

General Conditions for all Foreign Procurement Contracts

PART-1

NOTE: The following terms and conditions are applicable in all sort of Foreign Contract. However, the special conditions provided specifically with the contract will supersede the following applicable general conditions.

1. **Advance Payment:** To secure advance payment for delivery/shipment of goods/services, Supplier is requested to submit an invoice of an amount equal to the desired advance and an unconditional Bank Guarantee must be submitted by the SELLER to SUPARCO along with the acceptance of the contract. No any payments will be released until the Bank Guarantees will be counter verified from the issuance bank as well the copy of contract will be received duly accepted.
2. **Acceptance of Goods/Services:** SUPARCO shall accept goods/services if those qualify ATP (Acceptance Test Procedures/Parameters). Therefore all supplies must be made in accordance with the Description of Stores mentioned in the Order/Contract already placed. If goods are rejected, Supplier is required to collect those from the delivery site at his/her cost and risk. However, if payments have already been released to the Seller through any means & modes, the replacement is only allowed instead of collection/repair of the stores.
3. **Contract Price.** The total value of the order [(inclusive/exclusive of all charges like FOB, Packing, Handling, Documentation and allied charges, as per Annex-'A' of the Order/Contract placed.
4. **Target Date of Delivery/Shipment:** Target Delivery date mentioned in the PO and the subsequent Amendment/ Corrigendum should be strictly followed accordingly with true letter and spirit.
5. **Arbitration:** Any dispute arising in respect of the Order/Contract shall be settled in accordance with the normal practice of International Chamber of Commerce and Industry. In case of any arbitration, the arbitrators shall be appointed from Pakistan and arbitration proceedings shall be under the Law of the Islamic Republic of Pakistan. All the expenses shall be borne by the losing party.
6. **Insurance.** In case of an order is placed on Ex-Works/FOB/C&F basis, the consignment will be insured by Buyer with M/s. National Insurance Company Limited, NIC Building, Abbasi Shaheed Road, Off: Shahrah-e-Faisal, Karachi and an Insurance declaration will, therefore, be sent to the above Company prior to the dispatch of goods by the Seller. The declaration of shipment including a non-negotiable AWB/Bill of Lading and Invoice should be sent to the aforesaid Co; immediately after the shipment of the consignment. However, if an Order/Contract placed on CIF basis, the Seller will be responsible to insure the consignment comprehensively up to the Site of the Buyer and bear all concerned charges in this regard.

7. **Inspection of Stores:** The inspection of the ordered MACHINE/EQUIPMENT/STORES/TECHNOLOGY/SYSTEM/ACCESSORIES etc shall be carried out at SUPARCO premises or Pre Shipment Inspection will be done by SUPARCO Engrs at the OEM's Site if especially indicated in the Special Conditions of Contract.
8. **Rejection of Stores:** In case, the ordered MACHINE / EQUIPMENT / STORES / TECHNOLOGY / SYSTEM / ACCESSORIES etc on the inspection/test at the PURCHASERS' premises or at OEM's/Principal's Site is/are found used/old or not of good workmanship, or not in strict conformity to the specifications mentioned in our order/contract or could not qualify the criteria of Acceptance as per ATP or found defective during test and or during the Warranty Period, the SUPPLIERS/PRINCIPALS/OEM or their Local Agents shall be unconditionally bound to replace all such defective items free of cost. Return freight/insurance and other allied expenditures etc to be incurred on its Export/Re-Import shall be the responsibility of the supplier.
9. **Warranty.** The Seller will arrange provision of OEM's standard warranty/guarantee of the Stores. He shall warrant that the supplied Store will be free from any defects, weaknesses and shall conform to the ordered descriptions and specifications. The supplied Stores are subject to Warranty. The Buyer or his representative shall handle the Stores carefully and operate them strictly in accordance with the conditions laid down in the technical offer. If still the Buyer discovers any fault or defect(s) in the supplied Stores within Warranty period with effect from the Delivery Date/successful installation/commissioning/Acceptance of Stores (as indicated in Special Conditions of Contract/Order), he shall notify the occurrence of the fault to the Seller immediately, to enable him to take necessary rectification measures. The Seller shall rectify the defects and/or replace all Stores at their own expense within the shortest possible time, but not later than 30 days. The specimen of Warranty has been attached with the Contract and is placed on our website.
10. **Liquidated Damages:** If a Supplier delays in Shipment of goods/delivery of services beyond the stipulated targeted date and is unable to seek timely extension in the targeted dates through a written request, is unable to convince SUPARCO that the extension being sought in the target dates is due to reasons beyond the Supplier's control or the Seller/or their authorized local agent is liable to pay to SUPARCO, Liquidated Damages @ 2% per month or part thereof up to a maximum of 10% of the total contract value.
11. **Purchasing of the Goods/Services on Risk and Cost of Supplier:** If the Supplier is unable to ship the goods/deliver services despite levy of 10% LD, or expresses in writing, his inability or unwillingness to provide the goods/services, SUPARCO shall be at liberty to procure the goods and services from an alternative source, on the Supplier's risk and cost; the Supplier shall be bound to make payment to the new source.

