

**THIS AGREEMENT** is made on the date set out in the Schedule

**BETWEEN**

- (1) **Oilfield Supply Alliance FZC**, a company incorporated in in UAE whose registered office is at Hamriyah Free Zone, P.O. Box 52349, Sharjah, UAE (the **Seller**) and
- (2) the Buyer named in the Schedule (the **Buyer**)

**THE PARTIES AGREE**

**1 Definitions**

1.1 In this Agreement, unless otherwise provided:

**'Acceptance Date'**

means the date on which the Seller sends the Buyer written acceptance of an Order

**'Affiliate'**

of a party means any entity which directly or indirectly owns or controls, is directly or indirectly owned or controlled by, or is in common ownership or control with, that party

**'Business Day'**

means a day [other than Saturday, Sunday and public holidays OR when clearing banks generally are open for business in the UAE

**'Confidential Information'**

has the meaning set out in clause 11

**'Delivery Location'**

means the address specified in the Schedule

**'DIFC'**

means the Dubai International Financial Centre, Dubai, United Arab Emirates

**'Force Majeure'**

has the meaning set out in clause 12

**'Intellectual Property'**

means copyright, patents, know-how, trade secrets, trademarks, trade names, design rights, rights in get-up, rights in goodwill, rights in confidential information, rights to sue for passing off, chip topography rights, mask works, utility models, domain names and all similar rights and, in each case:

- (i) whether registered or not,
- (ii) including any applications to protect or register such rights,
- (iii) including all renewals and extensions of such rights or applications,
- (iv) whether vested, contingent or future,
- (v) to which the Seller is or may be entitled and
- (vi) in whichever part of the world existing

**'Order'**

means the Buyer's order, on the terms of this Agreement, for the Products and/or Services set out in the Buyer's order in the Schedule

**'Products'**

means the products and any related accessories, spare parts and documentation set out in the Schedule and to be supplied by the Seller to the Buyer

**'Services'**

means the services relating to the Products set out in the Schedule and to be supplied by the Seller to the Buyer

**'Specification'**

means, in relation to Products or Services, the description or specification set out in the Schedule or as otherwise agreed in writing between the Seller and the Buyer

**'Warranty Period'**

means the period referred to in clause 6.1

**'UAE'**

means the United Arab Emirates

1.2 Unless the context otherwise requires:

1.2.1 each gender includes the other

1.2.2 the singular includes the plural and vice versa

1.2.3 references to this Agreement include its Schedule

1.2.4 references to persons include individuals, unincorporated bodies, government entities, companies and corporations

1.2.5 clause headings do not affect their interpretation

1.2.6 general words are not limited by example, and

1.2.7 references to legislation include any modification or re-enactment thereof.

**2 Terms**

2.1 An Order will be deemed to be an offer to purchase Products and/or Services on the terms of this Agreement.

2.2 Orders are not binding until accepted by the Seller in writing. Once an Order is accepted by the Seller in writing, this will form a binding contract between the Seller and the Buyer. Should the Buyer wish to cancel an Order after it has been accepted by the Seller in writing, the Buyer will pay the Seller an Order termination fee of 35% of the value of the Order.

2.3 Quotations issued by the Seller are valid for 30 Business Days from issue. They do not constitute an offer to sell or supply. If the Buyer wishes to purchase Products or Services that are the subject of a quotation, it will need to place an Order.

- 2.4 Marketing and other descriptive matter relating to Products or Services are illustrative only and do not form part of this Agreement. The Buyer agrees that, in placing an Order, it has not relied on any representation or statement by the Seller not set out in this Agreement.
- 2.5 This Agreement alone will apply to the sale of the Products and the supply of the Services by the Seller to the Buyer. All other terms, including any:
- 2.5.1 which the Buyer seeks to incorporate, or
  - 2.5.2 implied by course of dealing or by custom or practice,
- are expressly excluded and will not apply.

