

## **GENERAL CONDITIONS OF PURCHASE**

0	Kaustubh Gujrati Rahul Saxena	Rajkumar Singh Manish Tiwari	Harendra Pandya	08/12/2020
Rev	Prepared by	Validated by	Approved by	Effective Date

**INDEX**

1.	DEFINITIONS AND INTERPRETATION:.....	5
2.	COMPLETE AGREEMENT: .....	13
3.	BIDDING: .....	14
4.	TITLE AND RISK OF LOSS:.....	14
5.	RESERVATION OF RIGHTS: .....	15
6.	INSTRUCTIONS FOR BILLING / INVOICES / CORRESPONDENCE:.....	15
7.	WAIVER:.....	16
8.	WARRANTY: .....	17
9.	SQS/INSPECTION: .....	19
10.	INDEMNITY: .....	21
11.	LIQUIDATED DAMAGES/ DELAY IN DELIVERY: .....	22
12.	OTHER GUARANTEES: .....	25
13.	ASSIGNMENT: .....	26
14.	CHANGES: .....	27
15.	TERMINATION FOR DEFAULT: .....	28
16.	TERMINATION FOR CONVENIENCE:.....	31
17.	REQUIREMENT OF DRAWINGS, DOCUMENTATIONS, ETC.....	32
18.	INSTRUCTION FOR DESPATCH:.....	33
19.	LAWS & REGULATIONS:.....	34
20.	WEIGHT AND MEASUREMENTS: .....	35
21.	LIENS.....	35
22.	SUSPENSION.....	35
23.	INDEPENDENT CONTRACTOR.....	35
24.	ETHICAL CONDUCT.....	36
25.	COMPLIANCE OF REGULATIONS.....	37
26.	CONFIDENTIAL INFORMATION.....	37
27.	SUPERVISION OF ERECTION & COMMISSIONING:.....	39

28.	<b>SITE WORK:</b> .....	<b>39</b>
29.	<b>HAZARDOUS MATERIALS</b> .....	<b>40</b>
30.	<b>VALIDITY OF PROVISIONS</b> .....	<b>40</b>
31.	<b>DISPUTE RESOLUTION &amp; ARBITRATION</b> .....	<b>40</b>
32.	<b>RIGHT TO OFFSET</b> .....	<b>41</b>
33.	<b>SURVIVAL</b> .....	<b>41</b>
34.	<b>INSURANCE</b> .....	<b>41</b>
35.	<b>SAFETY, HEALTH AND ENVIRONMENT</b> .....	<b>42</b>
36.	<b>LIMITATION OF LIABILITY</b> .....	<b>42</b>
37.	<b>PRICE AND PAYMENT</b> .....	<b>42</b>
38.	<b>INTELLECTUAL PROPERTY RIGHTS &amp; INFRINGEMENT</b> .....	<b>44</b>
39.	<b>BANKRUPTCY:</b> .....	<b>47</b>
40.	<b>PREVENTION OF CORRUPTION:</b> .....	<b>47</b>
41.	<b>TAXES AND DUTIES (IMPORT ORDERS)</b> .....	<b>48</b>
42.	<b>EXPEDITING</b> .....	<b>48</b>
43.	<b>STORAGE:</b> .....	<b>49</b>
44.	<b>BACK CHARGES</b> .....	<b>49</b>
45.	<b>DEFERRED PAYMENT GUARANTEE SCHEME:</b> .....	<b>50</b>
46.	<b>REPRESENTATION AND WARRANTIES</b> .....	<b>50</b>
47.	<b>ERGONOMICS</b> .....	<b>53</b>
48.	<b>RESPONSIBILITY OF COMPLETENESS:</b> .....	<b>53</b>
49.	<b>EXCLUSIVE MANUFACTURE:</b> .....	<b>53</b>
50.	<b>SECRECY:</b> .....	<b>54</b>
51.	<b>PUBLICITY AND ADVERTISING:</b> .....	<b>54</b>
52.	<b>HEADINGS:</b> .....	<b>54</b>
53.	<b>CONSEQUENTIAL DAMAGES</b> .....	<b>54</b>
54.	<b>INSOLVENCY</b> .....	<b>55</b>
55.	<b>MODIFICATION AND AMENDMENTS</b> .....	<b>55</b>

<b>56.</b>	<b>LOI/ PURCHASE ORDER/ CONTRACT ACCEPTANCE .....</b>	<b>55</b>
<b>57.</b>	<b>TRANSFER OF PROPERTY.....</b>	<b>56</b>
<b>58.</b>	<b>LEASING .....</b>	<b>56</b>
<b>59.</b>	<b>FORCE MAJEURE .....</b>	<b>56</b>
<b>60.</b>	<b>SEVERABILITY:.....</b>	<b>58</b>
<b>61.</b>	<b>INTEROPERABILITY .....</b>	<b>58</b>
<b>62.</b>	<b>LANGUAGE: .....</b>	<b>58</b>
<b>63.</b>	<b>COUNTERPARTS:.....</b>	<b>59</b>
<b>64.</b>	<b>NOTICE: .....</b>	<b>59</b>
<b>65.</b>	<b>ORDER OF PRECEDENCE:.....</b>	<b>59</b>
<b>66.</b>	<b>INTERFACE WITH THIRD PARTIES.....</b>	<b>59</b>

**GENERAL CONDITIONS OF PURCHASE**

**1. DEFINITIONS AND INTERPRETATION:**

- 1.1 The following terms, unless the context requires otherwise, shall have the following meanings:
- 1.1.1 **ACCEPTANCE CERTIFICATE** means the written certificate issued by the BUYER to the SELLER indicating ACCEPTANCE OF GOODS.
  - 1.1.2 **ACCEPTANCE OF GOODS** means (i) if acceptance criteria are set forth in the CONTRACT, the satisfaction of all such acceptance criteria, including COMMISSIONING and performance tests, if applicable; or (ii) if no such criteria are provided, the BUYER'S determination that the GOODS fully comply with all requirements set forth in the CONTRACT, and in both cases, as evidenced by the issuance of the ACCEPTANCE CERTIFICATE by the BUYER.
  - 1.1.3 **AFFILIATE** means, with respect to any PERSON, any other PERSON, directly or indirectly controlling, controlled by or under direct, indirect or common control with, such PERSON. For the purposes of this definition, "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such PERSON, whether through the ownership of voting securities, by agreement with respect to the voting of securities, by other agreement conferring control over management or policy decisions, by virtue of the power to control the composition of the board of directors or managers, or otherwise. The terms "controlling" and "controlled" shall have correlative meanings.
  - 1.1.4 **APPLICABLE LAW** means, with respect to any domestic or foreign national, federal, regional, state, provincial, town, city, municipal or other jurisdiction, any constitutional provision, law, statute, rule, regulation, ordinance, treaty, order, notification, decree, judgment, decision, certificate, injunction, or conditions of any registration, license, permit, authorization, guideline, governmental approval, consent or requirement of any GOVERNMENTAL AUTHORITY of such jurisdiction, as construed from time to time by any GOVERNMENTAL AUTHORITY of such jurisdiction.
  - 1.1.5 **AUTHORIZED REPRESENTATIVE** means the representative of the BUYER or the SELLER, as the case may be, who is duly empowered and authorized by the applicable PARTY to act for and on behalf of it. Each PARTY may change its AUTHORIZED REPRESENTATIVE(S) from time to time by written notice to the other PARTY.
  - 1.1.6 **BACK CHARGE** means the costs and expenses incurred, by or on behalf of the BUYER, for the performance of any obligations of the SELLER, which may include costs and expenses in connection with repair, replacement or remedy of any DEFECTS.
  - 1.1.7 **BACKGROUND INFORMATION** means any SPECIFICATIONS, requirements, plans, drawings, patterns or designs, proprietary information, instructions, site plans, process requirements, technical information, battery limit conditions, forecasts, trade secrets, data or know how pertaining to the GOODS, or other similar materials, and all documentation related thereto.

- 1.1.8 **BASIC TOTAL / BASIC ORDER VALUE** means the Basic total price payable to a SUPPLIER/CONTRACTOR by COMPANY for the supply of GOODS under the PURCHASE ORDER.
- 1.1.9 **BUSINESS DAY** means a day other than a Sunday on which banks in Mumbai, India are open for business.
- 1.1.10 **BUSINESS PARTNERS** means a supplier, contractors, sub-contractors, vendors, third party, service providers, surveyors
- 1.1.11 **BUYER** means the PERSON entering into the CONTRACT (which expression, unless repugnant to the context or meaning thereof, means and include its successors and assigns). Terms such as 'AARTI INDUSTRIES LIMITED (AIL)', 'Purchaser', 'Owner' or 'Customer', as may be used in any CONTRACT DOCUMENTS, shall be construed to mean BUYER.
- 1.1.12 **BUYER GROUP** means the BUYER, its AFFILIATES and their respective officers, directors, employees and representatives.
- 1.1.13 **BUYER INDEMNIFIED PARTIES** means the BUYER, its AFFILIATES, its contractors, sub-contractors and their respective officers, directors, employees and representatives, but shall exclude each member of the SELLER GROUP.
- 1.1.14 **BUYER IP** means INTELLECTUAL PROPERTY RIGHTS in (i) all of BUYER'S Background Information and (ii) any enhancements, improvements and derivative works thereof, including those arising with respect to the smallest separable parts or components of the GOODS which embody only or are comprised only of enhancements, improvements and derivative works of BUYER'S Background Information.
- 1.1.15 **BUYER'S MATERIAL** means any material or equipment owned by the BUYER and made available to the SELLER without charge to the SELLER, as mutually agreed in writing between the SELLER and the BUYER, for the purposes of the PROJECT.
- 1.1.16 **COMMISSIONING or COMMISSIONED** means the successful installation, testing, pre-commissioning and commissioning of the GOODS at the SITE as evidenced by the issuance of a COMMISSIONING CERTIFICATE.
- 1.1.17 **COMMISSIONING CERTIFICATE** means the written certificate issued by the BUYER to the SELLER evidencing that the GOODS have been COMMISSIONED.
- 1.1.18 **COMPANY** means Aarti Industries Limited or AIL.
- 1.1.19 **CONFIDENTIAL INFORMATION** means confidential and proprietary information, including inventions, ideas, processes, methods, copyrights, patents, techniques, formulas, computer programs, hardware, SPECIFICATIONS, prototypes, designs, know-how, drawings, marketing plans, financial data, customer lists, referral and vendor sources, policies and other procedures, past, present and future research, development, business activities, products, services and technical knowledge and any other information in written, oral, physical or sample form (provided that if such information is provided orally, it shall be summarized in writing and the written

summary furnished within thirty (30) calendar days of disclosure), whether or not marked 'confidential' or 'proprietary'.

- 1.1.20 **CONFIDENTIALITY AGREEMENT** means any agreement with respect to confidentiality or non-disclosure of TECHNICAL INFORMATION entered into between (i) the BUYER and the SELLER or any SUB-SELLER; (ii) a licensor of the TECHNICAL INFORMATION and the SELLER or any SUB-SELLER; or (iii) any combination of the foregoing PERSONS.
- 1.1.21 **CONSULTANT** means engineering contractors and other contractors and consultants engaged by the BUYER for the PROJECT.
- 1.1.22 **CONTRACT** means the totality of the agreement between the BUYER and the SELLER as expressed in the CONTRACT DOCUMENTS.
- 1.1.23 **CONTRACT DOCUMENTS** means the following:
- a) PURCHASE ORDER, including any amendments thereto;
  - b) SPECIAL CONDITIONS;
  - c) Deviations to the GCP;
  - d) GCP;
  - e) MRP;
  - f) any other document referred to in any of the documents referred to in clauses (i) through (v) above and incorporated herein by specific reference in such document; and
  - g) any other document agreed by the PARTIES to constitute a part of the CONTRACT DOCUMENTS.
- 1.1.24 **DEFECT** means any defect, deficiency, error, failure, flaw, omission, non-conformance, damage, fault, inadequacy or discrepancy in the GOODS or any part or component thereof and the word 'DEFECTIVE' shall be construed accordingly.
- 1.1.25 **DELIVERY POINT** means the place or location identified for delivery of the GOODS as set forth in the DELIVERY TERMS.
- 1.1.26 **DELIVERY SCHEDULE** means the schedule for delivery of the GOODS as set out in the DELIVERY TERMS.
- 1.1.27 **DELIVERY TERMS** means the terms for the delivery of the GOODS, including the DELIVERY SCHEDULE, DELIVERY POINTS and locations and shipping terms, as set out in the CONTRACT. Except as otherwise specified in the CONTRACT, terms for the delivery of the GOODS shall incorporate the INCOTERMS.
- 1.1.28 **DRAWINGS and DOCUMENTS** mean the design calculations, drawings, analysis patterns, specifications, construction and fabrication drawings and documents, certificates, test results, installation, operating and maintenance manuals and any

other documentation or materials prepared or provided by the SELLER under the CONTRACT (whether recorded in physical form or on electronic storage media).

- 1.1.29 **EFFECTIVE DATE** means the date specified as the “Effective Date” in the LETTER OF COMMITMENT / LETTER OF INTENT (if any), or if no such date is specified, then the effective date shall be the date that is the earlier of (i) the date of the LETTER OF INTENT relating to the CONTRACT (if any), and (ii) the date specified on the face of the PURCHASE ORDER.
- 1.1.30 **ENCUMBRANCE** means any interest or equity of any PERSON (including any right to acquire, option or right of pre-emption) and any security, mortgage, charge, pledge, lien, assignment, hypothecation or other priority or security interest, deferred purchase, conditional sale, defect in title, trust, lease and any other agreement or arrangement whatsoever having the same effect as security.
- 1.1.31 **ENGINEER** - Any company appointed by Owner for engineering and/or design Services.
- 1.1.32 **EPC (M) Contractors** - Contractors appointed (or still to be appointed) by Buyer or Owner for Engineering, Procurement and Construction (Management) services.
- 1.1.33 **FACILITIES means**
- a) something designed, built, installed, etc., to serve a specific function affording a convenience or service
  - b) something that permits the easier performance of an action or course of conduct
- 1.1.34 **FINANCIAL YEAR** means the period from April 1 in any calendar year up to and including March 31 of the following calendar year.
- 1.1.35 **FORCE MAJEURE** means each of the following events or occurrences:
- a) Acts of God, epidemic, earthquake, fire, explosion, or extraordinary weather conditions in the affected geographic area;
  - b) Acts of a public enemy, war (declared or undeclared), terrorism, blockade, insurrection, riot or civil disturbance, or any exercise of police power by or on behalf of any GOVERNMENTAL AUTHORITY;
  - c) With respect to the BUYER, the suspension, termination, interruption, denial or failure of or delay in renewal or issuance of any permit under APPLICABLE LAWS required by the CONTRACT; or
  - d) Strikes, boycotts or lockouts by a whole national category of workers, except for any strike, boycott or lockout limited to the employees of the SELLER or a SUB-SELLER.

Provided that, any such event (a) has a material adverse impact on a PARTY'S ability to perform its obligations and duties under the CONTRACT; (b) is not attributable (either by causation or inducement) to the affected PARTY; (c) is beyond the reasonable control of the affected PARTY; and (d) could not reasonably have been



foreseen or mitigated by such PARTY.

- 1.1.36 **FREE ISSUE MATERIAL or FIM** is Where BUYER issues material/equipment 'Free of Charge' to SELLER in order that SELLER incorporates such material or equipment as part of the GOODS, as mutually agreed in writing between SELLER and BUYER, or may fulfil its obligations under the PURCHASE ORDER
- 1.1.37 **GOODS** means each item to be provided to the BUYER by the SELLER, or by a SUB-SELLER on behalf of the SELLER, including raw materials, processed materials, equipment, components, fabricated goods, finished products, SPARES, DRAWINGS and DOCUMENTS, data, related firmware or software and any other documentation described in the CONTRACT.
- 1.1.38 **GCP** means this General Conditions of Purchase.
- 1.1.39 **GOVERNMENTAL AUTHORITY** means any national, federal, regional, state, province, town, city, municipal or other government, whether domestic or foreign, or other administrative, regulatory or judicial body of any of the foregoing.
- 1.1.40 **GROSS NEGLIGENCE** means negligence consisting of such a high degree of careless and wanton conduct or omission, such that it is reasonable to presume that regardless of whether the PERSON committing a particular act or omitting to act intended a particular consequence, that PERSON must have been able to foresee that consequence and disregarded it.
- 1.1.41 **INCOTERMS** means the International Commercial Terms published by the International Chamber of Commerce, Paris, which, are in force as on the EFFECTIVE DATE.
- 1.1.42 **INTELLECTUAL PROPERTY RIGHT** means trademarks, service marks, trade names, trade dress, logos, domain names, copyrights, rights of authorship, inventions, mask work rights, moral rights, patents, rights of inventorship, design rights, all applications, registrations and renewals in connection with any of the above, database rights, know-how, trade secrets, rights of publicity, privacy and/or defamation, rights under unfair competition and unfair trade practice laws, and all other intellectual and industrial property rights anywhere in the world, whether registered or unregistered.
- 1.1.43 **LATENT DEFECT** means a DEFECT in the GOODS, which DEFECT could not have been discovered by reasonable diligence, examination, inspection or testing of the GOODS.
- 1.1.44 **LETTER OF COMMITMENT or LETTER OF INTENT** means the letter entitled "Letter of Commitment" issued by the BUYER to the SELLER prior to the issuance of the PURCHASE ORDER by the BUYER.
- 1.1.45 **LOSSES** mean all losses, claims, obligations, damages, liabilities, costs of defence, amounts paid in settlement or otherwise and any costs or expenses, including reasonable attorneys' fees (including any costs and expenses reimbursable to attorneys), whether or not a lawsuit or other proceeding is filed, and any levies, penalties, or any payments imposed by any GOVERNMENTAL AUTHORITY.