- 12. Collection of Rejected Goods:** Supplier is required to collect the rejected goods within 20 working days from the date of issuance of rejection letter, from Transit Stores (delivery site) of SUPARCO on any working day after showing the authority letter. SUPARCO shall not be responsible for any damage or loss, nor shall SUPARCO be liable to return the goods to the Supplier if the latter fails to collect those within 60 days.
- 13. Replacement of Rejected Goods:** Rejected goods are required to be replaced within one month from the date of collection by Supplier. Failure to comply shall result in imposition of appropriate penalty on the Supplier by SUPARCO as well as the case of blacklisting will also be initiated accordingly.
- 14. Certificate of Condition of the Goods:** Supplier is required to furnish a certificate from the OEM/Proprietary Distributor/Proprietary Stockist that the goods are new and not re-conditioned or re-furnished. Also certify that the correct stores have been delivered/shipped strictly in accordance with our Purchase Order specifications. When machinery/equipment is supplied, Supplier is required to provide a warranty certificate from OEM as well as a certificate guaranteeing provision of spares for a minimum period of 10 years.
- 15. Confidentiality:** The Supplier shall not, either during the process of provisioning, or after the expiration of this contract, disclose any proprietary or confidential information without the prior written consent of SUPARCO.
- 16. Modifications/Amendments in the Order/Contract:** Modification/Amendment in the terms and conditions of the contract, including any modification in description of goods and services, their quantity or price and extension in delivery/shipment schedule etc, can only be made on the written request by Supplier and on the mutual agreement/signature of Supplier and SUPARCO. The signed CORRIGENDUM will automatically become part of the contract in continuation of "Special Conditions of the Contract".
- 17. DISPATCH OF CONSIGNMENT:** The Seller shall ensure to dispatch the consignment along with proper documents and strict standard packing/s, ensuring compliances of all legalities and safety measures. The Seller shall also ensure implementation on the following essential aspects while dispatching the consignments, as agreed under specified Special Condition:
- a. Trans-Shipment. Dispatch of one consignment through multiple carriers
 - b. Partial Shipment. Whole consignment is delivered in piecemeal.
- 18. Shipping Instructions:** Shipment is to be made on Pakistani flag carrier vessel/aircraft. In case of non-availability of Pakistani flag carrier, the shipment should be done with consent of the buyer. The Freight Charges

will be payable on actual as per Bill of Lading/AWB. Any penalty/demurrage charges levied on the Buyer by the Custom authorities etc during clearance of the Stores, due to wrong documentation or supplied quantity will be recovered from the Seller or their authorized local representative, if applicable.

19. Packing: Supplier shall ensure that goods are packed in suitable crates/cartons, with sufficient cushioning material to withstand handling during transit. Supplier shall bear any loss or damage caused due to poor/insufficient packing. Delivery crates, cartons or packages should be marked as under having a GREEN Band of 50 mm width painted below the marking:

- a. Contract No: FPO/XX/XXXX Div/XXXX/XX dated DD-MM-YY
- b. Consignee: General Manager (Procurement)
- c. Serial No of Package:
- d. Net Wt of package:
- e. Gross Wt of Package:
- f. Size of Package: L x W x H (mm³)

A list showing contents of each package should be securely placed inside the package. In case of any damage/broken seal found, the stores may not be cleared from the outer (Custom/Carrier) agencies and all sort of demurrages will be borne by the Seller.

