Daly Middle East - Standard Terms & Conditions Of Purchase

1. BASIS OF CONTRACT

1.1 The conditions contained in this document (the "Conditions") and all instructions and documents issued by the Purchaser in connection with the Order (as defined below) or referred to therein whether printed, typed or handwritten shall form part of the Order and the Contract. No amendment, modification, instruction, variation, waiver or change shall have effect unless made in writing signed on behalf of the Purchaser by an authorised signatory.

1.2 The Order (as defined below) shall govern the Purchaser's contractual relationship with the Supplier and, unless expressly accepted in writing signed on behalf of the Purchaser by an authorised signatory, no terms inconsistent herewith shall have effect. In the event that the Supplier commences Performance (as defined below) before countersigning or otherwise expressly and unconditionally accepting the Order, then such act of commencement shall be deemed to be an unqualified acceptance of the Order upon these Conditions. The Supplier's terms and conditions are expressly excluded, and no term or condition of the Supplier shall have any legal effect unless expressly accepted in writing by the Purchaser and signed by an authorised signatory.

1.3 The Supplier is deemed to be aware of the Purchaser's obligations to the Client under its contract with the Client and is entitled to attend the Purchaser's offices on giving reasonable notice during the Purchaser's normal hours of business for the purpose of examining at the Purchaser's sole discretion copies of such documentation which the Purchaser considers to be relevant to the Contract (except information as to pricing which the Supplier acknowledges and agrees shall be held confidential by the Purchaser).

2. DEFINITIONS

In these terms the following words shall have the following meanings:-
"Associate" shall mean any subsidiary, holding company, or company with a holding company in common.
"Client" shall mean the Purchaser's client as advised by it to the Supplier
"Completion Date" shall mean the date specified in the Order
"Construction Contract" shall mean any Contract between the Purchaser and Supplier which is a "construction contract" as defined in the Act
"Contract" shall mean the contract between the Purchaser and the Supplier arising out of the Supplier's acceptance of an Order for the sale and purchase of the Work subject to the terms of the Order and these Conditions
"Defects Liability Period" shall mean the period stated in the Order as the Defects Liability Period or, if no such period is stated, 12 months calculated from the date of delivery
"Order" shall mean the Purchaser's order together with all documents referred to therein or attached thereto by the Purchaser
"Order Amendment" shall mean a variation or addition to an Order issued pursuant to Clause 11
"Performance" means manufacture, ordering goods, entry on site or setting aside goods or material for the purposes of the Order
"Price" shall mean all sums payable to the Supplier for performance of Work
"Purchaser" shall mean Daly Middle East
"Supplier" shall mean the person, firm or company with whom the Order is placed
"Work" shall mean all goods and/or services to be supplied pursuant to the Order

3. DRAWINGS

3.1 No drawings, designs or specifications provided in connection with this Order by the Purchaser or its servants or agents (including all features whether patented or patentable or not and whether separately or collectively shown) nor any other documents so provided may be reproduced in whole or in part nor used for any purpose other than the execution of the Contract. The Purchaser shall retain all intellectual and proprietary rights (including without limitation all copyright, registered, unregistered, community registered and community unregistered design rights, trade marks, patents and patent applications) in respect of all drawings, designs and other documents and articles, which are provided on loan only to the Supplier and are subject to immediate return upon demand.

3.2 The Supplier at its own expense shall prepare and submit for approval such drawings as may be required by the Purchaser but approval by the Purchaser, its servants or agents, or Client shall in no sense relieve the Supplier from any of its obligations under the Order. No drawings after such approval shall be varied or modified in any respect without prior written approval from the Purchaser which shall be promptly applied for in good time with full supporting explanation and particulars.

3.3 The Purchaser is hereby granted an irrevocable royalty free license to use and reproduce all copyright matter produced by the Supplier or its servants or agents pursuant to the Contract.

