



PACADAR KUWAIT

Standard Terms of purchase

PACADAR KUWAIT ("the Company")

We, the Company, only purchase goods, rights and services ("Deliverables") on these Terms and Conditions ("the Terms"). If you accept our order it will be on these Terms and no other standard terms. If you act in a manner calculated to appear as an acceptance of our order, *that will act as an acceptance* and you will be bound by our Terms, regardless of any inconsistency in your own small print. If you wish to reject our order and make a counter-offer you MUST therefore reply to our order in words explicitly and clearly indicating *rejection*. Equally, if you make a counter-offer which is not clearly labelled as such (or as a rejection of our order) no subsequent behaviour of ours, in accepting Performance, can be taken to imply any acceptance by us of that counter-offer. These Terms can only be changed, or other terms agreed, in written correspondence signed by a director or the Head of Procurement of the Company. These Terms are important and should be studied carefully.

1. THE CONTRACT

1.1 Our contract with you, our Supplier ("Supplier"), will comprise our express written order, these Terms, anything else we expressly agree under section 1.2, any content imposed by law, but nothing else.

1.2 If you want us to accept a term of yours, or accept a particular responsibility, or if you wish to rely on a representation we have made, you must therefore obtain our express agreement to that. *That means express written agreement, signed by a director or other senior officer of the Company and referring expressly to these Terms.* We will deal with you in reliance on these Terms, so be aware that our acceptance of contractual performance by you does *not* imply acceptance of any terms that are different to our Terms. You must indemnify us against any consequence of your seeking to rely on any contractual terms, or any statement, understanding or representation which is not contractually agreed as set out in this section 1. For purposes of this section, written agreement can be communicated by pre-paid post, fax or e-mail, save that we never accept small print terms communicated by fax, on grounds of uncertain legibility.

1.3 If any of the terms of the contract conflict with or contradict each other those terms will over-ride each other in the following order of priority: (1) any express written agreement from us; (2) our order; (3) these Terms.

1.4 We are not contractually bound until we place a formal order and then only to the extent of the issues specifically covered by that order or in writing signed by a director. We will only be contractually bound to you when you accept our order with a formal order acknowledgement in writing or (if later) when we accept Performance by you (see below).

2. INSTRUCTION

This purchase order ('Purchase Order') is subject to this Purchase Order Terms and its attachments,

And by accepting the Purchase Order, the Supplier (Supplier) agrees to, and accepts the aforementioned Terms, to the exclusion of all others.

For the purpose of this Purchase Order General Terms the 'Company' or 'the Company' shall mean Pacadar Kuwait and the 'Supplier' shall mean the successful bidder to whom the Purchase Order has been awarded

3. ACKNOWLEDGEMENT

The Supplier should sign and return the acknowledgement copy of the Purchase Order as acceptance thereof. Non return of this copy may cause the Purchase Order to be cancelled without liability to the Company.

4. ASSIGNMENT

The Supplier shall not assign the Purchase Order or any part thereof without the prior written consent of the Company nor shall the Supplier without the prior written consent of the Company assign any benefit or interest in or under the Purchase Order, except where an official assignment of any monies due or to become due under this Purchase Order is made in favour of the Supplier's bankers. In case of assignment of the Purchase Order the Supplier shall be jointly responsible with the assignee for the performance of the Purchase Order.

5. PRICE

The price shown on the Purchase Order cannot be varied unless by duly executed supplement to the Purchase Order.

6. PAYMENT TERMS

6.1 The Supplier shall be entitled to invoice the Client at the times and in the manner specified in the Agreement.

6.2 Provided that the invoice was one which under the Agreement the Supplier was entitled to submit the Client shall pay the Supplier within the period of days specified in the Agreement from the date of receipt of the invoice subject to any right of deduction which the Client may have by way of setoff or abatement. If the Client does make any such deduction then he shall notify the Supplier accordingly in writing with reasons.

6.3 If the Client shall fail to make any payment to the Supplier to which the Supplier is entitled under this Clause after deduction of any amount which the Client is entitled to deduct, then the Client shall pay to the Supplier, where so demanded by the Supplier, in addition to the amount not properly paid simple interest for the period in days until such payment is made. The rate of interest shall be 3% per annum over the Base Rate of the Bank of England ruling at the date when the payment became overdue

6.4 In case that an advance payment is agreed between the parties, the supplier shall raise an advance bank guarantee upon first request, for the same amount against this advance payment, and always before this advance payment is done.