- 1.1.46 **MRP** means the document entitled “Material Requisition for Purchase”, attached to the PURCHASE ORDER, which may incorporate the material requisition for quotation issued by the BUYER (“MRQ”).
- 1.1.47 **NOTICE OF DEFAULT or NOD** means the notice BUYER provides SELLER of the nature of the circumstance and BUYER’s intention to terminate this PURCHASE ORDER in whole or in part for default in the event as detailed under section 15.1
- 1.1.48 **NOTICE OF TERMINATION** means a notice terminating the CONTRACT or part thereof, issued by the BUYER to the SELLER.
- 1.1.49 **PARTY** means either the BUYER or the SELLER, as the context requires, and the PARTIES mean both the BUYER and the SELLER.
- 1.1.50 **PERSON** means any individual, firm, corporation, limited liability company, voluntary association, partnership, joint venture, trust, limited organization, society, unincorporated organization, GOVERNMENTAL AUTHORITY or other legal entity or organization.
- 1.1.51 **PRICING SCHEDULE** means the schedule of prices and associated terms set out in the PURCHASE ORDER
- 1.1.52 **PROJECT** means the project, enterprise, endeavour or other development activities undertaken by or on behalf of the BUYER to which the supply of GOODS relates.
- 1.1.53 **PURCHASE ORDER** means the document entitled “Purchase Order” to which the documents referenced in 1.1.21.
- 1.1.54 **QUALITY PLAN** means a document, or several documents, that together specify quality standards, practices, resources, specifications, and the sequence of activities relevant to a particular product, service, project, or contract.
- 1.1.55 **QUALITY SURVEILLANCE TERMS** means the parameters for quality surveillance of the GOODS as specified in the PURCHASE ORDER.
- 1.1.56 **REJECTED GOODS** means GOODS rejected by the BUYER or any goods delivered to the BUYER in error by the SELLER.
- 1.1.57 **SCOPE OF SUPPLY** means all of the requirements of the BUYER with respect to the supply of the GOODS by the SELLER as set forth in the CONTRACT DOCUMENTS.
- 1.1.58 **SELLER** means the PERSON with whom the BUYER has entered into the CONTRACT for purchase of the GOODS, as identified on the face of the PURCHASE ORDER or CONTRACT, and shall include such PERSON’S successors and permitted assigns, SELLER in its context, shall also be termed as “CONTRACTOR”.
- 1.1.59 **SELLER GROUP** means the SELLER, its AFFILIATES and SUB-SELLERS and their respective officers, directors, employees and representatives.
- 1.1.60 **SELLER IP** means INTELLECTUAL PROPERTY RIGHTS in (i) all SELLER’S Background Information and (ii) any enhancements, improvements and derivative works thereof, including those arising with respect to the smallest separable parts or

components of the GOODS which embody only or are comprised only of enhancements, improvements and derivative works of SELLER'S Background Information.

- 1.1.61 **SITE** means the land or premises on/at which the PROJECT is to be or is set up, as the case may be, and any surrounding land, premises or off-shore areas designated by the BUYER as being within the SITE.
- 1.1.62 **SPECIFICATIONS** means the description of the GOODS to be supplied under the CONTRACT, including, where appropriate, all specifications, requirements, technical standards, quality standards, performance standards, compatibility, interoperability, instructions, and other related criteria.
- 1.1.63 **SPARES** means the replacement parts, equipment, equipment assemblies or complete items of equipment that are used or required for the testing, COMMISSIONING, operation, maintenance, repair or replacement of the GOODS or any components of the GOODS.
- 1.1.64 **SPECIAL CONDITIONS or SCP** means the document entitled "SPECIAL CONDITIONS" and attached to the PURCHASE ORDER containing the specific commercial terms and conditions of purchase of the GOODS.
- 1.1.65 **SUB-ORDER** means an agreement entered into between the SELLER and a SUB-SELLER for the supply of raw materials, components, equipment, services or such other items as may be required by the SELLER to enable the fulfilment of the SELLER'S obligations under the CONTRACT.
- 1.1.66 **SUB-SELLER** means any PERSON, from whom the SELLER sources raw materials, components, equipment, services or such other items as may be required by the SELLER to enable the fulfilment of the SELLER'S obligations under the CONTRACT.
- 1.1.67 **SWIFT** means the internationally-recognized identification code for banks set out by the Society for Worldwide Interbank Financial Telecommunication.
- 1.1.68 **TECHNICAL INFORMATION** means all confidential technical and other information received, directly or indirectly, by the BUYER, the SELLER or any SUB-SELLER from a licensor of the BUYER with respect to the PROJECT.
- 1.1.69 **TOTAL ORDER VALUE or ORDER VALUE** means the amount identified as the "Total Order Value" set forth on the face of the PURCHASE ORDER.
- 1.1.70 **WORKS** means all the works and services being in the Contractor's Scope of Work including all Temporary Works and Permanent Works and shall also be read as 'Project Site'
- 1.2 In the CONTRACT:
- 1.2.1 Any reference to any provision of any APPLICABLE LAWS shall be construed, at the particular time, as including a reference to any modification, extension or re-enactment thereof then in force and to all instruments, orders or regulations then in force, and references to the laws of India include the laws of any State forming part of the Republic of India.

- 1.2.2 The singular shall include plural and vice versa, and words denoting natural persons shall also apply to partnerships, firms, companies, corporations, joint ventures, trusts, associations, organizations and other entities.
- 1.2.3 All references to Sections, sub-sections, clauses, paragraphs and annexures are to Sections, sub-sections, clauses, paragraphs and annexures in or to this GCP unless otherwise specified. The term “day” shall mean a calendar day, unless otherwise specified. If any monetary obligation falls due on a Saturday, Sunday or a public holiday, such obligation shall be deemed due on the next BUSINESS DAY thereafter.
- 1.2.4 Unless otherwise required by the context in which any term appears, capitalized terms used in the CONTRACT DOCUMENTS shall have the meanings specified in this GCP, or if not defined in this GCP, as defined elsewhere in the CONTRACT DOCUMENTS. For the purposes of the CONTRACT, the words and abbreviations that have well-known technical or trade meanings used but not defined in this GCP or elsewhere in the CONTRACT, shall be construed in accordance with such recognized technical or trade meanings.
- 1.2.5 The words “include” and “including” are to be construed without limitation. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The term “or” is not exclusive. The word “extent” in the phrase “to the extent” shall mean the degree to which a subject or other thing extends, and such phrase shall not mean simply “if.” The words “herein,” “hereof” and “hereunder” and words of similar import when used shall refer to this GCP as a whole and not to any particular Section or sub-section of this GCP.
- 1.2.6 The provisions of all parts of this CONTRACT shall be construed as a whole. All the headings in the Sections of this GCP and in the CONTRACT DOCUMENTS attached to it are intended solely for the purpose of giving broad indication of the contents of the provisions to which they refer and shall in no way be construed as a limitation of the scope of the particular Section to which the heading refers. Neither the CONTRACT nor any provision thereof will be construed in favour of or against either PARTY due to that PARTY’S drafting of the CONTRACT or any provision thereof. No course of dealing or course of performance under any other contract between the PARTIES shall be considered in the interpretation or enforcement of this CONTRACT.
- 1.2.7 In the event of any conflicting provisions within the CONTRACT DOCUMENTS, the order of precedence of the documents shall be as provided below:
- a) PURCHASE ORDER and amendments thereto;
  - b) SPECIAL CONDITIONS;
  - c) Deviations to the GCP;
  - d) GCP;
  - e) any other document referred to in any of the documents referred to in clauses (a) through (d) above and incorporated herein by specific reference in such document; and

- f) any other document agreed by the PARTIES to constitute a part of the CONTRACT DOCUMENTS.

- 1.3 If the SELLER consists of more than one PERSON, the PERSONS comprising the same shall be jointly and severally liable for each and every liability and obligation of the SELLER under the CONTRACT.
- 1.4 Each reference to the CONTRACT or to any other document, contract or agreement shall include a reference to each permitted variation of or supplement to the CONTRACT and such document, contract or agreement as amended, varied or supplemented from time to time.

## **2. COMPLETE AGREEMENT:**

- 2.1 This Purchase Order, together with the specifications, drawings and documents referred to herein and the other documents referred to therein, which by this reference are all made a part hereof, constitute the entire agreement between the parties, and all prior negotiations, proposals, and writing pertaining to this Purchase Order, or the subject matter hereof, are superseded hereby. Any reference to Seller's quotation, bid, or proposal does not imply acceptance of any terms, conditions, or instruction contained in such document.
- 2.2 Any terms and Conditions stated in such communication shall not be applicable to this Purchase Order and shall not be considered to be Seller's exceptions to the provisions of this Purchase Order.
- 2.3 Trade custom and/or trade usage is superseded by this Purchase Order and shall not be applicable in the interpretation of this Purchase Order.
- 2.4 Anything that may be called for in the specifications and not shown on the drawings, or shown on the drawings and not called for in the specifications, shall be of like effect as if called for and shown in both. In the event of any ambiguities, express conflicts or discrepancies in the Specifications, drawings or other documents which are a part of this Purchase Order, Seller shall immediately submit the matter to Buyer for its determination and shall comply with the determination of Buyer in such matter.
- 2.5 All headings and numbering in this Purchase Order are for convenience of reference only and shall in no way be used in interpretation of any of the provision in this Purchase Order.
- 2.6 In interpreting this Purchase Order, the INCOTERMS 2010 shall apply.
- 2.7 The CONTRACT and the CONFIDENTIALITY AGREEMENT, if any, embodies the entire agreement between the BUYER and the SELLER with respect to the subject matter hereof and thereof and supersede all prior agreements, understandings, promises, representations, negotiations, discussions and correspondence, whether oral or written, between the PARTIES with respect to the subject matter hereof and thereof.
- 2.8 The SELLER shall supply the GOODS upon the instructions, terms and conditions contained in the CONTRACT which shall override and exclude any other conditions proposed by the SELLER, including on the SELLER'S invoices, standard forms and correspondence with the BUYER. Nothing contained in any acknowledgement or

confirmation of the CONTRACT by the SELLER or any invoice or communication of acknowledgement or confirmation thereof shall have any effect of amendment or variation to the CONTRACT unless such amendment or variation is specifically accepted by the BUYER in writing and included in this CONTRACT.

- 2.9 The supplier will hold the good at the most for 10 weeks until the despatch clearance is given at no cost to the AIL.

**3. BIDDING:**

- 3.1 ALL may choose to finalize the contract by competitive bidding using reverse auctioning, international competitive bidding, etc.

**4. TITLE AND RISK OF LOSS:**

- 4.1 Seller warrants full and unrestricted title to Buyer for all goods, services and documents furnished by Seller under this Purchase Order free and clear of any and all liens, restrictions, reservations, security interests, and encumbrances.
- 4.2 Except as otherwise provided herein, title to and ownership of the GOODS transfers to the BUYER and the GOODS shall become the property of the BUYER upon the occurrence of the first of the following events:
- a) Upon payment of 50% (fifty per cent) or more of the price for such GOODS by the BUYER; or
  - b) When such GOODS or part thereof are delivered to the BUYER.
- 4.3 Seller shall clearly identify the goods as property of Buyer by visible marking or tagging, and Buyer shall have the right, at Buyer's option, to inspect and verify that said goods have been identified as Buyer's property. Care, custody, and control of such goods remain with the Seller until such time as Buyer takes physical possession or otherwise agrees in writing by change order to this Purchase Order.
- 4.4 Seller shall properly store and ensure maintenance, custody and control of any and all goods in accordance with the requirements of this Purchase Order and the best professional practices and shall protect the same against weather hazards, water, humidity, dirt, fire, theft, vandalism and the like. Seller shall use every means to prevent at all times any damage or loss whatsoever to the goods in its custody.
- 4.5 SELLER shall not, without the prior written consent of the BUYER, divert the GOODS or any part thereof to any other PERSON.
- 4.6 Notwithstanding the foregoing, the SELLER shall be responsible for and shall bear any and all risk of loss or damage to the GOODS until delivery thereof. Upon such delivery, risk of loss or damage shall pass to the BUYER; provided however, that any and all losses or damages, whenever occurring, for which the SELLER shall be accountable, including because of any improper or non-conforming packaging, crating or handling of the GOODS by the SELLER, shall be borne by the SELLER.
- 4.7 The SELLER shall, at its sole risk and cost, self-insure or purchase insurance for the GOODS against the risk of loss of or damage to the GOODS for the full replacement



value of the GOODS until delivery of the GOODS in accordance with the DELIVERY TERMS.

- 4.8 Unless expressly agreed to in writing in the CONTRACT, the BUYER shall not be obliged to accept the delivery of the GOODS by instalments. If the SELLER delivers and BUYER accepts the delivery of the GOODS by instalments, such acceptance shall be without prejudice to all the rights or remedies of the BUYER.

**5. RESERVATION OF RIGHTS:**

- 5.1 The making or failure to make any inspection of, or payment for, the goods or services covered by this Purchase Order shall in no way impair Buyer's right to reject nonconforming or defective goods or services, nor be deemed to constitute acceptance by Buyer of the goods or services, nor affect in any way Seller's obligations under this Purchase Order notwithstanding Buyer's opportunity to inspect the goods or services, Buyer's knowledge of the non-conformity or defect, its substantiality or the ease of its discovery, nor Buyer's earlier failure to reject the goods or services.
- 5.2 The BUYER may appoint any PERSON to exercise on its behalf any rights of the BUYER under the CONTRACT. Such appointment shall be made in writing signed by an AUTHORIZED REPRESENTATIVE of the BUYER, which writing may set forth the terms, conditions and limitations of such appointment. The appointment of any such PERSON may be revoked by the BUYER at any time at the BUYER'S sole discretion.

**6. INSTRUCTIONS FOR BILLING / INVOICES / CORRESPONDENCE:**

- 6.1 All invoices/proforma invoices and correspondence (original plus two copies) with reference to PURCHASE ORDER / CONTRACT number and other data shall be addressed as mentioned elsewhere in the PURCHASE ORDER.
- 6.2 Procedure for payment against invoices/bills
- In order to receive the payment against PURCHASE ORDER / CONTRACT, all proforma Invoices / invoices / bank guarantees etc. shall be sent in original plus two copies directly to the COMPANY at the address mentioned elsewhere in the PURCHASE ORDER.
- 6.3 In case of advance payment, the following procedure should be followed by the SUPPLIER / CONTRACTOR.
- 6.3.1 Duplicate copy of LOI/PURCHASE ORDER / CONTRACT duly accepted as per COMPANY's and CONSULTANT's instruction has to be submitted.
- 6.3.2 Bank guarantee (if applicable) , for advance payment has to be submitted in original in COMPANY's format, from a reputed scheduled Bank, along with the invoice, in original plus two copies.
- 6.4 In case of payment against approval of drawings/documents and/or proof evidencing the procurement or identification of major raw materials, the following procedure has to be observed
- 6.4.1 SUPPLIER / CONTRACTOR should obtain approval on the drawings/other relevant documents from the CONSULTANT.

- 6.4.2 Documentary proof (unpriced SUB-CONTRACT/SUB-ORDER) in duplicate that SUPPLIER / CONTRACTOR has placed his SUB-CONTRACT/SUB-ORDER for the procurement of the raw materials required for the completion of the entire work and acceptance by the SUB-VENDOR / SUB- CONTRACTOR to be submitted.
- 6.5 In case of payment to be made after receipt of material at SITE, the following procedure is to be observed
- 6.5.1 SUPPLIER / CONTRACTOR shall submit invoice in original plus two copies alongwith a copy of INSPECTOR's Release Order, and if required last testing report and all other despatch documents like: Delivery Challan duly signed by COMPANY's Stores, Lorry Receipt, Packing List, etc. directly to the COMPANY.
- 6.5.2 The COMPANY shall release this payment after getting confirmation from their Stores regarding receipt of materials, within 30 days of receipt of materials, unless otherwise specified in the PURCHASE ORDER / CONTRACT.
- 6.6 For payment against erection and commissioning or any other site job, invoices shall be certified by site engineer of CONSULTANT and recommended to the COMPANY for payment. There after the certification of the COMPANY's engineer will be required for processing payment.
- 6.7 All the following stipulations have to be complied with, by the SUPPLIER / CONTRACTOR, for the final payment.
- 6.7.1 All FINAL AS-BUILT technical documentation, in the required number of copies, as specified in the PURCHASE ORDER/CONTRACT and/or Technical Specifications should be submitted to the COMPANY/ CONSULTANT.
- 6.7.2 All contractual obligations should be fulfilled by the SUPPLIER / CONTRACTOR to the satisfaction of the COMPANY and the CONSULTANT.
- 6.7.3 Original Performance Bank Guarantee as per the terms of PURCHASE ORDER / CONTRACT shall be submitted by the SUPPLIER / CONTRACTOR as per the COMPANY's format valid for the agreed guarantee period.
- 6.7.4 Invoice in original plus two copies to be submitted.
- 6.7.5 All the conditions stipulated in the clause "Terms of Payment" of the LOI / PURCHASE ORDER / CONTRACT corresponding to this portion of the payment has to be fulfilled simultaneously.

**7. WAIVER:**

- 7.1 Any failure of either PARTY to enforce any of the provisions of the CONTRACT or any rights in respect thereof on one or more occasions, or to exercise any rights or remedies or options herein provided, shall in no way be considered to be a waiver of any provisions, rights or options as to any other occasion or in any way affect the validity of the CONTRACT.



- 7.2 A requirement that the SELLER furnish the DRAWINGS and DOCUMENTS for or subject to "Authorization to Proceed", "Approval", "Acceptance", "Review", "Comment", or any combinations of such words or words of like import shall mean that, unless the CONTRACT expressly states otherwise, the SELLER shall, before implementing the information in the DRAWINGS and DOCUMENTS, submit the DRAWINGS and DOCUMENTS to and obtain resolution of any comments and authorization to proceed from the BUYER. Such review shall not mean that a complete check will be performed by the BUYER. Approval by the BUYER or failure to approve by the BUYER shall not (a) constitute acceptance or approval of the GOODS or any design, tests, or materials developed or selected by the SELLER, nor (b) relieve the SELLER from full compliance with the requirements of the CONTRACT, nor (c) reduce or alter the SELLER'S liability under the CONTRACT.

**8. WARRANTY:**

- 8.1 The SELLER warrants that:
- a) all GOODS shall be free from DEFECTS;
  - b) all GOODS shall be new and unused and shall conform to and fully comply in all respects with the requirements of the CONTRACT;
  - c) all GOODS will be provided with and accompanied by all information, instructions and manuals necessary for the operation, maintenance, repair, proper storage, and proper and safe use of the GOODS; and
  - d) all GOODS shall, with respect to any firmware or software, be free from any viruses or malware (embedded or otherwise).

The warranties set forth in Section 8.1 above are collectively referred to as "GOODS WARRANTIES" and individually as a "GOODS WARRANTY".

- 8.2 The GOODS WARRANTIES shall be applicable for a period of eighteen (18) months from the date of the last delivery of the GOODS or twelve (12) months from the date of the last ACCEPTANCE OF GOODS, whichever expires earlier ("GOODS WARRANTY PERIOD").

Notwithstanding the foregoing, if a SUB-SELLER provides the SELLER a warranty for the GOODS or part thereof attributable to such SUB-SELLER for a period that is longer than the GOODS WARRANTY PERIOD, then the SELLER shall be deemed to have provided a similar GOODS WARRANTY for such GOODS or part thereof for such longer period. In such event, the GOODS WARRANTY for such GOODS or part shall be such longer period.

- 8.3 The BUYER'S rights, claims and remedies in case of breach of any GOODS WARRANTY shall not be deemed to be waived by reason of ACCEPTANCE OF GOODS. All GOODS WARRANTIES shall survive ACCEPTANCE OF GOODS. The GOODS WARRANTIES will be the sole and exclusive warranties with respect to the quality of the GOODS.
- 8.4 The SELLER shall, at its sole cost, immediately following notification by the BUYER, take all actions and measures that are necessary to remedy and correct any breach of any GOODS WARRANTY, including but not limited to repairing, replacing, correcting,

returning the GOODS or any component or part thereof causing such breach. Any repair, replacement, correction to the GOODS or any component or part thereof by SELLER because of any breach of any GOODS WARRANTY shall not reduce the functionality of the GOODS or affect the performance guarantees, if any, guaranteed by the SELLER with respect to the GOODS. After repair, replacement, correction to the GOODS or any component or part thereof, the GOODS shall fully comply with all the requirements of the CONTRACT. The SELLER shall additionally, at its sole cost, immediately following notification by the BUYER, re-perform all services and other obligations of the SELLER under the CONTRACT necessary to remedy and correct any breach of any GOODS WARRANTY. Any failure by the BUYER to identify any such non-compliance or DEFECTS shall in no way relieve the SELLER of its responsibility to promptly make such modifications, repairs, replacement, rectification or corrections as required. Unless the BUYER has specified a definite time for modification, repair, rectification, replacement or correction of DEFECTIVE GOODS, any DEFECTIVE GOODS shall be modified, repaired, replaced or corrected promptly and within a reasonable time period.