4. TECHNICAL DATA

4.1 The Supplier at its own expense shall supply all required as built drawings, operating instructions, maintenance manuals, mill certificates, fabrication reports and the like as and when required by the Purchaser. If any details shown on drawings issued by the Purchaser are omitted from the Order or other specification or documents issued by the Purchaser or vice versa, it is agreed that notwithstanding such omissions or discrepancy the Supplier will be deemed to have included for such details together with any research work and any other work which may be necessary to complete the Work in its Price, and in the event that the Supplier discovers any ambiguity or discrepancy in the drawings, specification and documents issued in connection with the Order or subsequently whether by way of Order Amendment or otherwise, the Supplier shall immediately submit the ambiguity or discrepancy to the Purchaser for its determination.

4.2 It is the responsibility of the Supplier to ensure it has in its possession all drawings, designs, specifications and documents (together the "Ancillary Documents") contained or referred to in the Order, including all supporting, drawings, designs, specifications and documents referred to within any such Ancillary Documents.

5. QUALITY AND MATERIALS

5.1 The Work shall be supplied strictly in accordance with the Order and any Order Amendments. No deviation is therefore permitted without the Purchaser's prior agreement in writing signed by an authorised signatory. Quality of materials and workmanship shall be fit for their respective purposes. The Work shall only be accepted after it has in the opinion of the Purchaser and/or the Client satisfied the requirements of the Order and these Conditions and is free from defects. Insofar as the Work involves any design on the part of the Supplier, it is a condition of the Contract that the design shall be fit for its purpose.

5.2 For the avoidance of doubt the Purchaser is entitled to the full benefit of all terms ordinarily implied by law whether by statute, trade, custom or usage or other course of dealings between the Purchaser and the Supplier and/or their Associates. This includes without prejudice to the generality of the foregoing any implied terms as to satisfaction, merchantability, fitness for purpose, quality, title and correspondence with description and/or sample.

6. REGULATIONS

6.1 The Work (and all packing, packaging and marking thereof) shall

comply fully and in all respects with all relevant legal obligations including without limitation all relevant local laws, standards, codes of practice, statutory instruments and bye-laws, in each case with regard to health and safety or as otherwise applicable.

6.2 The Supplier shall perform all necessary and relevant risk assessments to identify any hazards and risks in respect of the Works, including but not limited to identifying relevant hazards and risks associated with the construction, installation, maintenance, operation, cleaning and decommissioning of the Works. The Supplier shall keep adequate records of such risk assessments performed and shall, on request from the Purchaser, provide copies of the relevant risk assessment reports and records and any other evidence that the Purchaser may reasonably require to satisfy itself that a formal process has been followed in performing such risk assessments. The Supplier shall use the Purchaser's standard Hazard Identification and Risk Assessment Forms (available on request) or similar, in performing and recording its risk assessments.

7. ASSIGNMENT AND SUB-CONTRACTING

7.1 The Supplier shall not assign the Contract (nor sub-contract any part of the Work) without the Purchaser's prior written consent. No assignment or subcontract (even with the Purchaser's consent) shall relieve the Supplier of any of its obligations under the Contract. The Purchaser may assign the Contract at any time.

7.2 The Supplier shall at the Purchaser's request supply the Purchaser at no extra cost with un-priced copies of all sub-contract documentation.

7.3 All applicable terms and conditions of the Order shall be imposed in all sub-contracts entered into by the Supplier.

7.4 The Purchaser may as a condition precedent of consent to sub-contracting insist that the Supplier obtain from its proposed subcontractor a deed of warranty in favour of the Purchaser in such terms as the Purchaser may require.

8. FREE ISSUE MATERIALS

The Supplier shall be responsible and account for all material issued free, whether directly or indirectly by the Purchaser or Client. The Supplier must keep detailed records of all receipts and issues and provide a detailed reconciliation to the Purchaser when requested. Scrap and wastage of materials must also be accounted for. Free issue materials shall at all times be and remain the property of the Purchaser or Client as the case may be but the Supplier shall maintain an adequate policy of insurance in respect of the excess amount not covered by the insurances required under the Contract for such material and shall produce evidence of cover as and when reasonably required to do so.

