a state of emergency (or any of the events or circumstances that will or may result in the declaration of a state of emergency), civil commotion, act of terrorism or sabotage (in each case occurring in or involving Pakistan), embargo or blockade, declaration of public calamity (or any of the events or circumstances that will or may result in the declaration of public calamity);
- ii. any change in laws of Pakistan that prevents the affected Party from performing its obligations under this Purchase Order;
- iii. epidemics, fire, earthquake, tsunami, cyclone, hurricane, tempest, drought, a flood or other unusual or extreme adverse weather or environmental condition of the elements;
- iv. delays in the installation of equipment by the affected Party caused by Force Majeure or acts of God that may affect performance of the affected Party under this Purchase Order.

13.2. If either Party because of a Force Majeure Event is rendered wholly or partly unable to perform its obligations under this Purchase Order, such Party shall be excused from whatever performance is affected by the Force Majeure Event to the extent so affected provided that:

- i- The affected Party upon becoming aware of the event of Force Majeure shall within forty eight (48) hours of the occurrence of the event, or as soon thereafter as practicable, give the other Party written notice describing the particulars of the occurrence.
- ii- The suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure Event.
- iii- The affected Party shall use its best efforts to remedy its inability to perform. The settlement of strikes, walkouts, lockouts or other labour disputes shall be at the sole discretion of the affected Party.
- iv- When the Party affected by the Force Majeure is able to resume performance of its obligations under this Purchase Order it shall give the other Party written notice to that effect.
- v- If any Force Majeure Event delays a Party's performance for a time period greater than one (1) month, the other Party may terminate this Purchase Order without further obligations by giving a written notice to the affected Party.

ARTICLE 14 INTELLECTUAL PROPERTY

The Service Provider warrants that its performance of Service does not infringe any patent design, trademark, copyright or other proprietary or protected right (whether registered or unregistered) and that it shall fully indemnify the Company against any actions, claims, demands, costs, charges, expenses and damages arising from or incurred by reason of any such infringement or alleged infringement resulting from its performance of Services or any action associated with them.

ARTICLE 15 CONFIDENTIALITY

15.1 The Parties, their attorneys, officers, directors, contractors, subcontractors, consultants and agents, and each of their respective permitted successors and assigns shall hold in confidence all documents and other information whether technical, commercial or financial, supplied to them by or on behalf of the other Party and shall not, save as required by law or appropriate regulatory authorities, publish or otherwise disclose or use the same except as set out under this Purchase Order.

15.2 If this Purchase Order is terminated for any cause, each Party undertakes to deliver to the other Party or to its designated representatives all the confidential information and to destroy all related notes, report analysis, compilations studies and other documents, statements or any other information in any form whatsoever as well as any other materials and copies thereof. Any confidential information provided, disclosed or revealed by Parties, their officers, employees, agents or representatives, prior to the date of this Purchase Order, for the purposes of this Purchase Order shall be subject to all the confidentiality provisions contained herein. The Service Provider shall maintain the confidentiality of all information conveyed to it by the Company, in whatever form, for the purpose of the Services during the term of this Purchase Order and for five (5) years thereafter.

ARTICLE 16 DISPUTE RESOLUTION

16.1 A joint dispute resolution committee comprising of one (01) senior officer of each Party shall be formulated for the purpose of amicably settling routine disputes that may arise in good faith.

16.2 In case the dispute cannot be settled amicably or satisfactorily, it shall be referred for arbitration under Arbitration Act, 1940 and the venue for such arbitration shall be Karachi. Arbitration shall be a prerequisite to any other action at law. Each Party shall bear their own costs.

16.3 Reference to the Company for dispute resolution shall be made in writing by the Service Provider specifying distinctly and clearly all such questions and disputes no later than three (3) weeks after the occurrence of such questions and disputes and absolves the Company of any liability.