7. PURCHASE ORDER NUMBER

The Purchase Order number must appear on all invoices, airway bill, bill of lading packages, cases, packing list and correspondence.

8. MODIFICATION

No modification whatsoever must be made to the design or details as indicated or specified on the Company's drawings and / or specifications without Company's prior approval in writing.

9. PACKING

All goods must be carefully and properly prepared, secured and packed and protected by transit-worthy professional packing by the Supplier as prescribed by international conventions to ensure adequate protection until delivery at the destination specified in the Purchase Order. In the case of any damage which is attributable to defective and / or insufficient packing, the Supplier will be held fully responsible for any loss, damage, cost and expenses incurred or suffered by the Company. Hazardous goods must not be packed with those of non-hazardous nature.

Suppliers to supply ordered material with clearly visible tag consisting of – item number, ordered quantity, unit and short description. Materials that are supplied in huge quantities (especially, if material is shipped through 20/40 feet containers) shall be palletized.

For shelf life material the 'date of Manufacture' and 'date of expiry' should be clearly indicated on the material.

10. SHIPPING

The goods must be shipped as per the written instructions contained in the Purchase Order. Any extra handling charges, not authorized in writing will not be reimbursed by the Company.

Shipment shall be arranged as one lot and Partial shipment is not recommended. However, if partial shipment is mandated due to critical circumstances, prior approval of the Company shall be obtained before proceeding with shipment.

11. DOCUMENTATION

A notice of shipment shall be sent directly to the Company at procurement.kw@pacadar.com at the time goods leave the Supplier's premises or shipping port. This notice should state the Purchase Order number, kind, amount of material and route by which shipment is being made. All goods shall be suitably marked and shipped in accordance with instruction furnished in the Purchase Order and the requirements of the carrier. Documents should be submitted in accordance with the shipping instructions stipulated in the Purchase Order.

Any demurrage sustained due a mistake by the Supplier in documents, including shipping documents, as may be mandated by customs authorities (either that of the Country of origin or of Kuwait) will be back-charged to the Supplier's account.

12. ORIGIN OF GOODS

a) A declaration is required on every commercial invoice stating the country of origin.

Full details of shipping instructions are enclosed herewith.

b) The certificate of origin and invoice should show the name of manufacturer and the country of origin of goods.

13. DELIVERY

Delivery of the goods by the Supplier shall be effected at the place or places and at the time or times and in the manner specified in the Purchase Order. In the event of Supplier's failure to deliver, as and when specified, the Company reserves the right to cancel the Purchase Order or any part thereof, without prejudice to Supplier's other obligations and the Supplier agrees that the Company may return part or all of any shipment made and may charge the Supplier with any loss or expense sustained as a result of such failure to deliver.

14. SUPPLIER'S DEFAULT

If the Supplier shall fail or neglect to execute the Purchase Order with all due diligence and expeditiously or shall refuse or neglect to comply with the instructions given to the Supplier in writing by the Company in connection with the Purchase Order or shall contravene any of the provisions or conditions of the Purchase Order, the Company may give notice in writing to the Supplier requesting him to make good such failure, neglect, refusal or contravention. In the event of the Supplier failing to comply with such request within such time, as may in the opinion of the Company be reasonably necessary, having regard to all circumstances, the Company shall be at liberty forthwith to execute such part of the Purchase Order as the Supplier may have failed, neglected or refused to execute or, if Company shall think fit, to take the Purchase Order totally or in part out of the Supplier's hands and place a further Purchase Order for the goods with another firm or company. Any balance of the purchase price which may be otherwise due on Purchase Order of such part or this price, as necessary may be retained and applied to the payment of the cost of the said further purchase order. In event of the said balance or part thereof being insufficient to meet the cost of the said further purchase order, the Supplier shall pay any such

difference on demand.