20. Dispatch Advice. As soon as the consignment is delivered for dispatch, FAX/e mail information shall be sent to the Buyer by the Seller immediately, giving following details:

- a. Name of Carrier indicating AWB/Bill of Lading number and date.
- b. Name of city from where the consignment is being dispatched.
- c. Date of shipment.
- d. Expected date of arrival at Airport/seaport of Destination.
- e. Name of shipping agents at destination (if any).
- f. Total number of packages being dispatched with gross weight and volume of each package.

21. Dispatch of documents: In case of payment through Letter of Credit, following mentioned Negotiable documents must be presented to the bank immediately as soon as the shipment is affected with in the negotiation period. However, in case of advance payment/payment after shipment, following Non-negotiable documents are dispatched to the Buyer immediately followed by the dispatch advice:

- a. Five copies of duly signed invoice showing contract value of the items actually dispatched.
- b. Five copies of packing list.
- c. Original and two copies of duly signed AWB/Bill of Lading indicating actual freight paid.
- d. Copy of shipment declaration sent to N.I.C.L. However, if the Contract is placed on CIF basis, then Seller must ensure to send the copy of insurance details and other related documents for evidence that the consignment has been comprehensively insured prior making the shipment.
- e. Original Warranty/Guarantee/Mill Certificate (if applicable).

- f. Guarantee Certificate that correct goods as per order have been dispatched.

22. Terms of Payment: SUPARCO usually make payments to the Sellers by adopting following 03 modes/methods, however, this clause will be specifically been defined under the Special conditions of the Contract:

A. If contract allowed 100% payment against an Irrevocable Letter of Credit on submission of the correct/complete set of shipping documents and issuance of the Final Acceptance Certificate (by the Buyer) after receipt/acceptance of stores at our site, then the following information/documents are to be provided for the establishment of Letter of Credit.

- a. Name of Beneficiary.
- b. Complete Postal Address.
- c. Complete Bankers Name & Address inclusive of Contact Numbers.
- d. Complete Account Details.
- e. Performa Invoice as per the Contract Clauses.
- f. H.S Code/Number.

It is further added here that the bank charges will be borne as under:

- g. Buyer will bear the charges for establishment of Letter of Credit only.
 - h. Seller or his Principal will bear the charges incurred in relation to Letter of Credit outside Pakistan.
 - i. Seller/Buyer will bear the charges for any subsequent amendments/modification in Letter of Credit (from whom the request is initiated).
- B.** 100% payment to the beneficiary through Telegraphic Transfer, within 30 days of receipt/acceptance of stores at our site.
- C.** 100% payment in advance on receipt of INVOICE for the corresponding amount with complete bank details and an Un-conditional Bank Guarantee, issued by a First Class Bank of the beneficiary's country duly countersigned/issued by a Scheduled Bank of Pakistan, preferably by M/s. Habib Bank Limited, Nursery Branch, Karachi .

Note: *Schedule of Payment & Proper mode/method of Payments are specifically defined & incorporated under the Special Conditions of the Contract.*

23. Pre-Delivery Inspection: (If desired/identified under Special Conditions of the Contract), Supplier shall arrange a pre-delivery inspection of the goods by SUPARCO engineers at OEM site, before the shipment, for examining their quality, design, performance and specification.

