

THE ARAB POTASH COMPANY PLC

Tel. No. +962-6-5200520 - Fax No. 962-6-5200295

Terms And Conditions For Tender No. ----- / -----

Supply of

Hereunder, are the terms and conditions of contract and the bidding instructions issued to tenderers who bid against tenders raised by The Arab Potash Company "Hereinafter called the company". Tenderers must follow these instructions, terms and conditions and bid in strict accordance with them.

01. Bids must be submitted in **four closed, sealed and separate envelopes**; the first contains the commercial bid; the second contains the technical bid, the third contains the bid bond and "The Declaration of Abidance with Tender Terms and Conditions", and the fourth contains "The Declarations of the other and Prohibited Payments".

The tenderer must write in an indelible ink on each of the envelopes whether it contains commercial; technical bids, bank guarantee or prohibited and other payments envelope along with the tender number and tender name.

The envelopes are as follows:-

a. Technical Bid Envelope:

That indicates the technical specifications of the subject matter; confirmed by descriptive literature, samples, bulletins, and catalogues that refer specifically to the goods offered by the original manufacturers and shall be void of prices. The technical bid shall be submitted in two copies. The technical bid must indicate also the offer validity which must be 90 days from the date of the invitation for bid closing date. The technical bid must be stamped and signed (otherwise, the bid will be rejected).

b. Commercial Bid Envelope:

Commercial bid must be submitted on the form prepared specifically for the purpose titled “**COMMERCIAL BIDDING SHEET**”; showing the following details:

- 1. Price: for the required materials as per INCO terms 2000 and as follows:**

CFR Aqaba Seaport of Jordan with the exception to the Incoterms 2000 that the delivery place is Aqaba Seaport of Jordan and the delivery period shall be defined as the period elapsed from date of purchase order until delivery at Aqaba Seaport of Jordan.

- 2. Customs duties, taxes and clearance will be the company responsibility.**
- 3. Prices must remain fixed and valid for 90 days from the date of the invitation for bid closing date and shall be clearly stated in the technical and commercial bids (failure to comply with this term will nullify it as non responsive.**
- 4. The payment currency shall be the Jordanian Dinar or US Dollar or Euro, Noting that US Dollar and Euro exchange rate will be calculated at the currencies exchange rate issued by the Central Bank of Jordan at the commercial bids opening date.**
- 5. The prices include the revenue stamps which, in case of award and within 10 days there from, shall be paid by bidder to the Ministry of Finance at 6 dinars as per 1000 dinars of the price.**

c. **The bid bond and Abidance Declaration Envelope:-**

Shall be submitted duly filled and signed as appropriately required.

d. **The Declarations of Prohibited & Other Payments Envelope:-**

The declaration of the other payments and the prohibited payments shall be duly filled stamped and signed by the authorized signatory.

e. The bidder or his authorized signatory must sign and stamp the "Terms and Conditions of **Tender No. -----**" as an evidence of being obligated by these conditions (otherwise, the offer will be rejected).

f. The Bidder shall state the full name of his company's owners, the share holders and their proportions. **"This is mandatory requirement to consider the bid"**.

g. The origin of goods should be of: -----,

02. All the envelopes shall be additionally enclosed into one envelope that shall bear the company address, the title and address of the Tenderer, the invitation for bid title and number and the tender closing date.

THE COMPANY ADDRESS IS :

**ARAB POTASH CO. LTD.
P.O. BOX 1470,
AL-JAHIZ STREET,
SHMEISANI,
AMMAN 11118,
JORDAN.**

**03. The closing date for this bid is 14:00 Hours ...
...../...../.....**

04. All bonds required for this tender shall be drawn on or confirmed by a bank in Jordan. All bonds shall be unconditional, irrevocable, extendable, and payable at first demand without any judicial proceedings or notarial warnings. Also all bonds must show the name of the principal (Tenderer / Bidder) in English Language.

05. **Bid Bond:-**

The tenderer shall enclose, with his bid, a bid bond as a financial assurance in the form of a cheque or bank guarantee, duly approved, drawn on or confirmed by a bank in Jordan to the benefit of the company in a value not less than (... JOD), in a separate envelope which shall remain valid for (120) days from the tender closing date and any extension thereafter until the tender award and the acquisition of the performance bond from the successful tenderer. The bid bond shall be extendable and shall not be restricted by any condition, irrevocable, and payable to the company at first demand without any judicial proceedings or notarial warnings. In case the tenderer submits more than one bid, the tenderer shall submit along with his offer a bank guarantee for each bid. Otherwise, the company reserves the right to disregard all the bids submitted by the tenderer.