9. INSPECTION AND TESTING

9.1 The Purchaser, the Client and their representatives shall at all times be granted access to any premises of the Supplier (including those of the Supplier's subcontractors) and be allowed to inspect the Work, verify progress and witness or conduct relevant tests on the Works at any time prior to acceptance or delivery whichever shall be the later.

9.2 The Purchaser or its representatives shall have full power to reject any Work that it considers at its sole discretion to be defective or inferior in quality of material, workmanship or design and/or not in accordance with the Order in any respect. Any Work so rejected shall immediately be replaced or corrected as required by the Purchaser or its representative at the Supplier's expense. The Supplier shall then re-submit that reperformed Work for re-inspection and re-testing.

9.3 The Supplier shall make available at its own expense all tools, instruments, apparatus, facilities (including adequate space and light), services and materials necessary for carrying out tests on the Work (or on the Purchaser's request, confirmatory re-tests) as may be required by the Purchaser, and when requested the Work shall be completely assembled for such tests and at the Purchaser's opinion shall be dismantled for inspection before dispatch.

9.4 Where reasonably practicable not less than 14 days' notice shall be given to the Purchaser that the Work or any part thereof is ready for inspection and/or testing.

9.5 Neither inspection, testing nor acceptance of any Work nor any waiver of any rights in respect thereof by the Purchaser shall release the Supplier in any respect from any of its obligations under this Order or otherwise including without limitation its responsibility for any defects subsequently found in materials and/or workmanship.

9.6 The Supplier shall at its own expense provide all certificates of analysis, tests, inspection or origin as may be required by the Purchaser or by law which shall in any event be delivered to the Purchaser not later than the date of delivery of the Work to which they relate.

10. MAKING GOOD DEFECTS

10.1 The Supplier shall be responsible for making good by repair or replacement with all possible speed at his expense any defect in or damage to any part of the Work which may appear or occur during the Defects Liability Period and which arises either:

10.1.1 from any defective materials, workmanship or design, provided by the Supplier; or

10.1.2 from any act or omission of the Supplier done or omitted during the Defects Liability Period.

10.2 Where any section or part of the Work is delivered separately the Defects Liability Period in relation there to shall commence on the date of delivery thereof.

10.3 If any such defect shall appear or damage occur the Purchaser shall as soon as reasonably practicable inform the Supplier thereof stating the nature of the defect or damage to the Work ("the Defective Work").

10.4 If any part of the Work (the "Affected Work") cannot be put to its intended use by reason of any Defective Work or part of any such Defective Work, the Defects Liability Period in relation to such Affected Work shall be extended by a period equal to the period during which such Affected Work cannot be used by reason of the Defective Work.

10.5 If any such defect or damage is not remedied within a reasonable time (such period of reasonable time to be determined at the Purchaser's sole discretion), the Purchaser may proceed with remedial works at the Supplier's risk and expense provided that it notifies the Supplier of its intention to do so. The costs reasonably incurred by the Purchaser for such remedial works shall be deducted from the Price or be paid by the Supplier to the Purchaser on demand and the Supplier shall indemnify (and shall keep fully indemnified) the Purchaser from and against all such costs.

10.6 If any defect shall appear in any part of the Work, notwithstanding that the Defects Liability Period may have expired, the same shall be made good by the Supplier by repair or replacement at the Supplier's option provided that the defect was caused by the gross misconduct (as defined below) of the Supplier and would not have been disclosed by a reasonable examination prior to the expiry of the Defects Liability Period.

10.7 For the purposes of Clause 10.6, "gross misconduct" does not comprise each and every lack of care or skill but means an act or omission on the part of the Supplier which implies either a failure to pay due regard to the serious consequences which a conscientious and responsible contractor would normally foresee as likely to ensue or a wilful disregard of such consequences.