### **3 Price and payment**

- 3.1 The price for the Products and Services will be as set out in the Schedule. The price:
- 3.1.1 does not include packaging and delivery unless otherwise stated; and
  - 3.1.2 does not include Value Added Tax (VAT) and UAE customs and import duties, unless otherwise stated.
- 3.2 The price is payable in full in advance unless the price is stated to be paid by instalments as set out in the Schedule.
- 3.3 Services are charged on a time and materials basis at the Seller's then-current daily rates. The rates are calculated on the basis of a full workday. For Services provided outside those times, the Seller's then-current overtime rates will apply.
- 3.4 The Seller may vary prices for Products and/or Services from time to time. The Seller will give the Buyer not less than 30 days' written notice of such variations.
- 3.5 Orders accepted by the Seller at the time of notification of price variations under clause 3.4 will be fulfilled at the original prices quoted.
- 3.6 The Seller will invoice the Buyer:
- 3.6.1 for Products, within three (3) days from receipt of the Order; and
  - 3.6.2 for Services, monthly in arrears.
- 3.7 The Buyer will pay all invoices:
- 3.7.1 in full, without deduction or set-off, in cleared funds within seven (7) days of the invoice date;
  - 3.7.2 to the Seller's nominated bank account specified in the Schedule or as otherwise advised by the Seller to the Buyer in writing.
- 3.8 Where sums due hereunder are not paid in full by the due date:
- 3.8.1 the Seller may, without limiting its other rights, charge interest on such sums at two (2) % a year above the base rate of Emirates NBD Bank from time to time in force
  - 3.8.2 interest will accrue on a daily basis and apply from the due date for payment until actual payment in full, whether before or after judgment.

3.9 Where required in accordance with applicable law, VAT (or equivalent) will be charged by the Seller and paid by the Buyer at the then-applicable rate.

#### **4 Title and risk**

4.1 Risk in the Products will pass to the Buyer on delivery, unless otherwise agreed.

4.2 Title to the Products will pass to the Buyer once the Seller has received payment in full for:

4.2.1 the Products

4.2.2 the Services, and

4.2.3 any other products and services sold or supplied by the Seller to the Buyer for which payment is outstanding.

4.3 Until title to the Products has passed to the Buyer, the Buyer will:

4.3.1 hold the Products as bailee for the Seller

4.3.2 store the Products separately from all other material in the Buyer's possession

4.3.3 take all reasonable care of the Products and keep them in reasonable condition

4.3.4 insure the Products: (i) with a reputable insurer (ii) from the date of delivery (iii) against all risks (iv) for an amount at least equal to the Price (v) noting the Seller's interest on the policy

4.3.5 ensure that the Products are clearly identifiable as belonging to the Seller

4.3.6 not remove or alter any mark on or packaging of the Products

4.3.7 inform the Seller as soon as possible if it becomes subject to any of the events set out in clause 13.1

4.3.8 provide the Seller such information concerning the Products as the Seller may request from time to time.

4.4 If, at any time before title to the Products has passed to the Buyer, the Buyer informs the Seller, or the Seller reasonably believes, that the Buyer has or is likely to become subject to any of the events specified in clause 13.1, the Seller may:

4.4.1 require the Buyer to redeliver the Products to the Seller, and

4.4.2 if the Buyer fails to do so promptly, enter any premises where the Products are stored and repossess them.

#### **5 Delivery**

5.1 The Products will be:

5.1.1 delivered by or for the Seller to the Delivery Location on the date/s specified in the Schedule, or

5.1.2 made available for collection by the Buyer at the premises set out in the Schedule. The Buyer will collect the Products within the period specified in the Schedule.

5.2 The Products will be deemed delivered:

- 5.2.1 if delivered by or for the Seller under clause 5.1.1, on arrival of the Products at the Delivery Location; or
- 5.2.2 if collected by the Buyer under clause 5.1.2, on completion of loading at the premises set out in the Schedule.
- 5.3 The Products may be delivered by instalments. Any delay in delivery or defect in an instalment will not entitle the Buyer to cancel any other instalment.
- 5.4 Delivery of the Products will be accompanied by a delivery note stating:
  - 5.4.1 the date of the Order
  - 5.4.2 relevant Buyer and Seller details
  - 5.4.3 the product numbers and type and quantity of Products in the consignment
  - 5.4.4 any special handling and other instructions
  - 5.4.5 whether any packaging material is to be returned (in which case the Buyer will, at the Seller's option, return them to the Seller or make them available for collection by the Seller at a time specified by the latter, in either case at the Seller's expense).
- 5.5 Whilst the Seller will use reasonable endeavours to meet delivery dates, such dates are approximate only, and time of delivery is not of the essence.
- 5.6 The Seller will not be liable for any delay in or failure of delivery caused by:
  - 5.6.1 the Buyer's failure: (i) to make the Delivery Location available, (ii) prepare the Delivery Location in accordance with the Seller's instructions as required for delivery and installation of the Products or (iii) provide the Seller with adequate instructions, for delivery and installation or otherwise relating to the Products; or
  - 5.6.2 the Buyer's failure to collect the Products from the Seller's premises, or
  - 5.6.3 an event of Force Majeure.
- 5.7 If the Buyer fails to accept delivery of or collect the Products as provided in clause 5.1.1 or 5.1.2 on the date or within the period set out in the Schedule:
  - 5.7.1 delivery of the Products will be deemed to have occurred at 1700 on the following Business Day.
  - 5.7.2 the Seller will store and insure the Products pending delivery, and the Buyer will pay all reasonable storage and insurance charges and related costs and expenses incurred by the Seller in doing so.
- 5.8 If, 60 Business Days after the due date for delivery or collection of the Products, the Buyer has not taken delivery of or collected them, the Seller may resell or otherwise dispose of the Products. The Seller will:
  - 5.8.1 deduct all reasonable storage charges and costs of resale AND storage charges at the rate of \$2.50 per square metre per day of storage space needed and in addition, the reasonable costs of resale, and

