



**vedanta**

**transforming elements**

**GENERAL TERMS AND CONDITIONS - SUPPLY**  
**Vedanta/Sterlite Copper/GTC/2018/01**

## 1. DEFINITIONS & INTERPRETATIONS

### 1.1. Definitions:

In construing the Contract the following words and expressions shall have the meanings hereby assigned to them:

#### 1.1.1. **Abandon**” means either:

Contractor substantially ceases performance of the Contract for a period of 10 Business Days or longer for any reason other than:

- the occurrence of an event of Force Majeure; or
  - the issuance of instructions by Purchaser to suspend performance under the Contract pursuant to Clause 19.
- a failure by Contractor to resume performance under the Contract within 10 Business Days after:
- receipt of Notice pursuant to Clause 19 instructing Contractor to resume his obligations suspended by Company; or
  - the termination or cessation of an event of Force Majeure;

#### 1.1.2. **“Affiliate”** shall mean with respect to any person, any other person that, directly or indirectly, controls, is controlled by or is under common control of such specified person. For the purposes of this definition, “control” means the direct or indirect beneficial ownership of more than fifty percent (50%) of the issued share capital, stock or other participating interest or the legal power to direct or cause the direction of the general management, of the company, partnership or other person in question, and “controlled” shall be construed accordingly;

#### 1.1.3. **“Agreement/Contract”** means this Agreement entered into by and between the Parties hereto together with any and all Annexures, appendices, schedules, addendums and amendments hereto as well any Purchase Order(s) issued thereunder, signed by the authorized representative of the Parties shall be deemed to be read as an integral part of this Agreement.

#### 1.1.4. **“Claims”** shall mean any and all claims, demands, liens, judgments, awards, remedies, debts, liabilities, damages, injuries, costs, losses, legal and other expenses, or causes of action of whatsoever nature, including, without limitation, those claims made or enjoyed by dependants, heirs, claimants, executors, administrators, successors or assigns, in whatever jurisdiction the foregoing may arise.

#### 1.1.5. **“Commissioning”** shall mean successful commercial operation of the Material (including fully functional Material), and demonstration of performance guarantees as defined in Annexure 1 - Technical Specifications/Scope of Work.

#### 1.1.6. **“Commissioning Certificate** will mean certificate issued by the Purchaser to the Supplier upon successful Commissioning of the Material.

#### 1.1.7. **“Defect”** means any non-compliance with the requirements of this Contract including those specified in the Scope of Work including but not limited to those listed in Annexure 1 (Scope of Work).

#### 1.1.8. **“Deleterious material”** shall mean any element, compound present in the goods which is not part of standard Specification or a typical assay as per the purchase order or agreement and which is likely to cause or may in general probability cause harm or damage to the operations of the Purchaser and also restricts or affects performance of the goods as per the desired / industry / specified standards.

#### 1.1.9. **“Good Industry practice”** shall mean the exercise of that degree of skill, diligence and prudence which would reasonably and ordinarily be expected from a skilled and experienced Supplier, equipment manufacturer applying the standards generally adopted by Indian/International Supplier.

- 1.1.10. **“Governmental Authority”** shall mean any governmental department, local authority, commission, board, bureau, agency, regulatory authority, instrumentality, court or other judicial or administrative body, central, state, provincial or local having jurisdiction over the matter or matters in question.
- 1.1.11. **“Law”** any legislation, order, directive, or other legal or regulatory requirement in any relevant jurisdiction, from time to time.
- 1.1.12. **“Material”** shall mean the goods, equipment, or products (or parts thereof) to be purchased or to be supplied in accordance with this Agreement and/or as specified in the Purchase Order.
- 1.1.13. **“Mechanical Completion”** shall mean that all equipment has been erected on their respective foundations including electrical, piping and instrumentation/ structural items etc., and load trial/testing has been completed and the Facility is ready for commissioning in accordance with Annexure 1.
- 1.1.14. **“Purchase Order”** shall mean (i) the written instruction (which, for the purposes of this definition, includes electronic communications) by Purchaser issued to Supplier for the provision of Material under this Agreement, which shall include the specific requirements with respect to the scope of work, applicable rates and charges and the location of the Site; and (ii) if applicable, the oral instruction under this Agreement which shall be reduced to writing as soon as practicably possible including the specific requirements described above.
- 1.1.15. **“Purchaser Group”** shall mean and include Purchaser and its Affiliates.
- 1.1.16. **“Representative”** in respect of the Purchaser and the Supplier to include the persons so identified on the Purchase Order as their representative or such other person(s) notified by the Purchaser or the Supplier in writing to the other from time to time, which will include amongst others consultants engaged by the Party or any Affiliate of the Supplier having commonality of interest with the Supplier.
- 1.1.17. **“Supplier”** shall mean the person, firm or company identified on the Purchase Order as the provider of Material.
- 1.1.18. **“Site”** shall mean the location or locations identified in the Purchase Order, as the actual place or places provided or made available by the Purchaser, to which Material are to be delivered or where works are to be done by the Supplier.
- 1.1.19. **“Specification”** includes but is not limited to assays whether typical or otherwise or the scope or technical parameters of the Material attached to or referred to in this Agreement and/or any Purchase Order. Further Specification shall, in case of Material, always include being free from Deleterious material.
- 1.1.20. **“Supplies”** shall mean and include all supplies, equipment’s, materials, consumables, spare parts, which are to be supplied by the Contractor under the Contract for the completion of Works.
- 1.1.21. **“Supplier Group”** shall mean and include Supplier, its Affiliates and its and their sub-suppliers and suppliers of any tier and its and their respective Affiliates.
- 1.1.22. **“Trade Usage”** refers to generally accepted practice or norms in relation to expected standards, permissible deviation, internationally accepted scientific data, foreseeable consequences attributable to deviation beyond permissible deviation established over a period of time in course of commercial dealing between the parties to this Agreement or their associates.

## 1.2. Interpretation:

In this Contract:

- 1.2.1. Headings are for convenience only and shall not govern or affect the interpretation of the Contract;
- 1.2.2. Except where the context otherwise requires, references to one gender include all genders and the singular includes the plural and vice versa;

- 1.2.3. Except where the context otherwise requires, references to any enactment shall include references to such enactment as re-enacted, amended or extended and any sub-ordinate legislation made under it;
- 1.2.4. References to persons include companies, corporations, partnerships, associations, and other organizations whether or not having a separate legal personality;
- 1.2.5. Except where otherwise indicated, reference to clauses, sub-clauses, recitals and Schedules shall be to the clauses, sub-clauses, recitals and Schedules of this Contract;
- 1.2.6. "including" means "including without limitation";
- 1.2.7. If the day on which any act, matter or thing is to be done under or pursuant to this Contract is not a business day as per Trade Usage, that act, matter or thing shall be done on the preceding business day.
- 1.2.8. Unless specifically provided otherwise, the words 'herein', 'hereof', 'hereto', 'hereinafter' and 'hereunder', and words of similar import, refer to this Contract as a whole, and not only to the specific provision in which such words are set forth.
- 1.2.9. In the event of any inconsistency or discrepancy between these General Terms & Conditions as provided under this document and any other Schedule(s) forming part of the Contract, then Parties shall first endeavour to harmoniously construe these Conditions and in case, such harmonious construction is not feasible in the opinion of Owner, then the terms of the main agreement shall prevail.
- 1.2.10. The Contract is the result of negotiations between the Parties, and has been reviewed by the Parties and their respective counsel. Accordingly, the Contract shall be deemed to be the product of the Parties, and there shall be no presumption that an ambiguity should be construed in favor of or against any Party solely as a result of such Party's actual or alleged role in the drafting of the Contract.
- 1.2.11. The recitals set forth in the Contract are and for all purposes shall be interpreted as being an integral part of this Agreement, constituting acknowledgments and agreements by and between the parties hereto, and are incorporated in this Contract by this reference. Recitals shall have the same contractual and legal significance as any other language in this Contract.
- 1.2.12. In the event of inconsistency between the provisions of these conditions and the Purchase Order/Contract or writing between the parties hereto, the provisions of the Purchase Order/Contract shall prevail.
- 1.2.13. Whenever provision is made for the giving of notice, approval or consent by any Person, unless otherwise specified such notice, approval or consent shall be in writing and the words "notify" and "approve" shall be construed accordingly.
- 1.2.14. Subject to the Purchaser notifying the Supplier in writing and in explicit terms that (a) these conditions do not apply to the Contract or (b) the Purchaser agrees to be bound to specified variations to these conditions for the purposes of the Contract, these conditions are the only conditions upon which the Purchaser contracts with the Supplier and they shall govern the Contract to the entire exclusion of all other terms or conditions. In the event of any conflict between these conditions and a Purchase Order the Purchase Order will prevail.
- 1.2.15. Each Purchase Order which the Purchaser sends to the Supplier shall be deemed to be an offer by the Purchaser to buy Material subject to these conditions and no Purchase Order shall be accepted until the Supplier either expressly by giving notice of acceptance, or impliedly by commencing to fulfil the Purchase Order, in whole or in part accepts the offer.
- 1.2.16. No terms or conditions endorsed upon, delivered with or contained in the Supplier's quotation, acknowledgement or acceptance of a Purchase Order, specification or other document shall form part of the Contract and the Supplier waives any right which it otherwise might have to rely on such terms and conditions.

