MEMORANDUM OF AGREEMENT

KUWAIT OIL COMPANY (K.S.C.)
(Register of Commerce No. 21835)

TENDER NO. 2036309

MEMORANDUM OF AGREEMENT
- for -
CASING & ACCESSORIES WITH PREMIUM CONNECTIONS FOR DEEP DRILLING.

This **CONTRACT** made this .... day of .... by and between **KUWAIT OIL COMPANY (K.S.C.)**, a company registered in the Kuwait Register of Commerce under Number 21835, its legal successors and assigns, having its main office at Ahmadi, Kuwait, P.O. Box 9758, 61008 Ahmadi, Kuwait, **("Company")** and ……………………………………….… a company registered in Kuwait, whose address is ………………………………., Kuwait, (Contractor).

WHEREAS the Company wishes the Contractor to provide the Services comprising the supply of **Casing & Accessories with Premium Connection** to support the Company's drilling operations in the State of Kuwait as described in the Contract.

AND WHEREAS the Contractor warrants that it is able to provide the Supplies desired by the Company in accordance with the terms and conditions of this Contract.

NOW THEREFORE IT IS HEREBY AGREED AS FOLLOWS:

MEMORANDUM OF AGREEMENT

1. DEFINITIONS

"Adjustment Order" means a written adjustment to the Contract signed by both parties pursuant to a written instruction issued by the Superintendent to execute a variation.

"Approvals" means all approvals by the Superintendent in writing and wherever any of the words "approval", "approved", "authorised" and "authorisation" are used, shall mean in writing.

"Blanket Purchase Order Release" means a written instruction issued by the Company from time to time instructing the Contractor to deliver the Material in the quantities specified in the Release to the Company Store on or by the date specified there in and as further described in clause 7.

"Contract" means the documents listed in clause 2.

"Contractor" means the person or persons, firm or company who are undertaking the Services and includes the Contractor's personnel representative, successors and permitted assignee.

"Contract Period" has the meaning ascribed to it in clause 4, during which the Contractor shall perform the Services.

"Contract Price" means the money payable to the Contractor in accordance with and pursuant to this Contract calculated by reference to Attachment No.1 to the Form of Tender, which deemed inclusive of all costs and expenses in executing the Services. The unit prices, fixed during the 1st year of the Contract and subject to revisions for the consecutive periods and as extended.

"Commencement Date" means the date notified in writing by the Superintendent of the Contract to the Contractor, by which date Contractor must commence the Services which shall not be later than two (2) months of the date of this Contract.

"Days" means the Gregorian calendar days.

"Delivery Date" means the date stipulated by the Company from time to time in the Blanket Purchase Order Release, by which date the Contractor must supply the Material to the Company Store and as further referred to in clause 7.

"Group" means the Material as identified and referred to in Attachment 1 to the Form of Tender.

"Manufacturer" means the person or persons, firm or company (and include the Contractor where the contract permits) who manufacture the Material.

"Material" means Tubulars for oil wells as described in the technical specification stated in Appendix A.

"Not-To-Exceed-Value" has the meaning ascribed to it in clause 12.

"Performance Bond" means the approved unconditional bank guarantee provided by the Contractor prior to the date of this Contract and all succeeding bank guarantees described in clause 34.

“Services” means and includes all those things to be done or provided by the Contractor pursuant to this contract and as the context may require.

“Service Order” means an order issued by the Company instructing the Contractor to execute service pursuant to the provisions of the Contract.

“Store” means the Company’s Warehouse at Ahmadi Industrial Area.

“Superintendent” has the meaning ascribed to it in clause 37.

“Variation” means any increase, decrease or changes to the Services order by the Superintendent and carried out by the Contractor pursuant to an Adjustment Order.

