

Terms and Conditions

Important legal notice to all persons doing business with Yusuf A. Alghanim & Sons w.l.l. or any of its affiliates, shareholders, agents, officers or subsidiaries (each, and collectively, an "Alghanim Entity"): the following standard terms and conditions apply to and govern any commercial transaction with any Alghanim Entity and are deemed accepted by third parties who do business with any Alghanim Entity, including receiving any payment from any Alghanim Entity.

1. DEFINITIONS AND FORMATION OF CONTRACT

1.1 In these terms:

"Alghanim" means any Alghanim Entity that engages in any commercial transaction with the Supplier;

"Conditions" means the terms and conditions set out herein;

"Contract" means the terms and conditions for the supply of Goods and/or Services to Alghanim, as described in an order or other agreement for the supply of such Goods or Services, or if not subject to any written agreement, then as evidenced through any course of performance or oral agreement, and these Conditions. If there is any inconsistency between the terms of the order or contract and these Conditions, these Conditions shall prevail;

"Goods" means the goods described in or agreed to in a Contract;

"Services" means the services described in or agreed to in a Contract;

"Specification" means the specifications for the Goods and/or the Services as set out or referenced in the Contract;

"Supplier" means the company or person identified in the Contract as the supplier of the Goods and/or Services to Alghanim, or the person or entity doing business with Alghanim.

1.2 These Conditions shall apply to and form part of a Contract to the exclusion of any standard conditions of sale or supply of Supplier irrespective of whether or not they are expressly or by reference incorporated in the Contract.

2 INSPECTION, DELIVERY AND PERFORMANCE OF GOODS

2.1 The Supplier grants Alghanim the right to inspect any Goods at any time prior to delivery at Supplier's premises or elsewhere. The Supplier shall give Alghanim reasonable advance notice of when any completed Goods will be ready for inspection. Inspection by or on behalf of Alghanim of any Goods shall not relieve the Supplier of responsibility or liability for those Goods and shall not imply acceptance thereof. Alghanim shall be entitled to waive such right of inspection prior to delivery, without prejudice to its right to reject Goods after delivery.

2.2 Supplier shall deliver the Goods in accordance with the prices and delivery schedules and other terms stated in or which form part of the Contract.

2.3 Title to all or any part of the Goods shall pass to Alghanim on payment for such Goods or part thereof. Risk of loss or damage in the Goods shall pass to Alghanim on physical receipt by Alghanim unless as per the Contract delivery terms risk passes to Alghanim at an earlier point.

2.4 Alghanim may reject any Goods delivered which are not in accordance with the Contract, and shall not be deemed to have accepted any Goods, notwithstanding that Alghanim has paid for the Goods, until Alghanim has had a reasonable time to inspect them following delivery or, if later, within a reasonable time after any latent defect in the Goods has become apparent.

2.5 Without prejudice to any other rights Alghanim may have under the Contract or otherwise, if the Supplier fails to deliver the Goods in accordance with the terms of the Contract or Alghanim rejects the Goods pursuant to Condition 2.5, then Alghanim shall be entitled, at its option, to:

2.5.1 require the Supplier, at its cost, to remove, repair or replace the undelivered or rejected Goods, as expeditiously as reasonably practicable which Goods shall then immediately be held at the risk of the Supplier; and/or

2.5.2 obtain replacement goods from a third party and be reimbursed on demand by the Supplier for all related reasonable costs and expenses; and/or

2.5.3 terminate the Contract forthwith and refuse to accept any further consignment of Goods under the Contract; and/or

2.5.4 suspend the Contract and refuse to accept any further delivery of Goods from the Supplier.

3. PERFORMANCE OF THE SERVICES

3.1 Without prejudice to any other rights Alghanim may have under the Contract or otherwise, if the Supplier fails to perform the Services in accordance with the terms of the Contract and by the specified date or Alghanim rejects the Services, then Alghanim shall be entitled, at its option, to:

3.1.1 require the Supplier, at its cost, to re-perform the Services as expeditiously as reasonably practicable; and/or

3.1.2 obtain services from a third party and be reimbursed by the Supplier for all related reasonable costs and expenses; and/or

3.1.3 terminate the Contract forthwith and refuse to accept any further performance of Services under the Contract.

3.2 If the Supplier's employees are required to work on a Alghanim site:

3.2.1 Materials used are at the Supplier's risk until acceptance by Alghanim.

3.2.2 The Supplier shall be responsible for the safe keeping of all property belonging to it or within its control including, without limitation, plant, equipment, tools and documents and shall ensure that the same are properly maintained and are in good working order and repair and are accompanied by all necessary certificates and records. The Supplier shall perform the Services to ensure that all such property is handled and stored in such a manner so that it does not cause injury, loss or death to persons or loss or damage to property.

