



STANDARD PROJECT TERMS AND CONDITIONS (VER.1 11-2-13)



These terms and conditions ("the Standard Project Terms and Conditions") shall apply to the procurement of all goods, equipment, material and associated services, and the execution of projects in the Kingdom of Bahrain ("Bahrain") by a Supplier for ALBA ("Work"), except as may be qualified or specifically amended or excluded by any Special Terms in a Purchase Order ("PO") and is effective as of 1 December 2012 and supersedes all other standard terms and conditions.

1. The Parties

In these Standard Project Terms and Conditions and any PO:

"ALBA" shall mean Aluminium Bahrain B.S.C., a public company established and existing under the Laws of the Kingdom of Bahrain under registration number 999, with postal address P.O. Box 570, Manama, Kingdom of Bahrain. The term "ALBA" shall include its divisions and successors and assigns; and "Supplier" means the entity or party with whom ALBA places a Purchase Order, and includes its successors, permitted sub-contractor(s) and assigns.

2. The Purchase Order

- 2.1 All agreements for the performance of Work by a Supplier shall be entered into and confirmed by ALBA by means of the issuance of an official written PO which will be sent to Supplier, whereby these Standard Project Terms and Conditions shall be incorporated by reference in the PO.
- 2.2 ALBA may send the PO by registered mail or fax to the contact address nominated by Supplier, receipt and acceptance thereof by Supplier shall be deemed to be three (3) days after the date of the PO whether Supplier has acknowledged receipt or not; the date of issuance of the PO shall accordingly be the effective date of the Purchase Agreement ("the Effective Date").
- 2.3 The PO and any attachments thereto together with these Standard Project Terms and Conditions shall constitute the entire agreement between ALBA and Supplier (jointly referred to as "the Parties") in respect of the Work procured by ALBA from Supplier (collectively referred to as the "Purchase Agreement"). No other conditions, warranties, guarantees, representations or verbal or written exchanges with the Supplier shall be of any force or effect unless ALBA amends it in writing. Without prejudice to the generality of the foregoing, ALBA will not be bound by any standard or printed terms presented by Supplier; in any quotation or other document; unless expressly incorporated in the PO.
- 2.4 When used in a PO, any Incoterms mode/term shall have the meaning set out in the ICC Incoterms 2010 and the meaning of and responsibilities/obligations under the particular term shall be deemed to be incorporated into the Purchase Agreement by such reference.
- 2.5 In the event of any conflicting provisions in any applicable document the Special Terms of the PO and then the terms hereof shall always prevail and take precedence.

3. Scope of Work

- 3.1 Supplier shall perform, deliver or provide, and complete Work of the nature, the quantity and quality as set out in the PO in conformance with these Standard Project Terms and Conditions.
- 3.2 Supplier may not change the Specification(s), material or manufacturing processes of any part of the Work without the prior written consent of ALBA.
- 3.3 Prior to shipment of any material or the completion of any services that forms part of the Work, ALBA may request changes in respect to the Work; including but not limited to, changes in the mode of delivery, increase or decrease in the quantity; in which case such changes and the agreed cost and time changes will be recorded in a written amendment of the PO (a "Change Order").

4. Price and Payment terms

- 4.1 The price basis and currency payable in respect of the delivery/completion of the Work shall be as set out in the PO ("the Price").

- 4.2 Subject to the provisions of sub-Clause 4.5 below (Tax), and unless otherwise stated, the Price set out in the PO will be an all-inclusive and fixed lump sum or a fixed unit price or costs-plus for the Work, delivered/completed to ALBA as per the agreed terms. The Price cannot be varied without the express prior consent of ALBA given by means of a written Change Order.
- 4.3 Unless otherwise stated in a PO, payment for the Work delivered to and accepted by ALBA shall be made within forty five (45) days after receipt by ALBA of the Suppliers' invoice, if duly supported by documentary proof of the delivery and the acceptance of the Work to ALBA as specified in the PO.
- 4.4 In the event that ALBA agrees in the PO to pay a portion of the Price in advance, such payments shall be made against an unconditional and irrevocable guarantee by a Bahraini bank or financial institution acceptable to ALBA, in the format approved by ALBA.
- 4.5 In the event and to the extent that ALBA may be held responsible for any amount of taxes due by the Supplier inside Bahrain; ALBA shall be entitled to deduct this from any amount due to Supplier.
- 4.6 Payments in the currency mentioned in the PO shall be made by direct bank transfer to a bank account nominated by Supplier, or other means as set out in the PO.
- 4.7 All bank charges inside of Bahrain shall be for ALBA's account, and all bank charges outside of Bahrain shall be for Suppliers' account.
- 4.8 ALBA will have the right of set-off and may deduct all costs or amounts for which Supplier is liable for in terms of these Standard Project Terms and Conditions from any payment due to Supplier; including from a retention amount.
- 4.9 All invoices shall include at least the following information: PO number, description of Work, quantities; and shall be duly supported by documentary proof of the delivery/completion and acceptance of the Works. Invoices shall be addressed to or delivered to ALBA's address and designated party as set out in the invoice instruction in the PO.

