



## STANDARD SERVICE TERMS AND CONDITIONS (VER.4 30-1-13)



These terms and conditions ("the Standard Service Terms and Conditions") shall apply to the procurement of services by Aluminium Bahrain B.S.C. ("ALBA") from service providers or firms ("Service Provider") in the Kingdom of Bahrain ("Bahrain") or outside Bahrain and supersedes and replaces all previous standard terms and conditions for the procurement of Services.

### 1. Structure and the Purchase Order

- 1.1 ALBA may first request a proposal ("RFQ") from various potential suppliers, whereupon Service Providers will submit a proposal, and, if accepted, ALBA shall order the specific Services, by documenting the requirement in a Services Package, which will be annexed to a Purchase Order (PO).
- 1.2 All agreements for the procurement of Services (as defined below) shall be entered into and confirmed by ALBA by means of the issuance of one or more official written PO('s) which will be sent to the Service Provider, whereby these Standard Service Terms and Conditions shall be fully incorporated by reference in the PO.
- 1.3 ALBA may send the PO by registered mail or fax to the contact address nominated by the Service Provider, receipt and acceptance thereof by Service Provider shall be deemed to be three (3) days after the date of the PO; whether Services Provider has acknowledged receipt or not; which date shall be the effective date of the PO ("the Effective Date").
- 1.4 The PO and any attachments thereto together with these Standard Service Terms and Conditions shall constitute the entire agreement between ALBA and Service Provider ("the Parties") in respect of the Services. (Collectively referred to as the "Service Agreement"). No other conditions, warranties, guarantees, representations or verbal or written exchanges with the Service Provider shall be of any force or effect unless ALBA amends it in writing.
- 1.5 ALBA will not be bound by any standard or printed terms presented by Service Provider; in any quotation or other document unless expressly incorporated by the PO. In the event of any conflicting provisions in any applicable document the Special Terms of the PO and then these Standard Services Terms and Conditions shall always prevail and take precedence.

### 2. Definitions

In any Service Agreement the following words will have the following meanings:

- **"Acceptance Certificate"** means a document signed by an authorized representative of ALBA confirming that the acceptance criteria as set out in the Services Package in respect to the ordered Deliverables have been met.
- **"Deliverables"** means the items, including but not limited to documents, plans, results, reports, etc., described in a Services Package or as otherwise agreed by the Parties in writing to be delivered by Service Provider as part of the Services. For purposes hereof, the term Deliverables shall include any idea, method, invention, discovery, design, business process or method, communication, analysis, drawing, composition, database, writing, computer software, computer data or any other similar item (in any media).
- **"Time Schedule"** means a schedule (or bar-chart) detailing the time schedule, listing the specific Deliverables and acceptance criteria and the dates when they are due to start and for completion.
- **"Personnel"** means any of the directors, employees, approved assigns, sub-contractors and/or agents of Service Provider as may be involved in the execution of Services.
- **"Services"** means any service ordered under a PO for advice, services, supervision and includes the production and supply of any Deliverable, any other result which is to be performed or produced by Service Provider in connection with performing the Services.
- **"Services Package"** means the description of the scope of services in a form as agreed by Service Provider and ALBA prior to the commencement of the Services, which will include as a minimum, the following:

- (a) Scope and detail of the Services to be performed including, but not limited to, a description and specification of the Deliverables (“Specification”);
- (b) Time Schedule;
- (c) Acceptance criteria;
- (d) Fees/rates for the Services and method of calculation (e.g. hourly, daily or otherwise);
- (e) Names of key Personnel of Service Provider responsible for performing the Services; and
- (f) Any other specific obligations and/or special terms as agreed between the Parties.