## 2. REPRESENTATION

2.1. The Supplier represents that:

- 2.1.1 It is a duly organized company/business entity validly existing under the laws where it is incorporated/established, and has experience, expertise, ability and skills as required to supply Materials and perform the obligations as detailed in the Scope of Work above and as may be necessary to perform its obligations hereunder in a professional manner.
- 2.1.2 It has all the requisite power, authority and approvals required to enter into this Agreement and will have all the requisite power, authority to perform fully each and every obligation under this Agreement.
- 2.1.3 This Agreement has been duly executed and delivered by its duly authorized representatives and constitutes its legal, valid and binding obligation enforceable against it in accordance with its terms.
- 2.1.4 The execution, delivery and performance of this Agreement and all instruments or addenda required hereunder by it does not contravene, violate or constitute a default of or require any consent under the provisions of any other agreement or instrument to which it is bound, including the constitutional documents thereof, or any order, judgment, decree or injunction of any court of law.
- 2.1.5 No legal proceedings are pending or threatened against it before any court, tribunal or authority which do or may restrain or enjoin its performance or observance of the terms and conditions of this Agreement or which do or may in any other manner question the validity, binding effect or enforceability of this Agreement.
- 2.1.6 No order has been made or petition presented for the bankruptcy protection, winding up or dissolution thereof against it.
- 2.1.7 It shall maintain high professional standards to ensure performance of this Agreement as per best business practices and in full compliance with statutory obligations.
- 2.1.8 It has all necessary statutory and regulatory permissions, approvals and permits for the running and operation of its establishment for the conduct of its business;
- 2.1.9 It has full right, title and interest in and to all trade names, trademarks, service marks, logos symbols and other proprietary marks (IPR) (including limited right of use of those owned by any of its vendors, affiliates or subcontractors) which it provides to the Company, for use related to the Material/Services, and that any IPR provided by the Supplier shall not infringe the IPR of any third party;
- 2.1.10 The Supplier represents that there is no inquiry/ investigation pending by the Police against the Supplier or its employees. The Supplier undertakes that it will confirm at his own cost and expense and shall comply in all respect with the provisions of Government Authority applicable to the Supplier and /or to the Supplier's employees;
- 2.1.11 The Supplier shall be liable for all fines, penalties, and the like of parking, traffic and other criminal offences arising out of or concerning the use of any vehicle for performing the Agreement and any toll charges or entry Taxes payable locally and the Supplier accordingly indemnifies Company against all such liability.
- 2.1.12 The Supplier has sufficient resources available to respond to emergencies/ incidents, which may occur along established transportation routes. In case of any accident resulting in loss or damage to property of life, the sole responsibility for any legal or financial implication would vest with the Supplier. Company shall have no liability whatsoever.
- 2.1.13 Supplier has the the necessary experience and proper qualifications to supply the Material contemplated under the Purchase Order;

- 2.1.14 Supplier has reviewed and examined all applicable laws, codes and standards (including health, safety, environmental and security requirements); and
- 2.1.15 Supplier has carefully reviewed all documents, plans, drawings and other information that it deems necessary regarding supply of the Material and/or its performance of the the Contract.
- 2.1.16 The Supplier represents that it will not be in violation of any provisions of any applicable laws, its bye- laws or charter, or any indenture, agreement or instrument to which it is a party or by which it or its property may be bound or affected in execution, delivery and performance of this Contract. This Contract has been duly executed and delivered by the Supplier and constitutes a legal, valid and binding obligation of the Supplier, enforceable in accordance with its terms, except as such enforceability may be limited by Bankruptcy, insolvency, or similar events which may arise in future.
- 2.1.17 The Supplier confirms that it is not a party to any legal, administrative, arbitral, investigational or other proceeding or controversy which is pending, or, to the best of his knowledge, threatened, which would adversely affect its ability to perform this Contract.
- 2.1.18 The Supplier represents that neither it, nor any of its suppliers is engaged in any practice inconsistent with the Child Labour (Prohibition and Regulation) Act, 1986, which, inter alia, requires that a child shall be protected from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical mental, spiritual, moral or social development. Any breach of this representation shall entitle the Purchaser to terminate this Contract immediately upon notice to the Supplier, at no cost to the Purchaser.
- 2.1.19 The Supplier represents that it does not discriminate against anyone unlawfully, or treat anyone unfairly, on the grounds of their sex, gender identity, marital, or family status. The Supplier further represents that anyone acting on its behalf, its employees and sub-contractors involved in the Contract do not do so either, and that those involved in the management or operation of the Contract receive appropriate training on equal opportunities, equal remuneration, prevention and prohibition of sexual harassment of women at work place and associated good practices.

### **3. WARRANTIES**

- 3.1. The Supplier warrants and guarantees that:
  - 3.1.1. The Material shall conform to the Purchase Order (including, but not limited to, the Specification, which the Supplier warrants to be accurate and complete in all material respects and not misleading);
  - 3.1.2. The Material shall comply with any applicable quality standards and/or other standards or specifications as requested by the Purchaser and these standards/specifications shall not be changed without the prior written consent of the Purchaser;
  - 3.1.3. in the case of the Material, be of the best available design, of the best quality and workmanship and shall be free from fault or defect (including latent defect), with such tolerances as stated in the specification or on the drawings;
  - 3.1.4. if the Material are sold by sample then they shall conform to the sample;
  - 3.1.5. it is aware of the purpose and usage of the Material by the Purchaser including the technical parameters attributable to the usage of the Material; and

- 3.1.6. in the case of the Material, be complete and fully operational and shall be delivered with all parts (and also those parts that are not specified in the Purchase Order but which are required for proper operation and also including the usual safety devices, special tools etc.);
  - 3.1.7. in the case of the Material, when delivered, be accompanied by a delivery note which shows, inter alia, the Purchase Order number, date of Purchase Order, number of packages and contents and, in the case of part delivery, the outstanding balance remaining to be delivered, be clearly marked as such;
  - 3.1.8. be accompanied by all appropriate information, warnings, instructions and documentation in relation to the safe use, handling, storing, operation, consuming, transportation and disposal of any Material or parts or Material, to the Purchaser; and
- 3.2. The Supplier further warrants that the Material shall conform with all Laws applicable to:
- 3.2.1. such Material as regards the design, manufacture, quality, packaging, transportation, delivery, labelling, health, safety and environmental standards and use of such Material which are in force at the time of supply; and/or
  - 3.2.2. The Supplier warrants that it shall at all times and at its and their own expense:
  - 3.2.3. maintain all necessary licenses and consents and comply with all applicable Law in performance of the Contract;
  - 3.2.4. adopt safe working practices and at the proper time supply and install such guards and safety devices as may be necessary to comply with the provisions of all health and safety Laws;
  - 3.2.5. ensure that, in performing its obligations under the Contract, it does not cause any disturbance or damage to the industrial operations and property at the relevant site;
  - 3.2.6. comply with the policy or code of conduct as notified by the Purchaser to the Supplier from time to time;
  - 3.2.7. assist the Purchaser and its representative in the investigation of any accident or incident or the resolution of any dispute, which assistance shall include, but not be limited to, providing access to documents and records and providing information reasonably requested by the Purchaser;
  - 3.2.8. notify the Purchaser's representative promptly as soon as it becomes aware of any breach of Laws or any health and safety or issue which arises in relation to the Material (which notification shall not release the Supplier from any liability and/or obligations in respect of such breach, hazard or issue);
  - 3.2.9. notify the Purchaser's representative promptly after it becomes aware that the Purchaser is not or may not be complying with any of the Purchaser's obligations, provided that the Supplier shall not be entitled to rely on such notice as relieving the Supplier's performance under the Contract, save to the extent that it actually restricts or precludes performance of the Supplier's obligations.
- 3.3. The representations and warranties mentioned herein shall survive any inspection, test, performance, acceptance or payment pursuant to the Contract and shall be extended to any repaired or replaced Material provided by the Supplier.
- 3.4. Each Party hereby warrants that it has not entered into this Agreement relying on any warranty, representation or undertaking except for any warranty, representation or undertaking expressly set out in this Agreement.
- 3.5. Without prejudice to any other rights which Purchaser may have hereunder, Supplier shall, at Purchaser's option and Supplier's cost, either repair or replace any and all Material which fail or are found to be defective within a period of eighteen (18) months from the date of delivery or twelve (12) months from the date of commencement of use, whichever is the later. If Supplier is required to repair or replace defective Material, the warranty period shall be renewed for the repaired or replaced Material.



#### **4. SCHEDULING AND PROGRESS INFORMATION**

- 4.1. On request made by the Purchaser, the Supplier shall prepare a manufacturing schedule or a progress report, and send copies of the schedule or the report to the Purchaser. These schedules or reports shall specify:
  - 4.1.1. in the case of the Material, the progress of the drawing operation, the Material supply, the operations in the workshop and the delivery date; and
  - 4.1.2. in each case, such other information as the Purchaser may request.
- 4.2. Where the Supplier is of the opinion that it will be unable to meet its obligations under the Contract or that it will only be able to meet its obligations in part, or too late, it shall promptly notify the Purchaser accordingly in writing, specifying the conditions and circumstances causing such failure or delay. This obligation also arises if the source of the problem lies with the Purchaser.
- 4.3. Where the Supplier fails to so notify the Purchaser or Purchaser's Representative, even if the Purchaser should have been made aware of the existence of those conditions and circumstances, no reliance by the Supplier on the conditions and circumstances referred to above can exclude, reduce or mitigate the Supplier's obligations under the Contract.

#### **5. INSPECTION AND TESTING**

- 5.1. At any time prior to delivery of the Material to the Purchaser or readiness of the Material, the Purchaser (or its nominee) shall have the right to inspect and test the Material or inspect the work being carried out in performance of the Scope of work under this Contract. If at the date of the inspection the Material are located at the premises of the Supplier or its, or their associated companies or subcontractors, the Supplier shall ensure that the Purchaser or its nominee has access on reasonable notice and shall ensure that the inspectors shall receive such information and assistance as they reasonably request in relation to their inspection or testing of the Material.
- 5.2. The readiness for carrying out the inspection and testing must be notified to Purchaser in writing 7 working days before the anticipated date of inspection. Inspection call should contain internal inspection and test reports. Should the Purchaser waive the inspection and testing, the Supplier will be notified accordingly and shall execute the inspection and testing by himself deemed as in Purchaser's Representative's presence and the Supplier shall forthwith forward to the Purchaser the inspection and test reports in triplicate.
- 5.3. Should such inspection entail any cost, these shall be borne by the Supplier with the exception of the travel, accommodation and personal costs for the inspectors appointed by the Purchaser or the Purchaser's authorized representatives.
- 5.4. Where special tests in addition to agreed tests are required by the Purchaser (before the acceptance of Material), the Supplier shall bear the cost of the testing only if such special test proves that the Supplies are not in accordance with the specified Specifications. However, if such special tests are necessary based on the result of the agreed test, then cost of all such special tests shall be to the account of the Supplier. In all the other cases cost of special tests shall be borne by the Purchaser.
- 5.5. Each test certificate shall be approved by the Purchaser's Representative. Each test certificate shall contain, wherever required:
  - 5.5.1. Conformity with statutory regulations/stipulations or provisions.
  - 5.5.2. Material test certificate at the time of Material identification. In case Material test certificate cannot be produced, the Material shall be tested in a reputed laboratory at Supplier's cost for fabricated equipment and Material test certificate from such laboratory shall be produced.
  - 5.5.3. Performance certificates for rotating / moving equipment. (iv). Special test certificates, if any.