3.2.3 The Supplier shall be responsible for ensuring at its own cost that all personnel engaged in the Services are supplied with and wear all safety gear and protective clothing appropriate to the Services to be provided. The Supplier shall not use any tools, equipment or other property belonging to or within the control of Alghanim without the written consent of Alghanim. In the event that the Supplier uses such property, the Supplier will be responsible for its use and safekeeping.

3.2.4 Written permission to work must be obtained from Alghanim before commencement of any work on site. Particular attention must be paid to the site safety rules and other warning signs. Alghanim shall have the right to request the removal of any individual working at an Alghanim site without giving any reason.

3.2.5 The Supplier shall at its cost, when required by Alghanim, carry away all unwanted material arising from the execution of any works by the Supplier, and shall at all times leave the site clear and tidy to Alghanim's satisfaction. In carrying out these duties the Supplier shall comply with all relevant legislation, including environmental and waste disposal laws and regulations and warrants that it is properly licensed and registered to transport and store controlled and special waste arising in connection with the Services.

4. PRICE AND PAYMENT

4.1 The price(s) for the Goods and Services shall be specified in the Contract.

4.2 The price payable for the Goods and Services shall be:

4.2.1 exclusive of sales tax which, if the Supplier is required by law to charge on the sale or supply, shall be added to the agreed price for the sale of the Goods and/or supply of Services;

4.2.2 inclusive of all charges for packaging, packing, shipping, carriage, insurance and delivery of the Goods and all duties, licences, permits and taxes (other than as per clause 4.2.1) as may be payable in respect of Goods or Services from time to time.

4.3 Alghanim shall make payment for the Goods or Services as stated in the Contract subject to receipt of Supplier's duly completed and accurate invoice which invoices shall only be issued by the Supplier following delivery of the relevant Goods to Alghanim or following completion of the relevant Services.

4.4 Alghanim may withhold payments of any disputed or insufficiently documented amounts included in any invoice. Alghanim is entitled to set-off against the price sums owed to Alghanim by the Supplier.

5. ALGHANIM PROPERTY

The Supplier shall be fully responsible for, will maintain and, where relevant, will calibrate any Alghanim property, including the safe and secure storage thereof, whilst in the Supplier's possession and will promptly replace or repair, as required by Alghanim, at the Supplier's own cost, any Alghanim property lost or damaged by the Supplier. The Supplier will return such property immediately on request and will allow access to Alghanim personnel for the purpose of removing such Alghanim property.

6. REPRESENTATION, WARRANTIES AND GUARANTEE TO ALGHANIM

6.1 The Supplier represents and warrants that the Goods and any parts or materials used in the performance of the Services will:

6.1.1 conform to the Specification;

6.1.2 be fit for their purpose or any special purpose notified in writing by Alghanim to the Supplier;

6.1.3 be new and unused; be of sound materials and workmanship and shall be of satisfactory quality and free from any defects (latent or otherwise) and including defects in design;

6.1.4 conform with all legal and regulatory requirements applicable to such Goods or Services (including any parts or materials used in the performance of the Services) and/or their use;

6.1.5 be accompanied by all appropriate information, warnings, instructions and documentation in relation to the use, storage, operation, transportation and disposal of such Goods or parts or materials; and

6.2 In addition and in relation to the Goods and any parts or materials used in the performance of the Services, the Supplier shall:

6.2.1 specify full details regarding all immediate and long term potential hazards or dangers (including, but not limited to, toxicity, flammability, harmful effect due to inhalation or direct contact and whether due to direct or indirect use thereof);

6.2.2 furnish full details relating to the most appropriate safety precautions to be taken (including in relation to the use or handling thereof);

6.2.3 appropriately and prominently label all receptacles containing dangerous, toxic or otherwise harmful Goods in order to protect those who handle them or who are exposed to them;

6.2.4 Notify Alghanim before the supply of any Goods or use of any materials in the provision of Services, which are manufactured using or containing ozone depleting substances.

6.3 The Supplier represents and warrants that all Services will be performed (i) in a safe and workmanlike manner and in accordance with best practice and with the degree of skill, care and diligence exercised by skilled and experienced contractors in the Supplier's industry, (ii) in full accordance with all applicable laws and regulations, and (iii) so as to ensure that the completed works the subject of the Services are free from defects in materials and workmanship and fit for purpose.