### **3. Scope of Services**

- 3.1 Service Provider shall perform the Services as set out in the PO and in accordance with the terms and conditions of the Service Agreement.
- 3.2 Service Provider may not change the Specifications; the Time Schedule and/or the Deliverables as set out in a PO, without the prior written consent of ALBA.
- 3.3 If ALBA at a later stage wish to amend the PO and Service Package or require that the Service Provider is to provide Services or resources in addition to those specified in a PO, such amendments or additions will be agreed and reflected in a Change Order of the original PO or a further PO, which, on execution, will be deemed incorporated into this Service Agreement.
- 3.4 Service Provider shall carry out the Services described therein in a professional and diligent manner, strictly within the Time Schedule and completion period and otherwise in accordance with the terms of the Service Agreement.
- 3.5 Service Provider undertakes to provide the Deliverables in conformity to the Specification and any specific obligations.
- 3.6 Service Provider will regularly provide ALBA with written progress reports, evidence and/or information concerning the progress with the Services as may be requested by ALBA from time to time.

### **4. Consideration and Payment Terms**

- 4.1 Unless otherwise stated in a PO, in consideration of the performance of the Services, Service Provider will receive a fixed all-inclusive lump sum; or, fees calculated at agreed hourly rates and allowable additional expenses (if any) (“the Price”). The Price will be fixed or firm and cannot be varied without the express prior consent of ALBA given by means of a written Change Order.
- 4.2 Unless otherwise stated in the PO the fees shall be all-inclusive of any taxes or levies as may be due by Service Provider. Service Provider will be responsible for all payments to its Personnel and for any deductions required by Bahraini law or otherwise in respect of income tax and insurance contributions or similar contributions in respect of its Personnel relating to the provision of the Services.
- 4.3 Service Provider will invoice ALBA monthly in arrears or as otherwise specified in the PO, for Services completed and accepted by ALBA.
- 4.4 Payment shall be made within forty-five (45) days after receipt by ALBA of Service Provider’s invoice, provided that the invoice is duly supported by documentary proof of the completion and the acceptance of the Services as specified in the PO.
- 4.5 Payments in the currency mentioned in the PO shall be made by direct bank transfer or other means set out in the PO.
- 4.6 ALBA will have the right of set-off and may deduct all costs or amounts for which Service Provider is liable for pursuant to these Standard Services Terms and Conditions, from any payment due to Service Provider.
- 4.7 All invoices (in duplicate) shall include at least the following information: PO number, description of Services, Deliverables, and Acceptance Certificate(s) issued under Clause 8, and shall be addressed to or delivered to ALBA’s address and designated party as set out in the invoice instruction in the PO.

### **5. Representations and Warranties**

- 5.1 Service Provider represents and warrants that:
  - (a) it has full capacity and authority to enter into the Service Agreement and that it has or will obtain prior to the Commencement Date, any necessary licenses, consents, and permits as may be required of it for the performance of the Services;
  - (b) it will provide the Services with all due skill, care and diligence, in a good and workmanlike manner and otherwise in line with best international practice within its industry (“Best Industry Practice”); and
  - (c) Its Personnel will possess the required qualifications, professional competence and experience to carry out such

Services in accordance with Best Industry Practice.

- 5.2 Service Provider will procure that its Personnel co-operate with the ALBA's employees, officers, advisors, nominees and agents and comply with the instructions of ALBA in providing the Services, including without limitation, any applicable internal ALBA policies; including but not limited to Ethics and Environmental Health and Safety.
- 5.3 The Services and Deliverables 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 Services; in accordance with Best Industry Practices and any applicable professional standards and codes.
- 5.4 Service Provider warrants and guarantees that the Deliverables will be fit for the intended purpose and the Services will be free from faulty design and patent or latent defects.
- 5.5 Service Provider shall promptly and at his sole cost and risk rectify or otherwise make good any Deliverable or part of the Services which are found to be non-conforming.
- 5.6 In addition, Service Provider shall compensate ALBA for all costs and expenses reasonably incurred or suffered in connection with the re-execution, revision or replacement of the Deliverable or Services not conforming to the warranty.

