

CONDITIONS OF PURCHASE FOR SUPPLY CONTRACT

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1. Definitions:

1. "Buyer" means Linde Engineering India Pvt. Limited, 38, Nutan Bharat Society, Alkapuri, Vadodara - 390 007 including its successors, affiliates and assigns.
2. "Client" means the owner of the plant
3. "Consultant" means ... retained by client.
4. "Order" means the written purchase order duly signed with all the terms and condition thereof including all the documents, drawings, exhibition and attachment mentioned therein along with any supplements and amendments thereto.
5. "Seller" means the natural or juristic person (firm, company or any legal establishment including its various agents & Subsellers) with whom the Buyer has placed the order.

6. "Party" means Buyer or Seller. "Parties," means Buyer and Seller.
7. "Sub-Seller" means any person / firm / company to whom/ which the Seller subcontracts any portion / whole of the supplies of this order under the terms and conditions stipulated hereunder, with prior approval of Buyer.
8. "Plant" means plant for client.
9. "Subject of order" means all supplies and services, which the Seller has to execute according to order.
10. "Supplies" / "Goods " shall mean and include all equipment, hardware, materials of any nature, software, drawings, design & data and any other item along with all its parts, accessories to be supplied by the Seller under the order.
11. "Services" shall mean physical installation, testing, commissioning, operating, training & any other manpower assistance regarding the subject of order to be rendered/ supplied by the Seller to the Buyer.
12. "Work" shall mean and include all activities by Seller after the placement of the order for the subject of order.
13. "Reserve parts" shall mean spare and wear parts of the subject of order.
14. "Site" means the location where the plant shall be erected and the surrounding area if any designated by the client as part of the site.
15. "Battery limits" shall mean the batteries of continuous area, within which the plant is to be erected.
16. "Drawings" shall mean and include drawings, calculation, certificates, plans, sketches, sections and elevations related to the order together with the modifications and revisions thereto or thereafter that are made from time to time.
17. "Engineer in-charge/Site manager" shall mean the engineer or officer who is in charge of the work at site nominated by Buyer / client / consultant.
18. "Inspector" shall mean any person, firm company or any agency nominated by Buyer / client / consultant to inspect subject of order at any given location at any stage before despatch and after receipt at site as per terms of order.
19. "Delivery dates" shall mean the dates stated in the order on which the Seller must have commenced / projected / completed the respective documentation / activities for the supplies / services in whole or in specified parts at the place(s) specified therein.

20. "Tests" shall mean such process or processes to be carried out by the Seller as one prescribed in the order or considered necessary.

21. "Approval" shall mean and include the written consent, either manuscript, type written or printed statement under signature or seal as the case may be of the Buyer or their authorized representative on documents / drawings or other particulars in relation to the order.

22. "Change" / "Changes" shall mean and include the written amendment, revision, modification, supplement, change, addition, deletion and correction wherever asked.

2. Effectiveness of the Order:

1. The order is effective only if it is issued in Buyer's order form duly signed by the Buyer's authorized signatories.

2. Contradictory or deviating conditions in the Seller's quotation and/or in the confirmation of order shall be valid only, if these have been accepted expressly in writing by the Buyer as an integral part of the order. All terms, conditions, specifications, standards and other annexures attached to or mentioned in the order are integral parts thereof.

3. The following sequences shall prevail for the contents of the order, especially in case of contradictions (i) the wording of the order, commercial protocol, technical protocol, record notes (ii) the conditions of purchase for supply contracts issued by (iii) the technical specification (iv) the general specifications and the Buyer's blank forms, general standards (din, vde uvv, vdi, asme, adi etc.)

4. The Seller shall without any delay carefully review the order with regard to any errors and contradictions in and between individual parts of the order and, if any, shall inform and substantiate to the Buyer in writing without any delay about those doubts. If the Seller fails to inform the Buyer accordingly, within 7 days from the date of issue of order, the Seller shall be liable to the Buyer for any damages occurring thereof.

3. Scope Of Supply and Execution of the Subject of Order:

1. The subject of order as specified in the order shall be delivered so completely that it shall fulfill all the required functions and that it shall guarantee safe operation, even if supplies and services necessary therefor might not have been mentioned expressly in the order. Only such supplies and services (which are mentioned expressly in the order as such) shall be deemed to be excluded from the subject of order.

2. Even if not particularly mentioned in the order, the Seller shall deliver to the Buyer (at his named site) the subject of order along with the technical documentation necessary for erection, installation, commissioning, operation and maintenance as well as to adjust,

supplement or modify (this documentation) in any other respect without any delay in any case according to the changes which might occur during the execution of the order

3. Furthermore, the Seller shall observe all statutory and relevant professional regulations, recommendations and guidelines, environmental protection, accident prevention and protective labour legislation etc. which are effective at the time & place of application of the subject of order. The Seller shall obtain at his own cost all permits eventually necessary for execution of the order.

4. The Seller shall supply the subject of order in accordance with the latest recognized state of the art technology applicable at the time of placing of the order and only out of new materials of best quality and suitability considering modern operating conditions and the requirements / specification of the order.