5.8.2 account to the Buyer for any excess of the resale price over or invoice the Buyer for any shortfall of the resale price below, the price paid by the Buyer for the Products.

## **6 Quality**

6.1 The Seller warrants that, for the period of 18 months from delivery or 12 months from the date of installation, whichever is earlier (the **Warranty Period**), the Products will:

6.1.1 conform in all material respects to their description and to any applicable Specification; and

6.1.2 be free from material defects in design, material and workmanship.

6.2 The Seller will, at its option, repair, replace or refund the price of defective Products, provided that and subject to clause 9:

6.2.1 the Buyer informs the Seller in writing within 48 hours of discovering, as per clause 5, that some or all Products do not comply with clause 6.1; and

6.2.2 the Buyer gives the Seller a reasonable opportunity to examine the defective Products; and

6.2.3 the Buyer returns the defective products to the Seller.

6.3 This Agreement will apply to any Product repaired or replaced under clause 6.2.

6.4 The Seller will not be liable for any failure of the Products to comply with clause 6.1:

6.4.1 where such failure arises by reason of fair wear and tear, could be expected to arise in the normal course of use of the Product or is as a result of wilful damage, negligence, or abnormal working conditions; or

6.4.2 to the extent caused by the Buyer's failure to comply with the Seller's instructions as to: (i) storage, installation, commissioning, use or maintenance of the Products or (ii) good practice in relation thereto; or

6.4.3 to the extent caused by the Seller following any design or specification or requirement of the Buyer in relation to the Product; or

6.4.4 where the Buyer repairs or alters any Product without the Seller's prior written agreement, or

6.4.5 where the Buyer uses any Product after notifying the Seller that it does not comply with clause 6.1.

6.5 Except as set out in this clause 6:

6.5.1 the Seller gives no warranty in relation to the Products, and

6.5.2 will be under no liability for their failure to comply with the warranty in clause 6.1.

## **7 Services**

7.1 The Seller will provide the Services to the Buyer in accordance with the Specification and as set out in the Schedule.

7.2 The Seller may make any changes to the Services:

- 7.2.1 that are needed to comply with applicable law or safety requirements, or
- 7.2.2 which do not materially affect the nature or quality of the Services, and  
and will notify the Buyer in advance of such changes.
- 7.3 The Seller will provide the Services with reasonable care and skill.
- 7.4 The Seller will use all reasonable endeavours to meet the timescales set out in the Schedule for the performance of the Services. However, time will not be of the essence of such performance.
- 7.5 If the Seller is prevented or delayed in performing the Services by any cause attributable to the Buyer, the Seller (without prejudice to its other rights):
  - 7.5.1 may suspend performance of the Services until the Buyer rectifies its default;
  - 7.5.2 will not be liable for any costs or losses sustained by the Buyer as a result of such suspension; and
  - 7.5.3 may charge the Buyer (and the Buyer will pay in accordance with this Agreement) costs or losses incurred by the Seller arising from the Buyer's default.

## **8 Obligations of the Buyer**

The Buyer will:

- 8.1 place all orders on the terms of this Agreement and ensure that their contents are complete and accurate
- 8.2 ensure that any part of the Specification which it provides is complete and accurate and contains all information the Seller may require
- 8.3 co-operate fully with the Seller in relation to delivery or collection of the Products
- 8.4 co-operate fully with the Seller in relation to the provision of the Services, and provide the Seller with all necessary premises, facilities, personnel and assistance, and
- 8.5 obtain and maintain all necessary licences and consents for the performance of the Services.

## **9 Liability**

- 9.1 The Seller does not exclude its liability:
  - 9.1.1 for death or personal injury caused by its negligence, or
  - 9.1.2 for fraud or fraudulent misrepresentation.
- 9.2 Neither party will be liable for:
  - 9.2.1 loss of data or use
  - 9.2.2 any form of indirect, consequential or special loss, or
  - 9.2.3 any loss of or failure to realise expected profit, revenue or savings or any other form of pure economic loss, whether any such loss is direct or indirect,and, in each case, however arising.