## **6. Compliance to Laws and Ethics**

- 6.1 Service Provider shall at all times execute the Services in full compliance with all laws and regulations of Bahrain as well as any other applicable laws or international obligations.
- 6.2 ALBA subscribes to high health, safety and environmental standards and during the execution of any PO, Service Provider shall be obliged to strictly conform to all applicable standards and regulations.
- 6.3 To the extent that the Services includes hazardous materials, Service Provider 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 international regulations.
- 6.4 ALBA conducts its business in a highly ethical manner, and Service Provider shall take all necessary steps and precautions to prevent their employees or representatives 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 a ALBA employee to act (or refrain from acting) in a manner which may give Service Provider an unfair advantage.
- 6.5 Service Provider 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 Service Provider, its affiliates or sub-contractor(s). ALBA does not encourage the involvement of agents, intermediaries, or other third parties in its agreements. In the event that Service Provider intends to use such parties in connection with the performance of its obligations, it must declare such intention to ALBA, prior to commencement of performance, stating the reason for such involvement and confirmation of such party's role and providing the terms of the agreement between Service Provider and such party as well as official documentation confirming such party's ownership structure. Failure to comply with the foregoing may result in Service Provider being liable to compensate ALBA for any additional expenses incurred by ALBA as a result of the involvement of Service Provider's agents, intermediaries or other third parties.
- 6.6 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 Services or the law, cancel the PO summarily, without prior notice to Service Provider.

## **7. Service Provider's Personnel**

- 7.1 Where required and documented in the Services Package, the specific identified parts of the Services shall be performed by the specific Key Personnel of Service Provider.
- 7.2 Service Provider shall make no change to such key Personnel without the prior written approval of the ALBA. If ALBA approves or requires a change to the Service Provider Personnel in accordance with this Agreement, Service Provider shall submit to ALBA the names and full *curricula vitae* of any proposed substitute and shall permit ALBA to interview any proposed substitute. ALBA may, in its sole discretion, refuse to accept any proposed substitute, in which case Service Provider shall as soon as reasonably possible submit to ALBA further names and full *curricula vitae* of

proposed substitutes.

- 7.3 ALBA may, in its sole but reasonable discretion, require the immediate termination of the involvement of any of the Personnel involved in performing the Services by providing written notice to Service Provider. Service Provider will provide a suitable replacement for such an individual without delay in accordance with the process set out above.
- 7.4 ALBA will be under no obligation to pay Service Provider in respect of any periods during which any Service Provider Personnel are unable to carry out the Services due to illness or other incapacity in the event that the fees have been calculated on a time and materials basis.
- 7.5 If applicable, timesheets for hours worked by the Personnel together with such Deliverables as may be due under the Time Schedule will be submitted weekly to the ALBA representative designated in the PO, for his approval. All such timesheets will be submitted by Service Provider to substantiate the relevant invoice.
- 7.6 Notwithstanding anything set out herein, the Service Provider will be and solely remain responsible for its own Personnel and the implementation of any required disciplinary action with respect to any of its Personnel.

## **8. Acceptance of Services and Deliverables**

- 8.1 The Services including Deliverable(s) will only be accepted by ALBA if and when the acceptance criteria specified in the Services Package have been met and an Acceptance Certificate has been issued by ALBA. Any acceptance will be without prejudice to any of ALBA's rights and remedies under the Service Agreement and/or in Law.
- 8.2 Where part of a Service or a Deliverable is rejected, ALBA may, in its sole discretion and without prejudice to any other remedies hereunder, allow Service Provider the opportunity to rectify and resubmit that part of the Service or the rejected Deliverable at its sole cost and risk and to the satisfaction of ALBA.
- 8.3 Service Provider shall only be entitled to invoice for completed and formally accepted Services, or part thereof, as evidenced by the Acceptance Certificate.