5. Inspection

Without prejudice to Clauses 9 (Passing of Title and Risk), 10 (Acceptance of Works) and 11 below Quality and Warranty), ALBA shall be entitled to inspect and/or test (or arrange for independent inspection/testing) of the Work at Suppliers' facilities prior to and/or at delivery/completion in order to ensure that they conform to the Specifications. In the event that the inspection shows that Work do not conform to the Specifications or requirements of the PO, ALBA shall be entitled to reject the delivery and cancel the Purchase Agreement forthwith.

6. Packing and Documentation

- 6.1 The Price shall include and the Work will be suitably packed and (if applicable) protected against corrosion and weather as is customary for the type of goods and mode of delivery.
- 6.2 Supplier shall furnish ALBA with all the required and customary certificates, test data, manuals, certificates and technical information and documentation relating to the Work; including (but not limited to) certificates of origin, weight certificates, material test certificates etc. as specified in the PO.

7. Shipping and Transportation

In the event that Supplier will be responsible to transport or ship or arrange the shipment of the Works (or part thereof), ALBA's shipping instructions as per the PO shall apply and Supplier shall be obliged to execute such instructions fully and diligently.

8. Delivery and Late delivery

- 8.1 The mode of delivery and the completion date/schedule will be specified in the PO and will be firm and Supplier shall be obliged to timely deliver the Work to the delivery point.
- 8.2 Unless otherwise agreed, the time of delivery or completion shall be of the essence, and Supplier undertakes to deliver/complete the Work strictly within the agreed time. Supplier shall be obliged to notify ALBA in writing if it is anticipated that the delivery of any Work or any other scheduled activity shall be later than the schedule set out in the PO.

- 8.3 Should Supplier fail to deliver or perform the Work according to the agreed date(s) and/or schedule set out in the PO, ALBA may in its sole discretion, with or without prior notice to the Supplier:
- a) Extend the time by means of a Change Order;
 - b) cancel the PO or part of the Work and procure other goods or services of similar description from other suppliers; or
 - c) allow Supplier to proceed and claim from Supplier as liquidated - and genuine pre-estimate of damages that it will suffer as a result of such a breach, an amount of 2% (two percent) of the total PO value for every week (or part thereof) that the Work is delayed beyond the PO delivery date; and/or
 - d) claim from Supplier the damages actually suffered (including the amount by which the cost of replacements exceeds the Price) and to the extent allowed under the law, in lieu of the agreed liquidated damages provided for above.

9. Passing of Title and Risk

- 9.1 The title and ownership in the material forming part of the Work shall pass to ALBA on delivery; however the risk of damage or loss will remain vested in Supplier until such time that the completed Work has been accepted by or on behalf of ALBA, as provided for in Clause 10.
- 9.2 Supplier represents and warrants that it will have the right to sell the Works and that upon delivery, the rightful title in and to the Work will be passed to ALBA; free from any encumbrance or charge, in order that ALBA will have the full benefit of and enjoy quiet possession of the Works.