2. CONTRACT DOCUMENTS

The Contract comprises of the following documents, which constitute the entire agreement between the parties:

a) This Memorandum of Agreement
b) Appendix **A** - Technical Specifications for Tubulars
c) Appendix **A1 -** Pipe & Connection Data Sheets
d) Accepted technical offer and the exchanged correspondence
e) Appendix **B -** Approved Manufacturers List
f) Appendix **C** - Third Party Inspection Scope
g) Appendix **D** - Quality Assurance & Manufacturer’s Certificates
h) Appendix **E** - Form of Tender & Attachments to the Form of Tender Nos. 1-8 inclusive.
i) Annexure 1 - Specimen Disclaimer
j) Annexure 2 - Transportation & Delivery of Material

In the event of ambiguity or conflict between any of these documents priority shall be given to the documents in the above order.

3. SCOPE OF SERVICES

The Services comprise:

3.1 The supply of Material to the Company’s store in Ahmadi, as and when ordered by the Company. The estimated annual consumption indicated in Attachment No.1 to the Form of Tender is based on the current annual consumption and does not constitute any obligation on the part of the Company to direct the Contractor to supply the quantities stated.

3.2. The Contractor shall submit to the Company from time to time during the Contract Period the price lists and proposals for all new materials which the Contractor makes available for oil field utilization.

4. CONTRACT PERIOD AND WORKING HOURS

4.1 The Contract Period shall be **three (3) years** from the Commencement Date specified in writing by the Superintendent, during which the Contractor shall execute the Services.

4.2. The Company may extend the Contract Period three month at a time for a total period not exceeding six (6) months, by giving the Contractor written notice of its intention to extend three (3) months prior to the date of the first extension and one (1) month in the case of the second extension. Payment for the extended period shall be at the Contract rates prevailing during the final year of the original Contract Period.

4.3. Except where otherwise directed by the Superintendent in writing, the Contractor shall deliver the Material to the Company’s store in Ahmadi, during Company normal working hours between 0700 hours to 1500 hours. Sunday through Thursday, except during Ramadhan, when the working hours shall be 0830 hours to 1430 hours, and on Company holidays as may be declared from time to time.

5. WARRANTY

The Contractor warrants that:

5.1. it possesses the specialised knowledge, expertise and experience necessary to enable it to fulfil the requirements of the Contract in all respects and to provide the Services efficiently, effectively and promptly, upon demand by the Company in accordance with the requirements of the Contract;

5.2 that the Material shall meet all the quality standards and specifications as per ISO 9000 relating thereto and shall be fit for the intended purpose;

5.3 it shall perform the Services in accordance with the best relevant practices and standards and shall comply with all relevant Kuwaiti laws and regulations and in accordance with the requirement of the Contract;

5.4 it shall apply itself with due diligence in the provision of the Services promptly and expeditiously in accordance with the directions of the Company; and

5.5 that, within 18 months of delivery to the Company Store or within 12 months of installation of any material, whichever occurs first, it shall promptly replace any Material that are found defective or damaged or which in the reasonable opinion of the Superintendent (substantiated with evidence) are considered to be defective/unusable product for the purposes for which they were intended. However, Material damaged by the Company shall be dealt with according to clause 8.3.

5.6 The Material provided by it shall not infringe any patent or copyright.

6. PRODUCTS QUALITY

6.1 The Contractor shall operate a quality management system complying with the requirements of ISO 9000 or a similar internationally recognised quality system. Subcontractors are not required to operate ISO 9000.

6.2 The Company may inspect the Contractor manufacturing facilities at any time during the Contract Period.

6.3 The Company or its appointed Inspection Agency may inspect Material as per Appendix-C (Third Party Inspection Scope) during and on completion of manufacture. The Contractor shall allow the Company or its appointed Inspection Agency free entry at all times and to all areas while work on an order is being performed. The Contractor shall afford the Company inspectors without charges all reasonable facilities to assist them in their inspection task.

6.4 The Contractor shall include a statement in all subcontract orders to allow the Company or it's appointed Inspection Agency entry to the subcontractor's manufacturing facilities to inspect the material as per Appendix C (Third Party Inspection Scope). All requests for such inspection will be made through the Contractor.