## **9. Intellectual Property**

- 9.1 Service Provider agrees that all rights and benefits relating to all Intellectual Property created in relation to the Services and the Deliverables will solely vest with and be owned by ALBA on its creation.
- 9.2 To the extent that the Intellectual Property does not vest in ALBA as contemplated above, Service Provider hereby assigns (and procure that Personnel will assign), to ALBA such rights throughout the world for as long as such rights shall last. For this purpose, Service Provider unconditionally and irrevocably agrees that it will (and will procure that its Personnel will) do all such acts and sign such documents as will be necessary to give effect to the matters contemplated above.
- 9.3 The above provisions will not apply if and to the extent:
  - (a) the Intellectual Property belong to a third party other than Service Provider Personnel; or
  - (b) prior to this Agreement, such Intellectual Property formed part of any Service Provider Material and was expressly excluded from the Deliverables; in which case Service Provider shall provide and procure a royalty free, worldwide license in order for ALBA to fully enjoy the benefit of the Services and Deliverables.
- 9.4 Service Provider represents and warrants that the Services and Deliverables 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.
- 9.5 Service Provider undertakes to defend and hold ALBA (including its shareholders, directors, employees and agents) free and harmless from and against any claim or action that the use or possession of any Deliverable infringes the Intellectual Property of a third party ('IP Claim') and shall fully indemnify and hold ALBA harmless from and against any losses, damages, costs (including legal fees) and expenses incurred by ALBA as a result of or in connection with such an IP Claim.
- 9.6 Service Provider shall be promptly informed by ALBA in writing and furnished with a copy of each communication, notice or other action relating to the alleged infringement or IP Claim, ALBA shall further provide Service Provider with reasonable authority, information and assistance reasonably required by Service Provider to defend or settle such and IP Claim (at the sole cost and expenses of Service Provider).
- 9.7 The foregoing indemnity(ies) shall survive the duration hereof and shall remain in effect notwithstanding the completion or termination of this Service Agreement.

## **10. Liabilities and Indemnity**

- 10.1 Service Provider shall be solely responsible for all equipment, material and Personnel used in the performance of the Services and indemnifies ALBA (including its shareholders, Directors, employees and agents) and shall defend and

hold ALBA forever 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 the Service Provider and in respect of injury or death of any employee or representative of the Service Provider, however resulting in connection with the Services.

10.2 Service Provider executes the Services under any PO for its own profit and risk and shall be solely liable for, and hereby indemnifies ALBA (including its shareholders, Directors,

agents and employees) from and against any and all damages, claims, suits, action or demands made in connection with or arising out of the delivery and/or use of the Services; and/or:

- a) any breach of any representation, warranty or covenant made by Service Provider in this Service Agreement;
- b) any negligence or willful misconduct of Service Provider, Personnel, its agents or sub-contractors;
- c) any third party claim relating to the obligations of Service Provider under the Service Agreement; and
- d) Service Provider's ownership, control or operation of its business.

10.3 Notwithstanding the above, it is agreed that neither party shall under any circumstances be liable towards the other for consequential damages, including loss of profit.

## **11. Insurance**

11.1 Service Provider shall not commence any services until the insurance specified in this Clause is effected and in force.

11.2 In all cases, Service Provider shall, as a minimum and condition precedent to the entering into force of the Service Agreement, take out, maintain and on ALBA's request, demonstrated valid professional indemnity insurances of at least US\$ 2 million.

11.3 In the event that the scope of services require the Service Provider to enter and/or execute any Services on-site of a ALBA facility and/or if a Special Obligation, Service Provider shall also procure, maintain and carry:

- a) World-wide - twenty four (24) hour insurance(s) for his workmen; having terms and coverage as customary and is required by the Bahraini laws as may be applicable to such workmen including all of its employees, sub-contractors and agents. Such insurances(s) shall include overseas travelers' personal accident insurance and/or similar statutory social insurance, and/or
- b) 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 Service Provider and is to include coverage for completed operations; and/or
- c) Third Party Motor Liability Insurance covering owned, non-owned and hired, leased, or rented automotive equipment and vehicles under Service Provider'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.

## **12. Force Majeure**

12.1 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.

12.2 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 occurrences shall mean strikes, blockages, earthquakes, sabotage, fires, floods or other acts of God or acts of Government enacted after the Effective Date.

12.3 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.

12.4 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.

12.5 Where the period of delay due to force majeure exceeds six (6) months, ALBA shall be entitled in its sole discretion to terminate the PO.