10 Acceptance of Works

- 10.1 ALBA shall not be deemed to have accepted the Work until such time as ALBA notifies Supplier in writing. Any acceptance will be without prejudice to any of ALBA rights under the Purchase Agreement and/or in law.
- 10.2 Notwithstanding the fact that the Work may have passed the inspection provided for in Clause 5 above, ALBA will have the right to reject any consignment or part of the Work within forty five (45) days of delivery where it is determined that the Work is defective or do not conform to the requirements of the PO ("Rejected Work").
- 10.3 Unless the Parties otherwise agree on the rectification thereof, the Rejected Work will be returned to Supplier at its sole cost and risk. Where Supplier has already been paid (fully or partly) for such Rejected Work, the Supplier shall forthwith replace the Rejected Work and issue a credit note in respect thereof.
- 10.4 In the event that ALBA in its sole discretion elects to accept and correct any Rejected Work, the Supplier shall be liable for and promptly reimburse ALBA for all reasonable cost and expenses actually incurred by ALBA in connection with the correction or repair of the Rejected Work.

11. Quality and Warranty

- 11.1 The Work shall conform in all respects to the quality requirements and specifications set out in the PO; and if not specified, to the normal and customary specifications or quality of such goods, or in the case of services; in accordance with accepted industry practices and any applicable professional standards and codes ("the Specifications"). Supplier may not change the Specifications, material or manufacturing processes without the prior written consent of ALBA.
- 11.2 Supplier warrants and guarantees that the Work will be free from faulty design, defects (whether patent or latent), in material and workmanship (fair wear and tear excluded), and fit for the intended purpose for a period of at least eighteen (18) months after acceptance or twelve (12) months from its use, installation or commissioning (whichever is the latest) (the "Warranty Period").
- 11.3 If any such defects or failure is discovered or occur within the Warranty Period, ALBA shall notify Supplier accordingly, and Supplier shall promptly, and at its sole cost and risk repair or replace or otherwise make good any and all Work which is found to be defective. In addition, Supplier shall compensate ALBA for all costs and expenses reasonably incurred or suffered in connection with the defect and the repairs or replacement of the Works (or part thereof) under the warranty.

- 11.4 The repairs/replacement Works will carry the same warranty as from the date of replacement.
- 11.5 This warranty is additional to and without prejudice to any further or specific terms of warranties offered by Supplier or applicable in respect of the Work.

12. Books and Records and Audit

Supplier shall maintain and keep (and shall procure that its affiliates and sub-contractor(s) maintain and keep) proper books and records in respect of the PO and the Work in accordance with generally acceptable accounting practices, for a period of at least three (3) years after the execution of the requirements of PO. Within this period and with reasonable prior notice, ALBA shall have the right to inspect such books and records and to audit them. If an audit shows any error(s) in Suppliers' invoices and/or over payments, appropriate adjustments in payments, if any still due by ALBA; or repayment by Supplier (as the case may be) will be made.

13. Compliance to Laws and Ethics

- 13.1 In the performance of any Purchase Agreement, Supplier shall take all reasonable steps to ensure full compliance with all laws and regulations of Bahrain as well as any other applicable laws or international obligations.
- 13.2 ALBA subscribes to high health, safety and environmental standards and during the execution of any PO Supplier shall be obliged to strictly conform to all applicable standards and regulations.
- 13.3 To the extent that the Work includes hazardous materials, Supplier shall provide ALBA with all information and data sheets as may be required under the applicable occupational health and safety laws and regulations of Bahrain and any applicable international regulations.
- 13.4 ALBA conducts its business in a highly ethical manner and Suppliers shall take all necessary steps and precautions to prevent their employees or representative from making, offering and/or receiving any gifts (other than promotional material of a nominal value) fee, rebate and/or any other consideration or advantage of any nature to any employee or representative of ALBA, which could in any way influence an ALBA employee to act (or refrain from acting) in a manner which may give Supplier an unfair advantage.
- 13.5 Supplier shall promptly notify ALBA if and when any of its employees or representatives may obtain any interest (whether directly or indirectly) by way of a shareholding, partnership or in any other form of association in the Supplier, its affiliates or sub-contractor(s).
- 13.6 Any breach of any of the above provisions shall entitle ALBA to, without prejudice to any other rights or remedies it may have under these Standard Project Terms and Conditions or the law, cancel the PO summarily, without prior notice to Supplier.

14. Confidentiality

Supplier shall at all times during the execution of a Purchase Agreement and thereafter, treat and keep the details of the PO and all information received from ALBA in connection thereto, confidential and agree not to disclose such to any third parties without ALBA's prior written consent. These obligations will survive the completion or early termination of the Purchase Agreement.