- 8.5 In the event the SELLER unreasonably delays, fails or refuses to modify, repair or replace any DEFECTIVE GOODS or it is not possible to restore the required functionality of the GOODS or parts thereof to fully comply with the CONTRACT, the SELLER shall be in material breach of its obligations under the CONTRACT. In the event of such a breach, without prejudice to its other rights and remedies under the CONTRACT, the BUYER may, at its option, elect to proceed as set forth in Section 8.5 (a) or Section 8.5 (b).
- a) Reject the DEFECTIVE GOODS. If the BUYER elects to reject the DEFECTIVE GOODS, the BUYER shall make available for return to the SELLER the DEFECTIVE GOODS, for removal of such GOODS at the SELLER'S sole risk and cost. The SELLER shall (i) refund to the BUYER all amounts paid by the BUYER to the SELLER for such DEFECTIVE GOODS; (ii) forego all amounts otherwise due or payable to the SELLER in respect of such DEFECTIVE GOODS; (iii) reimburse the BUYER all costs and expenses in excess of the TOTAL ORDER VALUE incurred by the BUYER for procuring similar or substitute goods similar to the DEFECTIVE GOODS from any other PERSON (including, without limitation, any charges and costs such as transportation, clearing and forwarding, storage and insurance, costs of removal, inspection, re-installation, return or warehousing, import duties and taxes incurred by the BUYER and of completing any uncompleted works by itself or by any other PERSON.
  - b) Retain the DEFECTIVE GOODS. If the BUYER elects to retain the DEFECTIVE GOODS then: (i) the BUYER shall be entitled to retain all amounts otherwise due or payable to the SELLER and determine reasonable adjustment reducing the TOTAL ORDER VALUE to reflect the diminished value of DEFECTIVE GOODS; and (ii) the BUYER may proceed to correct, remedy, rectify or replace such DEFECTIVE GOODS at the SELLER'S sole risk and cost and the SELLER shall in such instance be liable to pay the BUYER and the BUYER shall be entitled to recover from the SELLER the BACK CHARGES associated with such correction, remedy, rectification or replacement. For the avoidance of doubt, any work carried out on the DEFECTIVE GOODS, by the BUYER or any third parties on behalf of the BUYER, under this Section 8 or Sections 44 (BACK CHARGES) or 38 (INFRINGEMENT) shall not void or adversely affect the GOODS WARRANTIES.

- 8.6 If the BUYER elects to reject the DEFECTIVE GOODS, then the SELLER shall promptly, but no later than fifteen (15) days from the date of notice by the BUYER in this regard, remove the DEFECTIVE GOODS. If the SELLER fails to remove the DEFECTIVE GOODS, then the BUYER shall be entitled to recover from the SELLER all the costs of storage or demurrage charges of the DEFECTIVE GOODS. If the SELLER does not remove the DEFECTIVE GOODS within an aggregate period of thirty (30) days after the date of notice by the BUYER in this regard, the BUYER shall be entitled to dispose of the DEFECTIVE GOODS at its sole discretion. The SELLER shall indemnify and hold harmless the BUYER against all LOSSES arising out of such storage or disposition of the DEFECTIVE GOODS. The BUYER shall permit the SELLER to remove the DEFECTIVE GOODS only after payment to the BUYER of amounts described in this Section 8.6
- 8.7 All GOODS WARRANTIES with respect to the components of the GOODS which are so corrected, remedied, replaced or rectified shall apply for the longer of (i) a period of twelve (12) months from the date of such correction, remedy, rectification or replacement; or (ii) the remainder of the original GOODS WARRANTY PERIOD. Such longer period shall be the new GOODS WARRANTY PERIOD for such GOODS.
- 8.8 The SELLER shall remain liable to the BUYER for any LATENT DEFECTS for a further period of twelve (12) months from the expiry of the GOODS WARRANTY PERIOD ("LATENT DEFECTS WARRANTY PERIOD") and all the GOODS WARRANTIES shall apply during such further period.
- 8.9 If in the reasonable opinion of the BUYER, a visit by the SELLER'S personnel to the SITE where the GOODS are installed is required for the repair, replacement or correction of any DEFECTS, then the same shall be provided by the SELLER at no additional cost to the BUYER.
- 8.10 The SELLER'S liability hereunder shall extend to all damages incurred by the BUYER as a result of the breach of any of the GOODS WARRANTIES, including removal, inspection, re-installation and costs of return or warehousing.
- 8.11 The SELLER shall be liable to the BUYER for any DEFECTS that existed in the GOODS during the GOODS WARRANTY PERIOD, provided that the BUYER communicates the DEFECTS to the SELLER within six (6) months after the expiration of the GOODS WARRANTY PERIOD or LATENT DEFECTS WARRANTY PERIOD, whichever occurs later.
- 8.12 The SELLER shall provide support services at no extra charge, cost or expense to the BUYER for the GOODS during the GOODS WARRANTY PERIOD for such GOODS.
- 9. SQS/INSPECTION:**
- 9.1 SELLER shall be responsible for the performance of all activities affecting quality and schedule including those of its suppliers. BUYER reserves the right to review SELLER's Quality Assurance and Quality Control Procedures. SELLER's Quality Plan submittal requirements, if applicable, are defined in the "Supplier Drawing and Data Commitment Form" section of this Purchase Order.
- 9.2 The SELLER shall carry out all examinations and tests and provide certifications pursuant to such examinations and tests, all in accordance with the CONTRACT. The SELLER shall also provide and maintain an inspection system acceptable to the BUYER, but in

any event sufficient to detect DEFECTS in the GOODS, and shall supply only such GOODS that have been inspected in accordance with such inspection system. Records evidencing such procedures and inspections shall be made available by the SELLER for the BUYER'S and the BUYER'S representatives review during performance of the CONTRACT and for a minimum of two (2) years following the SELLER'S delivery of the related GOODS to the BUYER. The SELLER agrees that it shall, in the performance of its obligations under the CONTRACT, fully comply with the standards of quality specified in the CONTRACT or if none are specified, fully comply with those standard international practices customary in the industry.

- 9.3 The BUYER reserves the right to attend and witness all examinations, tests and inspections of the GOODS and, at its discretion, conduct its own examinations, tests and inspections of the GOODS, in each case, either by itself or by a BUYER'S representative, at all times during the performance of the CONTRACT, including during the manufacturing and shipping of the GOODS or after receipt of the GOODS. The SELLER shall give the BUYER and the BUYER'S representatives at least five (5) BUSINESS DAYS' prior notice in writing of any examinations, tests and inspections that the SELLER or any SUB-SELLER intends to conduct, including the address at which such examinations, tests and inspections are to take place. The BUYER and the BUYER'S quality monitoring and control representatives shall be allowed free access during working hours to plants of the SELLER and the SELLER shall procure a similar right for the BUYER and the BUYER'S quality monitoring and control representatives for quality monitoring and control purposes with respect to all SUB-SELLERS in order to monitor compliance with quality requirements.
- 9.4 The SELLER shall provide to the BUYER and the BUYER'S representatives without charge, examination, testing and inspection personnel and all reasonable and necessary equipment, supplies and facilities to enable their tasks to be carried out in the SELLER'S premises.
- 9.5 The GOODS which are required to be painted before dispatch shall be in an unpainted condition for examination, testing and inspection and any approval stamp mark shall be left unpainted, or if not practicable, the mark shall be encircled and marked in the manner specified by the BUYER.
- 9.6 Neither the attendance of the BUYER or the BUYER'S representatives during the examination of the GOODS by the SELLER nor the inspection of the GOODS by the SELLER shall be construed as ACCEPTANCE of GOODS. The BUYER'S or the BUYER'S representatives' examination, testing and inspection of the GOODS or ACCEPTANCE OF GOODS, acceptance of delivery of the GOODS or the making of any payment to the SELLER shall not relieve the SELLER of any GOODS WARRANTY, obligations, liabilities or demonstration of performance guarantees under the CONTRACT. The making or failure to make an inspection, examination or test of, or payment for, shall in no way relieve the SELLER from its obligation to conform to all of the requirements of the CONTRACT and shall in no way impair the BUYER'S right to reject DEFECTIVE GOODS or revoke ACCEPTANCE OF GOODS, or to avail itself of any other remedies to which the BUYER may be entitled.
- 9.7 The BUYER may at its option appoint third party inspection agencies or other PERSONS to examine, test and inspect the GOODS on its behalf and the SELLER shall treat these appointees as if they were the BUYER'S own examination, testing and inspection personnel.

- 9.8 In the event that any inspection or test indicates that the GOODS fail to meet the requirements of the CONTRACT, the SELLER shall, at its own cost and expense, immediately undertake necessary rectification in order that the GOODS meet the requirements of the CONTRACT. Immediately after such rectification, the SELLER shall notify the BUYER of availability for re-inspection or retest. The procedure in the aforementioned sentences shall be repeated as necessary until the BUYER or the BUYER'S representative is satisfied that the GOODS are in complete conformity with the requirements of the CONTRACT. If corrective actions undertaken by the SELLER are insufficient or the SELLER does not improve its performance to fully comply with the requirements of the CONTRACT within a reasonable period, the BUYER or the BUYER'S representative may require the SELLER to make changes or modifications to its manufacturing or operations or such changes as the BUYER or the BUYER'S representative may reasonably direct. For the avoidance of doubt, no actions undertaken by the SELLER in accordance with this Section 9 shall entitle the SELLER to any additional compensation or to an adjustment to the price(s) set out in the CONTRACT or release the SELLER from any of its obligations under the CONTRACT.

**10. INDEMNITY:**

- 10.1 SELLER agrees to defend, indemnify and hold harmless BUYER and its affiliated companies, directors, officers, employees, agents and representatives, from and against all claims, demands, causes of action, liability, loss or expense arising from or relating to any actual or asserted:

10.1.1 Failure by SELLER to comply with any law, ordinance, regulation, rule or order, or with this Purchase Order. This Section 10.1.1 includes, but is not limited to, fines or penalties by government authorities and claims arising from SELLER's actual or asserted failure to pay taxes, import/export licenses or duties, employment taxes or benefits, or other charges associated with SELLER's goods or services.

10.1.2 Violation or infringement of rights in any patent, copyright, proprietary information, trade secret or other property right caused or alleged to be caused by the use or sale of goods, materials, equipment, methods, processes, designs or information furnished by SELLER or its suppliers. Should any goods or services provided by SELLER become, or appear likely to become, the subject of a claim of infringement of a patent, copyright or other property right, SELLER shall, at BUYER's option, either procure for BUYER the right to continue using such goods or services, replace same with equivalent, non-infringing goods or services, or modify the goods or services so that the use thereof becomes non-infringing, provided that any such modification or replacement is of equal quality and provides equal performance to the infringing goods or services.

The preceding paragraph shall not apply to any goods, or any part thereof, manufactured to designs furnished and required by BUYER, nor shall it apply to claims that the sale or use of a process or use of a combination of the goods supplied by SELLER hereunder with other goods infringes a patent, if such process or other goods were not supplied by SELLER and SELLER's supplying of the goods hereunder does not constitute contributory patent infringement.

10.1.3 Injury to or death of persons (including employees of BUYER, SELLER and SELLER's suppliers) or from damage to or loss of property (including the property of BUYER or OWNER) arising directly or indirectly out of this Purchase Order or out of



any acts or omissions of SELLER or its suppliers. SELLER's defense and indemnity obligations hereunder include claims and damages arising from non-delegable duties of BUYER or arising from use by SELLER of construction equipment, tools, scaffolding or facilities furnished to SELLER by BUYER.

- 10.1.4 Contamination, pollution, or public or private nuisance, arising directly or indirectly out of this Purchase Order or out of any acts or omissions by SELLER, its suppliers or sub-suppliers.
- 10.2 SELLER's indemnity obligations shall apply regardless of whether the party to be indemnified was concurrently negligent, whether actively or passively, excepting only where the injury, loss or damage was caused solely by the negligence or willful misconduct of, or by defects in design furnished by, the party to be indemnified. SELLER's defense and indemnity obligations shall include the duty to reimburse any attorneys' fees and expenses incurred by BUYER for legal action to enforce SELLER's indemnity obligations.
- 10.3 In the event that any indemnity provisions in this Purchase Order are contrary to the law governing this Purchase Order, then the indemnity obligations applicable hereunder shall be construed to be to the fullest extent allowed by applicable law.
- 10.4 With respect to claims by employees of SELLER or its suppliers, the indemnity obligations under this Purchase Order shall not be limited by the fact of, amount, or type of benefits or compensation payable by or for SELLER, its suppliers or sub-suppliers under any workers' compensation, disability benefits, or other employee benefits acts or regulations, and SELLER waives any limitations of liability arising from workers' compensation or such other acts or regulations.

**11. LIQUIDATED DAMAGES/ DELAY IN DELIVERY:**

- 11.1 The performance by the SELLER of its obligations under the CONTRACT at the specified dates is the essential condition of this CONTRACT. The SELLER acknowledges that the delivery of the GOODS and the DRAWINGS AND DOCUMENTS in accordance with the DELIVERY SCHEDULE affects the completion of the PROJECT and that the BUYER will suffer LOSSES if the delivery of the GOODS and the DRAWINGS AND DOCUMENTS is delayed.
- 11.2 The SELLER shall promptly notify BUYER of any actual or anticipated delay in delivery and take all reasonable steps to avoid or end delays and recover the program without additional cost to BUYER apart from the conditions specified in Section-44 (FORCE MAJEURE). Should SELLER fail to implement such measures as BUYER considers necessary, BUYER may instruct SELLER in writing to take such measures to achieve the DELIVERY SCHEDULE (and the SELLER shall not be entitled to claim additional cost for taking such measures).
- 11.3 The exercise by BUYER of its powers under this Section 11 shall not relieve the SELLER of any of its obligations of this Purchase Order or reduce SELLER's liability to BUYER for breach of contract and, in particular SELLER's liability to BUYER to pay Liquidated Damages, if any, for late delivery.
- 11.4 Liquidated damages for delayed delivery of the GOODS:

In the event the SELLER fails to deliver the GOODS in compliance with the DELIVERY SCHEDULE for such GOODS, the SELLER shall pay to the BUYER liquidated damages equal to one percent (1 %) of the ORDER VALUE per week of delay or part thereof until the GOODS are delivered, subject to a maximum of ten percent (10 %) of the ORDER VALUE.

- 11.5 If the specified delivery schedule is not adhered to or the progress of manufacture or supply of the EQUIPMENT / GOODS / ITEM(S) is not satisfactory or not in accordance with the progress schedule, the COMPANY has the right to:
- 11.5.1 Hire, for the period of delay, from elsewhere, EQUIPMENT / GOODS / ITEM(S) which in COMPANY's / CONSULTANT's opinion would meet the same purpose as the EQUIPMENT / GOODS / ITEM(S) which are delayed and SUPPLIER / CONTRACTOR shall be liable without limitation for the hire charges, OR
  - 11.5.2 Cancel the PURCHASE ORDER/ CONTRACT in whole or in part without liability for any charges on account of cancellation. In such an event the COMPANY may procure from elsewhere EQUIPMENT / GOODS / ITEM(S) which in COMPANY's opinion would meet the same purpose as the EQUIPMENT / GOODS / ITEM(S) for which PURCHASE ORDER / CONTRACT is cancelled and SUPPLIER / CONTRACTOR shall be liable without limitation for the difference between the cost of such substitution and the price set forth in the PURCHASE ORDER / CONTRACT for the EQUIPMENT / GOODS / ITEM(S) involved or
  - 11.5.3 Hire the substitute EQUIPMENT / GOODS / ITEM(S) vide 15.3.1 above and if the ordered EQUIPMENT / GOODS / ITEM(S) continue to remain undelivered thereafter, Cancel the PURCHASE ORDER / CONTRACT in part or in full vide 15.3.2 above.
- 11.6 The BUYER shall not claim any general damages at law for the period for which any liquidated damages have been paid by the SELLER under this Section. Notwithstanding anything to the contrary contained in the CONTRACT, the payment of liquidated damages shall not relieve the SELLER from fulfilling its obligations under the CONTRACT for which liquidated damages are paid.
- 11.7 The SELLER waives any and all objections, including by way of defence that (i) the DELIVERY SCHEDULE is not of the essence of the CONTRACT by reason of the PARTIES agreeing to the payment of any liquidated damages for delay; (ii) the BUYER forbearing exercise of its right to terminate the CONTRACT up to a period of ten (10) weeks; or (iii) the BUYER granting the SELLER additional time for performance of the SELLER'S obligations including extending the DELIVERY SCHEDULE.
- 11.8 The PARTIES agree that damages for breach for which liquidated damages are agreed herein are difficult to calculate accurately and are not reasonably determinable at the time of entry of the CONTRACT. Therefore, PARTIES agree that liquidated damages agreed in this Section 11 by the PARTIES shall not be considered as a penalty under any APPLICABLE LAWS and are a genuine pre-estimate of the loss to the BUYER as a result of the SELLER'S failure to supply the GOODS or the DRAWINGS AND DOCUMENTS in accordance with the DELIVERY SCHEDULE or non-fulfilment of PERFORMANCE GUARANTEES.
- 11.9 BUYER may on its discretion and good faith, extend a delivery period of two weeks, upon SELLER's request, on the implementation of a plan leading to the recovery of the

anticipated delay. SELLER shall not be excused from performance hereunder where alternate sources of supply of Materials, goods or services are available

- 11.10 In the event of rejection of non-conforming EQUIPMENT / GOODS / ITEM(S), SUPPLIER / CONTRACTOR shall be allowed, without any extension of delivery time to rectify the non-conformities. Should, however, SUPPLIER / CONTRACTOR fail to do so within the stipulated time, the COMPANY may cancel the PURCHASE ORDER / CONTRACT as to the non-conforming EQUIPMENT / GOODS / ITEM(S) and retain the same rights with respect to substitution as are set out in the preceding paragraph and in addition recover actual expenses incurred by the COMPANY for installing and removing the non-conforming EQUIPMENT / GOODS / ITEM(S). Alternatively, COMPANY may at his option have or cause the non-conformity to be rectified at SUPPLIER / CONTRACTOR's risk and cost.

If the SUPPLIER / CONTRACTOR fails to perform any of his obligations, the COMPANY shall be entitled to all remedies provided by law and recover all damages caused to the COMPANY by delay or non- supply of the EQUIPMENT / GOODS / ITEM(S) or supply of non-conforming EQUIPMENT / GOODS / ITEM(S) and to obtain adequate compensation thereof.