5. Data and material of all parts specified in the order do not release the Seller in any case to check with regard to the requirement of a faultless continuous operation, as far as such checks are possible by the Seller. The eventual participation of the Buyer in design and engineering including the selection and process of materials as well as selection of sub-Sellers of the Seller shall be in an advisory capacity only and does not limit in any way the sole responsibility of the Seller for the execution of the order with the exception of cooperative obligations expressly accepted by the Buyer.

4. Sub-Contract:

1. The Seller shall not except with the previous written consent of Buyer transfer or assign their obligations & interest in supplu of materials or sub contract whole or part of the work under the order in any manner whatsoever.

Upon subcontracting any item of major importance the Seller shall submit to the Buyer an (un-priced) copy of the respective order bearing the Buyer's order number.

2. The Seller shall be responsible/liable for all obligations arising out of or in connection with these terms and conditions including any default / breach / loss or damage caused by the sub-Seller during and in connection with the execution of the work by such sub-Seller with respect to the sub-contracted part(s) of the Seller's scope of work. Seller shall be solely responsible for all costs including inspection costs relating to subcontract work.

5. Price:

1. Price shall be as per the basis specified in the Enquiry / order Price (excluding taxes & duties) shall remain fixed and firm without any escalation until the complete execution of the order.

2. Price shall include all the direct and indirect costs to be incurred by Seller for the full and final execution of order. The Buyer shall not bear any additional cost unless specifically negotiated and agreed with Seller.

3. The price also includes the costs for the following items.

3.1 Providing manpower, tools, tackles, test equipment & facilities to Buyer / client / consultant or Buyer's representative for inspection of ordered items at Seller's as well as Seller's sub-Seller's works.

3.2 Inspection charges of material for Seller's in-house quality control (including at sub-Seller works).

3.3 Inspection charges (material as well as personnel) if 1st inspection is unsuccessful due to reasons attributable to the Seller.

3.4 Any other agency's approval, permits & certifications including submission of documents as required in technical part & as per statutory requirements.

3.5 In addition the price shall include all costs to execute the complete scope of the order.

4. Buyer will not accept any invoice for overages in respect of items supplied under the order unless expressly agreed. Seller shall only invoice the quantity shown in the order or less in the event Seller has not supplied the quantity in full.

5. The purchase price shall be set forth under the order. However, that in the event Seller sells or offers to sell items of a similar type, quality and quantities to a third party, at any time between acceptance of the order and final completion thereof at prices lower than those herein specified, the purchase price shall be reduced to extend the benefit of Buyer of such lower prices.

6. The agreed discount applies to all units' rates.

7. Octroi is applicable as the site is the octroi check post.

8. The transportation costs on 'freight paid basis' of the ordered goods for 'delivery at site' (CIP site) shall be reimbursed at actuals subject to the upper limit stipulated in the order and as supported by proper documents.

6. Taxes and Duties:

1. Taxes and duties shall be as applicable at the time of despatch provided the despatch is within delivery dates. Any variation arising after the delivery dates shall be borne by the Seller.

2. Seller shall consider the best tax advantage to Buyer and shall provide to Buyer all necessary documentation to complete the sale transaction and to avail tax concession, if any.

Documents pertaining to excise duty and sales tax, i.e., invoice, lorry receipt etc., shall be as per Buyer's requirements for his client to avail the available benefits.

3. Seller shall also issue all necessary form / declaration related / necessary to complete the sales /

purchase transaction. In case of non - submission / delay in submission of required documents by Seller, Seller shall be liable to pay any levies arising out of this non - submission / delay in submission of required documents.

4. Seller shall include all taxes and duties as applicable on the goods under supply and mention the taxes / duties as included in the price schedule submitted to the Buyer. Any omission / error noticed by Seller at later date for not having included taxes / duties in the price shall not be considered good for consideration by Buyer.

7. Payment:

1. Payment will be made in accordance with applicable conditions of the order. The time for payment of invoice or for accepting shall start from date of approval specified in the order or from the date of receipt of Seller's correct invoices with back up documents, whichever is later.

2. 90% of net fixed price, any agreed packing and handling charges, inspection charges, taxes, duties and freight charges will be paid after receipt of the following and after settling Buyer's entitlements for any price reduction as specified in the Price reduction clause.

2.1 Order confirmation form attached to this order issued by Buyer duly signed and stamped by Seller for having accepted this order without any changes within a week from the date of receipt of this order.

2.2 Complete delivery of all ordered goods at project site alongwith final invoice (both excise and commercial) with complete set of commercial despatch documents i.e. Copy of lorry receipt, delivery challans, packing list etc. And Buyer's site confirmation for receipt of materials.

2.3 All required technical documents, certificates, manuals as well as inspection documents and all required statutory documents as per order terms.

3. 10% of net fixed price will be paid after the expiry of Seller's guarantee obligation or after submission of Performance Bank Guarantee (PBG) for an equivalent value as per Buyer's approved format from a nationalised bank acceptable to Buyer with validity as per the Guarantee period specified in the Guarantee period clause and with a further claim period of 3 months.

4. All the above payments will be released within 30 days of receipt of invoice and due documents at the Buyer's office at Vadodara in proper and acceptable manner to the Buyer.

All invoice amounts shall be paid by cheque payable at Vadodara / Mumbai.

If DD is required by Seller, bank commissions / charges for issuing DD, courier charges, etc. will be borne by Seller.