15. Intellectual Property

- 15.1 Supplier represents that the delivery to and use of Work by ALBA will not in any way infringe or contribute to the infringement on any third parties' patent, design, trademark, copyrights or any other form of intellectual property; whether registered or not.
- 15.2 Supplier indemnifies and undertakes to hold ALBA, its directors and employees free and harmless from and against any demand or claim by any party, costs and/or expense incurred (including legal costs) in connection with such legal action in any jurisdiction in relation to an alleged infringement of intellectual property rights flowing from the delivery and/or use of the Work.
- 15.3 In addition, Supplier shall immediately, upon allegations of an infringement of intellectual property rights, remove the relevant Work and, at its sole cost and risk, promptly replace it with other suitable non-infringing Work.

16. Liabilities and Indemnity

16.1 Supplier executes the PO for its own profit and risk and shall be solely liable for, and hereby indemnifies ALBA, its shareholders, Directors and employees from and against any and all damages, claims, suits, actions or demands made in connection with or arising out of the execution, delivery and/or use of the Work; and/or:

- any breach of any representation, warranty or covenant made by the Supplier in this Purchase Agreement;
- any negligence or willful misconduct of Supplier, its agents or sub-contractors;
- any third party claim relating to the obligations of Supplier under the Purchase Agreement; and
- Supplier's ownership, control or operation of its business.

16.2 Supplier shall furthermore solely be responsible for all equipment, material and persons used in the execution of the PO and indemnifies ALBA and shall hold it for ever harmless and free from and against all costs, expenses, demands and claims in respect of or flowing from loss of or damage to the property of Supplier and in respect of injury or death of any employee or representative of Supplier, however resulting in connection with the Work.

16.3 Notwithstanding the above, it is agreed that neither party shall under any circumstances be liable towards the other for consequential damages, including but not limited to loss of use, or loss and profit.

17. Insurance

17.1 General:

- (a) In all cases Supplier shall, as a minimum and as a condition precedent to the entering into force of the Purchase Agreement, take out and maintain for the term of the Purchase Agreement valid insurances adequately covering all aspects of the Works, as set out here below and such other insurances as may be required by the Law applicable to the country or location where the Services are being performed or the Goods are being provided.
- (b) Supplier and its sub-contractors shall not commence the shipment of any Goods, equipment or materials or commence any Services or work until the insurance specified in this Clause 17 is effected and in force.
- (c) If any of Suppliers' responsibilities under this Purchase Agreement are sub-contracted or assigned to a third party, Supplier shall require and attend to each such third party procuring, carrying and maintaining similar insurance as required hereunder, including for such third party's employees and agents, unless such employees and/or agents, as the case may be, are covered under Supplier's insurance.

17.2 Marine Cargo Insurance:

- In the event that Supplier is responsible for insuring the Works during the delivery, Supplier shall procure customary "all risk" marine cargo insurance as per Incoterms which shall include coverage for inland transportation covering loss of or damage to equipment, materials, and other supplies, including chemicals, for a value of 110% of the CIF value of the consignment, covering the Works during the complete delivery; from warehouse to warehouse.
- In the event of repair-and-return contracts, Supplier shall similarly, under equivalent terms as set out in sub-clause 17.2 (a) insure the ALBA equipment concerned from the time when risks in respect of such equipment is handed-over to Supplier for repairs.

17.3 Workmen Compensation:

Supplier shall procure, maintain and carry, world-wide - twenty four (24) hour insurance(s) for his workmen; having terms and coverage as customary and is required by the Laws which may be applicable to such workmen including all of its employees, sub-contractors and agents engaged in providing any Goods and/or Services under this Purchase Agreement. Such insurances(s) shall include overseas travelers' personal accident insurance and/or similar statutory social insurance.

17.4 Comprehensive General Liability insurance:

Supplier shall procure, maintain and carry Comprehensive general liability (CGL) insurance providing coverage for damage due to bodily injury (including death at any time resulting there from) and personal injury sustained by any person and for loss of or damage to property caused by any occurrence or accident arising out of any operations in connection with the execution of this Agreement, with such insurance to have a combined single limit of USD \$2,000,000 (USD two million) per occurrence and to be unlimited in aggregate, and to provide for contractual liability and not exclude professional negligence, any of ALBA's existing property, or any property of others, including that of ALBA, which is under the care, custody or control of Supplier and to include coverage for completed operations.