6.5. The Contractor guarantees that all the Materials delivered by it shall be manufactured and tested. The Contractor shall submit with each delivery, original manufacturing documents and MTC.

7. ORDERING AND DELIVERY

7.1. As and when required, the Company shall issue to the Contractor, Blanket Purchase Order Release listing the Material required. The Contractor shall deliver the Material to the Company Store in Ahmadi within a period stated in **Appendix-1C** starting from the receipt of the Blanket Purchase Order Release.

7.2. On arrival at the Company Store, the Company shall offload and stack the pipes. Alternatively, the Contractor may arrange with the Company to provide its own cranes to offload and stack the pipes on condition that its offloading team are equipped with adequate offloading gear, cargo overseers, riggers, labourers and tally clerks. In this connection, the Contractor shall ensure compliance with the provision of clause 18. If the Contractor opts to offload itself then, the cost of such offloading shall be deemed included in the Contract price.

7.3 All Material delivered to the Company store shall be subject to inspection by the Company prior to acceptance. Any Material, which does not comply with the specifications, defective or damaged, shall be rejected. The Company shall instruct the Contractor to remove any defective material within two weeks otherwise the same will be disposed off at Company's discretion and the Contractor will have no further claim against Company.

7.4. The API/Premium connections specified in Appendix A shall be cut by the Manufacturer who developed threads or its licensee only. A copy of the valid licensee certificate shall be submitted with the order, if the threads are cut by such licensee.

7.5. If the Contractor is unable or refuses to replace the rejected Material within a time deemed reasonable by the Company, the Company may arrange to procure the Material from other sources. Company shall be entitled to recover from the Contractor the difference in the actual cost plus ten (10) percent of the new order value towards expenses and liquidated damages so incurred by the Company. The Contractor shall bear all costs of rejected Material.

7.6. Wherever specified, Material and test/approval certificates with full traceability for each item shall be submitted with delivered Material. The Company shall inspect the Material and test certificates prior to accepting the Material. If the Material and test/approval certificates are not complete and not fully traceable, the Material shall be rejected and the Contractor shall promptly replace such Material.

8. REPLACEMENT OF MATERIAL AND ORDER CANCELLATION

8.1. If for operational reasons some delivered Material have become surplus to requirements, the Contractor, if so directed by the Company, shall collect the surplus Material from the Company store and replace them with other required Material within six (6) months of such direction pursuant to the Material return and exchange policy in Appendix E, Attachment No.3 to the Form of Tender.

8.2. If for operational reasons, it has become necessary to cancel a Blanket Purchase Order Release, the Contractor shall accept such cancellation pursuant to the cancellation policy in Appendix E, Attachment No.3 to the Form of Tender.

8.3. The Company may request the Contractor to collect from Company store and repair Material damaged by the Company. The Contractor shall do so and return the repaired Materials to Company stores within the time and cost of which shall be agreed between the parties at the time.

9. CONTRACT PRICE

The Company shall pay the Contractor the Contract Price *for the first year* as calculated at the rates per unit stated in the Attachment No. 1 to the Form of Tender, upon delivery of Material to the Company Store and subject to the requirements of this Contract.

For the consecutive years the Contract Prices subject to revisions as per the following **<u>Formula and Parameters for calculating the Price Adjustment</u>**

$$\mathbf{R = A + \left[\left\{ \frac{(\mu Bi - Bi)}{Bi} \times \frac{B}{100} \right\} + \left\{ \frac{(\mu Cr - Cr)}{Cr} \times \frac{C}{100} \right\} + \left\{ \frac{(\mu Ni - Ni)}{Ni} \times \frac{D}{100} \right\} + \left\{ \frac{(\mu Mo - Mo)}{Mo} \times \frac{E}{100} \right\} \right] X\ A}$$

Note: Where applicable, Billet prices shall be replaced with Hot Rolled Coil (HRC) prices from the LME publications. (*The base price for the Billet Bi shall be replaced with the base price for Hot Rolled Coil Hr.)*

A = Quoted Unit Price for the item, <u>firm for 1st year & factor for the following years</u>.
R = Revised unit price (Calculated from above formula).