16.4 In case the dispute cannot be settled amicably or satisfactorily, it shall be referred for arbitration under Arbitration Act, 1940 and the venue for such arbitration shall be Karachi. Arbitration shall be a prerequisite to any other action at law. Each Party shall bear their own costs.

ARTICLE 17 TERMINATION

17.1 This Purchase Order may be terminated by the Company if the Service Provider is in breach of any terms of this Purchase Order, by giving fifteen (15) days prior notice in writing to the Service Provider.

17.2 The Company may terminate this Purchase Order without prior notice to the Service Provider if the Service Provider:

- i. assigns this Purchase Order without the prior written approval of the Company;
- ii. becomes insolvent or commences any insolvency proceedings or makes any composition with its creditors or attempts to do so;
- iii. promises or offers a bribe, gratuity, gift, loan, reward or advantage, whether pecuniary or otherwise, either directly or indirectly, to any person in the employment of Company in any manner.

The Service Provider shall not be entitled to recover or be paid for any Services performed up to the time of termination of the Purchase Order for the abovementioned reasons.

ARTICLE 18 NOTICES

18.1 Any notice required to be given to either Party in pursuance of this Purchase Order shall be sent by courier service, registered mail acknowledgement due, facsimile or electronic mail, and shall be deemed to be duly given if delivered to the addresses stated below or at such changed addresses as the Parties may have communicated to each other in writing:

Company

Attention:
State Life Building No. 11
Abdullah Haroon Road, Saddar,
Karachi 74400, Pakistan.
Phone:
Facsimile:

Service Provider:

Attention:
Address:
Phone:
Facsimile:

18.2 A notice sent through courier shall be deemed delivered when received by the Party to whom it is addressed. Notice transmitted through facsimile shall be deemed delivered on the date specified on the transmission confirmation receipt. Notice sent by courier or registered mail shall be deemed delivered on the date indicated on the delivery receipt. Similarly, electronic mail notices shall be deemed effective as of the date of confirmed transmission. Notices that are not delivered on a business day shall be effective as of the business day immediately after the delivery date.

ARTICLE 19 ENTIRE UNDERSTANDING

This Purchase Order contains the entire understanding between the Parties with respect to the subject matter of this Purchase Order and supersedes all prior negotiation, contracts, representations and understanding between the Parties, whether expressed in writing or otherwise. It is expressly agreed between the Parties that the Service Provider shall not be entitled to any other compensation other than what has been mentioned in this Purchase Order.

ARTICLE 20 ASSIGNMENT

The Service Provider shall not assign or transfer this Purchase Order or any part hereof, or engage any other independent consultant or sub-contractor to perform any part of the Services without the prior written approval of the Company.

ARTICLE 21 GOVERNING LAWS

This Purchase Order shall be governed and construed in accordance with the laws of the Islamic Republic of Pakistan and the courts of Karachi shall have exclusive jurisdiction. All provisions of the Purchase Order are without prejudice to the Company's rights and remedies pursuant to the law of contract, common law, and statute or otherwise.

ARTICLE 22 SURVIVAL

The cancellation, expiry or earlier termination of this Purchase Order shall not relieve the Parties of obligation that by their nature should survive such cancellation, expiration or termination, including, without limitation, warranties, remedies, promises confidentiality.

ARTICLE 23 SEVERABILITY

23.1 Each provision contained in this Purchase Order shall be deemed to be distinct and severable so that if one or more of the provisions contained herein are declared or become illegal, void or unenforceable under the applicable law, the remaining rights and obligations shall (unless the effect is to frustrate the fundamental basis of this Purchase Order) continue in force and effect.

23.2 Where a provision, right or obligation is or has been declared or becomes illegal, void or unenforceable and the effect thereof is not to frustrate the fundamental basis of the Purchase Order, the Parties agree to meet as soon as possible with a view to agree on alternative arrangements, if possible, which shall most closely conform to the provision, right or obligation that has become or has been declared illegal, void or unenforceable.