Notwithstanding to any other rights in the Purchase Order, the Company maintain the right to cancel the Purchase Order for the following reasons through notice by registered mail or fax or courier without any need to judicial proceedings

- a) If the Supplier has abandoned / breached any conditions of the Purchase Order or practice an action (he or his representatives) that is considered as a fraudulent behavior.
- b) If the Supplier, Supplier's representatives or any of Supplier's employees bribes either in direct or indirect way any Company employee.
- c) If the Supplier has become bankrupt, or have a receiving order made against the Supplier, or have presented petition for bankruptcy.
- d) If the Supplier delays supplying the goods in such a way that it deems not to be able to execute the deliveries as in the Purchase Order.

As consequences of the cancellation of Purchase Order for the above reasons the Company may at its option shall

- a) En cash the Performance Bond without need to any judicial proceedings.
- b) Purchase the required good on the Supplier's account in a way deemed appropriate to the Company, without prejudice to any other rights available to the Company.

15. CANCELLATION

Without prejudice to any of the conditions herein contained, the Company may, for any reason whatsoever, by notice in writing to the Supplier and with immediate effect cancel the Purchase Order or any part thereof. In the event of a cancellation as aforesaid, the Supplier shall:

- a) Use its best endeavors to cancel orders and terminate contracts which the Supplier may have placed with others in connection with the execution of the Purchase Order, and
- b) Receive payment for all materials used and work executed by him pertinent to the Purchase Order but unpaid for at the time of such cancellation. The Supplier shall, upon receiving notice of cancellation as aforesaid, notify the Company within a reasonable time of the amounts unpaid as aforementioned. These shall be agreed in wiring between the Company and the Supplier and upon payment of the amount agreed as aforesaid, all materials and work to which these amount relate shall immediately become the property of the Company.

16. MATERIALS

- a) The goods should be of the best quality and in all respects in strict accordance with Company's specification.
- b) Material / equipment covered by the Purchase Order should be supplied / manufactured in accordance with the Company original Tender Specification and subsequent clarifications / deletions / additions accepted after submission of original offer.
- c) This Purchase Order is placed with the Supplier for the supply of subject goods and is conditional that it should be of your manufacturer or of the company specified in your Proforma Invoice or as called for in our inquiry.

17. SUB-ORDERS

No sub-order for assembly or manufacturer of the goods, other than for the supply of materials, or minor details of any part of the goods, shall be placed by the Supplier without the written permission of the Company. Three copies of all sub-contracts permitted, as aforesaid, are to be submitted to the Company's office within seven days.

18. INSPECTION

18.1 THIRD PARTY INSPECTION

18.1.1. The Company may appoint TPI agency thru the existing long term contract and fee for third party inspection service shall be paid by the Company. However, the Supplier shall bear any additional third party inspection charges due to Supplier's failure or non-compliance of material with the Purchase Order requirements.

18.1.2. The location (place with address) for inspection activities as per the scope of TPI shall be specified by the Supplier to the Company for informing TPI agency.

18.1.3. Also, if the material is not ready for Inspection, despite issuance of material readiness written notification by the Supplier, the fee for TPI agency for any additional inspection visit shall be borne by the Supplier.

18.1.4. Material shall not be shipped until the Company approves the third party inspection report along with material test certificates. The Supplier shall be liable to replace the complete material if any shipment is made without the Company advice for shipment / approval of TPI report.

18.1.5. For any deviation indicated in the Inspection reports / submittals by the TPI Agency, the Supplier shall be responsible to carry out necessary corrective actions/modifications/replacement and offer to the TPI Agency immediately for re- inspection of material at his cost.

18.1.6. Acceptance of material by the TPI Agency does not relieve the Supplier from the responsibility to replace the delivered material if not found in full compliance to the Purchase Order specification upon inspection at the Company warehouse. In addition to any of the stipulated inspection requirements, the supplied material shall be inspected by the Company at Company's warehouse/stores to ensure its conformity to applicable specifications.

18.1.7 If inspection by third party inspection (TPI) agency is not specified in the Tender, but, mill test certificates (MTC) is specified, then Material shall not be shipped until the Company approves the mill test certificates. The Supplier shall be liable to replace the complete material if any shipment is made without the Company advice for shipment / approval of mill test certificates (MTC).

The Heat Numbers stated on the MTCs approved by the Company must be reflected / marked up on materials to avoid rejection after order delivery.

18.2 WAREHOUSE INSPECTION

18.2.1 Supplier shall comply with the technical specifications, quantities and the supply schedule (Date, Venue) stated in the Purchase Order and all materials delivered pursuant to the Purchase Order shall be free from defects, deficiencies, failures and damage.