COMPANY reserves the right to claim damages for use of defective or substandard EQUIPMENT / GOODS / ITEM(S) supplied by the SUPPLIER / CONTRACTOR irrespective of the fact whether EQUIPMENT / GOODS / ITEM(S) were or were not inspected by COMPANY/CONSULTANT prior to receipt at the SITE.

- 11.11 Should it be reasonably established by the COMPANY/ CONSULTANT that the SUPPLIER / CONTRACTOR:

11.11.1 Is not executing the CONTRACT WORK in accordance with or as specified in the PURCHASE ORDER / CONTRACT

AND / OR

11.11.2 Is not keeping up progress commensurate enough to ensure the completion of the CONTRACT WORK by the time schedule stipulated in the PURCHASE ORDER / CONTRACT or that such time schedule has already lapsed.

AND / OR

11.11.3 Has refused to carry out reasonable instructions of the CONSULTANT / COMPANY for the execution of the CONTRACT WORK

AND / OR

11.11.4 Has committed any breach of any other terms & conditions of the CONTRACT,

The COMPANY may give the SUPPLIER / CONTRACTOR seven days' written notice to make good his default. Should the SUPPLIER / CONTRACTOR fail to comply with such notice, the COMPANY may, at the expense of the SUPPLIER / CONTRACTOR and without prejudice to any other right of the COMPANY-



11.11.4.1 Determine the PURCHASE ORDER / CONTRACT and perform themselves such of the CONTRACT WORK as the SUPPLIER / CONTRACTOR has failed to perform:

OR

11.11.4.2 Take the CONTRACT WORK wholly or in part out of the SUPPLIER / CONTRACTOR's scope and re- CONTRACT them to any other supplier / contractor / agency.

OR

11.11.4.3 Make such modifications or substitutions to the CONTRACT WORK as is considered necessary to ensure the satisfactory execution thereof.

11.11.5 19.5.5 The COMPANY shall also be at liberty to exercise their rights as contained in Clause 19.5, without the requirement of providing the 7 days' notice, if the SUPPLIER / CONTRACTOR has been enjoined, or there is a reasonable apprehension that they might be enjoined by a competent court of law or authority from providing such services/material/goods to the COMPANY.

## 11.12 LIQUIDATED DAMAGES TOWARDS NON-ACHIEVEMENT OF GAURANTEE PARAMETERS

Liquidated damages for non-achievement of performance parameters shall be subject to a limit of 10% of PURCHASE ORDER value, however in the event of GOODS failing to meet the minimum acceptable criteria, as specified in PURCHASE ORDER, in which case the GOODS shall have to be rectified and/or replaced at COMPANY'S discretion by the SUPPLIER/CONTRACTOR at his cost, without any limitations so as to achieve the performance parameters within the minimum acceptable criteria.

The aggregate liability of the SUPPLIER/CONTRACTOR under section 11.2 (late delivery) and section 11.12 (performance warranty) shall not exceed 20% of the PURCHASE ORDER value.

In case, inspite of repeated trials the GOODS fail to achieve the minimum acceptable criteria then the GOODS/ Plant stands fully rejected. In such a case COMPANY has the right to reject the Goods / Plant or negotiate the Price with the SUPPLIER/ CONTRACTOR.

In case of rejection of Goods / Plant by the COMPANY, the SUPPLIER/ CONTRACTOR shall be responsible for all cost and expenses towards dismantling and removal of the Goods / Plant from the COMPANY'S premises within 60 days from the date of such rejection by the COMPANY.

## 12. OTHER GUARANTEES:

### 12.1 PRICE GUARANTEE:

12.1.1 The SUPPLIER/ CONTRACTOR warrants that the price quoted, negotiated, confirmed and charged/collected from the COMPANY shall be the lowest price. The COMPANY /CONSULTANT have placed order based on the pricing on the

representation of the SUPPLIER / CONTRACTOR that the price offered is the best price below which the SUPPLIER / CONTRACTOR has not supplied goods/ rendered services to any other Buyer/Customer. Based on this representation of fair & equal pricing, the COMPANY / CONSULTANT has agreed to pay/ paid the price. At any point of time if it is discovered by the COMPANY that the SUPPLIER / CONTRACTOR has charged lower price for undertaking similar/same supplies, regardless of the commercial terms, the COMPANY / CONSULTANT reserve their right to recover the liquidated damages from the SUPPLIER / CONTRACTOR, which shall not exceed the total value of supply.

**12.2 GUARANTEE FOR SPARES:**

- 12.2.1 The SUPPLIER / CONTRACTOR shall give adequate advance notice to the COMPANY before going out of production of the spare parts, so that the latter may order their requirements of spares in one lot if required.

The SUPPLIER / CONTRACTOR shall further guarantee that if they go out of production of spare parts, then he will make available blue prints, drawings of spare parts and specifications of materials at no extra cost to the COMPANY, if and when required in connection with the EQUIPMENT / GOODS / ITEM(S) supplied by them to enable the COMPANY to fabricate or procure spare parts from other sources.

**13. ASSIGNMENT:**

- 13.1 Notwithstanding anything to the contrary in this Agreement/PO/WO, the Contractor shall terminate in their entirety/discharged from the duties from the Plant / Site of Owner on observation of following: (i) fraud on or misappropriation of any funds or (ii) breach by Contractor of any provision of any employment, non-disclosure, non-competition, non-solicitation, assignment of inventions, or other similar agreement executed by Owner for the benefit of the Company, as determined by the Administrator, which determination will be conclusive (iii) any incident WRT Sexual harassment at the workplace results in violation of the fundamental rights of a woman - to equality under Articles 14 and 15 of the Constitution of India, to life and to live with dignity under article 21 of the Constitution, to practice any profession or to carry on any occupation, trade or business which includes a right to a safe environment free from sexual harassment. Contractor shall report immediately to the Engineer In-charge and HR dept. of Owner in writing on observation of the incident, report every day on the investigation, finding and action taken. Contractor shall prepare detailed report and submit to the Owner. Contractor shall be liable to follow POSH (Prevention of Sexual Harassment) policy of AIL if working in AIL's premises.
- 13.2 The SELLER shall not subcontract, assign, enter into SUB-ORDERS, create any ENCUMBRANCE or otherwise transfer (including by change of ownership or control, by operation of law or otherwise) its rights and obligations under the CONTRACT in whole or in part without the prior written consent of the BUYER, which may be granted or withheld by the BUYER in the BUYER'S sole and absolute discretion. Any assignment or other transfer of its rights and obligations under the CONTRACT or creation of any ENCUMBRANCE in any manner, in whole or in part, without the consent of the BUYER shall be null and void.
- 13.3 This CONTRACT may be assigned in whole (both as to the benefits and the obligations contained therein) or in part by the BUYER to any AFFILIATE of the BUYER without the consent or approval of the SELLER. The CONTRACT shall be automatically binding

upon, and inure to the benefit of, any successor of the BUYER acquiring all or substantially all of the business and assets of the BUYER. Except as set forth below, any other assignment of this CONTRACT by the BUYER shall be subject to the prior written consent of the SELLER, which consent shall not be conditional, unreasonably withheld or delayed. The SELLER shall, at its own cost, do any acts and execute any documents necessary to effect such assignment or transfer.

- 13.4 Notwithstanding anything to the contrary contained in this CONTRACT, the BUYER shall have the right to create any ENCUMBRANCE on or assign by way of security the BUYER'S rights and obligations under this CONTRACT, without the consent of the SELLER, to any financial institution(s), banks, lenders, trustees and other PERSONS providing, arranging or participating in financing, credit, loans, guarantees or other support to the BUYER or any of the BUYER'S AFFILIATES. The SELLER agrees to execute such consents to the assignment or ENCUMBRANCE of this CONTRACT as may be requested by the BUYER, so long as such consents neither materially diminish the rights of the SELLER under this CONTRACT nor impose any material additional obligations on the SELLER. The SELLER acknowledges that as a result of an assignment of or ENCUMBRANCE of the BUYER'S rights and obligations under this CONTRACT: (i) the SELLER may be obligated to notify one or more third parties if the BUYER is in default under this CONTRACT; (ii) one or more third parties may have the right to cure defaults by the BUYER under this CONTRACT; and (iii) one or more third parties may have the right, upon the occurrence of a default under the financing agreements, to assign the rights under this CONTRACT to a nominee and to assume or cause such nominee to assume all of the obligations of the BUYER under this CONTRACT. No assignment or ENCUMBRANCE by the BUYER under this provision and no assumptions of the BUYER'S obligations by the assignee or other third party shall relieve the BUYER of its obligations herein, unless all of the BUYER'S obligations herein are assumed by an assignee (including a nominee of any lenders) or other third party.

**14. CHANGES:**

- 14.1 No substitutions shall be made in this Purchase Order without the prior written consent of BUYER. BUYER shall have the right by written direction to make changes in the specification and drawings for goods or services covered by this Purchase Order.
- 14.2 If SELLER believes that such change affects the price or delivery date for such goods or services, SELLER shall so notify BUYER in writing (with adequate supporting documentation) within five (5) working days after receipt of said written direction.
- 14.3 SELLER shall suspend performance of the change communicated verbally unless thereafter released in writing by BUYER to perform the said change and BUYER and SELLER shall mutually agree in writing upon an equitable adjustment in the price and/or delivery date to reflect the effect of such change.
- 14.4 For avoidance of doubt, an instruction by BUYER shall not be construed as a Change. If SELLER is of the opinion that an instruction given by BUYER constitutes a change, SELLER shall within 5 days of the date of issue of such instruction notify BUYER accordingly. SELLER's request for any adjustments shall be deemed waived unless submitted in writing within five (5) working days after SELLER receives direction to make such changes. SELLER shall not suspend performance of the unaffected portion of this Purchase Order while BUYER and SELLER are in the process of making such changes and any related adjustments or at any time thereafter unless so instructed in writing by

BUYER. If released in writing by BUYER, SELLER shall comply with and perform such change in accordance with the terms of this Purchase Order during the time SELLER and BUYER require to mutually agree upon an equitable adjustment.

No agreement or understanding modifying the conditions of terms of this Purchase Order shall not be binding upon BUYER nor will extra compensation be paid by BUYER unless the agreement or understanding is made in writing.

**15. TERMINATION FOR DEFAULT:**

15.1 The BUYER may terminate the CONTRACT or any part thereof without any penalty to, or payment obligation of, the BUYER (other than undisputed payment obligations outstanding as of the date of any such termination, with disputed payment obligations being subject to the dispute resolution provisions of Section 31) due to the occurrence of any of the following events (each, a "SELLER EVENT OF DEFAULT"):

- a) The SELLER (i) is insolvent, (ii) files a voluntary petition for winding up or has an involuntary petition for winding up filed against it that is not dismissed within thirty (30) days of such involuntary filing, (iii) admits the material allegations of any petition of winding-up filed against it, (iv) is adjudged insolvent, or (v) makes a general assignment for the benefit of its creditors, or a receiver is appointed for all or a substantial portion of its assets and is not discharged within thirty (30) days after its appointment;
- b) The SELLER commences any proceeding for relief from its creditors in any court under APPLICABLE LAW;
- c) The SELLER commits any misrepresentation, fraud or wilful misconduct or breaches any provision of applicable law, code of conduct of BUYER;
- d) The SELLER abandons, ceases, fails to commence or make progress in the supply of the GOODS or the performance of any of its other obligations under the CONTRACT or suspends performance of all or a material portion of its obligations under the CONTRACT (except as a result of an event of FORCE MAJEURE or a suspension authorized by the BUYER);
- e) The SELLER fails to deliver the GOODS in accordance with the DELIVERY SCHEDULE, provided, that, if the BUYER makes a claim for recovery of liquidated damages on the SELLER or recovers from the SELLER the liquidated damages with respect to such failure, then the BUYER shall only be entitled to terminate the CONTRACT or any part thereof once the maximum amount of such liquidated damages is claimed or recovered;
- f) The SELLER subcontracts or assigns any of its obligations under this CONTRACT other than in compliance with the terms of this CONTRACT;
- g) If any other contract for any goods or services relating to the PROJECT to which the BUYER and the SELLER and/or any of their respective AFFILIATES are party to and the SELLER and/or any of their respective AFFILIATES is in default or has been terminated by reason of the SELLER'S (and/or the SELLER'S AFFILIATE'S) breach under such contract; or

- h) The SELLER breaches any material representation, warranty, covenant or obligation of the SELLER in the CONTRACT.
- 15.2 If any SELLER EVENT OF DEFAULT exists and is continuing, the BUYER may, without prejudice to any other rights or remedies of the BUYER in this CONTRACT or at law or in equity, terminate this CONTRACT by providing a NOTICE OF TERMINATION to the SELLER; provided, however, that the BUYER shall have first provided to the SELLER the following periods of notice and opportunity to cure:
- a) in the case of a SELLER EVENT OF DEFAULT specified in Section 15.1 (d), (e), (f) or (h), the BUYER shall have provided ten (10) days prior written notice to the SELLER, and the SELLER shall have failed to remedy such breach (or commenced to, in the BUYER'S sole opinion, diligently cure such breach) entirely by the end of such ten (10) days period; and
  - b) in the case of a SELLER EVENT OF DEFAULT specified in Sections 15.1 (a), (b), (c), or (g), no notice or opportunity to cure shall be required.
- 15.3 If the BUYER terminates the CONTRACT in whole or in part for a SELLER EVENT OF DEFAULT and it is subsequently determined pursuant to Sections 31 (DISPUTE RESOLUTION & ARBITRATION), that the SELLER was not in default, then such termination shall be treated as if a NOTICE OF TERMINATION had been issued pursuant to Section 15.
- 15.4 Notwithstanding anything contained herein to the contrary in any provision of the CONTRACT, in the event of any termination of the CONTRACT under this Section 15, the BUYER may at its option, elect to proceed as set forth in Section 15.4 (a) or Section 15.4 (b) with respect to the terminated portion of the CONTRACT:
- a) Reject the GOODS. If the BUYER elects to reject the GOODS, the BUYER shall make any GOODS delivered to the BUYER available for return to the SELLER and for removal at the SELLER'S sole risk and cost. The SELLER shall (i) refund to the BUYER all amounts paid by the BUYER to the SELLER for such GOODS; (ii) forego all amounts otherwise due or payable to the SELLER in respect of such GOODS; (iii) reimburse the BUYER all costs and expenses in excess of the TOTAL ORDER VALUE incurred by the BUYER for procuring similar or substitute goods similar to such GOODS from any other PERSON (including, without limitation, any charges and costs such as transportation, clearing and forwarding, storage and insurance, costs of removal, inspection, re-installation, return or warehousing, import duties and taxes incurred by the BUYER and of completing any uncompleted works by itself or by any other PERSON.
  - b) Retain the GOODS. If the BUYER elects to retain the GOODS then: (i) the BUYER shall retain all amounts otherwise due or payable to the SELLER and shall determine reasonable adjustment reducing the TOTAL ORDER VALUE to reflect the diminished value of such GOODS; and (ii) reimburse the BUYER all cost and expenses in excess of the TOTAL ORDER VALUE, incurred by the BUYER for procuring any goods similar to the GOODS or the BUYER may proceed to correct, remedy, rectify or replace such GOODS at the SELLER'S sole risk and cost and the SELLER shall in such instance be liable to pay the BUYER and the BUYER shall be entitled to recover from the SELLER the BACK CHARGES associated with such correction, remedy, rectification or replacement.



For the avoidance of doubt, any work carried out on the GOODS, by the BUYER or any third parties on behalf of the BUYER, under this Section 15 or Sections 44 (BACK CHARGES) or 38 (INFRINGEMENT) shall not void or adversely affect the GOODS WARRANTIES.

- 15.5 Upon rejection of the GOODS by the BUYER, the SELLER shall promptly, but no later than fifteen (15) days from the date of notice by the BUYER in this regard, remove the GOODS. If the SELLER fails to remove the GOODS, then the BUYER shall be entitled to all the costs of storage or demurrage charges of the GOODS. If the SELLER does not remove the GOODS within an aggregate period of thirty (30) days after the date of notice by the BUYER in this regard, the BUYER shall be entitled to dispose of the GOODS at its sole discretion. The SELLER shall indemnify and hold harmless the BUYER against all LOSSES arising out of such storage or disposition of the GOODS. The BUYER shall permit the SELLER to remove the GOODS only after payment to the BUYER of amounts described in this Section 15.4.
- 15.6 Upon termination of all or any part of the CONTRACT under this Section 15, the SELLER shall:
- a) immediately discontinue the work on the date and to the extent specified in the NOTICE OF TERMINATION and place no further SUB-ORDERS or purchase orders to the extent that they relate to the performance of the terminated portion of the CONTRACT;
  - b) account for and return to the BUYER all the BUYER'S MATERIAL relating to the portion of the CONTRACT that was terminated; and
  - c) promptly obtain cancellation upon terms satisfactory to the BUYER of all SUB-ORDERS, rentals or any other agreements existing for the performance of the terminated portion of the CONTRACT or assign or novate any of those agreements to such PERSONS as directed by the BUYER.
- 15.7 Digital Payments: Contractor shall not disburse any payment in cash to the labours or subcontractors or any other agencies. The mode of payment for any of the above cited transactions must be done either through direct bank transfer or by any other digital mode. Non-compliance of Clause 15.7 may lead to termination of the contract without any liability to AIL.
- 15.8 Notwithstanding anything to the contrary contained in this Section 15,
- a) the PARTIES shall at all times continue with the performance of their respective obligations under the CONTRACT to the extent not terminated under this Section 15; and
  - b) termination of the CONTRACT in whole or part by the BUYER under this Section 15 for any reason whatsoever shall not affect or prejudice any rights, claims or liabilities which may have accrued to the PARTIES prior to the date and time of termination.