- 5.6. If the results of such inspection or testing cause the Purchaser to be of the opinion that the Material do not conform or are unlikely to conform with the Purchase Order or to any Specification and/or patterns supplied or advised by the Purchaser to the Supplier or that the Material may not be delivered to time, the Purchaser may, at its option:
- 5.6.1. inform the Supplier in writing, following which the Supplier shall immediately take such action as is necessary to ensure conformity;
  - 5.6.2. reject the Material; or
  - 5.6.3. require and witness further testing and inspection.
- 5.7. Material supplied shall be strictly as per the Purchaser's required specifications / quality standards as mentioned in the Purchase Order. The Purchaser reserves the right to reject any part (or) full quantity of the supplies if the same does not comply with the specifications and quality standards mentioned in the Purchase Order. In case of rejection of Material supplied, a discrepancy note shall be forwarded to the Supplier and the replacement for the rejected Material shall be effected within 15 days at the Supplier's cost and expense.
- 5.8. The carrying out of the inspection and testing by the Purchaser, or any waiver thereof, shall in no manner relieve the Supplier from discharging any of his contractual obligations. Notwithstanding any such inspection or testing or any statement made by any inspector, the Supplier shall remain fully responsible for the Material and any such inspection or testing shall not diminish or otherwise affect the Supplier's obligations under the Contract.
- 5.9. Payment made by the Purchaser against the particular item shall not constitute acceptance of the item ordered. If rejected, material will be returned to the Supplier for replacement and all handling, transport charges to and from incurred in that behalf shall be to Supplier's account.

## **6. PACKING, MARKING ETC.**

- 6.1. The Supplier shall ensure that all the packaging requirements as per ISO: 14001, OHSAS: 18001 Standards are met by him and shall ensure that there shall be no spillage or leakage of Material during loading, transit and unloading.
- 6.2. The general specification of packing and marking in respect of Material shall be as per the then prevailing best Industry Practices and in accordance with the prescribed specifications. The Material shall be packaged by the Supplier so as to ensure that they will be in good condition upon arrival at their destination and shall be accompanied by a delivery note which shows, inter alia, the Purchase Order number, date of Purchase Order, number of packages and contents.
- 6.3. The Purchaser has a policy of 'Green Purchase'. The Supplier shall pack Material with use of bio-degradable or 'green' materials and if unavoidable and necessary may use polyethylene sheets of more than 20 microns for packaging.
- 6.4. The Supplier shall ensure that Material Safety Data Sheet (MSDS) is sent along with the Material supplied, and all precautionary measures are taken for all Hazardous Material & notified Material as per relevant rules and regulations in force.

## **7. DELIVERY AND QUANTITY**

- 7.1. Timely delivery of Material is the essence for the Purchase Order.
- 7.2. The Material shall be delivered at the place and time specified in the Purchase Order or to such other place of delivery as is agreed by the Purchaser in writing prior to delivery of the Material. Unless otherwise stipulated by the Purchaser in the Purchase Order, deliveries shall only be accepted by the Purchaser in normal business hours.
- 7.3. The Supplier shall deliver the quantity specified in the Purchase Order. All Material supplied on a price for weight basis shall be delivered over the Purchaser's weighbridge. The net weight so recorded shall be final and binding upon the parties of the Contract.

- 7.4. Where the Purchaser agrees in writing to accept delivery by instalments the Contract shall be construed as a single contract in respect of each instalment. Failure by the Supplier to deliver any one instalment shall entitle the Purchaser at its option to treat the whole Contract as repudiated.
- 7.5. Quantities of Material to be supplied shall include adequate extra to cover shortage/damage during transportation, storage, handling, construction, erection and commissioning. Should it be found that the quantities supplied are not adequate till Commissioning; the Supplier shall supply further quantities within the time Schedule and without any extra cost to the Purchaser.
- 7.6. If the Material are delivered to the Purchaser in excess of the quantities ordered the Purchaser shall not be bound to pay for the excess and any excess shall be and shall remain at the Supplier's risk and shall be available for collection at the Supplier's expense within 3 months. Thereafter the Purchaser may dispose of such excess Material at the Supplier's expense.
- 7.7. In the event of any delay in supplies or any breach in supply of the Material, the Purchaser shall be entitled to make risk purchases from other sources and the additional cost and expenses so incurred by the Purchaser in procuring the whole or part of Material shall be liable to be recovered from the charges payable to the Supplier or the Security deposit or Bank Guarantee so deposited by the Supplier. The Purchaser's decision for estimation of such damages shall be final and binding on the Supplier.
- 7.8. If in the opinion of the Purchaser, if the Supplier is not in a position to fulfill his obligations under the contract (which opinion cannot be challenged by the Supplier), the Purchaser reserves the right to appoint one more third parties or make some other suitable arrangement to fulfill its requirement. The expenditure so incurred by the Purchaser shall be deducted from the charges payable to the Supplier or the Security deposit or Bank Guarantee so deposited by the Supplier.
- 7.9. The Purchaser reserves the right to reject Material in case it is supplied prior to the scheduled delivery date until otherwise specifically waived-off in writing by an authorized Representative from the Purchaser's commercial department, prior to dispatch.
- 7.10. If the Supplier fails to deliver the Material under this Agreement as per the agreed delivery schedule, the Purchaser may at its discretion and without prejudice to other rights and remedies under this Agreement or otherwise, avail itself of any one or more of the remedies hereunder:
- 7.10.1. refuse to accept any further deliveries of the Material which the Supplier attempts to make, in each case without any liability to the Purchaser;
  - 7.10.2. procure that some other person supplies, at the Supplier's expense, the Material to comply with this Agreement (including but not limited to freight, disassembly and reassembly, as the case may be);
  - 7.10.3. instruct the Supplier to suspend performance of its obligations under this Agreement with immediate effect and to take such steps as the Purchaser may direct in order to remedy such breach at the Supplier's expense;
  - 7.10.4. claim such damages as may have been sustained in consequence of the Supplier's breach or breaches of this Agreement;

## **8. PRICE, INVOICING AND PAYMENT**

- 8.1. The price of the Material shall be stated in the Purchase Order and unless otherwise agreed in writing by the Purchaser shall be exclusive of Goods and Service Tax, as applicable but inclusive of all other levies, duty and charges.
- 8.2. No variation in the price shall be accepted by the Purchaser unless formally agreed in writing.

- 8.3. Invoices (Both Original & Duplicate) shall be sent along with the Material. The Purchaser reserves the right to reject the Material received without the invoices.
- 8.4. Each invoice shall make specific reference to the Agreement and/or relevant Purchase Order number and shall be accompanied by all relevant supporting documents.
- 8.5. If Purchaser disputes all or any part of any invoice, it shall notify Supplier specifying the disputed parts thereof. Supplier shall withdraw the disputed invoice and submit an amended invoice for the undisputed amount and Purchaser shall pay this amount within forty-five (45) days of the date of receipt of the amended invoice. Purchaser and Supplier shall endeavour to settle the disputed amount as quickly as possible through good faith negotiations. The Parties agree that no interest shall accrue on any invoice until the settlement of the disputed amounts.
- 8.6. The Purchaser shall have a right (but not an obligation) to set-off / adjust any payment due from the Supplier against any amount due / payable to the Supplier from the Purchasing Group.
- 8.7. The Supplier shall ensure that the Invoices provided by him meet the entire requirement and shall specify descriptions as required under the Goods and Services Tax Act, and all other applicable legislation. All documents shall bear the Purchaser's Purchase Order No. and date.
- 8.8. The Supplier shall ensure that the Invoices provided by him are digitally scanned and sent to the Purchaser's Representative via email.
- 8.9. The Supplier shall raise separate invoices for different Purchase Orders as well as different deliveries. Commercial Invoices / Delivery Challans shall have complete description of the Material & the Purchaser's item code against every item of the Purchase Order.
- 8.10. The Supplier shall submit sufficient proof and documents along with its Invoice for freight amount paid and consequently claimed by the Supplier, if the accepted freight term as "extra to be paid by the Purchaser". Duplicate for Transporter copy of the excise gate pass shall be sent in separate covers along with the Material.
- 8.11. The Supplier is not entitled to suspend deliveries of the Material as a result of any sums being outstanding.

## **9. TAXES AND DUTIES**

### **9.1. Definitions**

For the purposes of this Clause 9 (Taxation):

- 9.1.1. "Tax" or "Taxes" means taxes, levies, duties, fees, charges and contributions as amended from time to time and any interest or penalties thereon;
- 9.1.2. "Government Authority" or "Government Authorities" means any local or national government or authority of any country, competent to levy any Tax;
- 9.1.3. "Goods & Services Tax" or "GST" shall include Central Goods & Service Tax ("CGST"), State Goods & Service Tax ("SGST"), Integrated Goods & Service Tax ("IGST"), Union Territory Goods & Service Tax ("UTGST") & GST Compensation Cess.

### **9.2. Person Responsible for payment of Taxes**

#### **9.2.1. General**

Except as may be expressly set out in this Contract, the Supplier shall be responsible for:

- 9.2.1.1. the payment of all Taxes now or hereafter levied or imposed on the Supplier or its subcontractors or on the personnel of the Supplier or its subcontractors by any Government Authority in respect of any wages, salaries and other remuneration paid directly or indirectly to persons engaged or employed by the Supplier or its

subcontractors (hereinafter referred to as “Personal Income tax”);

- 9.2.1.2. the payment of all Taxes now or hereafter levied or imposed by any Government Authority on the actual/assumed profits and gains made by the Supplier or its subcontractors (hereinafter referred to as “Corporate Income tax”);
- 9.2.1.3. the payment of all GST now or hereafter levied or imposed by any Government Authority on the supply of goods or services, if any, provided to the Company by the Supplier or its subcontractors;
- 9.2.1.4. the payment of all Taxes now or hereafter levied or imposed by any Government Authority on the mentioned goods only, namely, petroleum crude, HSD, Petrol, Natural Gas & ATF, if any, sold to the Company by the Supplier or its subcontractors (hereinafter referred to as “Sales tax/VAT/CST”);
- 9.2.1.5. the payment of all Taxes now or hereafter levied or imposed by any Government Authority on the mentioned goods only, namely, petroleum crude, HSD, Petrol, Natural Gas & ATF, if any, manufactured by the Supplier or its subcontractors for sale to the Company (hereinafter referred to as “Excise Duty”);and
- 9.2.1.6. the payment of any other Taxes now or hereafter levied or imposed by any Government Authority on the Supplier or its subcontractors as a result of the performance of this Agreement.