Upon inspection by the Company, if any materials are rejected due to any defects, deficiency, failure, damage or inconsistency with the required specifications, Supplier shall take back the materials immediately or, in any event, no later than one month from the date of notice.

In the event the Supplier fails to collect the rejected materials within the aforesaid period of one month, the Company shall treat the un-collected rejected materials as scrap and dispose without any liability or other obligation on the Company, and the Supplier expressly agrees not to claim any amount or compensation for such disposed materials. In addition, the company shall not make any payment for these rejected materials and shall deduct any amount paid to the Supplier prior to delivery from any monies due or becoming due to the Supplier under this Purchase Order or any other contract with the Company. The Company shall not be responsible for any damage, loss or shortage that may occur to those materials under its storage and the Supplier shall take back the stored materials on, as is basis.

18.2.2 In case of rejection of goods upon inspection, Company shall have the following alternative rights

i. Purchase the required goods in Supplier's account in a way deemed appropriate to the Company and demand from the Supplier the price differences and Liquidated Damages (10 % of the purchased goods) without necessity for any legal or other formality or recourse to judicial proceedings.

ii. Request the Supplier to supply the goods as per the required specification within specified time limit, without prejudice to apply the stipulated liquidated damages for delay.

19. PERFORMANCE BOND

If Performance Bond is stipulated in the Purchase Order then the Supplier must submit a Performance Bond in the value specified. This Bond shall be an unconditional and irrevocable bank guarantee issued by a bank licensed to carry out banking business in Kuwait, made payable to Pacadar Kuwait.

The Performance Bond shall be valid for the Purchase Order delivery period plus 90 days. The Company shall hold the Performance Bond during this period and will have the right to deduct any demurrages and /or any monies due or to become due under the Purchase Order from the performance Bond.

The Company will notify the Supplier to increase the Performance Bond Value in case of:

I. applying deduction for demurrages and/or any monies due or to become due.

II. increase the Purchase Order value due to increase in scope of work.

Supplier shall increase the value of the Performance Bond within (7) seven days from notification. If Supplier fails to increase the value of the Performance Bond then;

I. Company shall have the right to adjust the monies due or to become due under the subject Purchase Order or any other Purchase Order(s) or Contract(s) between the Company and the Supplier.

II. If there is no amount due under the subject Purchase Order and the Supplier fails to increase the value of the Performance Bond, then the Company has the full right to terminate the Purchase Order due to Supplier's default without need to any judicial measures and Company maintain the right to claim on Supplier for all consequent compensations in this regard.

The Company has the right to deduct all monies owed to it by the Supplier such as liquidated damages, compensation or any other amount(s) from the above Performance Bond submitted to the Company or from any monies due or to become due to the Supplier under this Purchase Order or any other Purchase Order(s) or Contract(s) with the Company, without the need to any notice or recourse to any judicial proceedings against the Supplier.

20. LIQUIDATED DAMAGES

The Supplier, should supply the items in accordance with Purchase Order conditions at the agreed upon location within the agreed upon period as from the issue date of the Purchase Order. For Delays in supply of the required quantities or part thereof the Company will have the right to impose Liquidated Damages of 0.5% of the value of unsupplied items for each week of delay or part thereof, but not exceeding 10% of total Purchase Order value unless otherwise provided for under the Purchase Order.

In case of non-delivery of material the Company has the right to take action as deemed necessary considering, but not limited to the following options :-

I. Purchase the required goods in the Supplier's account in a way deemed appropriate to the Company. The price differences and Liquidated damages (10 % of the purchased goods) shall be imposed on Supplier without necessity for any legal or other formality or recourse to judicial proceedings.

II. Terminate the Purchase Order and encash the Performance Bond without prejudice to any other rights of the Company under the Purchase Order.

21. PRODUCTION PROGRAMME

Where specified in the Purchase Order, the Supplier shall within 14 days from receipt thereof, send to the Company a general programme covering

- a) Drawing status
- b) Engineering Status
- c) Shop Program
- d) Sub-order position and delivery schedule.

22. LICENCES AND PERMITS

If the performance of this Purchase Order requires any Government or other permit, it shall be responsibility of the Supplier to ensure that such licenses or permits are obtained at the relevant time.