06. The company reserves the right to confiscate the bid bond, if the tenderer chooses to withdraw his bid after the bid opening date, and before validity expiry date and/or failure of the tenderer to submit the performance bond within ten ((10)) days from the purchase order issuance date.

07. **Performance Bond:-**

The tenderer awarded the tender shall bear the obligation towards the company for submitting the performance bond in the form of a cheque or a bank guarantee, duly approved, drawn on or confirmed by a bank in Jordan, to the company benefit, of a value not less than ((10%)) of the award price valid for (6) months and the performance bond shall be extendable, first demand, unconditional, irrevocable and payable to the company without any judicial proceedings and/or notarial warnings.

08. **The company reserves the right to disregard any bid in which the company "Declaration of Abidance by terms and conditions and technical specification", "Technical Specifications Bidding Sheets" and/or "Commercial Bidding Sheets" are not duly filled in detail, properly stamped and signed by the tenderer. Technical specifications must be stamped and signed by the original manufacturer.**

09. Unless the company decides otherwise; bids which are not duly signed by the original manufacturer, and/or received after the closing date and/or substantially incomplete are not acceptable and that will be decided upon by the company and upon its own discretion.
10. The company reserves the right, upon its discretion, to disregard any bid which is not amply clear, having more than one interpretation, and/or any of the bid items specifications is not quoted completely as detailed in the company tender documents. Also, the same applies if the delivery terms or periods are not fully stated.
11. The bid shall remain valid and irrevocable for ninety “90” days from the bids closing date and shall be clearly stated in the technical and commercial bids.
12. The company has the right to award partially any of the materials.
13. Fax, phone and E-mail bids are not acceptable.
14. The company is not bound to place a purchase order for all the items tendered against or any part thereof and, prima facie, is not bound to place an order. Also, the company is not bound to offer justifications and the tenderers shall not acquire any rights to claim any losses.
15. The company is not bound to place an order on the least price basis.
16. The company reserves the right to cancel any invitation for bid, to reject, in all or in part, the tenderers’ bids submitted to the company in response to any invitation for bid raised by the company without offering justifications and the tenderers shall not acquire any right to claim any losses, whatsoever, as a result of bidding in response to the company invitation for bid.

17. Tenderers bear the responsibility of thoroughly scrutinizing the invitation for bid, the specification attached thereto, the terms and regulations of bidding and the proofing of the prices and quantities lists. Also, the tenderers bear the consequences of failing to do the above correctly.
18. The bid shall show the unit price and the total price, which shall be regarded as including packaging costs, unless noted otherwise.
19. In case an error exists in the total price, the unit price shall prevail.
20. In case the invitation for bid does not show the delivery time, the tenderer shall quote the delivery time; otherwise, the delivery time shall be taken as prompt delivery. The obligatory delivery period shall be the period elapsed between the date of purchase order until the delivery of the goods at the named place of destination which, if exceeded, delay penalty shall apply as stipulated in clause (31) of these conditions.
21. The tenderer shall state the goods country of origin, the manufacturer, the trade name, and the type where applicable.
22. The tenderer must indicate if he has an official / legal agent in Jordan or if he is an agent for a foreign principal and must enclose a copy of the empowerment to act as such. Alternatively, the tenderer must indicate if he is neither an agent nor a principal.
23. The tenderer shall submit along with his bid the punctual specifications of the offered goods, the relevant catalogues and any data, information and/or statistics that will define the offered goods appropriately.
24. If the invitation for bid quotes a manufacturer name, a trade name and/or specifications of a certain make of the goods requested in the invitation for bid, these shall not bound the tenderer to such restrictions, except that these restrictions are binding in regard of same merits, characteristics and suitability for the purpose which form the basis for equivalence between different makes that will serve the same as the nominated goods.