9.2.2. Exception to General:

Prior to commencing the Services, the Supplier shall notify the Company whether or not it has Fixed Establishment in India. If the Supplier notifies the Company that it does not have Fixed Establishment in India, then, any Indian GST chargeable on the services provided by the Supplier under this Agreement shall be paid by the Company directly to the relevant Government Authority.

9.2.3. Reimbursement of Taxes to the Supplier

It is acknowledged that responsibility for payment of Taxes to the Government Authority will be governed as per Clause 9.2.1 and 9.2.2, the Supplier will be reimbursed only for such Taxes which will be agreed to be reimbursed in the Compensation Schedule or any of the Purchase Order(s) issued under the Agreement.

9.2.4. Pricing

The Parties agree that details of Taxes included in, or excluded from, the Supplier's prices and/or rates shall be as stated in the Compensation Schedule to the Agreement and nothing in this Clause 1 shall be construed to affect or prejudice such details as stated in the Compensation Schedule.

9.3. Withholding taxes and Withholding certificates

- 9.3.1. The Company shall, at the time of its payments due to the Supplier, withhold the necessary taxes at such rate as is required by any Government Authority, unless and to the extent that the Supplier shall produce to the Company any certificate issued by a Government Authority (having authority to issue such certificate) entitling the Supplier to receive the payments under the Agreement for a prescribed period without deduction of any tax or deduction at a lower rate.
- 9.3.2. The Company shall provide the necessary withholding tax certificates to the Supplier within the time stipulated by the relevant law to enable the Supplier to file the same with the Government Authority as a proof of payment of such taxes.

9.4. Person Responsible for filing of returns / information to Government Authorities

- 9.4.1. The Supplier shall be responsible for filing all necessary Tax returns (including, without limitation, returns for Corporate Income tax, Personal Income tax, GST, Sales tax and Excise Duty) with the relevant Government Authorities in accordance with all applicable statutory requirements and shall be responsible for providing all information requested by such Government Authorities.
- 9.4.2. The Supplier shall also ensure that its subcontractors file such returns as stipulated by the relevant Government Authorities and furnish such information as requested for by the relevant Government Authorities.
- 9.4.3. The Company, with respect to the tax withheld from the Supplier in accordance with Clause 9.3 (Withholding Tax and Withholding Tax Certificates), shall be responsible for filing the withholding tax returns with the relevant Government Authorities in accordance with applicable statutory requirements.

9.5. Company's rights, if treated as representative assessee by Government Authorities

In certain situations, a Government Authority may treat the Company as the representative assessee of the Supplier and/or its subcontractors and recover the Taxes due to the Government Authority by the Supplier or its subcontractors from the Company. In such situations, the Company shall have the following rights:

- 9.5.1. The Company shall be entitled to recover from the Supplier, the Taxes paid on behalf of the Supplier or its subcontractors (together with any costs and expenses incurred by the Company in connection therewith) or to retain the same out of any amounts to be paid to the Supplier or its subcontractors that may be in its possession (whether due under this Agreement or otherwise) and shall pay only the balance, if any, to the Supplier; and
- 9.5.2. If the Company is required to furnish any details or documents in such capacity, the Company shall request the details or documents to be furnished to it by the Supplier and the Supplier shall immediately furnish the same to the Company. If the Supplier fails to comply with the foregoing, any penalty/interest levied on the Company for non-filing or late filing of details or documents in this regard shall be recoverable from the Supplier.

9.6. Indemnity

The Supplier shall defend, indemnify and hold the Company Group harmless from and against any and all claims, liabilities, costs, damages and expenses (including court costs and legal fees) in connection with any Taxes which may be levied or imposed on the Supplier or its subcontractors by any Government Authority arising out of or in connection with the performance of this Agreement.

9.7. Changes in Law

If, after the date of execution of this Agreement, there is any change in law which results in a change in the rate of any Tax included in the Supplier's prices or rates or the introduction of a new Tax and such change results in an increase or decrease in the cost to the Supplier of performing this Agreement then the Parties shall agree to a revision in pricing to reflect such change provided that:

- 9.7.1. the Party requesting such revision shall promptly (and in any case prior to submission of the Supplier's final invoice under this Agreement) notify the other Party that such change in law has arisen; and
- 9.7.2. the Party requesting such revision shall provide the other Party with documentary proof of such change in cost to the reasonable satisfaction of the other Party; and
- 9.7.3. the provisions of this Clause 9.7 shall not apply to changes in Personal Income tax or Corporate Income tax or to changes in non-Indian Taxes.

9.8. GST Compliances by Supplier

9.8.1. Notwithstanding anything contained hereinabove, the Supplier shall strictly and in a timely manner, adhere to and undertake all acts, omissions and compliances required under the applicable GST laws to ensure that the Company is able to avail the Input Tax Credit/set off/rebate/refund of the GST (along with cesses and surcharges, if relevant) as applicable on the Services or any supplies if applicable made by the Supplier under this Agreement to the fullest extent possible under law. In this regard, without limiting the generality of the foregoing obligation in any manner whatsoever, Company reserves the right to specify to the Supplier, particulars including but not limited to the following:

9.8.1.1. whether Supplier should charge IGST or CGST-plus-SGST;

9.8.1.2. GST registration number of the Company;

9.8.1.3. whether the Supplier should be responsible to generate the E-Way Bill;

9.8.1.4. the format of invoices/credit and debit notes/advance receipt vouchers;

9.8.1.5. the requirement for maintenance of a 'GST compliance rating score' above a specified threshold; etc. and

9.8.1.6. The relevant timelines for such compliances based on the applicable GST laws.

9.8.2. The Supplier acknowledges that any failure in the foregoing obligations (including undertaking the ones specifically instructed by the Company, if any) can cause significant losses to the Company in the form of loss of GST credit, statutory interest liability on such credit loss (under applicable GST laws) and adverse impact on the 'GST compliance rating score' and thus, undertakes to carry out this foregoing obligation with sincerity, due diligence and without any delay or demur.

9.9. The Parties agree that the Company reserves the right to reimburse the GST component on supplies received only when the corresponding credit has become available in the electronic credit ledger of the relevant GST registration of Company.

## **10. PASSING OF OWNERSHIP, RISK, COPYRIGHT, PATENTS AND OTHER PROPRIETARY RIGHTS ETC.**

10.1. The Material shall remain at the risk of the Supplier until delivery to the Purchaser is complete in all respect at the place or places and in the manner specified in the Purchase Order.

10.2. Ownership of the Material shall, pass to the Purchaser on (a) the earlier of the time at which the Material become identifiable as the Material to be delivered to the Purchaser under the Contract; (b) completion of delivery; and (c) payment of the price or any instalment of the price.

10.3. Where the Purchaser rejects any Material in accordance with these conditions, such Material shall be deemed to have remained the property and risk of the Supplier at all times.

10.4. Material supplied by the Purchaser to the Supplier for servicing or repair shall remain from the time of collection or receipt until re-delivery at the place or places and in the manner instructed by the Purchaser at the absolute risk of the Supplier in regard to any loss or damage.

10.5. Supplier warrants to the Purchaser that it conveys good and valid title to the Material sold under this Contract. Supplier's liability and the Purchaser's remedy under this warranty are strictly limited to the removal of any title defect or, at the sole option of the Supplier, to the replacement of the Material etc which are defective in title.

10.6. Whenever Purchaser is not the ultimate consumer of the Material, all rights, benefits and remedies conferred upon Purchaser by the provisions of this Agreement, including specifically the benefit of any warranties and transfer of title, shall accrue to and shall be for the express benefit of any third party customer and on whose behalf or for whose benefit the Purchaser has purchased the Material.

## **11. INTELLECTUAL PROPERTY**



- 11.1. If any Material purchased or supplied or Services performed or provided under the Agreement and/or Purchase Order involves a patent, copyright, trademark, or proprietary information (IPR), Supplier hereby grants Purchasing Group a permanent, irrevocable, worldwide, non-exclusive license to use the same without additional charge.
- 11.2. Purchaser is the sole owner of IPR in anything developed and delivered under this Agreement / Purchase Order. Supplier shall provide at Purchaser's reasonable request any documentation necessary to confirm Purchaser's ownership interest in such intellectual property rights. Supplier shall retain ownership of any intellectual property rights vested in Supplier prior to this Agreement or created by Supplier outside of its performance of this Agreement during the term of this Agreement.
- 11.3. Supplier shall at all times be responsible for, shall release and shall defend, protect, indemnify, hold harmless and defend Purchasing Group, from and against any Claim by a third party for infringement of any IPR which may arise out of the sale and/or use of the Material supplied or the Services performed and/or provided by Supplier.
- 11.4. It has been agreed that such designs, drawings, patterns calculations, codes, softwares, specifications, equipments and other data/information of the Purchaser shall at all times be and remain the exclusive property of the Purchaser but shall be held by the Supplier in safe custody at its own risk and maintained and kept in good condition by the Supplier until returned to the Purchaser at the Purchaser's request (and, in any event, immediately on termination of the Contract) and shall not be disposed of other than in accordance with the Purchaser's written instructions, nor shall such items be copied or used or disclosed to third parties, otherwise than as authorised by the Purchaser in writing in advance.
- 11.5. The Supplier shall indemnify the Purchaser from and against any demands, claims, suits, and causes of action and any liability, legal costs, expenses, settlements arising from or incurred by reason of any infringement or, design, copyright, trade mark or trade name by the use or possession of such designs, drawings, patterns calculations, codes, softwares, specifications, equipment and other data/information of the Purchaser.
- 11.6. The Supplier assigns to the Purchaser all intellectual property rights, to the extent that such intellectual property rights do not automatically vest in the Purchaser, in all designs, drawings, patterns, equipment, calculations, codes, specifications, softwares, and other data/information used, created or developed by the Supplier specifically for the purposes of the manufacture of Material or the provision of Services under this contract or otherwise needed for the assembly, use, maintenance, enhancement and repair of the Material including software codes and source codes in respect of software developed for the purposes of the Contract to the Purchaser under this Contract.
- 11.7. The Supplier grants to the Purchaser (and to the extent the Supplier is not able to grant the license itself, shall procure the grant of) a non-transferable, non-exclusive, royalty free license (with the right to sub- license) of such intellectual property rights to enable the Purchaser to use and enjoy the Material including without limitation to allow the Purchaser freely to utilise the delivered Material and enjoy the benefit of the Services, to allow the Material to perform those functions which they are designed for and to repair the delivered Material (or to have those Material repaired) and manufacture (or have manufactured) spare parts and replacements. The Contract price includes the full license fee.
- 11.8. The Supplier declares that the manufacture, delivery, use and/or repair of the Material to be supplied and of each of the parts thereof and the application of the associated functions and the performance of the Supply do not infringe any industrial and intellectual property rights held by third parties and the Supplier shall indemnify the Purchaser against any loss without limit arising out of claims, liabilities, and expenses (including loss of profits) resulting from any claim or action made by third parties against the Purchaser alleging infringement.
- 11.9. The Supplier represents to the Purchaser that, as of the date 30 (thirty) days prior to the date of execution of the Contract, the Supplier has received no notification of any rightful patent infringement claim, which would prejudice the Purchaser's right to use or enjoy the Good agreed to be provided by the Supplier to the Purchaser under the Contract.
- 11.10. If, in consequence of any infringement of letters patent, registered design, copyright, trademark or trade name, the Supplier is prevented from executing the Works, or the Purchaser is prevented from using the Plant, the Supplier shall at its own expense