24. **Installation and Commissioning:** (If desired/identified under Special Conditions of the Contract). Supplier shall be responsible for installation and commissioning within the stipulated/agreed timeframe. Goods shall only be declared "OK"/"Acceptable" after the complete and satisfactory installation, commissioning, test and operation, as applicable. SUPARCO shall provide all facilities and make all arrangements to ensure unhindered and smooth installation and commissioning process.
25. **Bank Guarantee:** If Special Conditions of the contract requires a Bank Guarantee, against any advance payment to the supplier, the supplier shall provide an Unconditional Bank Guarantee, issued by any Pakistani Scheduled Bank, equal to the amount of advance payment, and must be valid for at least three months after the due date of delivery/execution of the contract. SUPARCO shall confirm the authenticity/genuineness of the Bank Guarantee from the concerned bank/institution before making advance payment. If the supplier fails to deliver the goods as per contract, or causes extraordinary delay in the delivery of the stores, or does not abide by other terms and conditions of the contract, SUPARCO shall have the right to en-cash the bank guarantee after issuing a notice.
[The Bank Guarantee must be submitted as per specimen given on our website.]
26. **Delivery/Shipment Date:** It is the date by which the shipment of stores must be on board/affected from the port of the Seller/Beneficiary/OEM.
27. **Negotiation Date:** It is the date by which the Negotiable/ Non Negotiable documents to be presented by the beneficiary through banking channel (in case of payment through Letter of Credit) and to the Buyer (in case of payment through TT Remittance/Advance Payments)
28. **Law:** Law of the Islamic Republic of Pakistan shall be applicable to all contracts unless otherwise specified under the Special Conditions of the Contract.
29. **Cancellation of Contract:** If the Supplier causes abnormal delays in delivery, or if the delivered goods are of poor quality, or deviate from specifications, or does not shipped/delivered at all, SUPARCO can, after serving 02 notices to the Supplier, cancel or terminate the contract or PO. The Supplier will be informed accordingly when such action is taken; also, Bid Security shall be forfeited and all expenditures incurred on the establishment of Letter of credit and all other allied expenditures or if the advance payments have been made, the same will be recovered from the supplier/local agent.
30. **Performance Bond/Guarantee:** If SUPARCO suffers any losses or damages as a result of proven faults, errors or omissions in the design of the goods, the Supplier shall make good such losses or damages. For this purpose, the Supplier shall provide to SUPARCO, a Performance Bond/Guarantee issued by a scheduled bank, having a value of 10% of the

contract price and which will be valid for 12 months beyond the expected delivery date of goods (specimen is available at our website). Performance Bond/Guarantee shall be submitted just after satisfactory execution of the order and/or installation & commissioning of equipment or software (or specified else) and after obtaining the Final Acceptance Certificate form SUPARCO. The tenure of the Performance Bond could be extended if the goods are found faulty or required repair during warranty. The Buyer shall have the right to en-cash the performance bond/ guarantee after serving one notice.

31. **Acceptance of the Order:** Supplier shall acknowledge acceptance of Contract/Order within 10 days from the date of issue of FPO/Contract. If no intimation/communication is received from Supplier, SUPARCO shall consider the FPO/Contract to have been "ACCEPTED" with all the terms and conditions specified in the FPO/Contract. If the Supplier wishes to report a discrepancy or seek any clarification, he/she may do so within 10 working days. However, if Letter of Credit is to be established or any advance payment is required to be made and respective supplier/local agent has signed the Letter of credit documents or provided the bank guarantee, then SUPARCO shall consider that the terms & conditions of contract are acceptable to the Supplier/OEM/Local Agent.
32. **Deletion of the items:** If the Supplier, for any reason desires to delete one or more items from the contract, and if that deletion is acceptable to SUPARCO, the price of the item along with a penalty equal to 2% of the cost of the deleted item(s) and the freight/FOB charges shall be deducted/recovered from the payment of the Supplier.
33. **Warranty Performance Bond/Guarantee:** It is a security provided to the Buyer for the Stores to properly performance for entire period of Warranty. A scheduled bank of Pakistan shall issue an unconditional Warranty Performance Bond/Guarantee in favour of SUPARCO. Warranty Performance Bond/Guarantee shall remain valid for entire period of warranty with effect from shipment date/successful installation and commissioning/acceptance of stores (as specified in Special Conditions of Contract).
The Warranty Performance Bond/Guarantee shall be automatically extendable in case of delay in the delivery date of the stores or delay in the installation/commissioning due to Seller inability to supply the stores on schedule. The Buyer shall have the right to encash the Warranty Performance Bond/Guarantee in case the Seller fails to execute the contract.
34. **Notices:** Any notice, request, or consent made pursuant to this Contract shall be in writing and shall be deemed to have been made when delivered in person to an Authorized Representative of the Party or to whom the communication is to be addressed, or when sent by registered mail, telex, email or facsimile to such Party at the address of the Authorized Representative(s) [or specified under Special Conditions of the Contract]. A

Party may change its address for notice by giving such written information to the other Party.