10.8 Without prejudice to the operation of the other provisions of these Conditions, where defects appear in or damage is caused to or by the Work at any time resulting from a breach of the Contract by the Supplier then the Purchaser may at its own discretion require the Supplier at its own expense to make good by repair or replacements such defects or damage or to pay the cost of replacement or repair by others. This includes any indirect, special and any reasonably foreseeable consequential costs arising from the defects or damage as the Purchaser shall think fit. The making good of defects or damage shall not prejudice any other rights or remedies to which the Purchaser is or shall become entitled to pursuant to the Contract.

11. CHANGES/ORDER AMENDMENTS

11.1 The Supplier shall carry out changes to the Work required by the Purchaser, which without limitation may include alterations in the quantity of the Work as well as additions or omissions to the scope and subject matter of the Work and no change shall vitiate the

Order. No such changes shall be complied with unless expressed by way of written Order Amendment from the Purchaser to the Supplier signed by an authorised signatory of the Purchaser. All changes shall be valued at the rates and prices set out in the Order. If the rates and prices in the Order are not applicable to the changes then suitable rates based on those in the Order shall be agreed between Purchaser and Suppler. In the event of failure by the Purchaser and the Supplier to agree such suitable rates or prices then the Purchaser shall determine fair and reasonable rates or prices and utilise the same to adjust the Order Amendment accordingly.

11.2 Unless otherwise agreed, any additional work arising during the execution of the Order shall not extend the agreed delivery date for the Order or be the cause of any other amendment.

12. PATENTS AND INTELLECTUAL PROPERTY

The Supplier shall indemnify and keep fully indemnified and hold harmless the Purchaser and its Client against and from all actions, liabilities, claims, demands, proceedings, losses, damages, expenses, costs, fees, charges whatsoever or howsoever arising out of or in connection with the infringement of any patent or other intellectual property rights of any third party in respect of Work supplied hereunder or in relation thereto.

13. COMPLETION AND DELIVERY

13.1 The Work shall be completed by the date specified in the Order or as varied by any Order Amendment(s). Further the Supplier shall deliver the Work to any schedule or programme which the Purchaser may issue from time to time or to any revision thereof.

13.2 Time of performance and of completion and of delivery shall be of the essence.

13.3 The Supplier shall not withhold delivery of any Work by reason of any outstanding payment due from the Purchaser to the Supplier from time to time under any other contract or order between the Purchaser and the Supplier or otherwise.

13.4 The Supplier shall immediately report any delay or anticipated delay whatsoever and its cause and shall keep the Purchaser fully informed with dates of anticipated actual delivery and shall use its best endeavours (without reduction in any event in its contractual liability and damages or otherwise) to eliminate such cause or causes of delay.

13.5 The Supplier shall provide at its own expense such bar charts, suggested programmes and progress data as the Purchaser shall deem necessary from time to time.

13.6 If the Supplier shall fail to commence performance of the Work on the starting date or if the Purchaser considers that the supplier may not be able to complete the Work by any due date or if in fact the Supplier shall fail to do so then in either event the Purchaser may terminate the Order or any part thereof and the provisions of Clause 18 shall particularly apply.

13.7 Any part of the Work ready for delivery before the Purchaser requires delivery shall be stored by the Supplier at its own risk and expense.

13.8 Delivery of the Work shall be affected in the manner and at the time or times specified by the Purchaser, and if the Work is not delivered accordingly, then the:

13.9 Supplier shall be fully responsible for any additional expenses arising therefrom. In any event unless otherwise provided, the Supplier shall be responsible for delivery (including packaging and unloading) to the site designated by the Purchaser. The Work shall be delivered in accordance with the relevant Incoterm 2000 stated in the Order to the extent that the relevant provisions thereof do not conflict with this Clause 13. Where no such Incoterm is stated in the Order the Work shall be delivered DDP.