- 11.10.1. Procure for the Purchaser the right to continue using the system or part.
- 11.10.2. Replace the system or part with a non-infringing system or part.
- 11.10.3. Modify the relevant system or part so it becomes non-infringing.

## **12. BANK GUARANTEE / SECURITY DEPOSIT (WHEREVER APPLICABLE)**

- 12.1. Supplier shall furnish an unconditional, absolute, irrevocable and interest free security deposit for a percentage of order value as agreed and mention in the purchase order (If applicable) for supplies of Material. The security deposit shall be in the form of a valid Demand Draft/Cheque in favour of the Purchaser, payable at Tuticorin or in the form of Bank Guarantee from a Nationalized Bank in a format approved by the Purchaser within 10 (ten) days of award of the Purchase Order, in the prescribed format.
- 12.2. It has been agreed that Security Deposit/Bank Guarantee shall be valid for the entire period of the Contract. The Supplier shall also cause the validity period of such security deposit extended for such period(s) for which the purchase order is extended, for any reason whatsoever.
- 12.3. It is further agreed that the said Security Deposit/Bank Guarantee shall not be automatically discharged in any circumstances whatsoever by mere efflux of time and a 'Discharge Certificate', issued by the Purchaser, in writing, shall alone discharge the Supplier from any such liability or discharge the Security Deposit/Bank Guarantee, for which reason the Supplier hereby and henceforth absolutely indemnifies the Purchaser and which indemnity shall not be in derogation of but in addition or conjunction to the said Security Deposit/Bank Guarantee.
- 12.4. It is agreed that in the event of breach of any or all provisions of the Contract, including unsatisfactory performance or any loss resulting to the Purchaser due to the negligence of the Supplier, the Purchaser shall be entitled to forfeit whole or part of the said Security Deposit/Bank Guarantee apart from any other legal / administrative action / right which may be taken or have accrued to the Purchaser as a consequence of such breach.
- 12.5. The Purchaser reserves its rights to invoke the bank guarantee/operate the security deposit for any or all losses to the Purchaser arising out of the performance of the Supplier under the Contract notwithstanding its rights to take any further legal remedy for recovery of such losses.
- 12.6. The Supplier shall ensure that at all times, the Security Deposit/Bank Guarantee shall remain at the specified amount and in the event of any deficiency arising by appropriation by the Purchaser, they shall immediately on notice, replenish the deposit amount to the extent of the short fall. Failure to furnish the Bank Guarantee shall be treated as failure to discharge the duties under the contract and shall result in termination of the contract.

## **13. CONSEQUENCES OF DEFAULT**

- 13.1. If the Supplier, breaches any of the warranties or representation under the Contract; or breaches any other provision of the Contract or any of the Material otherwise fail to comply with the provisions of the Contract; the Purchaser shall notify the Supplier of the failure of the Material to comply with the Contract or the breach of warranty, as the case may be.
- 13.2. If the Supplier fails to rectify such breach in supply of the Material under this Contract, which being capable of remedy are not remedied within 14 days of notice of such default, the Purchaser may at its discretion and without prejudice to other rights and remedies under the Contract or otherwise, avail itself of any one or more of the remedies as hereunder:
  - 13.2.1. reject the Material (in whole or in part) and return them to the Supplier at the risk and cost of the Supplier on the basis that the Supplier shall immediately pay to the Purchaser a full refund for the Material so returned;
  - 13.2.2. give the Supplier the opportunity at the Supplier's expense either to remedy any defect in the Material or to supply replacement Material and carry out any other necessary work to ensure that the terms of the Contract are fulfilled within a reasonable period specified by the Purchaser;

- 13.2.3. refuse to accept any further deliveries of the Material which the Supplier attempts to make, in each case without any liability to the Supplier;
- 13.2.4. carry out or procure that some other person carries out at the Supplier's expense any work necessary to make the Material comply with the Contract (including but not limited to freight, disassembly and reassembly);
- 13.2.5. instruct the Supplier to suspend performance of its obligations under this Contract with immediate effect and to take such steps as the Purchaser may direct in order to remedy such breach at the Supplier's expense;
- 13.2.6. claim such damages as may have been sustained in consequence of the Supplier's breach or breaches of the Contract;
- 13.2.7. obtain substitute Material or elsewhere and recover from the Supplier any expenditure reasonably incurred by the Purchaser in obtaining the Material in substitution from another Supplier; and
- 13.3. If the Purchaser exercises its rights under conditions (b), (d) and/or (e) above in respect of Material which do not, in the Purchaser's opinion, meet the requirements specified in the Contract, the Supplier shall grant necessary right to the Purchaser to utilise the relevant Material until such time as they meet those requirements.
- 13.4. In the event of persistent default by the Supplier of its obligations under the Contract, the Purchaser may terminate the Contract in whole or in part or to rescind the Purchase Order, in each case without any liability to the Supplier.
- 13.5. The Purchaser reserves the right to reject Material in case it is supplied prior to the scheduled delivery date until otherwise specifically waived-off in writing by a representative from the Purchaser's commercial department, prior to dispatch.

#### **14. PERMITS, LICENSES, ENCUMBRANCES, LIENS ETC.**

- 14.1. The Supplier shall ascertain and comply with the Applicable Laws in performance of the Contract and shall obtain and keep in good standing all approvals, permits and licenses, as the case may be, which are necessary or expedient for the performance of his obligation under the Contract. These approvals, permits and licenses shall be valid and acceptable under appropriate laws.
- 14.2. The Supplier shall not cause or permit any lien, attachment or other encumbrance by any person to be placed on file or to remain on file in any public office or on file with the Purchaser against any monies due or to become due for any work done or Material furnished under this Contract, or by reason of any other claim or demand against the Supplier.
- 14.3. Customs-Trade Partnership against Terrorism (Only applicable in case of Supplies from outside India)

Purchaser is obligated to ensure that its suppliers meet the criteria for security mandated by the Customs-Trade Partnership Against Terrorism (C-TPAT) program. In order to comply with these requirements, Purchaser requires Supplier to be a C-TPAT certified participant where applicable, or satisfy comparable security program policies and procedures as follows:

- 14.3.1. If Supplier is C-TPAT Certified, upon receipt and certification of the SVI # (Status Verification Indicator), Purchaser requests a copy of the official letter, a copy of the C-TPAT Certificate to Supplier, and the Supplier SVI letter for file and audit record.
- 14.3.2. If Supplier is not C-TPAT certified or does not qualify under Customs terms to be C-TPAT certified, Supplier must provide evidence its approved under a similar supply chain security program that is endorsed and sponsored by its local country (For e.g., P.I.P. in Canada) OR must provide a statement from a company senior executive officer of its intent and plan to provide its supply chain security policy and procedure that describes its supply chain security systems that meet or exceed those expectations in U.S. C-TPAT. Upon written request, Supplier shall provide Purchaser with copies of its written tracking procedures to verify the Supplier's compliance with comparable supply chain security measures as required under C-TPAT.
- 14.3.3. Supplier shall grant to Purchaser or its designated Representative the right from time to time, upon prior written notice to Supplier and at reasonable date and hours, to visit Supplier's facilities to perform an audit of Supplier compliance with its security obligations. Upon completion of any review by Purchaser, Supplier will be advised in writing if any corrective action is required to assure compliance with the C-TPAT program. Based on the type of corrective action required, the parties will mutually establish a time period for implementation of the corrective measures required. If Supplier does not comply within a reasonable time period with the requirements for C-TPAT compliance, Purchaser will be entitled to treat Supplier's failure to comply as a material breach of this MPA.

## **15. INSURANCE**

- 15.1. The Supplier shall effect and maintain with a reputed insurance company a policy(ies) of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Supplier, arising out of the Supplier's performance of its obligations under the Agreement, including death or personal injury, loss of or damage to property or any other loss. Such insurance shall be maintained for the duration of the Term of the Agreement.
- 15.2. The Supplier shall hold employer's liability insurance in respect of its employees/personnel in accordance with any legal requirement from time to time in force.
- 15.3. The provisions of any insurance or the amount of cover shall not relieve the Supplier of any liabilities under the Agreement.
- 15.4. The Supplier shall also take third party liability insurance and surrounding property damage insurance. In case of any loss or damage, the Supplier shall lodge and settle the claim with the insurance company.
- 15.5. Supplier will be made at equivalent to differential loss suffered by the Company in case the loss to the Company is not fully compensated by the insurance agency.
- 15.6. Notwithstanding anything contained above the Company may arrange insurance of the consignment. But, that will not in any way absolve the Supplier from compensating Company /consignee in case of damage / loss.
- 15.7. Without limiting Supplier's obligations, liabilities, and responsibilities under any Purchase Order or at law, Supplier shall when providing Material, at its cost, obtain or procure or cause others to obtain or procure the insurances required by Exhibit B.