9.3 The Seller limits its liability (however arising) in respect of or in connection with the Products, and otherwise in connection with this Agreement, to the total price of Products and Services which are the subject of this Agreement.

## **10 Third Party IP Infringement**

10.1 The Seller will defend or, at its option, settle any action brought against the Buyer arising from any claim that the use of the Products or receipt by the Buyer of the Services in accordance with this Agreement infringes any third party intellectual property right, and indemnify the Buyer against all reasonable costs and expenses incurred by the Buyer in connection with such claim.

10.2 The Seller's obligations under clause 10.1 will not apply to Products modified or used by the Buyer other than in accordance with this Agreement. The Buyer will indemnify the Seller against all reasonable costs and expenses incurred by the Seller in connection with any claim arising from such modification or use.

10.3 The Seller's obligations under clause 10.1 are conditional on the Buyer:

10.3.1 promptly advising the Seller in writing of any claim or action;

10.3.2 making no admission as to, or settlement or compromise of any claim or action without the Seller's prior written consent;

10.3.3 giving the Seller sole conduct of any defence and any settlement negotiations, and

10.3.4 co-operating fully with the Seller and providing the Seller with all reasonable assistance in the defence or settlement of such claim or action.

10.4 The Buyer's reasonable costs of compliance with clauses 10.3.3 and 10.3.4 will be paid by the Seller.

10.5 The provisions of this clause 10 set out the Seller's entire liability and the Buyer's sole right in respect of third-party intellectual property infringement.

## **11 Confidentiality**

11.1 Neither party will, without the other's prior written consent, disclose (other than under clause 11.3):

11.1.1 the terms of this Agreement,

11.1.2 any information relating to the customers, products, plans or otherwise to the business or affairs of the other party which is obviously confidential or has been identified by the other party as such, or

11.1.3 any information developed by either party in performing its obligations under, or otherwise pursuant to this Agreement,

all such matters together **Confidential Information**.

11.2 Neither party will use the other's Confidential Information except as required to perform this Agreement.

- 11.3 Disclosure of Confidential Information may be made to a party's officers, employees, professional advisers and consultants and other agents, in each case on condition that the party disclosing is responsible for compliance with the obligations of confidence hereunder.
- 11.4 Confidential Information does not include information which:
- 11.4.1 is or becomes public other than by breach of this Agreement;
  - 11.4.2 was before this Agreement, or becomes known to the other party without breach of confidence;
  - 11.4.3 is independently developed by the other party without using information supplied by the first party, or
  - 11.4.4 is required to be disclosed by law or regulatory authority.
- 11.5 A reasonable number of copies of Confidential Information may be made and used for the purposes of this Agreement and subject to this clause 11.
- 11.6 This clause 11 will remain in force for a period of two (2) years from termination of this Agreement]

## **12 Force Majeure**

- 12.1 Force Majeure means an event or sequence of events beyond a party's reasonable control preventing or delaying it from performing its obligations hereunder. Inability to pay is not Force Majeure.
- 12.2 A party will not be liable if delayed in or prevented from performing its obligations due to Force Majeure, provided that it:
- 12.2.1 promptly notifies the other of the Force Majeure event and its expected duration, and
  - 12.2.2 uses reasonable endeavours to minimise the effects of that event.
- 12.3 If, due to Force Majeure, a party:
- 12.3.1 is or will be unable to perform a material obligation, or
  - 12.3.2 is delayed in or prevented from performing its obligations for a continuous period exceeding 30 days
- the other party may, within 30 days thereafter, terminate this Agreement on immediate notice OR the parties will, within 30 days, renegotiate the Agreement to achieve, as nearly as possible, the original commercial intent.

## **13 Termination**

- 13.1 This Agreement may be terminated forthwith at any time by either party on written notice to the other if:
- 13.1.1 the other commits a material breach, or series of breaches resulting in a material breach, of the Agreement and such breach is not remediable or is not remedied within 30 days of written notice to do so