Seller's invoice shall be submitted / posted to Buyer in original with two copies to the attention of Manager (Accounts). The invoice and envelope should be clearly marked with **Job No. & Order No.**

The invoice should be prepared strictly in accordance with Buyer's instructions.

Buyer shall have the right to adjust any claim of Buyer from the dues payable to the Seller.

8. Progress report (where applicable):

1. Progress report shall cover the critical information, which may affect the delivery date for any reason for goods as well as documentation. This report alone shall be the basis for the consideration of any delays.

2. Monthly submission of progress report by Seller in his format shall be a milestone for the release of his payment.

9. Price reduction for delay:

1.0 The delivery dates being an essential condition of this order, if the Seller fails to submit the periodical progress reports and / or to meet the delivery dates vide the order, the Seller shall reduce the agreed prices at the rates specified below in the invoice itself.

2.0 All items stated herein marked with "-p-" are subject to price reduction for delay beyond the delivery dates without having the necessity to submit any documentary support for any loss or damage suffered by the Buyer.

3.0 In addition Seller shall pay to Buyer interest at the MIBOR rate as applicable on the date of delivery of materials + 3% for the delayed period on any advance payment received by the Seller from Buyer

3.1 **In the case of material / equipment:** Price reduction as stated above shall be at the rate of 0.5 % (half percent) of the net fixed price for each week of delay or part thereof up to a maximum of 5% (five percent) of the net fixed price.

3.2 **In the case of technical documents:** Price reduction as stated above shall be at the rate of 0.2% (zero point two percent) of the net fixed price for each week of delay or part thereof up to a maximum of 2% (two percent) of the net fixed price.

3.3 **In case of progress reports:** In the event, that Seller has not submitted progress reports on regular basis then the Buyer shall have right to have price reduction from Seller of 0.2% (zero point two percent) of net fixed price per month subject to maximum of 0.8% (zero point eight percent) of net fixed price. However, this price reduction shall not be applicable where the progress reports are submitted late with the concurrence of the Buyer.

(Documents and dates requirement will be specified in order)

10. Guarantee and Warranty:

1. The Seller shall guarantee that the subject of order

1.1 at the time of delivery is new and unused and shall fulfill all the functions as per the agreed technical specifications.

1.2 has the guaranteed qualities provided in clause "Scope of Supply and Execution of the Subject Order" of these conditions of purchase and elsewhere in the order and allow appropriate smooth operation.

1.3 is in accordance with latest recognized state of technology, also regarding quality and suitability of material, design, construction and execution with all technical documents which shall underlie the order as well as relevant regulations, recommendations and guidelines according to clause "Scope of Supply and Execution of the Subject Order" of these conditions of purchase valid for the subject of order.

1.4 is free of any defects which annul or reduce the value or the qualification for ordinary or those application presumed in the order and does not cause any damages to persons or goods of Buyer or third parties.

2. The Seller warrants that the equipment, machinery and materials delivered by Seller will be free from any defects resulting from faulty design, material or workmanship and will be of merchantable quality for a period of 18 months from the date of commissioning of the plant or 24 months from the date of delivery of all ordered goods, whichever is earlier.

2.1 If the acceptance of plant is delayed, for reasons for which Seller is responsible, the period of warranty shall be extended so as to be valid for 12 months from the date of actual acceptance.

2.2 For replaced or repaired parts the same warranty conditions shall apply during a period of 12 months from the date of such repair or replacement. However, the extended warranty shall not exceed 12 months after the original warranty period has expired.

3. In the event, the subject of order is not as per the conditions stated above or if defects of the subject of order will accrue during the guarantee period, these defects will be notified to the Seller. At the latest, within one week after the notification, but, not later than 10 calendar days after expiry of the contractual guarantee period, the Seller shall in consultation with the Buyer remove such defects either through repair and/or replacement without any delay at Seller's own cost. Such repair and/or replacement shall be free of cost to Buyer including packing, disassembly and reassemble (method of transport according to Buyer's discretion).

3.1 Removal of defects if urgently required shall be carried out with increased use of personnel and devices, working multiple shifts, doing overtime or by working on Sundays and official holidays. The Seller shall obtain at his own cost all permits eventually necessary.

3.2 Besides the costs for disassembly of repaired or replaced parts the Seller shall also bear other direct costs relating to removal of the defect e.g. Material, personnel, transport costs, daily allowance, living expenses, as well as damages accrued to the Buyer irrespective whether such costs accrued to the Buyer's client or the Seller.

4. In case any part is modified or replaced by other parts under the guarantee, the Seller shall at Buyer's discretion also modify or replace already delivered respective reserve parts without any costs to Buyer.

5. Replaced part shall become the property of the Seller at the place of replacement and shall be removed by him at his cost without delay.

6. In the event the subject of order wholly or partly cannot be utilized as intended due to a defect, then the guarantee period for the whole subject of order or its defective part as the case may be shall be extended by the period of interruption of use.

7. In any case, to the extent technically possible and without any delay Seller has to make provisional arrangements and maintain them till rectification of defects in order to avoid interruption of use. These arrangements have to be in accordance with all regulations, recommendations and guidelines according to clause "Scope of Supply and Execution of the Subject Order" of this conditions of purchase. Such arrangements shall be economically reasonable and may accrue only with Buyer's prior consent.