- 15.8. All the insurance policies described in Exhibit B, except workers' compensation and employer's liability shall, to the extent of the insurable liabilities assumed and indemnities given by Supplier hereunder, be written or endorsed with Purchasing Group as additional insured or shall contain indemnity to principal provisions, and all policies described in Exhibit B, including workers' compensation and employer's liability, shall provide that the insurance company shall have no right of recovery or subrogation against Purchasing Group. All liability policies required herein shall provide severability of interest or cross liability clause. All policies required of Supplier herein shall, to the extent of the insurable liabilities assumed and indemnities given by Supplier hereunder, provide that the insurance coverages shall be primary and not excess to or contributing with any insurance or self-insurance maintained by Purchasing Group. In all cases all applicable Supplier Group deductibles, self-insured retentions, and excesses will be borne by Supplier.
- 15.9. All insurances taken out by Supplier in accordance with the provisions of this Clause 3 shall provide that Supplier's underwriters of insurance give not less than thirty (30) days' notice of cancellation of any such policy of insurance to Purchaser. No such cancellation shall relieve Supplier of its obligation to maintain insurance in accordance with this Agreement and / or any Purchase Order.
- 15.10. To the extent Supplier has sub-suppliers of any tier, Supplier agrees that should any sub-supplier's insurance lapse, is cancelled, has insufficient limits of insurance available or is not carried, Supplier's obligations under this Clause 15 are in no way relieved or diminished. Supplier shall use its best endeavours to obtain from its sub-suppliers additional insured, or indemnity to principals, status, a waiver of subrogation and a primary insurance statement, both in favour of Purchasing Group. Upon request, Supplier shall obtain and provide Purchaser with valid certificates of insurance from such sub-suppliers evidencing compliance with this Clause 15.
- 15.11. Neither the delivery to Purchaser of any certificates of insurance, nor any failure on the part of Purchaser to discover and notify Supplier of any errors or omissions in certificates of insurance, nor the rejection of certificates of insurance that do not conform to the requirements described herein, shall be construed to imply an acceptance of such certificates of insurance or the coverages/endorsements reflected therein, or a waiver of the coverages/endorsements requirements contained herein. Review by Purchaser of any certificate of insurance shall not relieve Supplier from any obligation to secure the insurance coverages and endorsements required herein, and nothing shall operate to shift responsibility for insurance coverages from Supplier to Purchaser.
- 15.12. The Supplier shall at his own cost take adequate transit risk insurance for any loss/damage with respect to:
- 15.12.1. all Material up to the point when delivery is complete;
- 15.12.2. all Material delivered to him by the Purchaser for repair or servicing from the time of collection or receiving them until re-delivery in accordance with the instructions of the Purchaser, in each case for their replacement value against loss, damage or destruction resulting from any insurable risk which can be reasonably contemplated as affecting the Material.
- 15.12.3. In case of any loss/damage during transit, the Supplier shall lodge and settle the claim with the insurance company without any delay and shall, independent of his claim, make good the loss to the Purchaser within reasonable time.
- 15.13. The Supplier shall not do any act in or around the premises of the Purchaser whereby any policy or insurance taken out by the Purchaser against loss or damage by fire or otherwise may become void or voidable. The Supplier shall be liable for and make good any damage caused to the Purchaser properties or premises or any part thereof or to any fixtures or fittings thereof therein any Act, omission default or negligence of the Supplier or its employees or agents.

## 16. INDEMNITY

- 16.1. The Supplier shall indemnify and keep indemnified the Purchasing group, its Directors and officials from and against all claims, demands, actions, suits and proceedings, whatsoever that may be brought or made against the Purchaser by or on behalf of any person, body, authority, whomsoever and whatsoever by virtue of or as a result of the Supplier's negligence, default or breach of contract; defective workmanship, quality or materials; or failure or delay in performance of the terms of the Contract by the Supplier; or any claim made against the Purchaser in respect of any Losses sustained by the Purchaser's employees, agents, contractors or by any customer or third party to the extent that such Losses were caused by, relate to or arise from the Material as a consequence of a direct or indirect breach or negligent performance or failure or delay in performance of the terms of the Contract by the Supplier.
- 16.2. The Supplier shall keep the Purchasing group, and their respective Directors, officers, employees and agents indemnified against all duties, penalties, levies, taxes, losses, costs, charges and expenses and all other liabilities of whatsoever nature, which the Purchaser may now or hereafter be liable to pay, incur or sustain due to any breach of any such statutes, ordinances, laws, rules, regulations and Bye-laws by the Supplier. The Supplier shall give all notice and pay fees and taxes required to be given or paid under any Central or State statutes, ordinances or other laws or any regulations or Bye-laws of any local or other duly constituted authority in relation to the supply under the Contract.
- 16.3. Supplier shall at all times be responsible for, shall release and shall defend, protect, indemnify and hold Purchasing Group harmless from and shall keep Purchaser's equipment and property free and clear of all liens, claims, assessments, fines and levies incurred, created, caused or committed by Supplier Group
- 16.4. This indemnity shall be without prejudice to any other rights or remedies, including injunctive or other equitable relief, which the Company may be entitled to.
- 16.5. Without prejudice to the Purchaser's other rights, the Purchaser will be entitled to claim, recover and adjust the amount paid by the Purchaser as a consequence of any claims, demands, costs charges and expenses which can be directly attributed to the Supplier's negligence, default or breach of contract, from any amount payable to the Supplier or from the Security deposit or Bank Guarantee so deposited by the Supplier.
- 16.6. Purchaser shall have the right to retain / withhold out of any payment to be made to the Supplier an amount sufficient to indemnify it completely against any such lien, claim, assessment, fine or levy exercised or made and all associated costs. Purchaser shall be at liberty to recover such amount or any part thereof from any amount due to the Supplier or from the Security deposit or Bank Guarantee so deposited by the Supplier.
- 16.7. It is the express intention of the Parties hereto that the provisions of this Agreement / Purchase Order shall exclusively govern the allocation of risks and liabilities of the Parties, it being acknowledged that the Agreement reflected herein has been based upon such express understanding. It is acknowledged that the compensation payable to Supplier as specified in this Agreement and/or applicable Purchase Order has been based upon the express understanding that risks and liabilities shall be determined in accordance with the provisions of this Agreement and/or applicable Purchase Order.

## **17. LIMITATION OF LIABILITY**

- 17.1. Except as may be otherwise provided in this Agreement, in no event shall either party be liable to the other, whether arising under Contract, Tort (including Negligence), Strict Liability or otherwise, for any indirect, consequential, special, punitive, exemplary or incidental loss or damages of any nature arising at any time from any cause whatsoever.
- 17.2. The limitations of liability and exclusion of warranties as set out in the Agreement shall be to the maximum extent permitted by applicable law. This limitation, however, shall not apply to any Losses (a) caused wilfully by or by material breach of Contract on the part of the Supplier; or (b) arising out of personal injury or death to any person; or (c) caused solely by the negligence or wilful default of the Supplier.

## **18. DEFAULT & TERMINATION**

- 18.1. Either Party may immediately terminate all or part of this Agreement/Purchase Order as under:
- 18.1.1. by a written notice to the other Party if the other Party has committed any material breach of the terms of this Agreement and has failed to remedy such breach within 30 days from receiving notice from the other Party.
  - 18.1.2. if other Party (a) ceases, or threatens to cease, to function as a going concern or conduct its operations in the normal course of business, (b) commences, or becomes the subject of, any bankruptcy, insolvency, reorganization (other than in the course of a corporate re-organization or to an affiliate), administration, liquidation or similar proceedings, (c) makes, or plans to make, a general assignment for the benefit of its creditors, or (d) creditor attaches or takes possession of all or a substantial part of said Party's assets;
  - 18.1.3. The foregoing shall not apply to any action or proceeding which is (a) in the reasonable opinion of the Party, frivolous or vexatious; or (b) discharged, stayed or dismissed within ninety (90) days of commencement;
  - 18.1.4. if either Party is unable to carry out its obligations by reason of Force Majeure events and the force majeure continues for a period more than 60 days, then either Party may by giving notice in writing, terminate this Agreement with immediate effect. Any such termination shall be without prejudice to any of the right of the Parties accrued prior to the date of such termination.
- 18.2. The Company may terminate all or part of this Agreement by one (1) months' written notice without assigning any reason whatsoever or if the Supplier fails to obtain any approval required under the terms of this Agreement.
- 18.3. Upon termination of this Agreement, both Parties shall be relieved of their respective rights and obligations under this Agreement save such obligations and / or liabilities of the Parties set forth herein which (a) that the Parties have expressly agreed will survive any expiration or termination, or (b) by their nature would be intended to be applicable following any such expiration or termination, or (c) the Parties have accrued before expiration or termination, as the case may be.
- 18.4. In the event of Supplier's breach of its obligations hereunder, no payment shall be due by Purchaser in respect of such order/Purchaser order, or, in the case of suspension, until the failure or breach has been remedied to the reasonable satisfaction of Purchaser.
- 18.5. The Contract shall be liable to be terminated automatically ipso facto on the date of the actual occurrence to Supplier irrespective of when such fact comes to the knowledge of the Purchaser and the liabilities of the Purchaser under the Contract shall be limited to such date:
- 18.5.1. If Supplier be a sole-proprietorship company when the sole-proprietor dies or is adjudged as an un- discharged insolvent or is declared a lunatic by a Court of competent jurisdiction during the period of obligations as brought in the Contract.
  - 18.5.2. If Supplier's representative is found guilty of fraud in respect of the Contract or has directly or indirectly involved in any immoral practice or an offence of moral turpitude or any other grievous offence punishable under the law, a decision of the Purchaser to this effect shall be final and binding upon the Supplier.
  - 18.5.3. There is any variation in Supplier's constitution or its business without the prior approval in writing by the Purchaser to such change.
  - 18.5.4. For any reason whatsoever Supplier becomes disentitled in law to perform its obligation under the Contract.
  - 18.5.5. Where there is an order of winding up or dissolution by a competent Court or if such winding up or dissolution proceedings have been initiated against the Supplier.
  - 18.5.6. an event of Force Majeure delays or prevents the performance of any obligations of either of the Parties hereto for a period of thirty (30) days in any three hundred and sixty five (365) days.