- 13.1.2 the other: (i) suspends or threatens to suspend payment of its debts, (ii) is unable to pay its debts as they fall due or (iii) is unable to pay its debts (being a company)
- 13.1.3 the other: (i) negotiates with its creditors for rescheduling of its debts, (ii) makes a proposal to or compounds with its creditors in respect of its debts [other than solely by way of solvent amalgamation or reconstruction] or (iii) makes an application to court for protection from its creditors generally
- 13.1.4 the other passes a resolution for winding-up or for the appointment of an administrator, or a liquidator or administrator is appointed in relation to the other, or a winding-up order is made in relation to the other
- 13.1.5 a receiver or administrative receiver may be or is appointed in relation to the other or any of its assets
- 13.1.6 any creditor of the other attaches, takes possession of, or any distress, execution or similar process is levied or enforced against, all or any part of the other's assets, and such attachment or process is not discharged within 14 days
- 13.1.7 the other takes or suffers any action similar to any of the above in any jurisdiction
- 13.1.8 there is a material change in the management, ownership or control of the other
- 13.1.9 the other suspends trading, ceases to carry on business, or threatens to do either
- 13.1.10 the other (being an individual) dies or ceases to be capable of managing his own affairs, or
- 13.1.11 the other is subject to an event of Force Majeure under clause 12
- 13.2 In addition to its rights under clause 13.1, the Seller may terminate this Agreement at any time:
  - 13.2.1 on 30 days' written notice to the Buyer without having to give reasons
  - 13.2.2 immediately on written notice to the Buyer if the Buyer has failed to pay any amount due under this Agreement [on the due date] [within [*three*] Business Days of the due date]
- 13.3 The Buyer may terminate this Agreement at any time
  - on 30 days' written notice to the Seller without having to give reasons.
- 13.4 On termination of this Agreement for any reason:
  - 13.4.1 the Buyer will within seven (7) Business Days pay all invoices of the Seller then outstanding and not disputed in good faith
  - 13.4.2 the Seller will, within seven (7) Business Days, invoice the Buyer for all Products and Services delivered or provided but not yet invoiced and the Buyer will pay such invoice within a further seven (7) Business Days (unless the invoice is disputed in good faith)
  - 13.4.3 each party will within seven (7) Business Days return any materials of the other then in its possession or control; if it fails to do so, the other may enter onto any premises of the first party and take possession of them. Pending such return or taking

possession, the first party will be responsible for such materials and will not use them for any purpose not connected with this Agreement

13.4.4 the accrued rights and liabilities of the parties will not be affected, and

13.4.5 clause which expressly or by implication are to survive termination will do so.

## **14 General**

### **14.1 Time**

Time is not of the essence of any date or period herein.

### **14.2 Set-off**

The Buyer may not set off any amount it owes against any amount it owes the Seller in relation to this Agreement. All payments hereunder will be made without set-off or counterclaim, free and clear of and without deduction for all taxes, levies, duties, charges, and withholdings of any kind now or in future imposed in any jurisdiction unless a party is compelled by law to deduct or withhold any such amounts, in which case it will pay to the other such additional amount as will ensure that the other is paid the full amount it would have received but for such deduction or withholding.

### **14.3 Relationship**

The parties are independent businesses and not principal and agent, partners, or employer and employee.

### **14.4 Variation**

Variations to this Agreement will have effect when agreed in writing.

### **14.5 Severability**

The unenforceability of any part of this Agreement will not affect the enforceability of any other part.

### **14.6 Notices**

Notices under this Agreement will be in writing and sent to the persons and addresses set out in the Schedule. They may be given, and will be deemed received:

14.6.1 by first-class post: two Business Days after posting;

14.6.2 by airmail: seven Business Days after posting;

14.6.3 by hand: on delivery;

14.6.4 by facsimile: on receipt of a successful transmission report from the correct number, and

14.6.5 by e-mail: on receipt of a delivery or read return mail from the correct address.

### **14.7 Waiver**

No delay, act or omission by either party in exercising any right or remedy will be deemed a waiver of that, or any other, right or remedy.

**14.8 Further Assurance**

The parties will do all further acts and execute all further documents necessary to give effect to this Agreement.

**14.9 Rights of Third Parties**

This Agreement is not enforceable by any third party.

**14.10 Priority**

The terms of this Agreement prevail over those of its Schedule.

**14.11 Entire Agreement**

This Agreement is the entire agreement between the parties in relation to its subject. No other terms apply.

**14.12 Succession**

This Agreement will bind and benefit each party's successors and personal representatives.

**14.13 Governing Law & Jurisdiction**

14.13.1 This Agreement will be governed by the law of the DIFC.

14.13.2 Disputes will be submitted to the exclusive jurisdiction of the courts of the DIFC.

SCHEDULE

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**Date of agreement:**

**Seller**

Name:

Address:

Contact:

Bank details [*name, address, sort code, account no., account name, special instructions*]

**Buyer**

Name:

Address:

Contact:

**Delivery Location:**

**Seller's premises:**

**Carrier's premises:**

**Products:**

Reference	Product	Description	Price
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**Services:**

Reference	Description	Personnel	Rate	Other
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**Delivery dates/periods:**