23. PATENT RIGHTS

The Supplier will indemnify and hold the Company harmless for any or all loss, cost, damages or expenses on account of any and all claims, suits or judgments

arising out of the use or sale of goods supplied in violation or alleged violation of rights under any patent, industrial design or application thereof.

24. INDEMNITY AND INSURANCE

a) The Supplier shall hold the Company free and harmless against all claims for default or injury to employee of the Supplier or loss or damage to property of the Supplier (including the goods until delivery thereof), the Supplier's employees and against all claims by third parties in respect of default or injury or damage to property arising out of the execution of the Purchase Order.

b) The Supplier shall take out and maintain Employer's liability insurance or workmen's compensation or similar insurance required by applicable laws covering Supplier's employees which also shall be extended to protect the Company against all claims for death or injury of the Supplier's employees.

c) All plant, equipment and other goods supplied by the Supplier under the Purchase Order shall be at Supplier's risk until delivered and accepted by the Company in accordance with the conditions of the Purchase Order.

25. CLAIMS

All cost / damages / expenses for which the Supplier is liable to the Company may be deducted from any monies due to the Supplier or may be reserved by action at law or otherwise from the Supplier.

26. PUBLICITY

No advertising, publicity matter or other literatures in relation to the goods on this Purchase Order are to be published or utilized by the Supplier except with prior written permission of the Company.

27. OWNERSHIP OF TENDER DOCUMENTS

The Supplier acknowledges that the Company is the author of all documents of tenders it issues and the copyright in all such documents vests with the Company. The Supplier shall not use, reproduce, transmit or store the tender documents in any form or by any means without the Company's prior written permission except where reasonable necessity exists for Purchase Order administration purposes.

28. TAXES

28.1 The Supplier shall comply with the provisions of Decree No. 3 of 1955 in regards to Kuwait income tax as amended by law No. 2 of 2008 and its executive bylaw issued by the Minister of Finance's Decision No. 29 of 2008 and its amendments.

28.2 An amount of 5% of the Subcontract price or the value of each due payment shall be withheld, and will not be released until proof of tax clearance is submitted.

28.3 In case the Supplier is a foreign company or a Kuwaiti company that is an agent of a foreign company, the final payment will not be released to the Supplier until proof of tax clearance is submitted according to Item No. (2) of the Ministers Council's Resolution No. (738/First/1/b, c) issued in its meeting No. 35-2008/2 held on 14/7/2008.

29. GOVERNING LAW AND DISPUTE RESOLUTION

Purchase Order is considered concluded in Kuwait and any dispute arising hereunder shall be construed in accordance and will be governed by laws of the State of Kuwait.

In the event any dispute or difference of any kind shall arise between Company and the Supplier as regard to the Purchase Order or as regard to any matter of whatsoever nature hereunder or in connection herewith, then such dispute or difference shall be referred to the competent courts in the State of Kuwait which shall have exclusive jurisdiction.

30. APPLICABILITY WITH STATE LAWS

30.1 The Supplier, insofar as applicable, shall comply with all relevant laws, rules and regulations of the State of Kuwait regarding any matter affecting the Purchase Order.

30.2 In the event air travel of Supplier's employees or air freight of goods is required or becomes necessary for the performance of the Supplier's obligations under the Purchase Order, the Supplier shall use Kuwait Airways Corporation (herein "KAC") or other airlines which have the right to transport passengers and goods according to the mutual agreement signed by State of Kuwait in accordance with the instructions specified in Ministerial Decree No. 21/1985 and revised in their meeting 18/1987 held on 13/4/1987.

30.3 Supplier shall purchase goods, materials or appliances from National products or products of National origin as dictated by the Ministry of Trade's decree number 6/87. In case such products are not available, priority shall be given to products from the Gulf Cooperation Council (GCC) countries provided that they fully comply in all aspects to the required specifications. Violation of this condition is considered as a violation of the Purchase Order, leading to the application of a penalty no less than 20% of the value of the purchases in violation in addition to any other proceedings specified in the Purchase Order and other relevant bye-Laws.

30.4 Foreign Suppliers or a Kuwaiti company that is an agent of a foreign Supplier, the Supplier is not permitted to set up any production unit to supply construction materials required for the Project. The Supplier is bound to purchase such materials from National Products or Products of National Origin, if available.