Bi
Cr
Ni
Mo
The Base price per tonne published for the month prior to bid closing for the Billet, Chrome, Nickel & Molybdenum respectively. (Constant for the entire contract period and factor for price adjustment)

B
C
D
E
The percentage of the cost in the quoted unit price for Billet, Chrome, Nickel & Molybdenum respectively. (Constant for the entire contract period and factor for price adjustment)

µBi
µCr
µNi
µMo
The average Index value six month prior to adjustment date for the Billet, Chrome, Nickel & Molybdenum respectively. (Variable for the entire contract period and factor for price adjustment)

10. ADVANCE PAYMENT

10.1. If a single BPO Release, value exceed KD 1 Million, the Contractor is eligible to avail an advance payment up-to 10% of BPO Release value provided:

a) By submitting an irrevocable Bank Guarantee in favour of Company and equivalent to the requested amount (Max. 10% of BPO value) and valid until the BPO delivery period plus 3 months.

b) Advance Payment request (Bank Guarantee) shall submitted at the BPO signing date and Company shall pay within 30 days period.

c) Company shall deduct the advance value proportionately from the Contractor's invoice/s until the recovery of the entire advance value for the relevant BPO Release.

11. METHOD OF PAYMENT

11.1. The Contractor shall submit its invoices to the Company's Accounts Payable Team claiming payment in accordance with rates stated in Attachment 1 & 1A to the Form of Tender for Material delivered to the Company stores, accompanied by copies of the relevant Blanket Purchase Order Release and delivery receipt.

11.2 The Company shall make payment in Kuwaiti Dinars within thirty (30) days from the receipt of each invoice into a bank account nominated by the Contractor even if the inspection at the Company store has not been completed.

11.3. Defective Material shall not be included for payment and if payment has already been made, the Contractor shall credit the Company account with the full value of such defective Material.

12. NOT-TO-EXCEED VALUE

12.1 The Contractor acknowledges that, where the Contract Price is not a fixed lump sum but a schedule of rates or equivalent, the Contractor's contractual entitlement to payment for the Material under this Contract will not exceed Kuwaiti Dinars ……………….. ……………………………………………….(KD. ……………….….).

12.2 The Contractor shall inform the Superintendent immediately it reasonably considers that the actual cost of the supplies is likely to exceed the Not-To-Exceed Value and shall, if instructed by the Superintendent, recommend methods to reduce or hold costs within the Not-To-Exceed Value.

12.3 The Contractor acknowledges that it has a duty of care to take all reasonable steps to ensure that the costs of the Services do not exceed the Not-To-Exceed Value.

12.4 The Superintendent may adjust (increase or decrease) the Not-To-Exceed Value by issuing an Adjustment Order.

12.5 The Not-To-Exceed Value shall not be construed as commitment or a guarantee by the Company to request Services from the Contractor, which would incur expenditure up to the Not-To-Exceed Value.

13. QUANTITIES AND VARIATIONS

13.1 The Contractor acknowledges that the number of items and quantities of Material appearing in the relevant Attachment No.1 to the Form of Tender are estimates of the Company's requirements and that they may vary (increase or decrease) depending on the Company's operational activities. The Contractor acknowledges that the estimated requirements do not constitute a commitment by the Company to purchase those quantities or any item from the Contractor.

13.2. The Company may direct the Contractor to supply Material or other related materials not listed in Attachment No. 1 to the Form of Tender, in which case the unit rate shall be subject to mutual agreement between the Company and the Contractor. Such Variation shall be documented by an Adjustment Order issued by the Company.

14. CHANGE AND DISQUALIFICATION OF MANUFACTURERS

14.1 The Company may remove any Manufacturer from its approved list of Manufacturer during the Contract Period in the event of poor performance, in which case the Contractor shall recommend alternate manufacturers from the Approved List of Manufacturers in Appendix B.