6.4 The Supplier represents and warrants that the provision of any Services shall (i) not violate any third party's intellectual property rights, (ii) comply with all applicable laws and regulations and (iii) not conflict with its certificate of incorporation or by-laws or violate any rule, regulation, statute or order of any governmental body or court applicable to it or any agreement or instrument to which it is a party or by which it is bound.

6.5 The Supplier represents and warrants that (i) the Contract has been negotiated and will be performed on an arm's length basis and (ii) the Supplier is in compliance, and shall at all times comply strictly, with all Alghanim policies relating to ethics and conflicts of interest, including, but not limited to, the following:

6.5.1 The Supplier shall not offer to or demand from any Alghanim employee, representative or agent (i) any item (irrespective of value), act, omission, agreement or other arrangement which could cause, induce or entice such employee, representative or agent to violate or attempt to violate any such policies or result in the appearance of any such violation; or (ii) any personal benefit whatsoever, including, but not limited to, favors, gifts, services, loans, fees, commissions or anything of monetary value.

6.5.2 The Supplier shall take all appropriate measures to safeguard against any aspect of the Contract, its execution or performance resulting in a conflict or potential conflict with the duties of any Alghanim employee, representative or agent, including, but not limited to, the performance by such employee, representative or agent of any work outside Alghanim (with or without remuneration and whether during working hours or not).

6.6 The Supplier shall at its own cost, replace or repair at Alghanim's discretion any of the parts or materials so repaired, modified or replaced under this Condition 6 if it is defective within a period of 12 months from the date of acceptance of such repair, modification or replacement.

6.7 The Supplier agrees to the pass through or assignment to any subsequent user or purchaser the benefit of any warranty or guarantee to which Alghanim is entitled hereunder and the Supplier agrees to enter into such documents as may be necessary to achieve this.

7. LIABILITY, INDEMNITY AND INSURANCE

7.1 The Supplier shall hold harmless and indemnify Alghanim from and against any liability, loss, costs (including legal fees), expense, damage, death or injury arising in consequence of (i) a defect in design (other than a design made or furnished by Alghanim), parts or materials or workmanship of Goods or Services or any breach by the Supplier of the Contract (including any late delivery of Goods and/or performance of Services), (ii) any negligence, wilful default or wrongful act or omission of the Supplier, its employees, sub-contractors or agents, save to the extent that such liability, loss, cost, expense, damage or injury is due to the negligence of Alghanim or (iii) any breach of any representation or warranty by Supplier.

7.2 The Supplier agrees to indemnify Alghanim from any and all losses sustained by Alghanim by reason of any third party claim for injury, death or other damage caused by breach of the representations or warranties within Condition 6 above or by defects in the Goods and/or in the quality of the Services (including any product recall costs incurred by Alghanim as a consequence of Alghanim receiving defective Goods).

7.3 The Supplier shall arrange and maintain, at its own cost, all necessary insurance on terms satisfactory to Alghanim.

7.4 Alghanim's liability to the Supplier for breach of Contract or for any negligent act or omission in connection with the Contract or its performance shall be limited to an amount equal to the purchase price of the Goods and/or

Services the subject of the relevant Contact and in any event Alghanim shall not be liable for loss of profit or special or consequential loss.

8. INTELLECTUAL PROPERTY AND CONFIDENTIALITY

8.1 All intellectual property rights including patents, trade marks, service marks, design rights (whether registered or unregistered), copyright (including any future copyright) and any application for any of the foregoing, arising from work conducted or prepared by the Supplier for Alghanim or in tooling supplied by or on behalf of or funded by Alghanim shall belong to Alghanim and the Supplier agrees at Alghanim's expense to execute all documents and do all such other things as may reasonably be required (i) to assign such rights to Alghanim and (ii) to otherwise assist Alghanim in applying for and being granted such rights.

8.2 Property in all goods and materials (including, without limitation, photographs, drawings, illustrations, film negatives, positives, bromides, recordings, proofs, physical embodiments of computer programmes, tools/tooling and dies) supplied to the Supplier by or on behalf of Alghanim, or prepared, manufactured or procured by the Supplier specifically for or in connection with the performance of the Contract for Alghanim shall belong to Alghanim and shall immediately upon Alghanim's request be handed over to Alghanim free of charge and in good condition and no such goods or materials shall be used by Supplier other than in the performance of the Contract or disposed of without the prior written consent of Alghanim.

8.3 All information and documents provided to the Supplier by Alghanim, or otherwise acquired by the Supplier relating to Alghanim's business, or created or produced by or on behalf of the Supplier specifically for or in connection with the performance of the Contract for Alghanim shall be kept confidential by the Supplier and shall not be used or caused to be used by the Supplier other than for the purposes of the Contract without first obtaining Alghanim's express consent in writing.