17.5 Third Party Motor Liability Insurance:

Supplier shall procure, maintain and carry Third Party Motor Liability Insurance covering owned, non-owned and hired, leased, or rented automotive equipment and vehicles under Supplier's care, custody or control, providing coverage with a minimum combined single limit of USD \$2,000,000.00 (USD two million) against injury, death, or property damage on each and every occurrence.

17.6 All risk construction (CAR) insurance:

In the event of constructions on site and if required by the PO, the Supplier will in addition to the above be responsible to take out and maintain all risk construction (CAR) insurance in respect of the works for a cover equal to the amount not less than 110% of the total PO value.

17.7 Additional conditions:

- (a) Should Supplier at any time neglect, refuse or fail to provide or maintain any insurance as required by this Clause 17, or such insurances as required by Clause 17, are canceled, ALBA shall be entitled to, without notice, procure such insurance as it seems fit, at the sole cost and risk of Supplier. ALBA shall have the right to deduct the cost of such insurance (together with the reasonable expenses involved in, and a reasonable fee for, ALBA's procurement of such insurance) from payments then due, or which thereafter become due, to Supplier. As appropriate, the policies of insurance to be effected by Supplier pursuant hereto shall include as insured there under, ALBA, Supplier, vendors, sub-contractors, agent and/or other third parties as their interests may appear.
- (b) Insurance policies shall furthermore contain waivers of the insurance carriers' rights of subrogation with respect to all such insured and their owned, controlled, affiliated, subsidiary, associated, interrelated and operated companies and shareholders, officers, directors, agents, employees, and representatives of each. Such insurance shall include a cross liability clause such that the insured are regarded as third parties to each other. ALBA shall have the right but not the obligation, to approve or disapprove, in its sole discretion, the insurance providers selected by Supplier.
- (c) Supplier and its sub-contractors shall bear all policy deductibles as applicable to such insurance as if any such deductible amounts are not covered or are not recoverable there under for any reason whatsoever.
- (d) If requested by ALBA, Supplier shall have its insurance carrier or carriers furnish to ALBA certificates certifying that all insurance required to be maintained by Supplier under this Agreement is in full force and effect, reciting the expiration date of each policy and that the insurance will not be cancelled without thirty (30) days' prior written notice by registered mail to ALBA. On request, Supplier shall permit ALBA to examine the original insurance policies referenced herein. If the insurance required herein is cancelled, ALBA may procure such insurance on behalf of Supplier.
- (e) Any insurance specified in this Clause shall serve as primary and shall not contribute to any or all insurance as may be carried or maintained by ALBA or contain waiver of subrogation, cross liability, or severability interest clauses.
- (f) Supplier shall, and shall ensure that its subcontractors, manage, maintain and provide all documentation required to comply with the requirements of the insurance policies specified in this Article 17, and to recover

any claims there under.

- (g) In the event of any claim arising under insurance furnished by ALBA or by Supplier on ALBA's behalf, Supplier shall, and shall ensure that its subcontractors, provide in a timely manner all documentation, at their own respective cost and expense, which may be required to comply with the insurance policy requirements, to the insurance carrier's satisfaction, and Supplier shall, and shall ensure that its subcontractors, assist ALBA in every possible manner to process and recover such claims.

18. Force Majeure

- 18.1 Subject to the below provisions, neither party shall be liable for the non- or late performance of any of its obligations where such were caused by force majeure.
- 18.2 For purposes hereof "force majeure" shall mean an unforeseen and uncontrollable act or occurrence which has the effect of preventing a party from performing its obligations and/or from performing such obligation timely. These acts or occurrence shall include but not be limited to strikes, blockages, earthquakes, sabotage, fires, floods or other acts of God or acts of Government enacted after the Effective Date.
- 18.3 In the event that a party experiences a force majeure, it shall promptly, but not later than seven (7) days of becoming aware of such occurrence, notify the other in writing of the full detail, nature and anticipated duration and effect of the force majeure.
- 18.4 The party experiencing the force majeure event shall use its best efforts to remove the force majeure in the shortest time, and to minimize the negative effect of such on its performance under the PO.
- 18.5 Where the period of delay due to force majeure exceeds one (1) month, ALBA shall be entitled in its sole discretion to terminate the PO.