14.2 Addition of any new manufacturer to Appendix B shall not be permitted by the Company, unless, approved in writing by the Company, for which the Contractor has to submit full justification for change of manufacturers.

14.3. Change of Manufacturer within the Approved List of Manufacturer as per Appendix B shall be permitted, if approved by the Company, for which the Contractor shall submit full justification for the change of manufacturer.

15. CHANGES IN THE LAW

In the event that, subsequent to the Commencement Date, any law, rule or regulation (including ministerial order) comes into effect which causes an increase in the Contractor 's cost in the performance of the Contract, the Contractor shall submit a detailed breakdown of the claimed additional cost to the Company who shall reimburse to the Contractor all such reasonable direct costs actually incurred and caused by such new law, rule or regulation, provided that the Contractor had taken the proper immediate steps to mitigate the effect of such law, rule or regulation.

16. TAXES

16.1 Any taxes, charges or levies of whatsoever nature payable by the Contractor under the laws of Kuwait or any other country in respect of, or in connection with this Contract including income or benefit derived from payment made hereunder, shall be borne by the Contractor and shall not be reimbursable by the Company.

In this connection, the Contractor 's attention is expressly drawn to the provisions of Decree No. 3 of 1955 or any subsequent amendment or reenactment thereof. The provisions of this clause shall equally apply to any taxes, charges or levies which may be payable by the Contractor under the law of any other country in respect of or in connection with the income or benefit derived from payments made under this Contract.

16.2 The Company shall withhold the release of the Performance Bond to the Contractor notwithstanding any provision of the contract to the contrary pending the submission by the contractor of a valid certificate from the Income Tax Control Office of Kuwait stating that the Contractor has discharged its tax liability.

16.3 The withholding of the Performance Bond under the preceding clause 15.2 applies to all tax payers as defined in the Kuwait Income Tax Decree No. 3/1955 and subsequent amendments.

17. FORCE MAJEURE

17.1 Neither party shall be considered in default of its obligations hereunder if the performance of these obligations is delayed, hindered or prevented by force majeure provided that within seven (7) days after the start of an event or occurrence claimed as force majeure, the party affected by force majeure gives the other party written notice of such event or occurrence and that immediate steps are taken by the affected party to mitigate where possible the effects of the event or occurrence.

17.2 Force majeure shall be any event or occurrence starting after the date of the Contract whatsoever the origin which cannot be foreseen and is beyond the control of, and cannot be circumvented by the party affected, and which renders the performance of the obligations impossible, including acts of governmental authority, acts of God, fires, floods, earthquakes, explosions, riots, war, rebellion and sabotage but excluding among others, inefficiencies or similar occurrences which are within the control of the Contractor, inclement weather, industrial disputes, strikes or port congestion.

17.3 Should the Contractor be delayed in the execution of the Services by an occurrence it believes to be force majeure and the Contractor cannot avoid or prevent that delay by any means whatever and provided that the Contractor shall have given notice to the Company as specified in clause 16.1, then the Company if it agrees, will give notice to the Contractor confirming the existence of force majeure.

17.4 Notwithstanding any provision herein to the contrary, the Contractor shall not be entitled to claim any additional cost whatever under this clause.

18. SAFETY

18.1 The Contractor shall take all precautions to protect the health and safety of its employees and to avoid danger from all hazards to life and property.

18.2 The Contractor shall conform to all relevant safety practices and take all relevant safety precautions developed and adopted by the Company.

18.3 The Contractor, without prejudice to its obligations as prudent employer, shall instruct its personnel in all relevant safety practices and precautions and shall issue its personnel with all appropriate safety requirements and clothing and instruct them to use safety equipment and clothing for the purpose of avoiding bodily harm and damage to property.

18.4 The Contractor shall comply with the fire and safety regulation of the State of Kuwait and the relevant regulations of the Company existing or as may be issued from time to time.