13.10 The Supplier shall ensure all documentation and certificates identified in the Order shall be delivered at the times stated in the Order or, where no such time for delivery of a document is stated in the Order, with the Work, or relevant part thereof. All documents and certificates must be legible and in the English language and marked for the attention of the Purchaser's relevant contact for the Order, as stated on the Order.

14. LIQUIDATED DAMAGES

14.1 Without prejudice to the Purchaser's other rights or remedies under these Conditions, if the Supplier fails to deliver the Work or any part thereof on the date of delivery to the named destination or fails to achieve any performance guarantees set out in the Contract, then the Supplier shall pay liquidated damages as follows:

14.1.1 in the event of late delivery or performance of the Work to or at the named destination and/or non-acceptance of the Work by the Purchaser, the greater of five percent (5%) of the Price or Five thousand UAE Dirhams (5,000 AED), for each full week of delay and pro-rate temporis for any part thereof, or any part of the Work, as the case may be;

14.1.2 in the event of late submission of packing and/or any other shipping document as specified in the Order, Three Thousand UAE Dirhams (3000 AED) for each full week of delay and pro-rate temporis for any part thereof. The final packing list, where required in accordance with the Order, shall be given to the Purchaser no later than three (3) days prior to the actual delivery date;

14.1.3 in the event of late submission of any documents (other than shipping documents), Five hundred UAE Dirhams (500 AED) for each full week of delay behind the stipulated submission date.

14.2 The maximum aggregate liquidated damages payable in accordance with Clause 14.1 (14.1.1 for delay in delivery and non-achievement of the performance guarantees shall be twenty five percent (25%) of the Price.

14.3 The parties acknowledge and agree that because of the unique nature of the Work, and the unavailability of substitutes for the Work, it is difficult or impossible to determine with precision the amount of damages that would or might be incurred by the Purchaser if the Work is not completed on time and/or the Work fails to achieve the performance guarantees. Consequently the parties have, in good faith established the liquidated damages set out in Clause 14.1 above.

15. PACKING AND MARKING

Where the Work consists of more than one item of goods, then each separate item must be tagged and indelibly marked with the Purchaser's Order number and/or Contract number. Where appropriate, individual pieces shall have erection marks clearly painted on either in a durable form or in such other ways as the Purchaser shall indicate. All items shall be carefully packed and protected to protect against damage in transit in such a way as to facilitate rational off-loading, and all costs of packing, tagging, marking etc are at the expense of the Supplier, and no packaging is returnable unless otherwise agreed by the Purchaser in writing signed by its authorised signatory at or prior to the date of the Order.

16. ADVERTISING

No advertising, publicity matter or other literature in relation to the Work or to the associated project is to be published, released or utilised by the Supplier except with the prior written permission of the Purchaser signed by an authorised signatory.

17. TERMINATION FOR DEFAULT OR INSOLVENCY

17.1 In the event of any default by the Supplier in performance of any of its obligations which in the opinion of the Purchaser constitutes a material breach of such obligation or obligations, then the Purchaser may forthwith terminate the Contract by notice in writing. No forbearance whether by allowing an opportunity to rectify such default or breach or otherwise shall constitute a waiver of the Purchaser's right to terminate.

17.2 In the event of the Supplier compounding or entering into any arrangement with its creditors, whether a voluntary arrangement or otherwise or going into bankruptcy or into creditors' voluntary liquidation or compulsory winding-up or having an administrator, administrative receiver, receiver, trustee or other similar officer appointed (whether out of court or otherwise), then the Purchaser shall be entitled forthwith or at any time thereafter to determine the Contract by serving notice in writing to any substantial business address of the Supplier without effect on the Purchaser's other rights under the Contract.