35. **IMPORT/EXPORT Licenses:** The Seller shall obtain all necessary approval(s) or import/export license or clearance(s) relating to the export of Stores from all relevant Government/Semi-Government/Private Agencies, Department or Authority, and other concerned organization to be able to fulfill its obligations under this Contract. In case such approval or export license or clearance is not issued by the relevant authority the failure of the Seller to fulfill any of its obligations under the Contract shall not be considered to be a breach of Contract or default provided that the Seller has (a) inserted this clause in his quotation; (b) taken all reasonable actions and exercised due care to carry out the terms and conditions of the Contract; (c) informed the other Party in writing not later than 30 days following the occurrence of such an event.
36. **Post Installation Technical Support:** The Seller shall provide, post installation technical support to the SUPARCO in proper operation and maintenance of the Stores/Products including assured supply of all needed spares and to clarify operational problems (if any) arising during use of the products for a period of 5 years. The Seller shall provide their best assistance in this regard according to the requirement of the Buyer.
37. **EXTENSION OF TIME FOR COMPLETION:** If due to any reason, extension in the Target Delivery/Shipment Date is unavoidable or it is required due to enhancement of the Scope of Work or duration of production, the Seller shall inform the Buyer in writing or make a request for the extension giving brief account of the circumstances forcing him to ask for the extension and indicating the probable effects on the Contract. If the request of the Seller reasonable, the Buyer shall extend the time limit for delivery /shipment of the Stores accordingly. Moreover, if granted, the increase in the time limit of provisioning of Stores shall not be with any penalty.
38. **FORCE MAJEURE:** It is an event which is beyond the reasonable control of a party that makes his performance impossible or impractical under the most adverse circumstances, such as but not limited to war, riots, civil disorder, earthquake, fire, explosion, storm, flood (or other unfavorable weather conditions), strikes, lockouts or other industrial actions, confiscation or any other action by government agencies. Once Force Majeure is established, failure of a Party to fulfill any of its obligations under this Contract shall not be considered to be a breach of Contract or default provided that the Party affected by such an event; (a) has taken all reasonable precautions, due care and reasonable alternative measures in order to carry out the terms and conditions of this Contract; and (b) has informed the other Party in writing not later than 15 days following the occurrence of such an event. The time for completion will be extended for a time period equivalent to the period during which such Party was unable to perform such action as a result of Force Majeure. Force Majeure shall not include:
- a. Any event which is caused by the negligence or intentional action of a Party or his agents or employees.

- b. Any event which a diligent Party could reasonably have been expected to both (i) take into account at the time of the conclusion of this Contract; and (ii) avoid or overcome in the carrying out of its obligations.
- c. Insufficiency of funds or failure to make any payment required hereunder.

39. Release of Warranty Performance Bond: The Warranty Performance Bond will only be released after satisfactory execution/completion of entire Warranty Period and issuance of Completion of Warranty Certificate by the Buyer (if specified under Special Conditions of Contract).

40. Obligation for Payments. In consideration of the provision of Stores delivered by the Seller, the Buyer shall make to the Seller such payments and in such manner as has already been provided in Payment Terms/schedule and referred to in Special Conditions of Contract.

41. Stores. The commodity, the Buyer desires to procure from/through Seller, which possesses needed configuration, design, drawing, schematics, etc. Besides provision, the Seller is required to install and commission the Stores at site; and to impart training to the Buyer's nominated Personnel on the above mentioned facet at a pre-designated site, as described in Special Conditions of Contract.

42. Release of Earnest Money/Bid Bond: The Earnest Money/Bid Bond amount shall be returned to the Seller only after successful execution of Contract in all respects. In case of default against any Term/Condition of the Contract is established, this amount shall be forfeited in favour of the Buyer and the Seller shall not have any right to claim for its refund, directly/indirectly or through any Court of Law.

43. Taxes & Duties:

- a. The BUYER shall pay all taxes, duties custom dues etc and other taxes imposed by the authorities in the BUYER's country in respect of clearance of the consignment.
- b. The SELLER shall pay all taxes, duties and other allied expenditures/ payments, which may be applicable in the in the SELLER's country.
- c. The SELLER shall pay all fees, commissions, charges, expenditures and other charges due to the bank in the SELLER's country.
- d. The BUYER shall pay all fees, commissions, and other charges due to the bank in the BUYER's country.

44. Expiration/Completion of Contract: The Contract shall be considered as "Completed/Expired" when Warranty Period Expires and Buyer issues

Completion of Warranty Certificate to the Seller (if applicable or otherwise). At this time the Warranty Performance Bond will be released by the Buyer.

45. **Schedule for Payment:** The payment will be released to the Seller in accordance to the schedule as specified under Special Conditions of Contract.