19. INSURANCE

19.1 The supplier shall effect (or shall ensure that its subcontractor responsible for handling and transporting of Material in Kuwait effect) and maintain throughout the Contract period the following insurance policies issued by a Kuwaiti national insurance company.

19.2.1. Workmen's Compensation and Employer's Liability Insurance, which shall be indorsed to include waiver of subrogation in favour of the Company. The coverage under Employer's Liability Insurance shall be limited to KD. 50,000/- for any one occurrence.

19.2.2. All Risks Marine Insurance policy covering shipments delivered to Company Store with extended period of three (3) months storage period after delivery of Material. The Company shall serve on the Contractor with a damage report within this three months period.

19.2.3. General Third Party Liability Insurance with a limit of Kuwaiti Dinars fifty thousand (KD. 50,000/-) of any one (1) occurrence, the number of occurrences being unlimited.

20. LIABILITIES AND INDEMNITY

20.1 The Contractor shall be liable for and shall indemnify and keep indemnified the Company harmless against all losses and claims for death of or injury to any person (inclusive of Contractor's or its subcontractor employees) or claims for damage to the Contractor or its subcontractor's property and/or of a third party which may arise out of or in course of or in consequence of the execution of the services irrespective of the negligence of either party.

20.2 In no event shall the Contractor be liable to the Company for any consequential losses, damage, loss of anticipated profit or revenue, loss of goodwill, loss of business opportunity or loss of property, however such loss may have been caused even if it has been advised of its possible existence.

20.3 The Contractor shall indemnify and/or hold the Company harmless from any and all manner of actions, suits, debts, controversies, copyright infringements, damages, judgements, executions, claims, and demands against the Company arising from or in connection with the Contractor's execution of the Services, including any traffic accidents involving the Contractor's vehicles.

21. TIME LIMITATION OF CLAIMS BY CONTRACTOR

Notwithstanding any provision herein to the contrary, any claim by the Contractor for any additional amount due or claimed to be due to it from the Company under or in connection with or arising out of the Contract shall be unenforceable if made more than seven (7) days after the event giving rise to such claim.

22. ASSIGNMENT AND SUBCONTRACTING

The Contractor shall not assign the Contract or subcontract any of its obligations without the prior written approval of the Company.

23. REMEDIES AND POWERS

23.1 If the Contractor breaches this Contract, then the Company may give the Contractor seven (7) calendar days notice in writing specifying the breach. Should the Contractor fail to remedy the breach within the period stated in the notice of breach, the Company may terminate the Contract without any further notice or judicial proceedings and without prejudice to any other rights and remedies that the Company may have under the law and the Contract.

23.2 Upon termination of the Contract under this clause, the Contractor shall be entitled to payment for the Material delivered to the date of termination and shall be liable to pay to the Company all damages resulting from such termination.

23.3 Any amounts due to the Company under the Contract, including overpayment, damages and expenses, shall be recoverable without notice or judicial proceedings by drawing on the Performance Bond or by deductions from any monies due or become due to the Contractor under this or any other contract with the Company.

23.4 In the event a defect is discovered or incurred in the Material, which have been supplied, the Company shall notify the Contractor and the Contractor shall remedy the defect immediately. All costs associated with remedying such defects shall be borne by the Contractor.

24. OPTIONAL TERMINATION

The Company may terminate the Contract in whole or in part by giving the Contractor three (3) months advance written order of termination without assigning any reason thereof. Such order shall specify the effective date of such termination. In this event the Company's sole liability to the Contractor shall be, unless otherwise specifically provided in the Contract, to pay the Contractor for the Material delivered to the Company store, provided that such termination is not occasioned by any breach or default on the part of the Contractor and for the material ordered before the termination date.

25. CONTINUANCE OF THE SERVICES

Notwithstanding any disagreement, dispute, protest, or court proceedings relating directly or indirectly to the Services, the Contractor shall at all times proceed with the Services in accordance with the determinations, instructions and clarifications of the Company. The Contractor shall be solely liable for any costs and expenses arising from its failure to do so.