25. The company, upon its discretion, reserves the right to increase and/or decrease the quantities indicated in the invitation for bid in accordance with the company needs by 25% on the same price and conditions.
26. The tenderer shall guarantee that the goods quoted are brand new, genuine, free from manufacturing defects, and/or material defect, and of the latest model and/or type unless otherwise noted in the invitation for bid.
27. The company reserves the right to disregard any bid of a tenderer who, in the past, has not properly fulfilled his contractual obligations towards the company due to negligence, incompetence, claimed fraud representation of and/or working on behalf of any organization for sales without authorization.
28. In case the tenderer fails to fulfill his contractual obligations towards the company, or any part thereof, and/or fails to submit the performance bond to the company in the proper time; the company reserves the right to cancel the contract with the said tenderer and to purchase the materials and/or services forming the subject of the contract from any alternative source on the said tenderer account and expense without resorting to judicial proceedings and/or notarial warnings.
29. The inspection and testing of materials and samples are carried out as may be deemed necessary by the company.
30. Packaging shall be of an excellent commercial standard, details of which shall be shown in the tenderer's technical bid.
- 31. The company reserves the right to confiscate ((2%)) of the contract price for each week of delay of contract execution, to a maximum of ((10%)) of the contract price, after which the stipulation of clause No. (28) Of the tender terms and conditions shall apply.**

32. The company reserves the right to nominate a third party, engineer and/or any of the bodies having the suitable technical capabilities to inspect the goods within the works of the manufacturer or before shipping the goods to verify the compliance of the goods to the company tender specifications and upon the inspector findings, the goods may be either accepted or rejected. Notwithstanding the above, the final acceptance or rejection of the goods, or any part thereof, depends solely upon the goods receipt inspection report in the company plants site.
33. This document shall be signed by the tenderer as a declaration of acceptance of the terms contained herein and must be submitted within the commercial bid as a fundamental condition of the bid acceptance for evaluation by the company.
34. Any materials not strictly complying with the tender specifications and/or the contract terms and other obligations shall be rejected, for which the contractor shall bear all costs accruing there from and in addition to clause (28) of these terms and conditions and any other statutory remedies.
35. In case the contractor supplied any materials or goods in excess to those contracted for in the purchase order or bills of quantities without the written consent of the company, then the contractor shall bear all costs for its retrieval and/or its disposal, including but not limited to, all costs, expenses, duties and taxes levied by the government and shall abide with governmental procedures pertinent to the matter at his own cost.
36. The Governing law for all bids, bidding procedures, and the subsequent accruing awards shall strictly follow the current Jordanian laws.

37. **Delivery:-**

The delivery of the requested materials shall be within (----) months from the date of the purchase order until arrival of goods at Aqaba Seaport as a target. However, bidders may quote differently.

38. **Method of Payment:**

38-1- **For Foreign Supply:**

A. **Letter of credit to be paid as follows :**

- 1- (50%) of the L/C upon receipt of shipping documents duly signed and approved.
- 2- (50%) of the L/C after the company issuance of a conformity certificate ensuring that the materials are received at APC Safi Site complying to the company specifications, and submittal of the maintenance bond.

B. Banking and confirming charge for the L/C outside of Jordan shall be borne by the tenderer.

38-2- **For Local Supply:**

Payment in Jordanian Dinar against taxed invoice upon the company issuance of a conformity certificate ensuring that the materials are received at APC Safi Plant Site complying with the company specifications, and submittal of the maintenance bond.

39. **Other Payments :**

39-1 **Definition:**

Other payments are all payments direct or indirect commissions, consulting fees, agents fees, finders fees or other payments or inducements or the giving of any thing of value paid or promised to be paid by the contractor (collectively “third payments”) to third parties other than the company “Others”, by the contractor or on his behalf or any of his sub – contractors and his or their employees, agents or representatives, in connection with the solicitation, bidding, negotiation, award or performance of this contract.

39-2 Contractor has fully disclosed in the declaration for other payments attached to these Conditions any and all direct or indirect commissions, consulting fees, agent fees, finders fees or other payments, or inducements or the giving of anything of value (collectively, "Third Payments"), to third parties other than The Company (a "Third Payments") including without limitation a detailed description of the basis therefore, its sub-Contractors and its or their employees, agents or representatives, in connection with the solicitation, bidding, negotiation, award or performance of this Contract, and hereby covenants and agrees promptly to disclose to (The Company) in writing the existence of any Third Party Payments including without limitation, a detailed description of the basis therefore, upon the earliest to occur of Contractor making or being obligated to make any such third Party Payments.