18. TERMINATION GENERALLY

18.1 The Purchaser shall be entitled at any time prior to delivery to terminate the Contract in whole or in part by serving notice in writing upon the Supplier to that effect and thereon the Supplier shall cease all performance, unless to the extent otherwise provided by the Purchaser in the notice of termination. In the event of such termination, the Purchaser shall fully discharge all liabilities to the Supplier by making payment pursuant to the terms hereof within a reasonable period of time for all Work satisfactorily performed up to the date of termination together with all goods and materials properly procured by the Supplier for incorporation into the Work which had not yet been incorporated at that time and a reasonable sum in respect of cancellation charges in respect of any order(s) for the supply of goods or services by third parties pursuant to its obligations hereunder which the Supplier had properly placed. In the event of payment being made for such goods or services, then title therein shall pass immediately to the Purchaser.

18.2 Despite the provisions of Clause 18.1 above, under no circumstances shall the payment thereunder exceed, when added to sums previously paid or otherwise due, the amount which would have been payable to the Supplier had the Contract not been terminated and the Supplier had therefore received payment in full pursuant to Clause 19.

18.3 Where the Work is to be delivered in instalments in accordance with the Order or a series of connected Orders, failure by the Supplier to deliver any such instalment in accordance with or failure of such instalment to comply with the relevant Order and these Conditions, shall entitle the Purchaser to reject all instalments and treat the Contract as a whole to be repudiated.

18.4 In the event of termination pursuant to Clause 17 or Clause 18, the Purchaser shall be entitled to enter the Supplier's premises or any place where the Work is situated in whole or in part and take possession of the whole or any part of the Work and remove the same, and title thereto (insofar as the same shall not already be vested in the Purchaser) shall forthwith vest in the Purchaser and conversely the Purchaser shall at its sole discretion be entitled to repudiate title in or otherwise reject any goods which it does not require.

18.5 The exercise of any right to terminate (whether pursuant to Clauses 17, 18 or otherwise) shall be without prejudice to any of the Purchaser's other rights arising under the Contract or otherwise.

19. PRICES & PAYMENT

19.1 All prices shall be fixed for the duration of the Order and are not subject to fluctuations or variation.

19.2 The provisions of this Clause 19.2 shall apply to all Contracts:-

19.2.1 In consideration of the performance and/or delivery of the Work to the Purchaser's satisfaction, the Purchaser shall pay the Supplier the Price in accordance with these conditions. The Supplier shall send the Purchaser a detailed invoice clearly stating in each case on its face the Order and/or Contract number, any appropriate item numbers, together with all other information that the Purchaser may reasonably require from time to time, and such invoice shall be presented. In addition, a monthly statement of account shall be presented by the Supplier to the Purchaser within seven days of the end of each calendar month.

19.2.2 Unless otherwise specified in the Order any payments for which the Purchaser is liable shall, subject to Clause 19.2.1, fall due to be paid 60 days following the date on which the Supplier's true and correct invoice was received at the Purchaser's invoicing address. For the avoidance of doubt, payment shall not operate as a waiver of any rights of the Purchaser under the Contract or otherwise. The retention element in any calculation of value shall only fall due at the end of any retention period stated in the Order. Time for payment of the Price is not of the essence of the Contract.

19.2.3 Unless otherwise stated in the Order all payment hereunder shall be made in UAE Dirhams (AED). The Purchaser reserves the right to make payments by BACS.

19.2.4 Unless otherwise stated in the Order, the rates and prices stated in the Order are deemed to be sufficient to cover all the Supplier's obligations whether express or implied, and without prejudice to the generality of the foregoing, where the Work or any part thereof is to be performed or delivered otherwise than at the Supplier's premises, then it shall be deemed to have satisfied itself as to all local conditions, requirements or difficulties or any other factors which may in any way affect the performance or delivery of the Work.

19.2.5 Purchaser on behalf of itself and its Client reserves the right to audit the Supplier's charges, and both the Purchaser and its Client shall for a period of two years from the date of completion or delivery of the Work or from the expiration of the Client's audit rights if any under its contract with the Purchaser, if later, have free access to any detailed cost data necessary for the purpose of such audit and shall be entitled to confidential copies of such data and supporting documents and information.