- 18.5.7. an encumbrancer lawfully takes possession of relevant assets or an administrative receiver or receiver is validly appointed over the whole or a substantial part of the undertaking, property or assets of the other Supplier or an administration order is made in respect of the other party.
- 18.6. The Purchaser may by 7 days notice in writing to the Supplier terminate the contract, in whole or in part, at any time for his convenience. The notice for termination shall specify that the termination is for the Purchaser's convenience, the extent to which performance of work under the contract is terminated, and the date upon which such termination becomes effective.
- 18.7. In event of termination of this contract for the convenience of the Purchaser, the Purchaser shall pay to the Supplier compensation for any costs reasonably incurred or commitments made for work-in-progress already performed at the time of termination or suspension which cannot be mitigated. Such compensation shall be restricted to the value of work above and shall be the sole remedy of the Supplier for such termination or suspension. Under no circumstances shall the Purchaser be liable under the Contract for any loss of anticipated profits or any consequential or indirect loss.
- 18.8. If this Contract is terminated as above, the Purchaser shall, in respect to Material already supplied by the Supplier, have the right to demand delivery of Material whether completed or in the process of manufacture from the Supplier, either directly or through another contractor to manufacture and take delivery of final Material in a reasonable manner. In such case, the Supplier shall also be under liability to satisfy and refund all amount received by the Supplier from the Purchaser for the Material which is yet to be delivered to the Purchaser within 15 days of such termination.
- 18.9. In the event of either party being declared as bankrupt, insolvent, sick industrial company or proceeds with the liquidation of its business, the other party has the right to cancel the Contract in whole or in part reserving their right to seek compensation for costs, damages and interest incurred by the party not in breach arising due to any of the circumstances arising herein.

## **19. SUSPENSION**

- 19.1. The Purchaser may suspend the supplies of Material and/or works, in whole or in part, at any time by giving the Supplier notice in writing to such effect stating the nature, the date and the anticipated duration of such suspension. On receiving the notice of suspension, the Supplier shall stop all such work/supplies, which the Purchaser has directed to be suspended with immediate effect. The Supplier shall continue to perform other works/supplies in terms of the Contract, which the Purchaser has not suspended. The Supplier shall resume the suspended works/supplies as expeditiously as possible after receipt of such withdrawal of suspension notice.
- 19.2. In the event of written notice pursuant to the clause above, Supplier's failure to perform the obligations under this Agreement and or any Purchase Order issued hereunder to the standards required by the Agreement/Purchase Order and Supplier's material breach of any of its obligations under the Agreement, no payment shall be due by Purchaser in respect of such order/Purchaser order, or, in the case of suspension, until the failure or breach has been remedied to the reasonable satisfaction of Purchaser.
- 19.3. Subject to the clause above, in the event of suspension of the Agreement or any Purchase Order issued hereunder, the Material being supplied under such Agreement/Purchase Order shall, at Purchaser's discretion, either be delivered to the delivery address or shall be securely and separately stored at Supplier's premises, at Purchaser's sole cost and expense, and marked as the property of Purchaser until either such suspension is revoked or the Purchaser terminates the Agreement/Purchase Order and instructs Supplier with regard to the disposal of the Material stored at Supplier's premises. The proceeds of the disposal shall be adjusted against any compensation payable hereunder.
- 19.4. During suspension, the Supplier shall not be entitled for any claim whatsoever arising out of any loss or damage or idle labour caused by such suspension. However, the Supplier shall be entitled to receive from the Purchaser appropriate adjustment for Completion Schedule.



- 19.5. Further, if such suspension continues for more than 60 days in continuity or 120 days cumulatively, the Supplier shall be entitled to receive from Purchaser, a variation order covering reasonable cost, if any due to such suspension.
- 19.6. Notwithstanding anything in this Contract, the Purchaser reserves the right to intimate ceasing supplies or resuming supplies for the contract with a 24 hour notice without assigning any reason.

## **20. FORCE MAJEURE**

- 20.1. Force Majeure shall be deemed to be any cause beyond the reasonable control of Supplier or the Purchaser as the case may be, which prevents or impedes the due performance of the Contract and which by due diligence the affected party is unable to avoid or overcome through its individual concerted effort (other than an obligation to pay moneys).
- 20.2. Force Majeure includes without limitation Acts of God, natural disasters, earthquake, cyclone, flood, lightning, land slide, fire, explosion, plague, epidemic, lockouts, war, riot, invasion, prohibition or embargo, act of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, confiscation of power by military, trade embargoes by order of Government, or any other act of Government or any public authority (including allocations, quotas, priorities, requisitions and price controls) and other which are out of the control of the contractual Parties and have arisen after the conclusion of the Contract. Force majeure shall also include events when the Purchaser ceases to operate any of its works in whole or in part and in effect is prevented or hindered from receiving the Material under this Contract due to any order or direction of a competent court or public authority passed in any proceedings taken by any Governmental Agency or any third party.
- 20.3. For the avoidance of doubt, no industrial disruption of any kind, including boycotts shall constitute a Force Majeure event. The mere shortage of labour, Material or utilities, loss of markets or economical inability etc. shall not constitute a Force Majeure event, whether or not any such events are foreseeable, unless caused by circumstances which are themselves Force Majeure events. The Parties understand that the settlement of strikes, lockouts, and any other industrial disputes shall be treated to be within the sole discretion of the Party asserting Force Majeure
- 20.4. If a party gives a notice of existence of Force Majeure, the relevant obligations of such affected party under the Contract will be suspended for as long as the Force Majeure event may continue. Neither party will be liable to the other for any failure or delay in the performance of its obligations under the Contract which is due to a Force Majeure event.
- 20.5. If Force Majeure event continues beyond the period of 3(three) months from the beginning of the Force Majeure event or prevent the Supplier from performing its obligations under the Contract for an aggregate period of more than 6 (six) months, the Parties shall mutually decide further course of action. If mutual settlement cannot be arrived at within 30 (thirty) days, either Party shall have the right to terminate the Contract.
- 20.6. Notwithstanding the foregoing, this Section shall not have the effect of excusing any obligations which shall have accrued hereunder between Purchaser and Supplier prior to the occurrence of the Force Majeure or which are unrelated to the occurrence of the Force Majeure.
- 20.7. Both Parties agree to use their respective reasonable efforts to cure any event of Force Majeure to the extent that it is reasonably possible to do so. Upon the cessation of the event of Force Majeure, the party declaring Force Majeure shall immediately give notice thereof to the other party.

## **21. SUBCONTRACTING**

- 21.1. The appointment of sub-contractors for due performance of the Supplier's obligations under the Contract shall be subject to the prior approval of the Purchaser unless such other person is identified on the Purchase Order as acting in such capacity. The Supplier shall ensure that all sub-contracts are made in writing.
- 21.2. Subcontracting, shall not in any way diminish or relieve the Supplier from properly and punctually discharging any duties and obligations so subcontracted or discharge, diminish or relieve the Supplier from any of its duties or obligations under the contract and the Supplier shall remain liable to the Purchaser for any performance or nonperformance of such obligations.

- 21.3. The Supplier shall promptly and fully inform the sub-contractors as to the provisions contained in the Contract (including these conditions) which apply to them and shall ensure that each sub-contract with its sub-contractors and ensure that such sub-contractors are bound to such provisions of the Contract, as relevant as if those provisions were incorporated in that sub-contract.
- 21.4. The Supplier shall be responsible for the acts, defaults and neglects of all Sub-contractors and all agents, servants or workmen as if they were the acts, defaults or neglects of the Supplier under the terms of this Contract.
- 21.5. The Purchaser reserves the right to refuse access to any Sub-contractor to the Purchaser's premises. Access will only be granted to the extent necessary for the proper performance of the Supplier's obligations.
- 21.6. The Purchaser shall not be deemed by virtue of subcontracting, as above, to have any contractual obligation to or relationship with any sub-contractor of the Supplier.

## **22. ARBITRATION**

- 22.1. Any dispute or difference whatsoever arising between the parties out of or relating to the interpretation,, meaning, scope, operation or effect of this Agreement or the existence, validity, breach or anticipated breach thereof or determination and enforcement of respective rights, obligations and liabilities of the parties thereto shall be amicably settled by way of mediation. If the dispute is not conclusively settled within a period of twenty-one (21) days from the date of commencement of mediation or such further period as the parties shall agree in writing, the dispute shall be referred to and finally resolved by arbitration under the (Indian) Arbitration and Conciliation Act, 1996 (as amended from time to time), which are deemed to be incorporated by reference into this clause. The arbitration shall be conducted as follows:
  - 22.1.1. A sole arbitrator shall be appointed in case the value of claim under dispute is less than INR 5,000,000 (INR Five Million Only) / \$ 100,000 (Hundred Thousand United States Dollars) and in any other event by a forum of three arbitrators with one arbitrator nominated by each Party and the presiding arbitrator selected by the nominated arbitrators.
  - 22.1.2. The language of the mediation and arbitration proceedings shall be English. The seat and venue of arbitration shall be Tuticorin, Tamil Nadu, India.
  - 22.1.3. The award made in pursuance thereof shall be final and binding on the parties.
- 22.2. It is hereby agreed that the parties shall continue to perform their respective obligation under the Contract during the pendency of the arbitration proceedings except in so far as such obligation are the subject matter of the said arbitration proceedings.
- 22.3. It is expressly agreed that in case of invocation of the Arbitration by the Supplier, no reference for arbitration shall be maintainable unless the Supplier furnishes a interest free security deposit of a sum equivalent to 20% of its claim and the sum so deposited shall, on the completion of the arbitration proceedings and pronouncement of Award be adjusted against the cost, if any, awarded by the arbitrator against the Supplier. It is further agreed that the balance amount after such adjustment, if any, shall be refunded to the Supplier by the Purchaser.
- 22.4. The Parties agree that information concerning any arbitration, including, without limitation, information concerning any arbitration award, shall be treated as Confidential Information under this Contract and, notwithstanding any other provision of this Contract, the restrictions contained in this section shall survive the termination of this Contract.