19 Breach and Cancellation

- 19.1 If Supplier is not executing the PO in accordance with its terms, and/or is in breach of any provision of the Purchase Agreement and/or in the event of any other failure or default and/or if Supplier becomes insolvent, ALBA shall give Supplier written notice to remedy such failure or default. Failure by Supplier to remedy the failure or default within a period of seven (7) days of the date of the notice, will entitle ALBA to, without prejudice to any other rights and remedies it may have, cancel the Purchase Agreement.
- 19.2 In the event of a cancellation of the PO by ALBA under the terms hereof, Supplier shall not be entitled to claim for any compensation or damages; other than reasonable compensation for that portion of the services or Work performed or delivered and accepted by ALBA prior to the date of cancellation.

20 Relationship

Supplier is and shall at all times be an independent contractor ; and nothing in this Purchase Agreement is intended or shall be construed as or shall operate to create partnership, joint venture of any kind between the parties; or to constitute either party the agent or employee of the other.

21 Miscellaneous

- 21.1 Supplier shall be responsible for all acts and omissions of any sub-supplier (even if nominated by ALBA) including due payment of all such sub-contractors' charges in rendering the Work.
- 21.2 In the event any provision hereof should be declared invalid or unenforceable, it shall be severed from the Purchase Agreement, and such provision shall not affect the validity or enforceability of the remaining provisions hereof.
- 21.3 No Party shall be deemed to have waived any provision, breach, or remedy of or under the agreement, unless such waiver is specifically given in writing with reference to the Purchase Agreement signed by such Party. No waiver or breach of the Purchase Agreement shall be construed as a continuing waiver of any other or continuing breach of this Agreement.
- 21.4 Supplier shall not be entitled to sub-contract, transfer and/or assign any part of the Work or its obligations under the Purchase Agreement, without the prior written consent of ALBA; and in the event that Supplier does so assign, transfer or subcontract without the written consent, such act shall be void.
- 21.5 The following shall not apply to the Purchase Agreement: (i) the United Nations Convention on Contracts for the

International Sale of Goods of 1980 (Vienna Convention), (ii) the Uniform Law on Sales and the Uniform Law on Formation to which effect is given by Uniform Laws on International Sales Act 1967, and (iii) the United Nations Convention on Prescription (Limitation) in the International Sales of Goods of 1974 and the amending Protocol of 1980.

22 Governing law and Jurisdiction

- 22.1 The Purchase Agreement is governed by and shall be construed in accordance with the laws of the Kingdom of Bahrain without giving effect to its conflict of laws provisions.
- 22.2 In the event that a dispute arises between the parties regarding the existence, interpretation and/or the execution hereof, the parties shall attempt to resolve such in an amicable manner.
- 22.3 In the event that a dispute remains unresolved for a period of thirty (30) days or more, either party shall be entitled to refer the dispute to be settled in accordance the Arbitration Regulations and the Implementation Regulations of the Kingdom of Bahrain in Bahrain; provided that the courts of Bahrain will ultimately and exclusively have jurisdiction over any dispute hereunder. Unless otherwise agreed, the proceedings will be conducted in the English language.

23 Notices

- 23.1 Any notice or other communication to be given under this Purchase Agreement shall be in writing and may be served by sending it by fax, delivering it by hand or sending it by first class post to the address and for the attention of the relevant Party, in the case of the Supplier set out in the PO, and in the case of ALBA, as set out in Clause 1 hereof (or as otherwise notified by ALBA from time to time under this Purchase Agreement). Any notice so served by hand, fax or post shall be deemed to have been received:
- a) in case of delivery by hand, when delivered;
 - b) in the case of fax twelve (12) hours after the time of confirmation of dispatch; or
 - c) in the case of post, at the expiration of two (2) Business Days or (in the case of air mail) five (5) Business Days after the envelope containing the same was delivered in to the custody of the postal authorities.
- 23.2 Provided that where, in the case of delivery by hand or by fax, such delivery or transmission occurs after 6pm on a Business Day or on a day which is not a Business Day, service shall be deemed to occur at 9am on the next following Business Day.

**Regards,
Alba Procurement & Warehouse**

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