30.5 The Supplier shall comply with the Ministerial Decree Number 412 issued in Meeting Number 23/99 dated 13/6/99 regarding supporting local products and national contractors.

30.6 The Supplier shall implement the safety regulations listed in the "General Specifications for Kuwait Motorway/Expressway System" published in September 2012, the Guidelines for Road Signs in the State of Kuwait and their amendments, and the General Specifications for Buildings and Engineering Works (1990 edition), Published by Ministry of Public Works. In addition to that, the Supplier has to comply with the clauses of Special conditions for Works related to Public Utilities, Safety systems for individuals, Property, and public facilities and its associated appendices.

31. OVERSUPPLY

Supplier has to ensure that delivery of goods is as per quantities specified in the Purchase Order. In the event of delivery of excess quantity, the Company will accept the excess quantity without any compensation to the supplier.

32. ENVIRONMENT

32.1 Environmental Conditions

The Supplier shall be liable for any material adverse environmental impact or pollution or any material adverse health consequences which arise at Site after the Effective Date as a result of or which are directly or indirectly attributable to the wrongful acts or omissions of the Supplier.

If the Company shall be required by applicable Kuwaiti laws, rules, regulations and decrees to take remedial measures in respect of any wrongful act or omission of the Supplier, then the Company may instruct the Supplier to take such remedial measures as are so required, under the burden of the Supplier.

32.2 Compliance

(a) The Supplier shall take all reasonable steps and necessary measures to protect the Environment at the Site and to limit damages and nuisance to people and property resulting from pollution and other environmentally harmful results of the supply of the Purchase Order. The Supplier shall ensure that air emissions, surface and effluent discharges and the handling or disposal of any waste arising from the manufacture of the Purchase Order during the term of this Purchase Order shall be in accordance with applicable laws, rules, regulations and decrees.

(b) The Supplier shall ensure that itself, and shall use reasonable endeavours to procure that all of its Suppliers, suppliers, consultants, agents whatsoever, comply with the Specification and all applicable laws, rules, regulations and decrees concerning the Environment with respect to the supply of the Purchase Order.

(c) Without prejudice to the foregoing the Supplier shall supply the Purchase Order in a manner: i. which prevents unreasonable silting and erosion or pollution of or unauthorized discharges into any waterway, drain, watercourse and in a manner which will not have any adverse effect on the Project; and; ii. so as not to cause or knowingly permit contamination of any land, either on or off any part of the Site, by any deliberate or accidental disposal, including leakage or spillage of any effluent, pollutant, contaminant, flammable, corrosive, radioactive or otherwise hazardous substance and waste.

(d) In the event of the occurrence or suspected occurrence of an incident concerning the Environment caused by a failure on the part of the Supplier to comply with its obligations under this Purchase Order in connection with the supply of the Purchase Order which could give rise at any time to any environmental damage or damage to the Deliverables or the Site, the Supplier shall: i. immediately notify the Company of such incident and shall comply with any instruction of the Company relating to the incident; ii. take and complete promptly whatever action is required to prevent, mitigate or remedy any such environmental damage; and iii. Investigate the incident, and following such investigation, report to the Company the details of the incident and the results of such incident.

(e) Without prejudice to its obligations under other provisions of the Purchase Order, the Supplier shall ensure that the manufacture of the Deliverables do not in any way cause or result in occurrences of pollution.

33. FOREIGN PERSONNEL

The Supplier may recruit foreign staff and labourers as are required in order to supply of the Purchase Order, after agreement with the Relevant Authorities. The Supplier must ensure that all such staff and labour are provided with the required visas and work permits. Visa quota will be provided by the Contractor. Visa Processing and relevant payments will be provided by the Supplier. The Supplier shall be responsible for their return to the place where they were recruited or to their domicile of all persons whom the Supplier recruited and employed for the purpose of or in connection with the Purchase Order. The Supplier shall be responsible for such persons that are to be returned until they depart the Country. In the event of the death in the Country of any of these personnel or members of their families, the Supplier shall similarly be responsible for making the appropriate arrangements for their return or burial.

The Company has the right to suspend the outstanding payment of the Supplier, upon the completion of Purchase Order Works, until it submits a certificate or letter from the Ministry of Social Affairs and Labour confirming the suitable disposal or repatriation of the labour licensed for the Project.