8. In case the same parts of the subject of order have been repaired or replaced several times or an apparent defect raises apprehension that other parts of the subject of order are also affected by the same defect, the Seller shall remove the cause of these defects as well as of these parts by appropriate measures. E.g. By changing the design or by

9. Using different material within a reasonable time limit fixed by the Buyer. In such a case the Seller shall also agree to prolong the guarantee period to the reasonable extent as requested by the Buyer for the relevant parts.

10. If the Seller refuses to carry out repair and/or replacement work in general or as necessary or fails to execute these obligations without any delay or as a result of defects, delays are dangerous, or other cases of urgency shall occur (e.g. Damages of significant nature are imminent or immediate removal of defects is necessary for maintenance of operation of Buyer's plant), even if the delay or non-execution of guarantee work is not due to reasons attributable to the Seller, upon prior notice, the Buyer is entitled at his discretion to carry out guarantee work by himself or have it done by a third party. Such cost shall be borne by the Seller.

10.1 The Seller shall not be released from his guarantee obligation by such substituted performance in case guarantee work shall not be executed properly by third parties ordered by the Buyer.

10.2 Then the Seller is obliged only to fulfil guarantee obligations, if any, to that extent, which the third party executed without success. Upon request in such a case the Seller shall assign such claims, if any, regarding substituted performance to third parties.

11. If the Buyer terminates the order, the subject of order or parts thereof shall remain at Buyer's disposal free of charge until a sufficient replacement is made available without any delay. Cost incurred for dismantling, transport and all other costs connected with such termination shall be borne by the Seller.

12. The Buyer prior to acceptance can already assert the claims arising out of this clause of these conditions of purchase.

Performance Bank Guarantee (PBG):

Performance Bank Guarantee strictly as per the Buyer's approved Format shall be furnished by the Seller for 10% of the net fixed price.

This Bank Guarantee shall be furnished from a Nationalised Bank acceptable to the Buyer and shall be valid till the expiry of the Guarantee/Warranty/ Defect Liability period with a further claim period of 3 months

The approved Format of PBG is enclosed along with this General Purchase Conditions.

11. Substitution or wrong supplies:

1. In case of unauthorized substitution or materials delivered by error or of wrong description or defective quality or supplies in excess of the quantity ordered, rejected supplies shall be taken back by the Seller at his own expense within 30 days after due notification to Seller.

2. This will include the revised settlement of payment, if payment is already received by the Seller. Buyer in no way shall be responsible for any shortage, wear and tear or any other damage to such material as above mentioned. In case of delay by Seller to take back such material, the Buyer at his sole discretion may dispose off the said material. Seller shall bear the responsibility and shall bear among other relevant charges, transportation charges both ways. Seller shall substitute correct approved material and deliver at his own cost. Buyer shall in no way be responsible for any theft, deterioration, damage, or loss to rejected goods as aforementioned under any circumstances whatsoever.

12. Cancellation:

1. Due to non adherence to the technical and quantitative specification as required for the purposes for which the subject of order is intended for, the Buyer reserves the right to cancel the purchase order 'in part' or 'in toto'.

2. The Buyer also reserves the right to cancel the order in part or in toto if the Seller fails to make adequate post order progress and thereby delays in delivery is expected and/or fails to deliver the subject of order with

due diligence and as per delivery dates and / or contravene any other condition of the order.

3. The Buyer may give a maximum of seven days notice to the Seller about the Buyer's intention to cancel the subject order. Also the Buyer will be entitled in following cases to claim damages for Seller's non-fulfillment of the order conditions besides cancellation provided the concerned defects as stated in above are attributable to Seller.

4. In case of cancellation as stated above, the Buyer reserves the right to recover any loss or damage from the Seller, and/or purchase the total goods as per the order or similar goods or any part thereof from other sources on Seller's account. The Seller shall be liable to pay to the Buyer the difference between the price at which goods/or similar goods are actually purchased and the price mentioned in the order including any loss or damage which the Buyer may suffer, and price reduction for late delivery.

5. Moreover, the Buyer shall be entitled to terminate the order wholly or partly, if:

5.1 Seller refuses to carry out the guaranteed work or does not carry out this work within a reasonable time limit.

5.2 in spite of executed repair or replacement the defects could not be removed within a reasonable grace period fixed by Buyer.

5.3 the subject of order is executed so defective that removal is not possible or not reasonable or

5.4 the Buyer has to accept difficulties and limitations by governmental charges regarding the operation of Buyer's plant because of the subject of order is not executed by Seller in conformity with sub-clause 1 of this clause of these conditions of purchase.

5.5 in above-mentioned cases the Buyer shall be entitled to claim damages for non-fulfillment instead of/or besides termination provided that the fault is attributable to the Seller. The right to a price reduction shall not be effected thereby.

6. In case the Buyer requires cancellation for reasons other than what is aforesaid, the Seller will accept the cancellation and the effective cancellation costs as can be proved will be reimbursed. However, Buyer shall not be liable for any consequential damages like loss of production, loss of profits etc. direct or indirect. But cancellations made by Buyer within 4 weeks after placement of LOI/FOI/order will be carried out free of charge by Seller.

7. During execution of this order if standard or stock parts of the equipment is/are cancelled from Seller's scope of supply. Seller agrees to take back the same parts at the respective purchase price mentioned in this order.