**16. TERMINATION FOR CONVENIENCE:**

- 16.1 The CONTRACT may be terminated, in whole or in part, by the BUYER at any time in accordance with this Section 13. Any such termination shall be effected by issuing a NOTICE OF TERMINATION to the SELLER specifying the extent to which the CONTRACT is terminated, and the date upon which such termination becomes effective. Upon receipt of such NOTICE OF TERMINATION, the SELLER shall, unless such notice requires otherwise: (a) immediately discontinue any work under the CONTRACT on the date and to the extent specified in the NOTICE OF TERMINATION; (b) place no further orders for materials, equipment or services other than as may be necessarily required for completion of such portion of work that is not terminated; (c) promptly make all reasonable endeavors to either, as directed by the BUYER, cancel upon terms satisfactory to the BUYER all SUB-ORDERS or assign the SUB-ORDERS to the BUYER; and (d) assist the BUYER, upon the BUYER'S request, in the maintenance, protection, and disposition of the GOODS and or any property acquired by the BUYER under the CONTRACT.
- 16.2 Subject to Section 16.3 and without prejudice to the BUYER'S rights under Section 2 if requested in writing by the SELLER within thirty (30) days after the date of a NOTICE OF TERMINATION issued under Section 16.1 above, the BUYER will pay to the SELLER as full and final settlement of any amounts due to the SELLER under the CONTRACT: (a) all amounts due and not previously paid to the SELLER for the GOODS delivered in accordance with such CONTRACT prior to such NOTICE OF TERMINATION, and for work thereafter completed by the SELLER pursuant to the BUYER'S directions contained in the NOTICE OF TERMINATION; (b) a reasonable amount for any GOODS then in production; provided, that, no such adjustment shall be made in favor of the SELLER with respect to any GOODS which are a part of the SELLER'S standard stock; (c) any other direct and unavoidable costs incurred by the SELLER in the performance of the CONTRACT as on the date of such NOTICE OF TERMINATION; and (d) a reasonable amount to settle any claims arising out of cancelled SUB-ORDERS; in each case (a) through (d) to the extent that the BUYER has not previously paid the SELLER for these matters. The BUYER shall have the right to take possession of and use for any purpose all GOODS for which the BUYER has made payment. The BUYER'S obligations to make any payments described in this Section 16.2 shall be contingent on the SELLER having provided the BUYER with all DRAWINGS and DOCUMENTS, or any other documents or information that the BUYER may request in this regard. Except as set forth in this Section 16.2, the SELLER shall not be entitled to any additional compensation relating to any termination of the CONTRACT under this Section 16.
- 16.3 The total sum to be paid by the BUYER to the SELLER under Section 16.2 above shall not exceed the TOTAL ORDER VALUE as reduced by the following:
- a) the aggregate payments previously made to the SELLER; and
  - b) the proportion of the TOTAL ORDER VALUE attributable to the portion of the CONTRACT terminated by the BUYER.
- 16.4 The SELLER agrees that it shall promptly provide to the BUYER, upon the BUYER'S request, all related and complete documents and records for substantiating any claims made against the BUYER on account of any termination of whole or part of the CONTRACT pursuant to Section 16.1.

- 16.5 Notwithstanding anything contained in this Section 16 to the contrary, the SELLER shall mitigate any loss, cost or damage which the SELLER may incur as a result of a termination of all or part of the CONTRACT.

**17. REQUIREMENT OF DRAWINGS, DOCUMENTATIONS, ETC.**

- 17.1 SUPPLIER / CONTRACTOR is required to submit drawings, documents, etc. as per the PURCHASE ORDER/CONTRACT specifications. In case no instructions are given in the PURCHASE ORDER/CONTRACT Specifications, the following is applicable: -

INITIAL / PROGRESSIVE DOCUMENTS

SUPPLIER / CONTRACTOR is required to submit within 15 days from the effective date of the PURCHASE ORDER / CONTRACT i.e. within 15 days from the date of LOI, 4 sets of the following drawings/documents, whichever is applicable, for the CONSULTANT's approval.

- 17.1.1 Data Sheets
- 17.1.2 Design Calculations
- 17.1.3 General Arrangement (GA) drawings/cross sectional drawings
- 17.1.4 Foundation drawings
- 17.1.5 Control valve sizing calculations/Instrumentation details
- 17.1.6 Wiring Diagrams
- 17.1.7 Piping drawings(Isometrics)
- 17.1.8 Welding Procedure
- 17.1.9 QA/QC Plan
- 17.1.10 Activity Schedule - Bar Chart
- 17.1.11 Any other documents as specified by CONSULTANT

All data together with relevant data sheets duly filled in by the SUPPLIER / CONTRACTOR against cross

(X) mark(s) shall be submitted to the CONSULTANT.

Activity Schedule -Bar Chart shall show the start and finish dates of various activities forming part of the execution of the PURCHASE ORDER / CONTRACT and identifying the delivery date to this activity schedule. SUPPLIER / CONTRACTOR shall update this bar chart every month showing the actual performance of the activities and if and how the delivery date has been affected thereby. Copies of up dated bar chart will also be submitted to CONSULTANT and COMPANY for review of progress of the PURCHASE ORDER / CONTRACT.



The COMPANY/CONSULTANT reserves the right to monitor the progress against the above schedule and insist on the SUPPLIER / CONTRACTOR to take whatever corrective action necessary whenever the progress is behind schedule.

The first submission of the drawings etc. should be complete in all respects to avoid delay arising out of resubmission.

**FINAL AS-BUILT DOCUMENTS**

The SUPPLIER / CONTRACTOR shall submit the following FINAL, AS BUILT documents and such other necessary documents to the CONSULTANT prior to despatch of EQUIPMENT / GOODS / ITEM(S).

- a) Four sets of prints, One set of Reproducible & One set of soft copy (AutoCAD R14 Version) in CD/DVD, of all 'Final-As built' drawings/diagrams.
- b) One set of Original plus Three sets of copies of all test certificates / inspection records etc. including for all materials purchased by the SUPPLIER / CONTRACTOR.
- c) One set of Original IBR Certificate(s) plus Five copies
- d) Four sets of unpriced SUB-ORDER(S) / SUB-CONTRACT(S) with complete technical details.
- e) Four sets of spare parts catalogue, including that for SUB-VENDOR / SUB-CONTRACTOR's items.
- f) Four sets of operational and maintenance manual.

- 17.2 Detailed specifications and sketches for columns / Heat exchangers / fabricated Equipment / Tanks / Vessels will be provided by the CONSULTANT to the SUPPLIER / CONTRACTOR after the issuance of LOI by the COMPANY.

The drawing shall not be departed from without the written instruction COMPANY / CONSULTANT. Any drawings issued to the SUPPLIER / CONTRACTOR by the COMPANY / CONSULTANT are on loan only and shall be returned to the COMPANY / CONSULTANT at the end of the CONTRACT WORK or on demand.

- 17.3 PURCHASE ORDER/CONTRACT number & date must appear on Order confirmation, correspondence, drawings, invoices, shipping notes, packing and on all documents connected with the relevant PURCHASE ORDER / CONTRACT

**18. INSTRUCTION FOR DESPATCH:**

- 18.1 EQUIPMENT/GOODS/ITEM(S) shall be dispatched to all the AIL Site only after their final inspection and acceptance by the COMPANY/CONSULTANT's Inspectors. After acceptance, the supplier shall send dispatch clearance request to COMPANY with cc to CONSULTANT. COMPANY shall issue dispatch clearance and then only the material shall be dispatched.

**19. LAWS & REGULATIONS:**

19.1 SELLER warrants that all goods and services supplied pursuant to this Purchase Order will comply with all applicable laws, ordinances and regulations, and further SELLER shall provide all permits, certificates and licenses which may be required for the performance of the Purchase Order. This Purchase Order shall be governed by the laws of the Republic of India. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Purchase Order and shall be disclaimed and excluded from any contracts placed by SELLER with its suppliers. SELLER further warrants that all goods furnished by SELLER in performance of this Purchase Order will comply fully with all laws regarding environment protection, safety health and labor to the extent applicable to such equipment and in addition to any other rights or remedies which BUYER may have, SELLER shall indemnify, defend and hold harmless BUYER from and against any and all claims, loss, or liability arising from failure of such goods to comply therewith. SELLER certifies that it is in compliance, and shall at all times remain in compliance, with all applicable anti-corruption and anti-bribery laws. Contractor shall comply with all legal regulatory requirements applicable to the work performed under this contract and shall be responsible for compliance with all hazardous waste, health and safety, notice, training and environmental protection laws, rules, regulations and requirements.

**19.2 GOVERNING LAW AND JURISDICTION**

The PURCHASE ORDER / CONTRACT shall be governed by all the laws of Republic of India, as amended from time to time. Save and except for the remedies of interim relief, or interim measures, the PARTIES shall be bound to refer the DISPUTES to arbitration in accordance with the provisions of Section 38. Each PARTY to the CONTRACT hereby irrevocably submits to the non-exclusive jurisdiction of the Courts at Mumbai for the enforcement of the AWARD. Notwithstanding anything contained herein to the contrary, the PARTIES shall have the discretion to seek from any court of competent jurisdiction interim relief, or interim measures: (a) before commencement of arbitral proceedings, or (b) during arbitral proceedings, or (c) at any time after the making of the AWARD by the sole arbitrator but before it is enforced.

**19.3 Environmental, Labor and Social Standards**

BUYER conducts its business in accordance with the principle of sustainable development and complies with internationally recognized environmental, labor and social standards. BUYER has described its concept and the implementation of these standards in BUYER's Values and Principles. Equally, BUYER expects its suppliers to comply with comparable standards. Should BUYER discover that the SELLER (or its subcontractor(s)) is in breach of these standards (e.g. relating to child labor, forced and compulsory labor), BUYER reserves the right to terminate this order. In addition, BUYER asks the SELLER to urge its suppliers/subcontractors to introduce corresponding standards.

The SELLER /contractor has to adhere to Minimum wages act, Contract labor act, Provident fund act, ESI act, Factories inspector act, Child labor act, Equal wage act and all other laws applicable.

19.4 Sustainability: Business partners shall be liable to comply the sustainable policy of AIL in place.

**20. WEIGHT AND MEASUREMENTS:**

All weights and measurements recorded by the COMPANY on receipt of EQUIPMENT / GOODS / ITEM(S) at SITE will be treated as final.

**21. LIENS**

SELLER agrees to indemnify, hold harmless and defend BUYER from and against all laborers', material men's, mechanics', or other liens arising from the performance of SELLER's obligations under this Purchase Order and shall keep the premises of BUYER and OWNER free from all such claims, liens, and encumbrances. To the full extent permitted by applicable law, SELLER, for itself and all of its suppliers of any tier, waives all rights of lien against the property and premises of BUYER and OWNER for labor performed or for goods furnished for the Work.

**22. SUSPENSION**

BUYER may at any time, and from time to time, by written notice to SELLER, suspend further performance of all or any portion of this Purchase Order by SELLER. Such suspensions shall not exceed more than one hundred twenty (120) consecutive calendar days each nor aggregate do more than one hundred eighty (180) calendar days. Upon receiving any such notice of suspension, SELLER shall promptly suspend further performance of the Purchase Order to the extent specified, and during the period of such suspension shall properly care for and protect all work in progress and materials, supplies, and equipment SELLER has on hand for performance of the Purchase Order. SELLER shall use its best efforts to utilize its material, labor and equipment in such a manner as to mitigate costs associated with suspension. BUYER may at any time withdraw the suspension as to all or part of the suspended performance by written notice to SELLER specifying the effective date and scope of withdrawal and SELLER shall, on the specified date of withdrawal, resume diligent performance of the work for which the suspension is withdrawn. If SELLER believes that any such suspension or withdrawal of suspension justifies modification of the Purchase Order price or time for performance, SELLER shall comply with the provisions set forth in Section 14 - CHANGES. In no event shall SELLER be entitled to any loss of prospective profits, contributions to overhead or any incidental, consequential or other damages because of such suspensions or withdrawals of suspension.

**23. INDEPENDENT CONTRACTOR**

- 23.1 The performance by the SELLER of its duties and obligations under the CONTRACT is that of an independent contractor and nothing contained in the CONTRACT creates or implies an agency relationship or constitutes a joint venture or partnership between the BUYER and the SELLER. Subject to any express provisions to the contrary in the CONTRACT, the SELLER shall have no right or authority to, and shall not do any act, enter into any contract, make any representation, give any warranty, incur any liability or assume any obligation (express or implied) of any kind on behalf of the BUYER or bind the BUYER in any way. The SELLER'S employees, representatives, SUB-SELLERS and their personnel required for performance of the obligations under the CONTRACT are not subject to the control or direction of the BUYER in respect of the manner of performance of the CONTRACT and the BUYER is interested only in the end result of the CONTRACT.

23.2 The SELLER agrees and represents that its personnel are not the BUYER'S agents or employees for the purposes of any employment, tax or any other APPLICABLE LAWS, and as such its personnel are not entitled to any benefits available to the BUYER'S employees. The SELLER shall maintain complete control of its employees, representatives and SUB-SELLERS required for performance of its obligations under the CONTRACT and shall assume sole and full responsibility for its acts and the acts of its employees, representatives and SUB-SELLERS. The SELLER acknowledges that its employees have no authority to make commitments or enter into contracts on behalf of, bind, or otherwise obligate the BUYER in any manner whatsoever.

#### **24. ETHICAL CONDUCT**

24.1 The SELLER covenants to the BUYER that:

- a) The SELLER will not, and it will cause its AFFILIATES and SUB-SELLERS, and its and their respective employees, officers, directors or representatives to not, make, offer to make or agree to make any loan, gift, donation, commission, kick-back, bribe or other payment or facility, directly or indirectly, whether in cash or in kind, to or for (i) any governmental official, employee or representative, (ii) any employee, officer, director or representative of the BUYER or its AFFILIATES, or (iii) any other PERSON with respect to the negotiation, execution or performance of the CONTRACT.
- b) If the SELLER learns of or has reason to know of any such payment, offer or agreement described in Section 24.1 (a) to make any such loan, gift, donation, commission, kick-back, bribe or other payment or facility to any of the PERSONS described in Section 24.1 (a), it will immediately inform the BUYER in writing communicating to the BUYER all relevant information in respect of the above within the knowledge or possession of the SELLER. Without prejudice to the SELLER'S obligations as above, the SELLER agrees not to, and to cause its AFFILIATES and SUB-SELLERS not to, offer or give, or agree to give, to any employee, officer, director or representative of the BUYER any consideration of any kind as an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or performance of the CONTRACT, or for showing or refraining from showing favor or disfavor to any PERSON in relation to the CONTRACT.

24.2 BUYER may, by written notice to the SELLER, terminate the right of the SELLER to proceed or continue under this Purchase Order if it is found that gratuities (in the form of entertainment, gifts or otherwise), were offered or given by the SELLER, or any agent or representative of the SELLER to any officer or employee of the BUYER with a view toward securing this Purchase Order or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing of this Purchase Order. In the event this Purchase Order is terminated as provided in this provision, BUYER shall be entitled to pursue the same remedies against the SELLER as it could pursue in the event of a material breach of the Purchase Order by the SELLER. The rights and remedies of BUYER provided in this or any other article shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Purchase Order.

**25. COMPLIANCE OF REGULATIONS**

- 25.1 SUPPLIER / CONTRACTOR shall warrant that all EQUIPMENT / GOODS / ITEM(S) and services covered by these conditions shall have been produced, sold, supplied, despatched, delivered and furnished, including the manpower engaged by them in strict compliance with all applicable laws, regulations, labour agreements working conditions and technical codes and requirements as applicable from time to time. SUPPLIER / CONTRACTOR shall execute and deliver such documents as may be required to effect or to evidence such compliance. All laws and regulations required to be incorporated in agreement of this character are hereby deemed to be incorporated by the reference.
- 25.2 The COMPANY and/or CONSULTANT and/or their authorised representative disown any responsibility, for any irregularity, contravention or infringement of any statutory regulations on manufacture or supply of EQUIPMENT / GOODS / ITEM(S) covered by the PURCHASE ORDER / CONTRACT.
- 25.3 The SUPPLIER / CONTRACTOR shall ensure compliance with the above by all his SUB-VENDORS / SUB- CONTRACTORS and shall indemnify COMPANY / CONSULTANT against any actions, damages, cost and expenses of any failure to comply as aforesaid.

**26. CONFIDENTIAL INFORMATION**

- 26.1 Any CONFIDENTIAL INFORMATION of the Seller disclosed to the BUYER shall not, without the prior written consent of the SELLER, be disclosed, used, copied, modified or otherwise transferred by the BUYER to any PERSON, other than to the BUYER'S AFFILIATES and their respective directors, officers and employees, agents and representatives who are bound by an obligation of confidentiality to the BUYER. The BUYER may also disclose CONFIDENTIAL INFORMATION of the SELLER to the BUYER'S CONSULTANTS and other third parties (i) who have a specific need to know regarding the PROJECT, and (ii) who are bound by a written obligation of confidentiality to the BUYER. The BUYER agrees to protect the CONFIDENTIAL INFORMATION of the SELLER with the same degree of care that is uses to protect its own CONFIDENTIAL INFORMATION, but in all events will use at least a reasonable degree of care.
- 26.2 Any CONFIDENTIAL INFORMATION of the BUYER disclosed to the SELLER shall not, without the prior written consent of the BUYER, be disclosed, used, copied, modified or otherwise transferred by the SELLER to any PERSON, other than to the SELLER'S AFFILIATES and their respective directors, officers and employees, agents and representatives who (i) have a specific need to know regarding the supply of the GOODS, and (ii) are bound by an obligation of confidentiality to the SELLER. The SELLER may also disclose CONFIDENTIAL INFORMATION of the BUYER to SUB-SELLERS who (i) have a specific need to know regarding the supply of the GOODS, and (ii) are bound by a written obligation of confidentiality to the SELLER that is no less restrictive than the provisions of this Section 26; but only to the extent required for such SUB-SELLER to perform its obligations to the SELLER. The SELLER agrees to protect the CONFIDENTIAL INFORMATION of the BUYER with the same degree of care that is uses to protect its own CONFIDENTIAL INFORMATION, but in all events will use at least a reasonable degree of care.
- 26.3 Sections 26.1 and 26.2 shall not apply to CONFIDENTIAL INFORMATION that falls within any of the following exceptions, provided the receiving PARTY proves by credible written evidence that such information: (i) was already in the possession of the receiving PARTY



or, as the case may be, any AFFILIATE, consultant or SUB-SELLER of the receiving PARTY prior to disclosure by the disclosing PARTY, in each case, without any obligation of confidentiality, (ii) is or becomes part of the public domain through no fault of the receiving PARTY and, as the case may be, any AFFILIATE, consultant or SUB-SELLER, (iii) was independently developed by the receiving PARTY or, as the case may be, any AFFILIATE, consultant or SUB-SELLER of the receiving PARTY completely apart from the disclosure hereunder, or (iv) is released pursuant to a court order or otherwise required by law, provided that the receiving PARTY promptly notifies the disclosing PARTY of such court order or legal requirement, and gives the disclosing PARTY a reasonable opportunity and cooperates with the disclosing PARTY to contest, limit or condition the scope of such required disclosure.

Specific information shall not be deemed to be within the foregoing exceptions merely because it is embraced by more general information within the foregoing exceptions. In addition, any combination of features shall not be deemed to be within the foregoing exceptions merely because individual features are within the foregoing exceptions but only if the combination itself and its principle of operation are within the foregoing exceptions. Even if any CONFIDENTIAL INFORMATION falls within the foregoing exceptions, the receiving PARTY shall not disclose the correlation existing between such information acquired from another source and as originating with the BUYER or the SELLER. The foregoing obligations shall not apply to any information which:

- a) is in the public domain at the time of disclosure or later becomes part of the public domain through no fault of the Receiving Party;
- b) was known to the Receiving Party prior to disclosure by the Disclosing Party as proven by the contemporaneous written records of the Receiving Party;
- c) is disclosed to the Receiving Party by a third party who did not obtain such Information, directly or indirectly, from the Disclosing Party subject to any confidentiality obligation;
- d) is at any time independently developed by the Receiving Party as proven by its contemporaneous written records;
- e) is expressly authorized in writing by the Disclosing Party; or
- f) is required by law, court order or a governmental agency to be disclosed (in which case the Receiving Party will give the Disclosing Party as much notice thereof as reasonably practicable and which will be done subject to confidentiality protection to the extent reasonably available).