8.4 The provisions of Condition 8.3 above shall continue in force notwithstanding termination, however caused, or completion, of the Contract.

8.5 The provisions of Condition 8.3 above shall not apply to any information or document in the public domain or coming into the public domain other than through the default of the Supplier.

8.6 The Supplier warrants that the sale, possession, resale or use of the Goods and/or the performance of the Services to be supplied do not infringe any third party intellectual property rights including patents, designs (whether registered or not), copyright, trade and service marks (whether registered or unregistered), and undertakes to indemnify and hold harmless Alghanim, its employees, officers, servants, agents, successors, assigns and customers ("the Indemnified Parties") against all royalties or licence fees (to the extent not specifically provided for) and against all damages, expenses, losses or costs suffered by the Indemnified Parties or which the Indemnified Parties may be liable in respect of any breach of this warranty. The Supplier will give the Indemnified Parties all such support and assistance as the Indemnified Parties reasonably require in defending a claim that the Goods and Services infringe any third party intellectual property rights. If it should come to Alghanim's knowledge that a claim may arise under this warranty, Alghanim reserves the right to terminate the Contract forthwith on written notice and without any liability.

8.7 The Supplier shall make no reference to Alghanim in its advertising, literature or correspondence without Alghanim's prior written agreement.

9. TERMINATION

9.1 Alghanim shall be entitled to terminate the Contract immediately upon notice and to enter the Supplier's premises and remove any Alghanim Property if:

9.1.1 There is a material breach of a term or any breach of warranty of the Contract by the Supplier; or

9.1.2 Any distress or execution shall be levied on the Supplier's goods or if the Supplier has a receiver, administrator, administrative receiver or manager appointed over the whole or any part of its assets, becomes insolvent,

compounds or makes any arrangement with its creditors or commits any act of bankruptcy or is wound up or goes into liquidation or if the Supplier shall suffer any analogous proceedings under foreign law.

9.2 Termination of the Contract shall be without prejudice to the accrued rights of Alghanim or the Supplier prior to the date of termination.

10. GENERAL

10.1 The Supplier may not assign or sub-contract the Contract without the prior written consent of Alghanim. Alghanim may at any time assign, transfer, charge or deal in any manner with the Contract or any rights under it.

10.2 No term or provision of the Contract shall be enforceable by a third party (being any person other than the parties and their permitted assignees and successors).

10.3 No failure or delay on the part of Alghanim to exercise any power, right or remedy under the Contract shall operate as a waiver thereof nor shall any single or partial exercise by Alghanim of any power, right or remedy preclude any other or further exercise thereof or the exercise of any other power, right or remedy. No waiver by Alghanim shall be valid unless made in writing.

10.4 The Contract constitutes the entire agreement between Alghanim and the Supplier relating to the sale and purchase of Goods and/or Services. No amendment to or a variation of the Contract shall be effective unless agreed in writing by Alghanim.

10.5 All Contracts, acceptances, correspondence, specifications and other documents shall be in the English or Arabic language and shall be governed by and construed in accordance with the law of the State of Kuwait and Alghanim and the Supplier hereby submit to the jurisdiction of the Kuwaiti courts.

10.6 Alghanim reserves the right at any time to cancel the Contract in whole or in part or to make any changes to the Goods and/or Services the subject of the Contract. Unless any cancellation or changes arise from the Supplier's default, Alghanim shall pay to the Supplier fair and reasonable compensation for the Supplier's work-in-progress at the time of change or termination but such compensation shall never include loss of anticipated profits or any economic or consequential loss.

10.7 In the event that any term or provision of the Contract is declared null and void or unenforceable by any court of competent jurisdiction, the remainder of the provisions of the Contract shall remain in full force and effect to the fullest extent permitted by applicable law.

10.8 References to all laws, regulations and codes of practice shall be deemed to include all amendments or revisions thereto and re-enactments thereof as may be made from time to time.

10.9 If the Supplier assigns or sub-contracts any part of the Contract to any person, the Supplier shall ensure that such person agrees to be bound by these Conditions as though a party to the Contract and the Supplier shall indemnify Alghanim against any consequences of the Supplier's failing to do so, including any claim made by such person which it could not make if it were a party to the Contract.

10.10 Each party will be responsible for and will promptly pay when due its own taxes, in any jurisdiction, for which it is responsible and which arise in connection with the Contract. Each party will reimburse immediately upon the other party's demand any such taxes which it pays or is required to pay on behalf of the other party or its affiliates.