8. **Buy back of materials** : Notwithstanding the provisions of "cancellation" it is provided in the contract

that if the Buyer deems that all or part of the supplied goods are surplus to the project requirements, Seller shall accept return of the surplus goods at the original purchase price.

13. Amendments / modifications / supplement :-

1. The Buyer shall be entitled to make any change with regard to the order. The Seller shall carryout such changes and be bound by the same terms and conditions to the extent applicable as though the said changes were incorporated in the initial order.

2. The Seller at the latest within two weeks after the request by Buyer or contractual amendment of the order, shall notify the Buyer any comment in writing especially about changes in prices, delivery dates as well as despatched by Seller. After the receipt of notification the Buyer shall without any delay submit his comments to the Seller.

3. If any such changes affect the agreed price or delivery, the same shall be subject to adjustment of price/delivery wherever required on reasonable basis by mutual agreement. In case of dispute, Buyer's decision will be final. All such changes shall be incorporated through a written order supplement and Seller shall confirm the acceptance of such order supplement.

4. The Seller shall execute the changes of the subject of order as requested by the Buyer as per agreed time schedule.

5. In case any portion of the subject of order are changed under sub-clause 3 of this clause and for which already reserve parts have been delivered to the Buyer, the Seller shall also adopt such reserve parts according to this modification or shall redeliver them at its own cost.

6. Seller must make claims for adjustment within 15 days from the date of the changes or cancellation of order. Seller shall not be entitled to any compensation whatsoever for revision, changes, variations and/or cancellations except when agreed by Buyer in writing.

14. Documentation :-

1. Any changes, review or approval remark by the Buyer in Seller's technical documentation shall not release the Seller from his liability for the correctness of all information contained therein, such as dimensions, constructions, calculations and function of the subject of order.

2. The Seller shall responsibly check any drawings, specifications and other documents provided by the Buyer before using them for the subject of order. Upon completion of the subject of order the Seller shall return all documentation supplied by the Buyer without any request.

The Buyer reserves the right to back charge the Seller for the additional man hours spent by the Buyer/ Buyer's authorized agency due to delayed submission, bad quality, incomplete submission, non incorporation of Buyer's /

Buyer's authorized agency's comments resulting in repeated review / approval of the drawings/documents.

3. Any changes in drawings and any other documents made by the Seller shall be notified to the Buyer in writing without any delay and be marked distinctly for each item.

15. Delivery dates & Progress Status:

1. Timely completion is an essential condition of the order. The Seller shall adhere to the delivery dates by all means. Within seven days of receiving the letter of intent / order the Seller shall submit to Buyer a clear progress schedule for the subject of order for Buyer's approval. Any revision to this progress schedule shall be updated by Seller without delay and shall notify immediately to the Buyer. This weekly progress status report shall be submitted to the Buyer without delay. Any circumstances relating to an actual or expected delay or any other difficulties in manufacturing of the subject of order shall be notified by the Seller to the Buyer by giving reasons without any delay, not later than three working days after their detection. But, any justification/consent for extension of the delivery dates should not be derived from this notification. If Seller does not notify the Buyer for reasons attributable to the Seller, the Seller shall be liable for any damages occurring thereof.

2. In case of insufficient progress of work during the execution of the order or if delivery of subject of order in due time or if another condition of the order appears to be jeopardized, in all such cases if the reasons are attributable to the Seller, the Seller shall expedite the work at his own cost and shall bear all extra costs required for all the steps necessary to avoid delay in the delivery dates, e.g. By increased use of personnel and devices, working multiple shifts & doing overtime, working on Sundays and official holidays as well as support and control of manufacture by the Buyer. The Seller shall obtain at his own cost all permits eventually necessary.

3. Supply of the subject of order before the delivery dates are subject to the Buyer's prior written consent, all other rights and obligations of the Seller remaining unchanged.

Delivery of the equipment/materials along with necessary documents shall be made available at the place, time and manner specified in the enquiry/order.

4. If the Seller does not adhere to the delivery dates due to reasons attributable to the Seller, the agreed price reduction therefore shall become due, even if the Buyer has not reserved/invoked such right at the time of any payment to Seller. Where the subject of order has been delivered in due time but with defects, the Seller shall be liable to reduce the prices as prescribed in the order under the head "price reduction" for the period commencing on the date of receipt of the goods by the Buyer and ending with the date of satisfactory acceptance by the Buyer/client subject to the ceiling specified in the clause on "price reduction" as in the order. Such defect should however be communicated by the Buyer to the

Seller prior to acceptance in accordance with clause "Acceptance" of these conditions of purchase.

In addition Seller shall pay to Buyer interest at the prevailing prime rate for overdraft from bank for the delayed period on advance payment (if any) received by the Seller.

5. In case of any actual / expected delays, Buyer has the right to take all necessary actions to reduce / avoid delays including cancellation of order and recover the incidental costs and damages from the Seller as stated in clause "Cancellation".

6. If the delay in the delivery dates is attributable to Buyer no price reduction shall be due provided that the Seller has notified the Buyer in due time the expected delay according to sub-clause 1 of clause "Delivery Dates and Progress Status" of these conditions of purchase.

7. Should the Buyer use his right to terminate or to cancel the order, his claims of agreed price reduction existing at that time shall remain unchanged.