39.3 In the event of any violation or breach of the provisions of paragraph (39.2) of this clause. (The Company) at its sole option and discretion shall take all or any of the following actions:-

- (i) Terminate the Contract while reserving all its rights and/or,
- (ii) Deduct from all or any payments due to Contractor under this Contract an amount equal to two times the amount of any Third Party Payments, and/or,
- (iii) Demand that Contractor pay forthwith to "The Company" demand Contractor hereby irrevocably agrees to honor, an amount equal to two times the amount of any Third Party Payment, it being the intention, subject to paragraph (39.5) below, that the aggregate of all amount to which (The Company) is entitled under paragraphs (39.3) shall not exceed the amount which is two times the amount of all Third Party Payments.

39.4 Contractor agrees that provisions substantially similar (but in no event less restrictive) to paragraphs (39.2) and (39.3) above shall be incorporated by Contractor in all Contracts with Contractors sub-Contractors, suppliers or Contractors or arising out of or relating to this Contract, and shall also expressly provide that same may, at (The Company's) sole discretion, be enforced directly by (The Company). Contractor further agrees promptly to supply to (The Company) true and complete copies of such Contracts together with evidence of their inclusion in such Contracts forthwith upon the entering into by Contractor of such Contracts.

39.5 Nothing in this section shall expressly or implicitly make lawful or permissible any Third Party Payments that are otherwise prohibited under applicable law or regulations. These rights and remedies of (The Company) under this clause are in addition to and not in derogation of any other rights (The Company) may have under applicable laws or regulations.

39.6 This clause shall survive the termination of this Contract.

40. Prohibited Payments

40-1 Definition:

Prohibited payments are all payments direct or indirect commissions, consulting fees, agents fees, finders fees or other payments or inducements or the giving of anything of value paid or promised to be paid, by the Contractor or on his behalf or any of his sub-contractors, agents or representatives, to the "Company Person" in connection with the solicitation, bidding, negotiation, award or performance of this contract.

- 40.2 Contractor hereby represents and warrants to "The Company" in the attached declaration for prohibited payments to these Conditions that no direct or indirect commissions, consulting fees, agents fees, finders fees or other payments, and no inducements or the giving of anything of value, have been made or promised to be made, directly or indirectly, by or on behalf of Contractor, its sub-Contractors and its or their employers, agents or representatives, to "The Company" (collectively, "Prohibited Payments"), including without limitation any official, employee, agent or representative (whether or not acting in an official capacity) of "The Company" (The Company person), in connection with the solicitation, bidding, negotiation, award or performance of this Contract; and hereby covenants and agrees that no Prohibited Payments shall be made or promised to be made directly or indirectly, by or on behalf of Contractor, its sub-Contractors and its or their employees, agents or representatives, to any (The Company Person) in connection with the amendment, modification, renewal, extension or performance of this Contract.
- 40.3 In the event of any violation or breach of the provisions of paragraph (40.2) of this clause. (The Company) at its sole option and discretion shall take all or any of the following actions:-
- (i) Terminate the Contract while reserving all its rights and/or,
 - (ii) Deduct from all or any payments due to Contractor under this Contract an amount equal to two times the amount of any Prohibited Payments, and/or,
 - (iii) Demand that Contractor pay forthwith to "The Company" demand Contractor hereby irrevocably agrees to honor, an amount equal to two times the amount of any Prohibited Payments, it being the intention, subject to paragraph (40.5) below, that the aggregate of all amount to which (The Company) is entitled under paragraphs (40.3) shall not exceed the amount which is two times the amount of all Prohibited Payments.

40.4 Contractor agrees that provisions substantially similar (but in no event less restrictive) to paragraphs (40.2) and (40.3) above shall be incorporated by Contractor in all Contracts with Contractors sub-Contractors, suppliers or Contractors arising out of or relating to this Contract, and shall also expressly provide that same may, at (The Company's) sole discretion, be enforced directly by (The Company). Contractor further agrees promptly to supply to (The Company) true and complete copies of such Contracts together with evidence of their inclusion in such Contracts forthwith upon the entering into by Contractor of such Contracts.

40.5 The rights and remedies of (The Company) under this clause are in addition to and not in derogation of any other rights (The Company) may have under applicable laws or regulations.

40.6 This clause shall survive the termination of this Contract.

41. The company reserves the right to disregard any bid which does not strictly follow the aforementioned terms and conditions.

42. Correspondence shall be in writing stating the tender name and number and directed to:

Procurement Manager,

Arab Potash Company Limited,

P.O. Box 1470,

Amman 11118 – Jordan.

Fax No. : +962-6-5200295

Tel. No. : +962-6-5200520

E-mail : procurement@arabpotash.com