- 26.4 Each PARTY shall, upon receipt of a written request of the other PARTY, (a) return to the requesting PARTY all documents, drawings, electronic storage media and other tangible manifestations of the CONFIDENTIAL INFORMATION of the requesting PARTY; (b) permanently destroy, erase or render unreadable all copies of any analyses, compilations, studies or other documents prepared by or on behalf of it or for internal use which reflect the CONFIDENTIAL INFORMATION of the requesting PARTY; and (c) provide the requesting PARTY with a certificate signed by an AUTHORIZED REPRESENTATIVE of the returning PARTY attesting to such destruction. The returning PARTY shall thereafter retain no copies, transcriptions or summaries of any portion of the CONFIDENTIAL INFORMATION of the requesting PARTY, except that the returning PARTY may retain an

archive copy of the CONFIDENTIAL INFORMATION of the requesting PARTY in a secure manner only for use in enforcing rights and responding to claims based on an alleged breach of the confidentiality and non-disclosure obligations of this Section 26.

- 26.5 Notwithstanding anything else to the contrary herein, the BUYER may disclose CONFIDENTIAL INFORMATION of the SELLER to any GOVERNMENTAL AUTHORITY, local government bodies in India, banks, financial institutions, and insurance companies and any other agency acting on behalf of any of the foregoing, in each case only as requested or required by such PERSONS.
- 26.6 The provisions of this Section 26 shall bind the PARTIES and any PERSON receiving CONFIDENTIAL INFORMATION for a period of five (5) years from the EFFECTIVE DATE or, in respect of every item of CONFIDENTIAL INFORMATION later disclosed hereunder, a period of three (3) years from the date of disclosure, whichever period is longer, regardless of any earlier termination, cancellation or completion of the CONTRACT.
- 26.7 Notwithstanding anything otherwise provided in this Section 26, the rights and obligations with regard to all TECHNICAL INFORMATION disclosed to the SELLER and any SUB-SELLERS shall be governed by the applicable CONFIDENTIALITY AGREEMENT. Should any provisions herein conflict or be inconsistent with the terms of such CONFIDENTIALITY AGREEMENT with respect to any obligations, rights, liabilities or otherwise regarding TECHNICAL INFORMATION, then the terms of the CONFIDENTIALITY AGREEMENT shall supersede the terms herein.

**27. SUPERVISION OF ERECTION & COMMISSIONING:**

- 27.1 In case the SUPPLIER / CONTRACTOR's scope under the PURCHASE ORDER includes supervision of erection, testing and commissioning at the project site, the COMPANY, except where otherwise specified, shall provide free of charge such labour, materials, fuel, power, water, stores, apparatus, and instruments as may be required from time to time and as may reasonably be demanded by the SUPPLIER / CONTRACTOR to carry out efficiently such supervision. The SUPPLIER / CONTRACTOR will, however bring along with them special apparatus/instruments/ measuring devices etc. duly calibrated if required to carry out adjustments / settings etc. and to perform various tests as required under the relevant Codes/Standards and as defined in the PURCHASE ORDER.
- 27.2 It is responsibility of the SUPPLIER/CONTRACTOR to depute a qualified/skilled and knowledgeable personnel as supervisors at site. Such persons shall abide by the COMPANY's rules & regulations and disciplines as normally applicable. SUPPLIER/CONTRACTOR shall fulfil any requirements of statutory regulations such as ESI, PF, before deputing their supervisors to the SITE.
- 27.3 No sub- contracting is allowed. In case the sub-contracting is permitted by the COMPANY, then the Sub- Contractor has to work under Contractor's PF, ESIC, etc.
- 27.4 Supervision charges shall be payable as certified by CONSULTANT/ COMPANY.

**28. SITE WORK:**

- 28.1 If the SUPPLIER / CONTRACTOR has to perform CONTRACT WORK / any part of the PURCHASE ORDER / CONTRACT at the place / SITE where the EQUIPMENT / GOODS

/ ITEM(S) are to be delivered, he shall do so in accordance with the "GENERAL CONDITIONS OF CONTRACT (GCC)".

**29. HAZARDOUS MATERIALS**

SELLER shall notify BUYER in writing if goods furnished are subject to laws or regulations relating to hazardous or toxic substances, or when disposed of, to regulations governing hazardous wastes, or to any other environmental or safety and health regulation. SELLER shall furnish: all appropriate shipping certification; labeling in compliance with the Workplace Hazardous Materials Information System; Material Safety Data Sheets in compliance with the Workplace Hazardous Materials Information System; and instructions for shipping, safety, handling, exposure and disposal in a form sufficiently clear for use by BUYER's non-technical personnel and sufficiently specific to identify all action which the user must take concerning the material. The following certification must be made on the bill of lading: "This is to certify that the above named articles are properly classified, described, packaged, marked and labeled and are in proper condition for transportation according to any applicable transportation regulations."

**30. VALIDITY OF PROVISIONS**

In the event any Provision, or any part or portion of any Provision of this Purchase Order shall be held to be invalid, void or otherwise unenforceable, such holding shall not affect the remaining part or portions of that Provision, or any other Provision hereof.

**31. DISPUTE RESOLUTION & ARBITRATION**

31.1 Dispute Resolution, Consultations: In the event a dispute arises in connection with the validity, interpretation or implementation of this Purchase Order the parties shall attempt in the first instance to resolve such dispute through friendly consultations. If the dispute cannot be resolved in this manner within sixty (60) days after the commencement of consultations, either party may refer the dispute to arbitration in accordance with the provisions of article 31.2 hereof.

31.2 Arbitration: Any difference or dispute resulting from, concerning the validity of, or arising in connection with, the Purchase Order which cannot be settled reasonably, amicably or equitably by agreement between the Parties or by mediation, shall be finally settled by Arbitration under the Indian Arbitration and Conciliation Act, 1996 or of any modification or re-enactment thereof. The Parties may mutually decide to nominate and appoint a Sole Arbitrator, the arbitral award so passed by the Sole Arbitrator shall be final and binding on the Parties hereto. It is expressly agreed by and between the Parties that:

31.2.1 The Arbitrator shall pass the Award within six (6) months of entering upon reference;

31.2.2 The Arbitrator shall be entitled, with the consent of the parties to the Arbitration, to extend the time to make the Award;

31.2.3 The costs, charges, fees and expenses of the Arbitrator shall be borne equally by the Parties to the Arbitration, and save as aforesaid, the Parties shall bear its own costs;

31.2.4 The Courts in Mumbai shall have the exclusive jurisdiction in relation to the interim measures as provided under the Arbitration and Conciliation Act, 1996;



- 31.3 The arbitration shall be conducted in accordance with the Indian Arbitration and Conciliation Act, 1996 (Act) **(for Indigenous Purchase Order) and ICC regulations 2006 (for imported Purchase Orders)** and the rules there under and any statutory modification thereof by three arbitrators appointed pursuant to the provisions of the Act. The arbitration proceedings shall be held in Mumbai. The arbitration proceedings shall be conducted in the English language. The decision of the arbitrator(s) shall be final, binding and non-appeal able. Judgment upon any award rendered may be entered into any court having jurisdiction, or application may be made to such court for judicial acceptance of the award or an order of enforcement, as the case may be.
- 31.4 It is agreed however that the arbitrator shall not be an employee of either PARTY or in any way financially interested in this PURCHASE ORDER, dispute or claim.
- 31.5 Continuing Rights and obligations: Performance under the Purchase Order shall be continued during the arbitration proceedings unless otherwise directed by the BUYER in writing or unless the matter is such that the performance cannot be possibly continued until the decision of arbitrator is obtained.

## **32. RIGHT TO OFFSET**

The BUYER shall be entitled from time to time, without waiver or limitation of any of its rights or remedies, to deduct, adjust or setoff (A) (i) any costs incurred by the BUYER with respect to BACK CHARGES or any other obligation of the SELLER under the CONTRACT; (ii) any liquidated damages or other amounts due or that may become due to the BUYER from the SELLER; (iii) any payments made to the SELLER in advance, error or due to an incorrect invoice; or (iv) any amounts due or that may become due to the BUYER or any of its AFFILIATES from the SELLER or any of its AFFILIATES under any contractual or other arrangement between any of the BUYER, the SELLER or their respective AFFILIATES, relating to the PROJECT; against (B) (i) any amounts due or that may become due to the SELLER from the BUYER under the CONTRACT, or (ii) any amounts due or that may become due to the SELLER or any of its AFFILIATES from any of the BUYER or any of its AFFILIATES under any contractual or other arrangement between any of the BUYER, the SELLER or their respective AFFILIATES, relating to the PROJECT. For the purpose of any deduction, adjustment or set-off, the BUYER may convert any amount owed by the SELLER into any currency in which the obligation of the BUYER is to be paid. If the funds due to the SELLER are insufficient to completely deduct, adjust or set-off the amounts that are due or may be due to the BUYER or any of its AFFILIATES, the SELLER agrees to pay such amounts to the BUYER as a debt due and payable on written demand from the BUYER.

## **33. SURVIVAL**

The terms and conditions of the CONTRACT which by implication or by express stipulation of the PARTIES survive the termination or expiry of the CONTRACT shall be adhered to and complied with by the PARTIES even after the termination or expiration of the CONTRACT. In addition to and without limiting the generality of the foregoing, Sections 2, 8, 10, 19, 33, 38, 46 and 53 shall survive any termination or expiration of the CONTRACT or any portion thereof.

## **34. INSURANCE**

The SELLER shall obtain and maintain sufficient liability insurance at its expense for damage to property of and/or bodily injury to third parties and BUYER for which SELLER

or its affiliates or agents are responsible, unless otherwise specified by BUYER. Evidence of the amount of insurance coverage for each occurrence of damage is to be produced to BUYER upon request. The SELLERs/Contractor's contractual and legal liability remains unaffected by the extent and amount of his/her insurance coverage

### **35. SAFETY, HEALTH AND ENVIRONMENT**

In performing the obligations hereunder, the SELLER and/ or CONTRACTOR shall comply, and shall ensure that its employees (and subcontractors and agents) comply all applicable safety, health and environmental regulations and any related measures specified by BUYER.

The SELLER and/ or CONTRACTOR shall strictly adhere to the existing safety and security rules of BUYER and as framed from time to time by BUYER. Any violation will attract a penalty of INR 500/- per incidence per person. Repeated failure to adhere to the rules will be a sufficient cause for dismissal from the site.

Dedicated safety supervisor will be deputed at site (having min. 7 years' experience) during execution of order for every 50 people. Non employment of same will lead to a deduction of Rs 25,000/-.

### **36. LIMITATION OF LIABILITY**

36.1 Except as set forth in Section 36.2, the aggregate liability of one PARTY to the other PARTY in respect of any and all claims or liabilities arising out of or in connection with any breach of this CONTRACT shall not, in the aggregate, exceed the TOTAL ORDER VALUE.

36.2 The foregoing limitation of liability shall not apply to: (i) any breach of the SELLER'S obligations under Sections 8, 15.4, 24 and 38; (ii) the SELLER'S costs and expenses of SELLER'S personnel to perform engineering and design activities in connection with any of the SELLER'S obligations under any of the GOODS WARRANTIES; and (iii) liabilities arising out of GROSS NEGLIGENCE, wilful misconduct, fraud or intentional misrepresentation by the SELLER.

### **37. PRICE AND PAYMENT**

37.1 **Price:** Unless otherwise expressly stated in the CONTRACT, the prices set forth in the CONTRACT for the GOODS are firm and not subject to escalation or adjustment on any account (including any increase in the cost of production, raw materials, labor, taxes or any fluctuations in exchange rate). The BUYER shall not be invoiced at prices higher than stated on the PURCHASE ORDER unless authorized in writing by the BUYER. All prices set forth in the PURCHASE ORDER shall include packing and handling and may, in accordance with the DELIVERY TERMS, include the carriage/shipping of the GOODS, charges for insurance covering the GOODS, and all taxes, duties or similar charges in connection with the supply of the GOODS. Unless otherwise expressly stated in the CONTRACT, neither the SELLER nor any PERSON shall be entitled to any payments whatsoever towards any license fees, royalties, levies or the like for use of any INTELLECTUAL PROPERTY RIGHTS embodied or utilized in or for the manufacture, assembly or supply of the GOODS.

37.2 **Invoicing:** The SELLER shall render invoices to the BUYER at the address shown on the face of the PURCHASE ORDER. Each invoice shall be provided in duplicate along with all supporting documents required by the BUYER, including payment certification documents, shipping documents required for clearance of the GOODS, documentation required at the ports located in the country of the DELIVERY POINT and any other documents referred to in the CONTRACT or requested in writing by the BUYER (collectively "SUPPORTING DOCUMENTS") in this regard. The invoice shall in all cases include all details requested by the BUYER, including the PURCHASE ORDER number, details for making payment including the name of the SELLER'S bank, account number, RTGS/NEFT code (as applicable), and SWIFT codes and all other supporting documents requested by the BUYER (collectively, "INVOICE PAYMENT DETAILS"). The BUYER shall be entitled to reject any incorrect invoice or any invoice which fails to include any INVOICE PAYMENT DETAILS or attach any of the SUPPORTING DOCUMENTS.

37.3 **Payment:**

- a) **Undisputed Invoices:** Unless otherwise stated in the CONTRACT, each undisputed invoice is due and payable by the BUYER thirty (30) days following the BUYER'S receipt of the invoice, SUPPORTING DOCUMENTS and INVOICE PAYMENT DETAILS. If the CONTRACT expressly provides that payment for invoices will be made progressively, such payments shall be made within thirty (30) days after receipt of each interim invoice. Payment of any invoice or other amounts to the SELLER shall not constitute ACCEPTANCE OF GOODS.
- b) **Disputed Invoices:** To the extent that an invoice (i) pertains to REJECTED GOODS; (ii) does not include SUPPORTING DOCUMENTS or INVOICE PAYMENT DETAILS; or (iii) is otherwise incorrect, then the time period for payment of such portion of the corresponding invoice shall be suspended until thirty (30) days after the date of the BUYER'S issuance of an ACCEPTANCE CERTIFICATE for such GOODS or receipt of the SUPPORTING DOCUMENTS or INVOICE PAYMENT DETAILS, or receipt of a correct invoice, as the case may be.
- c) **Tax Compliance:** All payments by the BUYER to the SELLER shall be made subject to deduction of any taxes as required to be deducted by the BUYER in accordance with APPLICABLE LAWS.
- d) **Electronic Payment:** The BUYER may elect to pay the SELLER through the BUYER'S electronic disbursement system. The SELLER shall advise the BUYER in writing within thirty (30) days prior to the due date of the SELLER'S first invoice of the SELLER'S bank and account number to which electronic payments may be made by the BUYER.

37.4 **Suspension or Reductions in Payment:**

- a) **Cash Discounts:** If any cash or prompt payment discount is offered by the SELLER that is conditioned upon payment of invoices by the BUYER within the period stipulated by the SELLER ("CASH DISCOUNT PERIOD"), such CASH DISCOUNT PERIOD shall be computed from the later of: (i) the receipt of the GOODS, or (ii) receipt of a correct and undisputed invoice from the SELLER for such GOODS. However, in the event the invoice is incorrect or incomplete or pertains to REJECTED GOODS, the CASH DISCOUNT PERIOD shall be

extended until the SELLER provides the BUYER with the correct invoice or delivers GOODS fully complying with the requirements of the CONTRACT. The BUYER shall be entitled to reduce any payment to the SELLER to the extent of any such cash or prompt payment discount offered by the SELLER.

- b) Third Party Payments: The SELLER agrees that the BUYER, at its discretion, may withhold any payment to the SELLER or make payments directly to the SUB-SELLERS if there is any evidence of any unpaid claim of SUB-SELLERS or other PERSONS unless and until the SELLER furnishes to the BUYER evidence of payment to such SUB-SELLERS and other PERSONS.

**37.5 Lien on GOODS:**

- a) In the event that the BUYER makes a payment to the SELLER prior to the passage of title to such GOODS to the BUYER, the SELLER hereby pledges as collateral security for each payment and performance in full of the obligations of the SELLER under this CONTRACT in relation to delivery of the GOODS, the SELLER hereby pledges and grants to the BUYER, a lien on and security interest in and to all of the right, title and interest of the SELLER in and to the GOODS to the extent of such payment ("BUYER LIEN").
- b) SELLER shall, promptly, but no later than seven (7) days from the date of each payment made by the BUYER, file such form, financing statement or other document or any such other actions required to perfect the BUYER LIEN, as may be required by APPLICABLE LAWS.
- c) SELLER hereby irrevocably authorizes the BUYER to, at its sole option, any time and from time to time, file in any relevant jurisdiction any financing statements (including fixture filings, where applicable), forms and amendments thereto that contain the information required by APPLICABLE LAWS of each applicable jurisdiction for the filing of any forms, financing statement, amendment or other document with the relevant GOVERNMENTAL AUTHORITY for the purpose of perfecting, confirming, continuing, enforcing or protecting the BUYER LIEN, without the signature of such SELLER where permitted by law, including the filing of a financing statement, form or any other document describing the GOODS.
- d) SELLER hereby agrees that it shall, promptly upon request by the BUYER, provide all information required by the BUYER and co-operate with the BUYER, in order to perfect the BUYER LIEN.
- e) The BUYER LIEN shall expire upon passage of title to the GOODS to the BUYER.

**38. INTELLECTUAL PROPERTY RIGHTS & INFRINGEMENT**

- 38.1 The SELLER hereby assigns to the BUYER all right, title and interest in the DRAWINGS and DOCUMENTS, but excluding specifically the SELLER IP incorporated in the DRAWINGS and DOCUMENTS. The SELLER hereby grants to the BUYER, a perpetual, irrevocable, non-exclusive, royalty-free, fully paid-up right and license, with the right to use, copy, modify and prepare derivative works of the SELLER IP as incorporated in the DRAWINGS and DOCUMENTS as necessary for the (i) engineering, procurement, construction, installation, maintenance, operation, debottlenecking, modification and

improvement of the PROJECT, and (ii) to enable others to provide any services, equipment or goods in relation to any part of the PROJECT. Accordingly, notwithstanding any proprietary legends or copyright notices to the contrary, the BUYER may copy or reproduce the DRAWINGS and DOCUMENTS and any other information furnished by the SELLER in connection with the SELLER'S proposal and with the CONTRACT and provide such copies or reproductions to others, as necessary, to enable others to design, engineer, procure, construct, install, operate, maintain, debottleneck, improve and modify the PROJECT or any part thereof or provide any services, equipment or goods in relation to any part of the PROJECT.