8. In the event, that the Seller fails to keep a reasonable grace period fixed by the Buyer or if it becomes evident that it cannot be kept, the Buyer reserves the right.

8.1 To reject further delivery or rectification of the subject of order wholly or partly and get the subject of order executed or rectified through a third party at Seller's reasonable costs or

8.2 To cancel the order wholly or partly and/or to claim incidental costs and damages. In either cases, the reasons should be attributable to Seller.

9. If damages or defects shall occur during the progress of work and it is unclear to identify the party responsible therefore, the Seller shall remedy those damages or defects and adhere to the delivery dates. If the Seller refuses to do so although requested by the Buyer, until final clarification, the Buyer shall be entitled to execute delivery or remedy damages or defects of the subject of order by himself or by a third party at risk and reasonable cost of the Seller. After final clarification the cost to remedy damages or defects shall be borne by the party who is liable for it.

10. The clause regarding the delivery dates shall apply accordingly for periods.

16. Expediting:

1. The Seller shall be solely responsible to expedite the execution of the order and its sub-orders and with all parties relating to the execution of the purchase order/sub order.

2. However the Buyer, Buyer's client / consultant - the latter in co- ordination with the former - and their representatives are entitled to check the progress of work at Seller's and his sub-Sellers premises, especially to follow up the delivery dates and quality control. For this purpose they shall be granted free access during normal

office hours to the workshops and to such drawings and other documents which are required for this purpose. The Seller shall impose this obligation on his various agents including sub-Sellers. The Buyer shall hereby consider the justified interest of the Seller in exercising this right.

3. Should control be required repeatedly due to defects and/or delays regarding manufacture or delivery attributable to the Seller, the resulting costs shall be borne by the Seller.

4. In case of any expected delay in obtaining the components / materials / drawings / information by Seller from any source including Buyer such expected delay should be immediately informed to the Buyer.

17. Inspection & Testing:

1. Seller shall carry out inspection and tests and issue the related certificates to the Buyer.

2. Seller shall issue notice to Buyer for inspection 15 days prior to the proposed date of inspection.

3. In cases of doubt regarding the proper execution of the terms of the order on generally recognized regulations and standards for selection of engineering material, proper manufacture, ability to function and safety in operation, the Buyer and Buyer's client / consultant - the latter in co- ordination with the former - and their representatives are entitled to carry out nondestructive random tests (e.g. x-ray and ultrasonic tests) at the costs of the Seller.

4. Buyer reserves the right to attend / witness tests / inspection, and / or nominate third parties to conduct the tests / inspection. The related expenses shall be borne by the Buyer and the Seller respectively for their personnel.

5. The Seller shall provide all necessary facilities like materials, equipment, manpower etc free of cost to Buyer to conduct the test / inspection as stated in sub-clause 2 of clause "Expediting".

6. Any such action as stated in the sub-clause 3 of this clause by the Buyer will not relieve the Seller of his obligation and liabilities under the concerned order.

7. The Seller shall be solely responsible for informing the Buyer regarding compliance of all status, provisions for any special inspection/testing/certification.

8. After final satisfactory inspection by Buyer / client /consultant / tpi, the Seller shall submit to Buyer all technical documents and certification as per the order terms based on which the inspection release note duly signed by technical department of Buyer shall be issued to Seller.

8.1 The Seller shall despatch the ordered material only after receipt of the inspection release note of Buyer.

8.2 The inspection release note will be accompanied / followed by despatch instruction indicating the procedures for billing and transporting. The Seller shall despatch the ordered goods only after the despatch

instructions are communicated to him. The Seller shall comply strictly to such instruction to avoid any loss and delay at destination.

9. The inspection release note in no way will be treated as final acceptance of the goods.

18. Reserve Parts:

Upon Buyer's request the Seller shall maintain reserve parts till termination of the average useful life of the subject of order, at least for 10 years from the effective date of the order on the basis of reasonable prices and conditions of the order.

19. Despatch & Storage:

1. All despatch documents including invoice must clearly show the information required by the Buyer, especially order no., Item no., Job no., Code no., As well as quantity including weight per item. The documents should be prepared strictly according to the instruction of the Buyer to ensure that the Buyer is able to receive the expected commercial taxes/duty benefits.

The Buyer may reject the subject of order which has been delivered without appropriate despatch documents, test certificates or acceptance certificates, warranties, operating manual etc.

Despatch documents have to be with the Buyer before subject of order reaches place of fulfillment.

1. The Seller shall be liable for all costs and/or damages arising from non-observance of the instructions for despatch, delayed issue/not issuing at all and / or issuing incorrect declarations made by him in connection with despatch.

2. Deliveries to the place of fulfillment shall only be made during normal business hours. Any exceptions require express prior consent of the Buyer.

3. The subject of order shall not be despatched unless and until notified duly to the Buyer. If on receipt of Seller's notification of readiness for despatch, the Buyer requests the Seller to hold back the despatch of the subject of order, Seller shall store properly the subject of order at his own cost and risk.

In case the subject of order is stored, payment of due installment will be made only against anticipated transfer of property of the subject of order to Buyer.