### **13. Non Solicitation**

- 13.1 Neither party shall, during the term of this Service Agreement and for a period of twelve (12) months after the termination howsoever caused, directly or indirectly solicit or entice away or endeavour to solicit or entice away from the other party any employee of the other party who has been engaged in the provision of Services for the performance of this Agreement.
- 13.2 Nothing in this Agreement is intended to prevent any person from seeking employment by responding to a *bona fide* recruitment advertisement placed by (or on behalf of) the new employer.

### **14. Breach and Cancellation**

- 14.1 If Service Provider is not executing the PO in accordance with its terms, and/or is in breach any provision of the Service Agreement and/or in the event of any other failure or default (unless Service Provider becomes insolvent), ALBA shall give Service Provider written notice to remedy such failure or default. Failure by Service Provider 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 Service Agreement. This Service Agreement shall automatically be cancelled and/or deemed terminated in the event that any of the below applies to the Service Provider:
- i) the Service Provider is unable to or admits inability to pay its debts as they fall due, suspends or threatens to suspend making payments on any of its debts or, by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness;
  - ii) the value of the assets of the Service Provider is less than its liabilities (taking into account any contingent and prospective liabilities); or
  - iii) a moratorium is declared in respect of any indebtedness of the Service Provider. If a moratorium occurs, the ending of such will not remedy any cancellation and/or termination caused by such moratorium
- 14.2 In the event of a cancellation of the PO by ALBA under the terms hereof, Service Provider shall not be entitled to claim for any compensation or damages; other than reasonable compensation for that portion of the Services performed and accepted by ALBA prior to the date of cancellation.
- 14.3 Upon termination of this Service Agreement by ALBA for any reason whatsoever, Service Provider will deliver, and procure that the Personnel deliver, to ALBA's offices as ALBA may direct:
- (a) all Services and Deliverables whether complete or partially complete;
  - (b) all books, documents, papers, materials, equipment, customer lists, technical information and data, reports; and
  - (c) any other property (including copies, summaries and excerpts) in whatever form or medium relating to the business of ALBA, which are in the possession or control of Service Provider or the Personnel at the time of termination.

### **15. Relationship**

Service Provider is and shall at all times be an independent contractor, and nothing in this Service 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.

### **16. Confidentiality**

Service Provider shall at all times during the execution of the Service 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 Service Agreement.

### **17. Miscellaneous**

- 17.1 No changes or variations to this Service Agreement or any Services Package shall be effective unless agreed in writing pursuant to the change control procedure set out in a Change Order.
- 17.2 In the event any provision hereof should be declared invalid or unenforceable, it shall be severed from the Service

- Agreement, and such provision shall not affect the validity or enforceability of the remaining provisions hereof.
- 17.3 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 Service Agreement signed by such Party. No waiver or breach shall be construed as a continuing waiver of any other or continuing breach of this Agreement.
- 17.4 Service Provider shall not be entitled to sub-contract, transfer and/or assign any part of the Services or its obligations under the Service Agreement, without the prior written consent of ALBA; and in the event that the Service Provider does so assign, transfer or subcontract without the written consent, such act shall be void and he will remain fully liable towards ALBA.
- 17.5 A person not party to this Agreement shall have no rights to rely on or enforce the terms hereof.
- 17.6 Service Provider shall not disclose in its publicity material or otherwise the existence of this Agreement or the terms of its relationship with ALBA without the prior written consent of ALBA.
- 17.7 The following shall not apply to the Service 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.

## **18. Governing law and Jurisdiction**

- 18.1 The Service Agreement is governed by and shall be construed in accordance with the laws of Bahrain without giving effect to its conflict of law's provisions.
- 18.2 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.
- 18.3 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.

## **19. Notices**

- 19.1 Any notice or other communication to be given under this Service Agreement shall be in writing and signed by or on behalf of the party giving it and may be served by leaving it or 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 set out in clause 19.2 (or as otherwise notified from time to time under this 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; and
  - 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.
- 19.2 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.
- 19.3 For purposes of this clause, Service Provider will on or before the Effective Date, provide a written notice to ALBA of its full business address, contact numbers and contact persons, particulars.

## **Regards,**

### **Alba Procurement & Warehouse**

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