26. GOVERNING LAW

This Contract shall be governed by and take effect in accordance with the laws of the State of Kuwait. The wording of the Contract shall be construed in accordance with the normal commercial usage of the English language as related to services of this nature. The courts of Kuwait shall have exclusive jurisdiction on any matter arising out of or related to the Contract.

27. OBSERVANCE OF STATE REGULATIONS

The Contractor shall comply with relevant laws, rules and regulations of the State of Kuwait and shall indemnify the Company against all penalties and liabilities of every kind for breach of any such laws, rules and regulations.

28. DECLARATION OF COMMISSIONS

The Contractor shall comply with law No. 25/1996 relating to declaration of commissions in connection with State contracts and where such law is applicable or becomes applicable to the Contract, the Contractor shall serve on the Superintendent within the time limit specified by this law a declaration in the format set out in Attachment No. 5 to the Form of Tender.

29. DISCLAIMER AND CLOSURE OF ACCOUNTS

On expiry of the Contract Period and prior to the release of the Performance Bond under the Contract, the Contractor shall sign a disclaimer/closure of account statement worded in accordance with the attached specimen (Annexure 1) stating that all payments under the Contract have been received with exception of the Performance Bond pursuant to clause 34. On release of the Performance Bond, the Contractor shall be deemed to have no further or any claim against the Company.

30. VARIATION

Any Variation to the services shall be authorised by a written Adjustment Order issued by the Superintendent detailing the Variation prior to the execution of the Variation.

31. WAIVER

None of the provisions of the Contract shall be considered waived by the Company or its representative except when waived in writing. No such waiver shall be or be construed to be a waiver of any past or future default, breach or modification of any of the terms, provisions, conditions or covenants of the Contract except as stated in such waiver.

32. CONFIDENTIAL INFORMATION

32.1 All material or information provided to the Contractor for the purposes of the Services shall be confidential. The Contractor shall hold in confidence, except with prior written approval of the Company all information disclosed directly or indirectly to the Contractor by the Company, or prepared for the Company by the Contractor.

32.2 This obligation of confidentiality shall not prevent disclosure of information by the Contractor to its subcontractor or personnel of the Contractor or such subcontractor who have a need to access the information for the purpose of the Services provided always that in the case of subcontractors and their personnel and personnel of the Contractor each of them is bound directly to the Contractor in writing to keep the information in strict confidence in terms substantially the same in all respects as those of this clause and Contractor shall take all such steps and actions needed and/or as and when directed by the Company to comply with the observance of such confidentiality.

32.3 The obligation of confidentiality shall not apply to information which was in the public domain prior to disclosure or acquisition or which subsequently enters the public domain otherwise than through default of the Contractor or which the Contractor can establish was at the time of such disclosure or acquisition already known to the Contractor other than such information that was received through any other contract with the Company.

32.4 The provision of this clause shall survive the Contract and shall remain in force for ten (10) years after expiry of the Contract Period.

33. INDEPENDENT STATUS

The Contractor acknowledges that it is an independent Contractor and is not an agent of the Company. All persons employed by the Contractor for the purpose of executing this Contract shall be regarded as employees of the Contractor alone and the Contractor shall be completely responsible for any obligations whatsoever which such status imposes. The Contractor acknowledges that it has no authority to bind the Company in any way without the express prior written agreement of the Company.

34. PERFORMANCE BOND

34.1. The Company, where it considers the Contractor in default or in order to recover monies due to it, may at any time without prior notice to the Contractor, withdraw on the Performance Bond.

34.2. The Contractor shall maintain the Performance Bond to its full value in the event of withdrawn thereon and at Company's direction increase the value of the Performance Bond proportionally with any increase in the Contract Price resulting from any Adjustment Order(s).

34.3. The Contractor shall extend the validity of the Performance Bond to correspond with the end of the Delivery Date and until the expiry of the period and the extension, referred to in clause 4.2.