20. Packing & Forwarding:

1. All equipment including its accessories & spares shall be adequately packed in damage free conditions to enable proper transportation through any common carrier. Such packing should also withstand all hazards in transit and against all weather conditions. All protective actions like painting, greasing etc. Shall be done for the equipment and its accessories against rusting, corrosion and any other damage during transit. All accessories and spares should be sent along-with the main equipment inside the

main packing. All parts shall be adequately coated with protective compound.

2. Seller shall be held liable for damages if any damage occurs to the goods due to defective or insufficient packing.

3. In case of short receipt of any goods in any apparently undamaged package, Seller shall on receipt of information from Buyer immediately deliver short supplied goods to Buyer at no extra cost to the Buyer.

21. Packing information :

The Seller will submit the following information two weeks prior to despatch. (1) No. Of packages (2) Dimensions in (mm) - length - width - height (3) Net weight (kgs) (4) Gross weight (kgs) (5) Kind of packing

22. Acceptance :

1. Unless expressly stipulated otherwise, the acceptance of the subject of order by the Buyer shall take place at the place of fulfillment of the subject of order after delivery in conformity with the order condition and with the acceptance of Buyer's plant by Buyer's client, at the latest, however, at the expiry of latest period as stipulated in the order.

2. Acceptance is subject to presentation of all necessary governmental approval certificates to be procured by the Seller at his own cost.

3. The Seller free of charge shall provide any testing instruments or other resources required for acceptance and the tests connected therewith.

4. Acceptance shall be recorded in a test report jointly to be signed by the Seller and the Buyer. Should the Buyer waive a formal acceptance, then the date of payment of Seller's final invoice shall be construed to be the date of acceptance.

5. The material costs for acceptance shall be borne by the Seller. The personnel costs connected therewith shall be borne by the Buyer and the Seller respectively for their personnel.

6. If the acceptance test shows that the subject of order is not manufactured in conformity with the order, the Seller shall undertake all required steps without any delay and at his own risk and cost to achieve the conformity. In addition, the Seller shall bear the personnel costs of the Buyer for the repeated acceptance test as well as other costs connected therewith (e.g. Costs of inspection authorities).

7. In case the located defects do not affect the functions of the subject of order, provisional acceptance may be given subject to such defects being rectified during a reasonable period to be agreed mutually. In that case the Buyer shall retain a reasonable amount from the balance payment due to Seller till the rectification of these defects.

8. **Non-waiver:** Failure of Buyer to insist upon strict performance of any of terms and conditions hereof or failure or delay to exercise any rights of remedies provided herein or by law or failure to properly notify Seller in the event of breach, or the acceptance of or payment for any goods hereunder or approval.

Of design, shall not release Seller of any of the warranties or obligations of this order and shall not be deemed a waiver of any of right of Buyer to insist upon strict performance hereof or of any of its rights or remedies as to any such goods regardless when shipped received or accepted, nor shall any purported verbal modification or recession of this order by Buyer operate as a waiver of the terms hereof.

9. Moreover the acceptance shall be subject to the clause Guarantee and Warranty.

23. Passing of risk and transfer of property :

Unless otherwise stipulated in order, transfer of property of the subject of order to the Buyer coincides with transfer of risk. Transfer of property by itself does not result into any acceptance of the subject of order.

24. Transit Insurance:

Client shall arrange transit insurance. But, it shall be Seller's prime responsibility to inform Buyer/his client's insurance company, client and Buyer by fax at a time about the despatches to enable Buyer / client to take / cover timely insurance failing which Seller shall be solely held responsible for any loss, damages, pilferage etc., Costs and losses arising out of it shall be deducted from the due payment of the Seller or recovered from Seller.

25. Transportation:

Seller shall arrange to transport the ordered goods on 'freight paid basis' at extra cost to Buyer for delivery at site (agreed destination) alongwith consignee copy of Lorry Receipt. The consignment shall be accompanied by necessary documents and Seller shall ensure that these documents are handed over to the concerned personnel at the site for effecting proper delivery. In case there is any change in the scope of transportation, such change will be informed to the Seller before despatch.

In case of Buyer's own arrangement, Seller shall be responsible also for loading the ordered goods on to the designated 'carrier'.

26. Defects of title:

The Seller shall hold harmless, indemnify and keep indemnified the Buyer against all claims, damages, loss of profit or all of them arising from any infringement/ alleged infringement/ passing off or any other such action/ claim arising in connection with intellectual property rights and/or title of the goods/service supplied by the Seller under this agreement. In addition, the Seller shall reimburse to the Buyer all litigation costs, if any suffered by the Buyer, forthwith.

27. Secrecy, Property, Models:

1. All drawings, data, systems, operating procedures, figures, illustrations and other information, irrespective of nature and origin, forwarded to or coming to the knowledge of the Seller in connection with inquiry and execution of the order shall be treated strictly confidential by Seller and remain the property of the Buyer.

Without Buyer's prior consent such documents/information may neither be copied, published or made available to third parties nor used for any purpose other than that laid down in the order. The Seller shall instruct and oblige his personnel/sub-Seller/agents accordingly. The approving authorities shall not be considered as third parties, however, the Seller shall direct such authorities about the confidential nature of said information. Seller shall be responsible also for the safe custody of these items.

2. Upon completion of the order the Seller shall return all these drawings, data etc. To the Buyer without any request by the latter.