- 38.2 The SELLER hereby grants to the BUYER an irrevocable, perpetual, royalty-free, fully paid-up license to use the SELLER IP as incorporated in the GOODS, for all uses of the GOODS in the business operations of the BUYER GROUP.
- 38.3 The BUYER hereby grants the SELLER a limited right to use the BUYER IP for the sole purpose of manufacturing the GOODS.
- 38.4 All title to and all rights and interest in the CONTRACT SPECIFIC IP shall vest in the BUYER. The SELLER hereby assigns to the BUYER, with full title guarantee, title to and all rights and interest in the CONTRACT SPECIFIC IP and/or shall procure that the first creator of the CONTRACT SPECIFIC IP also does so. The assignment shall either take effect on the date of the CONTRACT or as a present assignment of future rights that will take effect immediately on the coming into existence of the relevant CONTRACT SPECIFIC IP, as appropriate. The SELLER shall without charge to the BUYER execute all documents and do all such further acts as the BUYER may require to perfect the assignment or shall procure that the first creator of the CONTRACT SPECIFIC IP does so on the same basis. In the event that any of the CONTRACT SPECIFIC IP constitutes patentable subject matter, the PARTIES shall cooperate on prosecution of any patent applications arising therefrom and the maintenance of any letters patent as may be issued thereon.
- 38.5 JOINT IP shall be jointly owned by the BUYER and the SELLER. Each of the BUYER and the SELLER shall have the right to use, commercialize, license or otherwise exploit the JOINT IP without accounting to the other PARTY hereto. In the event that any of the JOINT IP constitutes patentable subject matter, the PARTIES shall cooperate on prosecution of any patent applications arising therefrom and the maintenance of any letters patent as may be issued thereon.
- 38.6 The SELLER agrees that:
- a) The SELLER shall disclose promptly to the BUYER, all BUYER IP and JOINT IP developed by the SELLER, whether alone or jointly with the BUYER.
  - b) The SELLER hereby irrevocably assigns and transfers to the BUYER all of the SELLER'S right, title and interest in and to any BUYER IP.
  - c) The SELLER hereby irrevocably waives, on behalf of itself and all of its employees, and shall contractually require each SUB-SELLER to irrevocably waive, any right to assert any moral rights against the BUYER or any other PERSON with respect to any BUYER IP.



- 38.7 The SELLER shall on an annual basis and for a period of ten (10) years from COMMISSIONING provide the BUYER with enabling disclosures of all new SELLER IMPROVEMENTS. The BUYER may in its sole discretion decide whether to incorporate any SELLER IMPROVEMENTS. The SELLER hereby grants to the BUYER an irrevocable, perpetual, royalty-free, fully paid-up license to use such SELLER IMPROVEMENTS for all uses of the GOODS in the PROJECT.
- 38.8 Except as set forth in this CONTRACT, the SELLER shall not acquire any right, title or interest in the BUYER IP, which shall remain the property of the BUYER. Similarly, save as granted under this CONTRACT, the BUYER shall not acquire any right, title or interest in the SELLER IP and the SELLER IP shall remain the property of the SELLER.
- 38.9 **Infringement:** The SELLER shall, at its sole cost and expense, defend, indemnify and hold harmless the BUYER INDEMNIFIED PARTIES from and against any and all LOSSES which arise from, arise in connection with, or are in any way related to any claim by any PERSON that the GOODS or any part thereof or any use of the GOODS by the BUYER, as contemplated under the CONTRACT, infringes or misappropriates such PERSON'S INTELLECTUAL PROPERTY RIGHTS ("SELLER INFRINGEMENT CLAIM"). The BUYER shall give the SELLER written notice of any SELLER INFRINGEMENT CLAIM against any of the BUYER INDEMNIFIED PARTIES of which the BUYER has actual knowledge and shall give to the SELLER authority to assume control, at the SELLER'S sole cost and expense, of the defense against such SELLER INFRINGEMENT CLAIM through the SELLER'S own counsel. However, the SELLER shall not compromise or settle any SELLER INFRINGEMENT CLAIM or admit any liability or wrongdoing by any of the BUYER INDEMNIFIED PARTIES without the express prior written consent of the BUYER. The BUYER shall reasonably cooperate, at the SELLER'S sole cost and expense, with the SELLER in the defense of such SELLER INFRINGEMENT CLAIM. If the SELLER fails to so assume the defense of such suit, claim or action within ten (10) BUSINESS DAYS after receipt of such notice or fails to diligently defend such suit, claim or action, the BUYER or the BUYER INDEMNIFIED PARTY, against which such claim has been asserted, will (upon delivering notice to such effect to the SELLER) have the right to undertake, at the SELLER'S cost and expense, the defense, compromise or settlement of such suit, claim or action on behalf of and for the account and risk of the SELLER.
- 38.10 In the event the GOODS or any part thereof, or the use of the GOODS or any part thereof, is held to constitute an infringement or misappropriation of any PERSON'S INTELLECTUAL PROPERTY RIGHTS, or the use of the GOODS or any part thereof is enjoined, the SELLER shall, in addition to its indemnification obligations hereunder, at its sole cost and expense: (a) procure the right for the BUYER to continue the use of the GOODS or any part thereof without interruption or cost and expense to the BUYER; (b) replace the GOODS or any part thereof with non-infringing GOODS that complies with the requirements of the CONTRACT; or (c) modify the GOODS or parts thereof, or work so that the modified GOODS or part thereof are non-infringing; provided that, the replaced or modified GOODS or any part thereof or work also fully comply with all the requirements of the CONTRACT. If the SELLER fails or refuses to fulfil its obligations set forth in this Section 38, the SELLER shall (x) refund to the BUYER all amounts paid by the BUYER and all costs and expenses incurred by the BUYER with respect to the infringing GOODS, including the net price, import duty, any transportation, clearing and forwarding, storage and insurance costs without any further obligation of the BUYER to pay any additional amounts in connection with such GOODS, and (y) bear and pay any additional costs

incurred by the BUYER in procuring the right to continue using such infringing GOODS or part thereof.

**39. BANKRUPTCY:**

- 39.1 If SELLER and/or SELLER's suppliers becomes bankrupt or insolvent or has a receiving order made against it or compound with its creditors or being a corporation commences to be wound up (not being member's voluntary winding up for the purpose of amalgamation or reconstruction) or carries on its business under a receiver for the benefit of its creditors or any of them, BUYER may without prejudice to any other rights of BUYER, terminate the PURCHASE ORDER forthwith by notice to SELLER or any person in whom the PURCHASE ORDER may have become vested.
- 39.2 Any GOODS held in SELLER's works on the happening of any events giving the right of termination granted by section 20.0 of GCP or otherwise those have already been paid for by BUYER and shall not be held to be part of the assets of SELLER, title having already been passed to the BUYER under section 4.0 of GCP shall be released to BUYER on demand.

**40. PREVENTION OF CORRUPTION:**

- 40.1 The SELLER certifies that neither it, nor its AFFILIATES, and to the best of its knowledge, none of its employees, representatives, or agents, has made, offered to make or agreed to make any loan, gift, donation or other payment, directly or indirectly, whether in cash or in kind, to or for the personal benefit of the employees of BUYER or its AFFILIATES or any other person or third party by whatsoever name called to obtain any PURCHASE ORDER or in connection with execution or performance of this PURCHASE ORDER. The SELLER further, confirms that if it learns of or has reason to know of any such payment, offer or agreement to make a payment to any of the above mentioned persons or entities for the purpose of obtaining any PURCHASE ORDERS or in connection with execution or performance of this PURCHASE ORDER, it will immediately inform the BUYER in writing communicating to the BUYER all information in respect of the above within the knowledge or possession of the SELLER.
- 40.2 Without prejudice to SELLER's obligations under 40.1, SELLER shall not offer or give, or agree to give, to any employee, agent, servant or representative of the BUYER any consideration of any kind as an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of this PURCHASE ORDER or any other PURCHASE ORDER with the BUYER, or for showing or refraining from showing favour or disfavour to any person in relation to this PURCHASE ORDER or any such PURCHASE ORDER.
- 40.3 The SELLER shall not enter into this PURCHASE ORDER if in connection with it commission has been paid or is agreed to be paid to any employee's or representative of the BUYER by the SELLER or on the SELLER's behalf, unless before this PURCHASE ORDER is made, particulars of any such commission and of the terms and conditions of any agreement for the payment thereof have been disclosed in writing to the BUYER.
- 40.4 Where the SELLER or SELLER's employees, servants, SUB-SELLERS, suppliers or agents or anyone acting on the SELLER's behalf, engages in conduct prohibited by this clause in relation to this or any other PURCHASE ORDER with the BUYER, the BUYER has the right, without prejudice to any other rights or remedies available at law, to:



- a) terminate the PURCHASE ORDER and recover from the SELLER the amount of any loss suffered by the BUYER resulting from the termination;
- b) recover in full from the SELLER any other loss sustained by the BUYER in consequence of any breach of this clause, whether or not the PURCHASE ORDER has been terminated.

#### **41. TAXES AND DUTIES (IMPORT ORDERS)**

- 41.1 All prices for GOODS shall be inclusive of all taxes other than import duties, if any, payable on the import of the GOODS into India. Such import duties shall be the responsibility of BUYER. SELLER shall be liable for any increase in the customs duties during or post clearance including fines, penalties, interest or any other liability imposed by authorities authorised in terms of the Customs Act, 1962, which are due to non-compliance of any rules, regulations, notifications or statutory requirements or any valuation discrepancies, technical documentation errors, errors in any bill of entry (wherever customs clearance is in the scope of the SELLER) or any error in any packing lists, supply, labels and shipping documents or any reason otherwise attributable to SELLER .
- 41.2 SELLER shall pay/reimburse the additional custom duty levied/ paid due to increase in custom duty after the agreed period of delivery has expired.
- 41.3 Any increase in duties/levies /taxes which is payable by the SELLER, outside India, shall be borne by SELLER after the prices have been agreed and PURCHASE ORDER is issued and accepted.
- 41.4 SELLER shall pay, and hold BUYER harmless from and against, any penalty, interest, tax or other charge that maybe levied or assessed as a result of the delay or failure of SELLER to pay any tax properly payable by SELLER or file any return or information required by applicable law.
- 41.5 For the avoidance of doubt it is clarified that, SELLER shall be responsible for all income taxes (including withholding taxes in India, if applicable) arising from SELLER's activities and its personnel under the PURCHASE ORDER and / or SOS, as well as service taxes, if any applicable.

#### **42. EXPEDITING**

- 42.1 The GOODS shall be delivered in strict accordance with the DELIVERY SCHEDULE and the requirements of this CONTRACT. The SELLER shall be responsible for expediting all matters relating to the CONTRACT and SUB-ORDERS. The SELLER shall promptly notify the BUYER in writing of any actual or anticipated delays in the manufacturing or delivery of the GOODS immediately upon becoming aware of the same. Such notice shall include all details regarding the causes of any delay, an estimate of the period of delay, and corrective actions being taken or to be taken by the SELLER and the SUB-SELLERS. The SELLER shall keep the BUYER informed of its expediting plan and shall adopt the BUYER'S requirements for expediting
- 42.2 If the BUYER reasonably believes that, the corrective actions being taken by the SELLER are insufficient or the SELLER does not improve its performance to fully comply with the requirements of the CONTRACT within a reasonable period, the BUYER may require the

SELLER, at SELLER'S cost, to make changes or modifications to its manufacturing or delivery operations or require specific additional measures including an increase in the SELLER'S management, staff and work forces, overtime operations, additional days of work per week and similar measures.

42.3 If the BUYER reasonably believes that the SELLER will not meet the DELIVERY SCHEDULE or the SELLER is not promptly devising the expediting plan or not taking adequate measures for expediting the matters, the BUYER may, at its option, at SELLER'S risk and cost undertake expediting measures. The BUYER shall also have the aforementioned expediting right with respect to expediting any GOODS WARRANTY related work. Whether or not the BUYER has undertaken any expediting measures, the SELLER shall not be absolved from its responsibility for delivery of the GOODS in accordance with the requirements of the CONTRACT.

42.4 As required by the BUYER, the SELLER shall supply schedules, progress reports and un-priced copies of SELLER'S SUB-ORDERS for the BUYER'S use in expediting. The SELLER shall provide the BUYER and the BUYER'S representative's free access during working hours to the SELLER'S premises and the SELLER shall procure from all SUB-SELLERS a similar right for the BUYER and the BUYER'S representatives for expediting purposes with respect to all SUB-SELLERS. The SELLER shall make the BUYER and the BUYER'S representatives aware of all applicable safety procedures and provide the BUYER and the BUYER'S representatives with the necessary safety equipment. The SELLER shall at its cost and expense provide at its premises suitably sized and furnished, heated and air-conditioned office space as specified in the SCOPE OF SUPPLY. Such office space shall include all facilities reasonably required by the BUYER and the BUYER'S representatives' (including desks, chairs, all appropriate computer network connections, housekeeping, telephone and fax facilities and the use of lavatory facilities, hot and cold running water and changing facilities). The BUYER shall be responsible for the costs of international telephone and fax charges only.

#### **43. STORAGE:**

43.1 At the sole written option of COMPANY, SUPPLIER agrees to store the GOODS up to sixty (60) days beyond the delivery dates stipulated in the PURCHASE ORDER, at no cost to COMPANY. For storage after 60 days, SUPPLIER shall, if COMPANY so requires, continue to store the GOODS for another period of 120 days. SUPPLIER shall be entitled to reimbursement of all direct out of pocket expenses incurred for storage of GOODS beyond 60 days' subject to production of evidence of such payment.

#### **44. BACK CHARGES**

44.1 Upon identification by the BUYER of an actual or anticipated BACK CHARGE, the BUYER will issue a BACK CHARGE notice to the SELLER. Such notice shall describe the work or services to be performed by or on behalf of the SELLER, the estimated schedule period for performance, the estimated cost to be charged by the BUYER in respect of such BACK CHARGE and other terms that the BUYER may include.

44.2 The cost of such BACK CHARGE shall be determined as follows:

- a) labor shall be charged at actual cost;
- b) materials shall be charged at net delivered cost, including all freight, insurance,

taxes, duties and storage costs;

- c) equipment and tools shall be charged at actual third party rental cost or at the BUYER'S equipment and tool rental rates, whichever may be applicable;
- d) amounts paid to third parties shall be charged at actual cost; and
- e) twenty-five per cent (25%) of the total of the foregoing (a) through (d) shall be added for indirect costs, taxes, overhead, payroll additives, supervision and administration.

44.3 Within five (5) BUSINESS DAYS after receipt of the BACK CHARGE notice, the SELLER shall return to the BUYER a signed copy of the BACK CHARGE notice, indicating either acceptance of the BACK CHARGE or agreement that the SELLER shall perform the work or services described in the BACK CHARGE notice within the period for performance described in the BACK CHARGE notice. If the SELLER does not return to the BUYER the signed BACK CHARGE notice as required by the preceding sentence, within five (5) BUSINESS DAYS after receipt, then the BUYER may, at its sole option, proceed to perform or have performed from a third party, the work and services described in the BACK CHARGE notice and recover the BACK CHARGE cost from the SELLER.

**45. DEFERRED PAYMENT GUARANTEE SCHEME:**

45.1 During the execution of the PURCHASE ORDER, the BUYER may request the SELLER to organise the payments under valid Deferred Payment Guarantee scheme if the SELLER has such facilities. Alternatively, BUYER may organise such facilities to cover all payment to SELLER under the same facility. In such cases SELLER shall be obliged to co-operate in meeting the requirements of the Financial Institution(s). BUYER shall ensure that all technical and commercial conditions of the original PURCHASE ORDER are maintained. SELLER shall be compensated for any additional liabilities, which may result due to the application of Deferred Payment Guarantee scheme.

45.2 In the event that this PURCHASE ORDER is used by BUYER to qualify for export credit financing, SELLER will provide in a timely manner such documentation and material content certifications as necessary to satisfy the requirements of the relevant export credit agency.

**46. REPRESENTATION AND WARRANTIES**

46.1 In addition to the other representations and warranties contained in the CONTRACT, the SELLER further represents and warrants that:

- a) It is a company, duly organized, validly existing and in good standing under the laws of the country or state in which the SELLER is organized or formed, and has all requisite power and authority to own and operate its business and properties and to carry on its business as such business is now being conducted and is duly qualified to do business in all jurisdictions in which the transaction of its business in connection with the performance of its obligations in connection with this CONTRACT makes such qualification necessary. This CONTRACT has been duly authorized, executed and delivered by the SELLER and constitutes the legal, valid and binding obligation of the SELLER, enforceable against the SELLER in

accordance with its terms, except as enforceability may be limited by APPLICABLE LAWS relating to bankruptcy, receivership or similar laws affecting creditors' rights generally or by equitable principles relating to enforceability;

- b) The execution, delivery and performance of this CONTRACT by the SELLER and the consummation of the transactions contemplated thereby do not and will not: (i) contravene the SELLER'S certificate of incorporation, memorandum or articles of association or its constituent documents or by-laws; (ii) conflict with or result in a breach of or default under any license, indenture or agreement to which the SELLER is a party that would adversely affect the SELLER'S ability to perform its obligations under the CONTRACT; or (iii) breach any APPLICABLE LAWS, judgment, decree, order or ruling of any court, GOVERNMENTAL AUTHORITY or regulatory body to which the SELLER is a party or by which any of its assets are bound;
- c) All authorizations by, approvals or orders by, consents of, notices to, filings with or other acts by or in respect of any GOVERNMENTAL AUTHORITY or any other PERSON required in connection with the execution, delivery and performance of this CONTRACT by the SELLER have been obtained or shall be obtained in due course;
- d) There are no legal or arbitration proceedings or any proceedings by, with or before any GOVERNMENTAL AUTHORITY or any other PERSON, now pending or threatened against the SELLER or any of its AFFILIATES or, to the best of the SELLER'S knowledge, against any SUB-SELLERS, which, if adversely determined, could reasonably be expected to have an adverse effect on the financial condition, options, prospects or business of the SELLER or any SUB-SELLER or its ability to perform its obligations under the CONTRACT;
- e) The SELLER has the requisite personnel, expertise, skill, knowledge, experience and adequate infrastructure (with capacity and ability to augment all of these as may be necessary), and the requisite financial capabilities to successfully perform its obligations under the CONTRACT;
- f) Neither the SELLER nor any of its AFFILIATES and to the best of its knowledge, none of its SUB-SELLERS, nor any of its or its AFFILIATES' or SUB-SELLERS' respective employees, officers, directors or representatives, has made, offered to make or agreed to make any loan, gift, donation, commission, kick-back, bribe or other payment or facility, directly or indirectly, whether in cash or in kind, to or for (i) any governmental official, employee or representative, (ii) any employee, officer, director or representative of the BUYER or its AFFILIATES, or (iii) any other PERSON with respect to the negotiation, execution or performance of the CONTRACT;
- g) The SELLER has examined all aspects of the CONTRACT and the SCOPE OF SUPPLY, the GOODS to be supplied and other terms of the CONTRACT and has satisfied itself fully as to the sufficiency of the consideration for performance and completion of all of its obligations under, and in accordance with, the CONTRACT;
- h) All GOODS shall be produced, sold, delivered and furnished under the CONTRACT in compliance with all APPLICABLE LAWS.