35. LIQUIDATED DAMAGES

35.1. In respect of Blanket Purchase Order Release, the Contractor shall pay to the Company as pre-ascertained liquidated damages half (0.5%) percent of the value of each order less the value of the goods already delivered of that order (if applicable) for every week of delay and pro-rata for fractions of a week beyond the periods specified in clause 7. The liquidated damages shall be limited to 10% of the total value of such order. The meaning of value in this clause is the "Delivered to Company Stores" value to the goods.

35.2 For the sake of calculating the liquidated damages only complete materials are considered delivered. If any material lacks certification then it is considered outstanding.

36. PATENT AND COPYRIGHT INDEMNIFICATION

The Contractor shall indemnify, defend and save harmless the Company against all liability, claims, suits, actions, losses, cost, damages and expenses arising out of or in connection with the Material provided by the Contractor in the event of any claim or action based infringement or alleged infringement of any patent copyright or other intellectual property right and the Contractor's indemnity shall survive the termination of the Contract.

37. NOTICES

Any notices required to be given by one party to the other, shall be delivered by hand or by fax by the parties as follows:

Company: Team Leader Purchasing II
Kuwait Oil Company (K.S.C.)
P.O. Box 9758
61008-Ahmadi, Kuwait
Fax: (965) 23982134

Supplier:

38. SUPERINTENDENT

The Superintendent of the Contract shall be the Company's Team Leader Purchasing II or such other person as is notified in writing to the Contractor by the Company, who shall represent the Company in any matter arising out of or in connection with this Contract. When it is deem necessary, the superintendent will nominate his representative which shall be advice to the Contractor in writing.

39. KUWAITI AGENT

The Contractor shall appoint a Kuwaiti agent in Kuwait in respect of this Contract, and, on the date of signing of this Contract, shall provide the following details of its Kuwaiti agent so appointed:

a) Name

b) Address in Kuwait;

c) Address of main place of business or office in Kuwait (if different from (b) above); and

d) Letter from agent on agent's letterhead confirming appointment.

40. MATERIAL SUPPLIED BY THE CONTRACTOR

The Contractor supplied Materials shall, wherever possible, be a Kuwaiti manufacture all in accordance with Ministerial Order No. 6/1987 relating to priority to local and GCC products over others, subject to such Materials conforming to the relevant Kuwait standard specification and standards normally acceptable to the Company.

MEMORANDUM OF AGREEMENT

41. TRANSPORTATION & CARRIAGE PRIORITIES

41.1 The Contractor shall use Kuwait Airways Corporation ("KAC") in the event air Freight of material or air travel of Contractor's employees, agents or representatives is required or becomes necessary for the performance of the Contractor's obligations under the Contract. Where flights of KAC are not available or fully booked and may result in delay to the Delivery Date, or if the freight rates or air fares offered by KAC are not competitive with those offered by others, the Contractor may use any other air

line. In such case the Contractor shall, prior to making shipping arrangements through any other carrier, obtain Company's written approval. Company shall respond to the request from the Contractor for such approval within seven (7) working days from the date of receipt of written request supported by documentary evidence.

41.2 The Contractor shall dispatch the Material by the United Arab Shipping Company (hereafter "UASC"), in the event the Material is to be shipped by sea. If the ships of UASC are not available at the exporting port or if using of UASC ships may result in delay to the Delivery Date of the Material or if the freight rates offered by the UASC are not competitive with those offered by others for carriage of the Material, the Contractor may use another carrier. In such case the Contractor shall, prior to making shipping arrangements through other carriers, obtain Company's written approval. Company shall respond to the request from the Contractor for such approval within seven (7) working days from the date of receipt of written request supported by documentary evidence.

AS WITNESSED THE HANDS OF THE PARTIES HERETO HAVE SET THEIR HANDS THE DATE AND YEAR FIRST ABOVE WRITTEN.

______________________________	______________________________
For: **KUWAIT OIL COMPANY (K.S.C.)**	For:
By: ___________________________	By: ___________________________
In the presence of:______________________	In the presence of:__________________