3. Any drawings and other documents which the Seller has prepared in connection with the order shall become the property of Buyer's client and can be used by the Buyer and Buyer's client unrestrictedly for their own purposes.

4. Models manufactured by the Seller under the order at Buyer's expense shall become the property of the Buyer until Buyer's instruction the Seller shall store such models carefully free of charge and during the storage time shall insure them as property of another. The use of such models for or by third parties is subject to Buyer's prior consents.

28. Force majeure:

1. Events which shall influence Seller's or Buyer's works from outside and which are exceptional, unforeseeable and unavoidable as for example acts of god, acts of war, embargoes which make impossible wholly or partly or substantially impede the execution of contractual obligations in due time (force majeure) constitute a release from the execution of contractual obligations for the duration and to the extent of their consequences and lead in consideration periods on the basis of prevailing conditions the rejected scheduled supplies, delays of various agents (as far as those delays are not caused by force majeure), as well as outlaw strikes shall not constitute force majeure.

2. The occurrence and cessation of such events, and the estimate of the expected duration of delay as well as other possible consequences shall be notified and proved by the Seller and the Buyer mutually and without any delay. This notification including supporting evidence shall create the prerequisites for the recognition of delay in the delivery dates.

3. Moreover, the Seller shall undertake all reasonable precautions and measures in order to keep the original delivery dates and periods or to shorten the postponement as far as possible.

4. In case due to such events lasting continuously for three months, it is not possible for the Seller to execute the order or in case the Buyer is not able to fulfill his contractual obligations towards Buyer's client during the said period due to force majeure, the Buyer shall have the right to cancel or terminate the order wholly or partly. In case of cancellation the Buyer shall pay to the Seller such amount of order value which is equivalent to the value of manufacture already completed as part of the subject of order. If in such case it is not possible for the Seller to execute the order, he for his part can terminate the order.

29. Place of Fulfillment:

For equipment & materials, forming part of the order place of fulfillment is the place where the subject of order shall be delivered according to Buyer's instructions. For ex-works delivery place of fulfillment shall be the place of transfer of property which includes Seller's responsibility to load the subject order on to common carrier. For documentation and payments, place of fulfillment shall be Buyer's main office.

30. Applicable Law:

Unless otherwise agreed the interpretation, the laws of India shall govern application and performance of this order.

31. Arbitration:

Should any disagreement, dispute or difference arise out of or in connection with order, whether during the continuance of order or thereafter, parties hereto agree promptly to negotiate reasonable settlement thereof. If the parties are unable to act within a reasonable period of time, then the disagreement, dispute or difference shall be referred to arbitration in accordance with following clause.

If at any time any disagreement, dispute or difference whatsoever shall arise between parties upon or in relation to or in connection with order, either party may forth with give to other party notice in writing of existing of such question, disputes or difference and the same shall be referred to the adjudication of two arbitrators. One to be nominated by Buyer and other to be nominated by Seller or in the case of the said arbitrator not agreeing, then to the adjudication of an umpire to be appointed by the arbitrators in writing before proceeding with reference the award of the arbitrators, or in the event of their not agreeing that of the umpire appointed by them shall be final and binding on the parties and the provision of the Indian arbitration and conciliation act, 1996 and the rules thereunder and any statutory amendments thereof shall be deemed to apply.

32. Jurisdiction:

This contract shall be subject to jurisdiction of court in Vadodara, Gujarat State.

33. Most favoured customer:

Seller agrees that throughout the execution of the order, Buyer will be treated as most favoured customer. Seller confirms that no other customer will receive higher priority.

34. Order confirmation :-

Within 7 calendar days of the date of order, the Seller shall sign, stamp & return the order confirmation form attached to the order for having accepted the order without any changes. In the event the Buyer has not received the acceptance / confirmation of order within 10 calendar days from the date of the order, the Buyer shall be entitled to cancel the order at no cost to the Buyer depending on the circumstances. In the absence of non-receipt of the acceptance / confirmation as aforesaid the Buyer may at his own discretion treat the order as accepted by the Seller without his written confirmation. But, in this case otherwise due payment may not be effected. Except the said order confirmation form, the Buyer accepts no other order confirmation form.

35. Free issue of material:

1. If any material required to execute the order is issued by Buyer to the Seller free of cost, due deduction shall be made from the relevant order price. The Seller shall inform the Buyer in writing at the time of submitting the offer, about any possible implication of statutory levies, taxes etc.

2. The material issued free of cost shall remain property of Buyer and shall not be hypothecated or transferred or disposed off or subjected to any lien by Seller.

3. Seller shall collect such free issue material at his cost from the premises/destination indicated by Buyer. They shall be separately marked and stored and shall not be used for any purpose other than what is mentioned in the order.

4. Seller shall at his cost maintain quantity records of all materials issued by the Buyer and keep them in safe custody. Seller shall reimburse Buyer for any loss or damage to materials issued to the Seller by Buyer.

5. The Seller shall furnish suitable bank guarantee / indemnity bond for the safe custody of free issue material at his own cost and shall take all necessary care & responsibility as a bailee. Any surplus material arising out of this free issue material shall remain the property of the Buyer. Seller shall take necessary action according to the instructions of the Buyer, especially to return the said material on demand.

In case of any insurance claims relating to the Free issue of material, Seller shall extend necessary cooperation to Buyer for processing the claims.