- i) The SELLER is the owner, valid licensee, or authorized user of the SELLER'S internal use tools and any other tools or equipment which will be used incident to design, manufacture and delivery of the GOODS;
- j) Upon transfer of title in respect of the GOODS, as set forth in the CONTRACT, the BUYER shall have absolute ownership, good, marketable and clear title to all such GOODS, free and clear of any and all ENCUMBRANCES
- k) The SELLER shall not disclose to the BUYER, nor make use in the performance of its obligations under or pursuant to the CONTRACT, any INTELLECTUAL PROPERTY RIGHTS of any PERSON, unless such INTELLECTUAL PROPERTY RIGHTS are validly, owned, obtained by or licensed to the SELLER and can be validly used by the SELLER without the BUYER incurring any liability or obligation (past or future) to any PERSON;
- l) There are no current or threatened claims against the SELLER or any of its AFFILIATES alleging that the GOODS, the DRAWINGS and DOCUMENTS or any other property provided by the SELLER to the BUYER under the CONTRACT or used by the SELLER in connection with the performance of its obligations under the CONTRACT, infringe or misappropriate the INTELLECTUAL PROPERTY RIGHTS of any PERSON and the SELLER is not aware of any facts which may give rise to such a claim;
- m) The GOODS, DRAWINGS and DOCUMENTS and the BUYER'S proposed use (as contemplated by the CONTRACT) of the GOODS and all other property provided by the SELLER under the CONTRACT, do not and will not infringe or misappropriate the INTELLECTUAL PROPERTY RIGHTS of any PERSON; and
- n) The SELLER has, or will have prior to passage of title of the GOODS, full and sufficient rights to assign, grant or transfer to the BUYER all INTELLECTUAL PROPERTY RIGHTS of any PERSONS which are incorporated or subsisting in the GOODS or which are required to be held by or assigned, granted or transferred to the BUYER in order for the BUYER to be able to use the GOODS as contemplated by the CONTRACT.

46.2 The BUYER represents and warrants that:

- a) It is a company duly organized, validly existing, and in good standing under the laws of India. The CONTRACT has been duly authorized, executed and delivered by the BUYER and constitutes the legal, valid and binding obligation of the BUYER, enforceable against the BUYER in accordance with its terms, except as enforceability may be limited by APPLICABLE LAWS relating to bankruptcy, receivership or similar laws affecting creditors' rights generally or by equitable principles relating to enforceability;
- b) The execution, delivery and performance of the CONTRACT by the BUYER and the consummation of the transactions contemplated thereby do not and will not (i) contravene the BUYER'S certificate of incorporation, its memorandum or articles of association or constituent documents or by-laws; (ii) conflict with or result in a breach of or default under any license, indenture or agreement to which the BUYER is a party that would adversely affect the BUYER'S ability to perform its obligations under the CONTRACT; or (iii) breach any APPLICABLE LAWS,

judgment, decree, order or ruling of any court, GOVERNMENTAL AUTHORITY or regulatory body to which the BUYER is a party or by which any of its assets are bound; and

- c) There are no legal or arbitration proceedings or any proceedings by, with or before any GOVERNMENTAL AUTHORITY or any other PERSON, now pending or threatened against the BUYER or any of its AFFILIATES, which, if adversely determined, could reasonably be expected to have an adverse effect on the financial condition, options, prospects or business of the BUYER or its ability to perform its obligations under the CONTRACT.

#### **47. ERGONOMICS**

- 47.1 Ergonomics aims to create safe, comfortable and productive workspaces by bringing human abilities and limitations into the design of a workspace, including the individual's body size, strength, skill, speed, sensory abilities (vision, hearing), and even attitudes. Ergonomics aims to improve workspaces and environments to minimise risk of injury or harm. So as technologies change, so too does the need to ensure that the tools we access for work, rest and play are designed for our body's requirements.
- 47.2 The policy for the project facilities with respect to ergonomics is that building, plant & facilities, and auxiliaries are designed, constructed, used and maintained, in such a way that a healthy safe and efficient work environment is established.
- 47.3 The operability/ maintainability and access to equipment will be checked during the reviews in as so far required to ensure that the ergonomics objectives are achieved.

#### **48. RESPONSIBILITY OF COMPLETENESS:**

- 48.1 All equipment, mounting, fittings, accessories or apparatus which may not have been specifically mentioned but which are usual or necessary in the equipment or for the efficient working of the goods supplied shall be deemed to have been included in the PURCHASE ORDER / CONTRACT value and shall be provided by the SUPPLIER / CONTRACTOR without any extra cost. All plant / machinery / equipment / instruments shall be complete in all details whether such details are mentioned in the PURCHASE ORDER / CONTRACT or not.

#### **49. EXCLUSIVE MANUFACTURE:**

- 49.1 If the CONTRACT WORK are made to drawings /specifications or designs provided by the COMPANY / CONSULTANT, the SUPPLIER / CONTRACTOR shall manufacture them exclusively for the COMPANY and no detail or information from such drawings, specifications or designs shall be used on behalf of, or disclosed to, any other persons without written consent of the COMPANY / CONSULTANT.
- 49.2 The technical information imparted and supplied to the SUPPLIER / CONTRACTOR by the COMPANY / CONSULTANT shall at all times remain the absolute property of the COMPANY / CONSULTANT.



**50. SECRECY:**

- 50.1 SUPPLIER shall maintain secrecy and shall not disclose any information related to this PURCHASE ORDER to any Third party which COMPANY considers proprietary and confidential, including, but not limited to, information regarding its PURCHASE ORDER, Plans and strategies, cost and pricing information, data, know-how, designs, drawings, specifications, technical information, future projection, business plans, general business operation, engineering data. The drawings, data and technical information furnished by COMPANY to SUPPLIER in connection with PURCHASE ORDER remains the property of COMPANY and SUPPLIER shall not copy, abstract the information and divulge to any third parties. SUPPLIER to ensure such secrecy even by the SUB-VENDOR. SUPPLIER has agreed to stipulate with sub-vendor/s that they will not disclose and/or comply with this secrecy terms in toto.
- 50.2 SUPPLIER shall not disclose the existence of this PURCHASE ORDER and COMPANY'S name in connection with this PURCHASE ORDER.
- 50.3 Photographs of the GOODS (semi-finished / finished) shall be taken only with written consent of COMPANY.

**51. PUBLICITY AND ADVERTISING:**

- 51.1 SUPPLIER / CONTRACTOR shall not without prior permission of COMPANY / CONSULTANT make a reference to COMPANY / CONSULTANT or any company affiliated with COMPANY / CONSULTANT or to the destination or the description of the EQUIPMENT / GOODS / ITEM(S) or CONTRACT WORK or SERVICES supplied under the PURCHASE ORDER / CONTRACT in any publication, publicity or
- 51.2 advertising media. However, SUPPLIER / CONTRACTOR shall supply to the COMPANY / CONSULTANT such photographs of any part of the CONTRACT WORK as the COMPANY/ CONSULTANT may require or afford facilities to the COMPANY / CONSULTANT to take such photographs for the purpose of indicating progress and technical description. If any such photographs are required for publicity purposes, the same will be arranged by the COMPANY / CONSULTANT.

**52. HEADINGS:**

- 52.1 All the headings in the clauses in this GCP or otherwise in any PURCHASE ORDER documents are intended solely for the purpose of giving broad indication of the contents of the clause and are in no way to be construed as a limitation of the scope of the particular clause to which the title refers.

**53. CONSEQUENTIAL DAMAGES**

Neither PARTY shall be liable to the other for any indirect, remote, special, exemplary damages, or consequential damages such as loss of business opportunity, goodwill or loss of profits, whether foreseeable or not, provided however, the foregoing limitation and exclusion shall not apply to: (i) any of the SELLER'S obligations under Sections 24 and 38; or (ii) liabilities arising out of GROSS NEGLIGENCE, wilful misconduct, fraud or intentional misrepresentation by the SELLER.

**54. INSOLVENCY**

COMPANY may, at any time, by notice, in writing terminate PURCHASE ORDER without additional compensation to SUPPLIER on the happening of any of the following events, that is to say:

- 54.1 If SUPPLIER shall at any time, before final shipment, be adjudged insolvent or enter into any arrangement or composition with his creditors, or suspend payment, or if the firm be dissolved under the partnership act.
- 54.2 If SUPPLIER, being a company, shall pass a resolution or a court shall make an order for the liquidation of its affairs.

**55. MODIFICATION AND AMENDMENTS**

- 55.1 COMPANY/ CONSULTANT shall have the right to modify or amend this PURCHASE ORDER / CONTRACT subject to an adjustment in the price and / or delivery date in accordance with the applicable provision of the PURCHASE ORDER / CONTRACT, if any, or pursuant to mutual agreement. Modification of the PURCHASE ORDER / CONTRACT shall be binding only with written acceptance thereof by the SUPPLIER/ CONTRACTOR and CONSULTANT/ COMPANY.
- 55.2 The SUPPLIER / CONTRACTOR shall carry out such amendments to the PURCHASE ORDER / CONTRACT and shall be bound by same terms and conditions incorporated in the original PURCHASE ORDER / CONTRACT, unless and otherwise specifically amended and mutually agreed to.
- 55.3 Claims, if any, for any adjustment in price / delivery dates, shall be made within 15 days from the date when revisions / changes are ordered by CONSULTANT / COMPANY. Such claims shall not prejudice COMPANY's right to claim the refund of any amount advanced or paid to the SUPPLIER / CONTRACTOR.

**56. LOI/ PURCHASE ORDER/ CONTRACT ACCEPTANCE**

- 56.1 The LOI / PURCHASE ORDER/ CONTRACT issued by the COMPANY is expressly conditioned on the SUPPLIER / CONTRACTOR's acceptance of all the terms and conditions thereof.
- 56.2 The acceptance of LOI/ PURCHASE ORDER/CONTRACT shall be confirmed by returning one countersigned copy of the same to the COMPANY within 10 days from its receipt as token of having accepted the PURCHASE ORDER / CONTRACT without reservation.
- 56.3 The acceptance shall be confirmed by a duly authorised officer of the SUPPLIER / CONTRACTOR counter signing the LOI / PURCHASE ORDER / CONTRACT with the seal of the Company.
- 56.4 The LOI / PURCHASE ORDER / CONTRACT constitutes the entire agreement between the parties hereto and with the SUPPLIER / CONTRACTOR's acceptance of the LOI / PURCHASE ORDER / CONTRACT, SUPPLIER / CONTRACTOR waives and considers NULL & VOID all his general conditions of sale and all other previous communications merging into the PURCHASE ORDER/CONTRACT.

**57. TRANSFER OF PROPERTY**

In the absence of any provision to the contrary, transfer of property in the EQUIPMENT / GOODS / ITEM(S) shall be deemed to have taken place as follows:

- 57.1 F.O.R / F.O.T despatch point: On handing over the EQUIPMENT / GOODS / ITEM (S) to the carrier against a receipt and such receipt having been received by COMPANY / CONSULTANT.
- 57.2 F.O.R / F.O.T Destination: On receipt of the EQUIPMENT / GOODS / ITEM(S) at SITE.
- 57.3 EQUIPMENT / GOODS / ITEM(S) erected by SUPPLIER / CONTRACTOR: On temporary acceptance by CONSULTANT or COMPANY at SITE. Transfer of property in the EQUIPMENT / GOODS / ITEM(S) shall be without prejudice to any guarantee or liability of SUPPLIER / CONTRACTOR as to the quality, suitability or performance of the EQUIPMENT / GOODS / ITEM(S).
- 57.4 EQUIPMENT / GOODS / ITEM(S) commissioned by SUPPLIER / CONTRACTOR: On taking over by CONSULTANT / COMPANY for regular operation after test runs at maximum capacity for the specified period are satisfactorily performed.
- 57.5 In case of COMPANY MATERIALS supplied to the SUPPLIER / CONTRACTOR, notwithstanding whether Free Issue material (FIM) or otherwise and / or whether advance is paid to the SUPPLIER / CONTRACTOR or not, for fabrication / assembly / modification, then such fabricated EQUIPMENT / GOODS / ITEM(S) , including surplus / returnable raw materials / other equipment intended for the COMPANY shall be so designated within the factory premises and no third party can claim a lien, charge or right over the same.

**58. LEASING**

During the execution of the PURCHASE ORDER, the BUYER may decide to novate the PURCHASE ORDER in full / part thereof to any Leasing or Financial Institution for financing or for any other purpose. In such cases SELLER shall be obliged to co-operate in meeting the requirement of the leasing Institutions. BUYER shall ensure that all technical and commercial conditions of the PURCHASE ORDER are maintained. SELLER shall be compensated for any additional tax liabilities, which may result due to inability of the BUYER or the leasing buyer to issue necessary certificates.

**59. FORCE MAJEURE**

- 59.1 Neither the SUPPLIER / CONTRACTOR nor the COMPANY/CONSULTANT shall be considered to be in default in the performance of their respective obligations, if such performance is prevented or delayed for any causes beyond the reasonable control of the SUPPLIER / CONTRACTOR such as -
  - 59.1.1 Any war or hostilities, insurgency or national emergencies.
  - 59.1.2 Acts of God such as fire, flood, cyclone, earthquake, epidemics or any other natural physical disaster.

- 59.1.3 Any law or order or Acts of state such as any restriction imposed by the Government (Central or any State Govt.) or any other statutory body which prevents or delays the execution of the PROJECT or CONTRACT WORK related to PURCHASE ORDER / CONTRACT.
- 59.1.4 Civil commotions, unrest or riots, act of sabotage.
- 59.1.5 Impossibility of the use of any road, railways, seaport, airport or means to transport the EQUIPMENT / GOODS / ITEM (S)
- 59.1.6 Any accident, fire or explosion which affects the COMPANY / CONSULTANT / SUPPLIER / CONTRACTOR in execution / progress / completion of the PROJECT or CONTRACT WORK related to the PURCHASE ORDER / CONTRACT.
- 59.1.7 Any industrial unrest or strike, lockout, impossibility to carry out normal work affecting the PROJECT or CONTRACT WORK related to the PURCHASE ORDER / CONTRACT. Any cause other than those stated above, shall not be construed as force majeure.
- 59.2 Either PARTY may make a claim for a FORCE MAJEURE event. The PARTY claiming the benefit of FORCE MAJEURE hereunder shall (a) within five (5) days of the occurrence of the FORCE MAJEURE event, notify the other PARTY of the circumstances creating the FORCE MAJEURE event, and (b) provide sufficient documentation to establish to the reasonable satisfaction of the other PARTY; the impact of the event of FORCE MAJEURE on such PARTY. The affected PARTY shall make every reasonable effort to remove or remedy the cause of such FORCE MAJEURE or mitigate its effect as quickly as possible and resume performance whenever and to whatever extent possible without delay, including through the use of alternate sources, workaround plans or other means. If the FORCE MAJEURE event described in sub-section (a) above has ceased, then the PARTY that claimed the benefit of FORCE MAJEURE shall notify the other PARTY within five (5) days of cessation of the FORCE MAJEURE event
- 59.3 Force Majeure shall not include occurrences as follows:
- 59.3.1 Late delivery of materials caused by congestion at SELLER's facilities or elsewhere, an oversold condition of the market, inefficiencies, or similar occurrences.
- 59.3.2 Late performance or non-performance by SELLER and/or SUB-SELLER caused by unavailability of equipment, supervisors or labour, services inefficiencies or similar occurrences.
- 59.3.3 Mechanical breakdown of any item of SELLER's or its SUB-SELLER's equipment, plant or machinery.
- 59.3.4 Delays due to ordinary storm or inclement weather or other weather conditions which are or may be reasonably expected.
- 59.3.5 Financial distress of SELLER or any SUB-SELLER
- 59.3.6 Unless the delay by SELLER or SUB – SELLER arises out of a FORCE MAJEURE occurrence and is beyond both SELLER's and SUB – SELLER's or control and an alternate acceptable source of services, equipment or material is unavailable.

- 59.4 If an event of FORCE MAJEURE has occurred and continues for a period of sixty (60) continuous days or more, then the BUYER shall be entitled to terminate all or any portion of the CONTRACT after giving the SELLER ten (10) BUSINESS DAYS prior NOTICE OF TERMINATION. If, at the expiry of such period of ten (10) BUSINESS DAYS, the event of FORCE MAJEURE subject to such notice continues, the CONTRACT shall be terminated as specified in the NOTICE OF TERMINATION.
- 59.5 If the CONTRACT or portion thereof is terminated under Section 44.2, neither PARTY shall be liable to the other in any respect relating to the portion of the CONTRACT terminated, except to the extent of any liabilities which accrued between them prior to the event of the FORCE MAJEURE. Any delay or failure in performance by either PARTY hereto shall not give rise to any claims for LOSSES if, and to the extent, such delay or failure is caused by an event of FORCE MAJEURE
- 59.6 Any delay or failure in performance by either PARTY hereto shall not give rise to any claims for damages or loss of anticipated profits it, and to the extent, such delay or failure is caused by FORCE MAJEURE.

**60. SEVERABILITY:**

- 60.1 If any provision of this PURCHASE ORDER is declared or found to be illegal, unenforceable or void, the PARTIES shall negotiate in good faith to agree upon a substitute provision that is legal and enforceable and is as nearly as possible consistent with the intentions underlying the original provision. If the remainder of this PURCHASE ORDER is not materially affected by such a declaration or finding and is capable of substantial performance, then the remainder shall be enforced to the extent permitted by law.

**61. INTEROPERABILITY**

The SELLER shall ensure that the GOODS shall be fully interoperable as set forth in the CONTRACT (PURCHASE ORDER), Technical Specifications and Scope of Work. The SELLER shall reasonably co-operate with third party providers as directed by the BUYER to the extent necessary for the implementation of the PROJECT, subject to appropriate confidentiality agreements with such third party providers.

**62. LANGUAGE:**

- 62.1 All documents pertaining to the PURCHASE ORDER including DRAWINGS and DOCUMENTS, correspondence, operating and maintenance manuals/instructions, schedules, reports, notices and other submittals by either PARTY to the other shall be in the English language.

Any document, including documents issued/certified by any PERSON in any jurisdiction, if not in English shall be translated into English and notarised, by the PARTY in possession of such document and the English version of such documents shall be the governing and prevailing document.

**63. COUNTERPARTS:**

- 63.1 These GCP may be executed by one or more of the PARTIES on any number of separate counterparts, and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

**64. NOTICE:**

- 64.1 Any notice (which term shall in this clause include any other communication) required to be given under the PURCHASE ORDER or in connection with the matters contemplated by it shall be in writing in the English language.

- 64.2 Any notice shall be addressed to the relevant PARTY at the address provided in the PURCHASE ORDER and may be:

- 64.2.1 personally delivered or delivered by courier, in which case it shall be deemed to have been given upon delivery at the relevant address if it is delivered not later than 1700 hours on a BUSINESS DAY or, if it is delivered later than 1700 hours on a BUSINESS DAY or on a day which is not a BUSINESS DAY, at 0800 hours on the next BUSINESS DAY

**65. ORDER OF PRECEDENCE:**

- 65.1 In case of any conflict between these GENERAL PURCHASE CONDITIONS and the TERMS AND CONDITIONS stated in the particular PURCHASE ORDER / CONTRACT, as amended / revised to date, the latter shall prevail to the extent applicable.

**66. INTERFACE WITH THIRD PARTIES**

The SELLER shall work with the BUYER and all other vendors, EP and CONSULTANTS of the BUYER to ensure effective management and resolution of all technical issues encountered at any interface between the GOODS and all other goods and equipment to be used in relation to the PROJECT. The SELLER shall, subject to its obligations of confidentiality under the CONTRACT and any CONFIDENTIALITY AGREEMENT, share all relevant information with such other vendors or CONSULTANTS, as directed by the BUYER.