19.2.6 Save in relation to a Construction Contract, in the event that the Work directly involves the Purchaser with a Client, then the Purchaser undertakes to use its best endeavours to obtain payment from the Client, but no liability shall arise upon the Purchaser to make any payment to the Supplier whatsoever unless and until such time as the Client makes a corresponding payment to the Purchaser.

19.2.7 The Purchaser shall have the right to set off against any sum due to the Supplier howsoever arising at any time any claim, damage, loss, expense, or other liability or cost which it may have or sustain under the Contract or any other contract between the Purchaser or the Suppler or any Associate of the Supplier.

19.2.8 The Supplier shall pay the Purchaser for any Work carried out by the Purchaser or any third party engaged by the Purchaser on behalf of the Supplier should the Supplier fail to fulfil its obligations under the Contract to the satisfaction of the Purchaser in accordance with Clause 10.5 or otherwise. All such payments shall be made by the Supplier within 21 days of the date of the invoice provided by the Purchaser.

19.2.9 If either the Purchaser or the Supplier fails to pay an amount payable by it under the Contract to the other by the due date, then the other shall be entitled but not obliged to charge the interest on the overdue amount from the due date up to the date of actual payment, at the rate of 3 per cent per annum.

19.3 The provisions of this Clause 19.3 are only applicable to a Contract which is a Construction Contract.

19.3.1 Provisional interim payments shall be made by reference to calendar monthly instalments, as specified in the Order. The due date for each instalment payment shall be fourteen days after the end of each calendar month.

19.3.2 The Supplier shall present an accurately detailed workmanlike and legible application with full proper and satisfactory supporting documentation in respect of each instalment payment.

19.3.3 For the purposes of the Act, the final date for payment under the Contract in respect of any amount shall be 60 days after payment of such amount becoming due. The Purchaser may withhold payment after such final date for payment provided that it has given notice to the Supplier not less than 5 days before such final date for payment of its intention to withhold such payment. Such notice shall state the amount to be withheld and the ground for withholding payment (or if there are more than one ground, each ground and the amount attributable to each).

19.3.4 The Purchaser shall give a notice of payment to the Supplier specifying the amount (if any) of the payment made or proposed to be made and the basis on which such amount is calculated not less than 5 days after the date on which the payment becomes due, or would have become due if:

a) the Supplier had carried out its obligations under the Contract; and

b) no set-off or abatement were permitted.

19.3.5 Without prejudice to any other rights or remedies of the Purchaser, a retention sum of 5% will be withheld from all payments other than any final one under 19B.6 without obligation to invest, one half of such retained sum being payable within one calendar month following completion of the whole of the Work and one half being paid within one calendar month of the end of the Defects Liability Period.

19.3.6 During the Defects Liability Period the Purchaser will review and at its sole option effect a re-measure and issue a final account

to the Supplier. If such final account shows any further sum due to or from the Supplier then such payment shall be made within 30 days of the date of such final account.

19.3.7 Any referral to adjudication under section 108 of the Act, the appointment of the adjudicator and the conduct of the adjudication proceedings shall be subject to the adjudication provision of the Scheme of Construction Contracts made under Section 114 of the Act.

20. TITLE AND RISK

Title in the Work shall pass from the Supplier to the Purchaser on the earlier of the creation of the relevant goods or allocation from stock or acquisition by the Supplier. Notwithstanding the passing of title, the risk in such goods shall remain with the Supplier until delivery or until acceptance of the Work by the Purchaser in accordance with the provisions of the Order whichever shall be later. All materials or equipment forming part of the Work in which title has passed shall be clearly marked by the Supplier as the Purchaser's property and shall be stored separately from the Supplier's property.

21. INDEMNITIES

21.1 The Supplier shall indemnify and keep fully indemnified and hold harmless the Purchaser and its Client severally against and from any actions, liabilities, claims, demands, proceedings, losses, damages, expenses, costs, fees, charges whatsoever or howsoever arising out of or in connection with any of the following: -

21.1.1 the Supplier's breach of any provision of the Contract;

21.1.2 any act or omissions of the Supplier, its servants, agents or sub-contractors, which involves the Purchaser in any liability to its Client whether pursuant to or arising out of or in connection with the Purchaser's contractual relationship with its Client or otherwise;

21.1.3 injury, loss or damage to persons or property contributed to or caused by the negligence or breach of duty of the Supplier, its servants, agents or subcontractors, or otherwise arising out of or in the cause of or caused by the acts, omissions or defaults of the Supplier, its servants, agents or sub-contractors pursuant to the Contract (save where the injury, loss or damage is caused solely by the negligent act or omission of the Purchaser); and

21.1.4 all third party allegations, liens, claims, arrestments, garnishees, executions, judgments and awards (including expenses) whether groundless or not which may arise out of or in connection with the Contract.

21.2 The Supplier shall maintain insurance cover against such liabilities as are referred to at Clause 21.1.3 and shall provide to the Purchaser on demand valid certificates of insurance in respect thereof. Pursuant to Clause 21.1.4, the Supplier shall at the Purchaser's request furnish proofs satisfactory to the Purchaser that all such liens and claims, judgements and awards, etc. have been satisfied or released and further agrees that the Purchaser shall have the right to make payment direct to such third party and recover such payments from the Supplier as a contract debt.

22. LIENS

The Supplier agrees to waive any right to exercise a lien upon the Work or upon any materials, component parts, works in progress, relevant drawings, including as built drawings, operation instructions, maintenance manuals, mill certificates, fabrication reports, test certificates and the like and acknowledges that its sole remedy in the event of any breach by the Purchaser of its obligations under the Contract is to seek financial relief through the courts. As and when required by Purchaser, Supplier shall give a certificate of waiver of lien, and of any other rights over the Work or to any injunctive or performance remedies to Purchaser or to any third party nominated by Purchaser.

23. UAE LAW AND JURISDICTION

Save where otherwise specifically agreed in writing signed by an authorised signatory of the Purchaser, the Contract shall in all respects be construed in accordance with the laws of the United Arab Emirates, and the courts of United Arab Emirates shall have exclusive jurisdiction over any dispute or difference arising out of or in connection with the Contract.

24. GENERAL

24.1 Except as expressly provided for in this Clause 24.1, a person who is not a party to this Contract has no rights to rely upon or enforce any term of the Contract. The Purchaser is entering into the Contract for itself and for the benefit of its Client and any Associate of the Purchaser or Client each of which shall have the benefit of and shall be entitled to enforce the terms of the Contract where a right is conferred on such party by virtue of the terms and conditions of the Contract PROVIDED THAT the Contract may be varied from time to time or terminated in accordance with its terms without the consent of the Client, or any Associate of the Purchaser or the Client.

24.2 Any notice given under the Contract shall be in writing and signed by or on behalf of the party giving it and shall be served by delivering it personally or sending it by pre-paid recorded delivery or registered post to the registered office of the other party. Any such notice shall be deemed to have been received (a) if delivered personally, at the time of delivery or (b) in the case of pre-paid recorded delivery or registered post, 48 hours from the date of posting.

24.3 If any term or terms contained in the Contract shall be void, illegal or unenforceable in any respect under the applicable law the remaining terms will remain valid, legal and enforceable and will not in any way be affected or limited thereby.

24.4 The failure to exercise or delay in exercising a right or remedy provided by the Contract or by law does not constitute a waiver of the right or remedy or a waiver of other rights or remedies. A waiver of a breach of any of the terms of the Contract or of a default under the Contract does not constitute a waiver of any other breach or default and shall not affect the other terms of this Contract.