- 22.5. The Parties agree that the award passed by the arbitrator shall be final and binding upon the Parties, and that the Parties shall not be entitled to commence or maintain any action in any Court of Law in respect of any matter in dispute arising from or in relation to the Contract, except for the enforcement of an arbitral award or for seeking injunctive relief or in case of appeal against arbitral award passed by an arbitrator(s) pursuant to this Clause.

### **23. LAW AND JURISDICTION**

- 23.1. This Contract is executed under the laws of India and shall be governed by and interpreted in all respects in accordance with the laws of India. Place of performance and jurisdiction shall be the Registered Office of the Purchaser, i.e. Tuticorin, Tamil Nadu.
- 23.2. It has been agreed that each party irrevocably submits to the non-exclusive jurisdiction of the Courts at Tuticorin, Tamil Nadu (India), and the Courts competent to determine appeals from those courts, with respect to any legal proceedings for enforcement of any arbitral award or for seeking injunctive relief or in case of appeal against arbitral award passed by an arbitrator(s) pursuant to the Arbitration clause of the Contract.
- 23.3. Each party irrevocably waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, where that venue falls within Tuticorin at Tamil Nadu (India).

### **24. SET OFF**

Only the Company may at any time without notice to the Supplier set off any liability of the Supplier to the Company against any liability of Purchasing Group to the Supplier (in either case howsoever arising and whether any such liability is present or future, liquidated or unliquidated and irrespective of the currency of its denomination) and may for such purpose convert or exchange any currency. Any exercise by the Company of its rights under this clause shall be without prejudice to any other rights or remedies available to Company under this Agreement or otherwise.

### **25. CONFIDENTIALITY**

- 25.1. Each Party hereto shall, save as otherwise provided herein, maintain in strict confidence, and not disclose or use for a purpose other than the purpose set out herein, any confidential and/or proprietary information ("Confidential Information") of the other Party including this Agreement and the terms and conditions hereof. The foregoing covenant shall not restrict a Party from disclosing Confidential Information to the extent required in connection with any legal proceeding(s) or required for filing with govt. agencies, courts, stock exchanges or other regulatory agencies under applicable laws and regulations. Each Party shall use its best effort to assure that the provisions of this Agreement and its information disclosed to it concerning the other Party and its assets and business which is not otherwise publicly available, shall be kept confidential, unless other required by law, not to be disclosed without the consent of other Party to anyone other.
- 25.2. The Parties shall restrict access to the Confidential Information only to its own employees or professional advisers who need to have such access for the purposes of performing the obligations or enforcing the rights under this Agreement and who have agreed with such party to abide by the obligations of confidentiality equivalent to those contained herein with such party. The disclosing party shall remain vicariously liable for such disclosure.
- 25.3. Each Party agrees that it will not use the name or logo of the other Party, without the prior written consent of the other Party(ies) hereto.
- 25.4. All Confidential Information developed by Supplier Group as a result of performance of the supply of Material shall be the property of Purchaser. All such Confidential Information shall be delivered to Purchaser within fifteen (15) days after completion of any applicable Purchase Order. Purchaser shall have the unrestricted right to use and disclose such information in any manner and for any purpose without payment of further compensation. Such Confidential Information is proprietary information of Purchaser and subject to the terms of this Clause 25.

- 25.5. Obligations towards all Confidential Information as mentioned above under this clause shall continue to remain valid for the Term and further period of five (5) years from the date of expiry of this Agreement.
- 25.6. No member of Supplier Group shall make use of the name or logo of Purchasing Group for publicity purposes, nor shall publish or permit to be published any information or photographs in connection with this Agreement or any Purchase Order without the prior written consent of Purchaser.
- 25.7. The Supplier shall not without the previous written consent of the Purchaser advertise or, except for the performance of the Contract, make known to third parties the fact that the Supplier supplies Material to the Purchaser. The Supplier shall not erect any advertisement or give any notice (except for notices required to be displayed by statute or by the Contract) on any part of the Purchaser's premises without first applying for and obtaining the Purchaser's consent.

## **26. BUSINESS ETHICS**

- 26.1. The Supplier shall declare any conflicts of interest with the Company including relationship or financial interest of any nature whatsoever with employees, managers, other suppliers, vendors or stakeholders of the Company.
- 26.2. The Supplier shall not use the services of any of the employees of the Company, directly or indirectly or enter into any sort of monetary transaction with the employees of the Company. The Supplier undertakes that he has not given, offered or promised to give directly or indirectly any bribes, commission, gift, consideration, reward, or inducement to any of the employees of the Company or their agent or relatives for showing or agreeing to show favor or disfavor to any person in relation to this Agreement or forbearing to do or for having done or forborne to do any act in relation to the obtaining or execution of the aforesaid undertaking, by the Supplier, or his partners, agent or servant or any one authorized by him or acting on his behalf.
- 26.3. The Supplier agrees to comply with the provisions of the Company's Supplier Code of Conduct which includes Anti-bribery and Corruption requirements (a copy of which is also available at [http://www.vedantalimited.com/media/104182/supplier\\_code\\_of\\_conduct\\_december\\_2016.pdf](http://www.vedantalimited.com/media/104182/supplier_code_of_conduct_december_2016.pdf)) which includes compliance with UK Bribery Act, 2010 & Foreign Corrupt Practices Act and the Company's Human Rights Policy (a copy of which is available at [http://www.vedantalimited.com/media/80325/vedanta\\_human\\_rights\\_policy.pdf](http://www.vedantalimited.com/media/80325/vedanta_human_rights_policy.pdf)) including the Modern Slavery Act and in case of breach thereof, the same shall be treated as a breach of this Agreement.
- 26.4. The Supplier acknowledges and agrees that the Company is subject to the Modern Slavery Act 2015. In performing its obligations under the Agreement, the Supplier represents and warrants that neither the Supplier nor any of its employees performing Contract:
- 26.4.1. have been convicted of any offence involving slavery and human trafficking;
  - 26.4.2. have been or are the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking;
  - 26.4.3. shall indulge in performance of any activity of slavery of human trafficking;
- 26.5. During the course of this Agreement, the Supplier shall promptly notify the Company as soon as it becomes aware of:
- 26.5.1. an act which may lead to the Company being in any breach, or potential breach, of the Modern Slavery Act 2015; or
  - 26.5.2. any actual or suspected act of slavery or human trafficking in connection with this Agreement.
- 26.6. The Supplier shall maintain records and provide to the Company upon request such records and evidences, as the Company may reasonably require, confirming the Supplier's compliance with the obligations under this clause.

- 26.7. The Company shall have a right to initiate "audit proceedings" against the Supplier to verify compliance with the requirements under this clause. Such audit may be carried out by Company or by a reputed agency to be appointed by Company at the sole discretion of Company. The Supplier shall extend full cooperation for smooth completion of the audit mentioned herein.
- 26.8. Notwithstanding anything in this agreement, Company shall have right to terminate the Agreement forthwith and recover from the Supplier, the amount of any loss arising from such termination in case, it is found that the Supplier has failed to comply with requirements under this clause including any corrupt practices. A decision of the Company or his nominee to this effect that a breach of the undertaking had been committed shall be final and binding on the Supplier.
- 26.9. If at any time during execution or performance of this Agreement the Supplier becomes aware of any unethical practices or is faced with any undue demand, request for gratification or favor from any employee of the Company or a person connection with such employee, the Supplier must report the same immediately to the Group Head-Management Assurance at the following address:  
Group Head – Management Assurance,  
Vedanta, 75 Nehru Road  
Vile Parle (E), Mumbai 400 099  
'Complaints' can also be sent to the designated e-mail id: [siil.whistleblower@vedanta.co.in](mailto:siil.whistleblower@vedanta.co.in)

## **27. RECOURSE OF THE PARTIES**

- 27.1. Supplier shall look only to Purchaser for the due performance of the Purchase Order and nothing therein contained shall impose any liability upon, or entitle Supplier to commence any proceedings against any third party customer or any person not a party to the Agreement or the Purchase Order.
- 27.2. Purchaser shall be entitled to enforce any Purchase Order on behalf of any third party customer in connection with the Agreement / Purchase Order as well as for itself and for this purpose, only Purchaser may commence proceedings against Supplier. The obligations and liabilities of Purchasing Group issuing Purchase Orders are several and not joint.
- 27.3. It is clarified that under no circumstances, by virtue of this Agreement, will the employee/workers of the Supplier be deemed to have any privity of contract with the Company nor would they or any of their heirs, assigns or successors would claim any benefit / privilege, whatsoever, from the Company.

## **28. MISCELLANEOUS PROVISIONS**

- 28.1. Entire Agreement: This Agreement along addendums and with all annexures, if any constitutes the entire agreement and understanding between the parties with respect to its subject matter and overrides and supersedes all previous agreements, representations, written documents, correspondence and understanding of the parties, whether in writing or otherwise.
- 28.2. Severability: If any clause or provision of this Agreement is prohibited, invalid or unenforceable in any jurisdiction, that provision will, as to that jurisdiction, be ineffective to the extent of the prohibition, invalidity or unenforceability without affecting or invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of that provision in any other jurisdiction, unless it materially alters the nature or material terms of this Agreement.
- 28.3. Counterpart: This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original Agreement and all of which, when taken together, will constitute one and the same instrument

- 28.4. Relationship: This Agreement shall not be construed to have any purpose or intent other than for purchase and sale of the Commodity between the Parties on a non-exclusive basis and nothing contained in this Agreement shall be deemed to create any association, partnership, joint-venture or relationship of principal and agent or master and servant between the parties or any affiliates or subsidiaries thereof.
- 28.5. Notices: Any notice required to be given hereunder shall be given by sending the same by facsimile, prepaid post or by hand delivery to the address of the addressee shown in this Agreement or to such other address as either Party may notify to the other for this purpose in writing. If sending by facsimile, notice shall be deemed to have been given upon successful transmission, if by hand upon at the time of dispatch and if sending by post, notice shall be deemed to have been given on the 3rd day on dispatch by post.

Non-Waiver/Exercise Of Right: A failure or delay in exercising any right, power or privilege in respect of this Agreement will not be presumed to operate as a waiver, and a single or partial exercise of any right, power or privilege will not be presumed to preclude any subsequent or further exercise, of that right, power or privilege or the exercise of any other right, power or privilege. All waivers under this Agreement must be made in writing. Each right or remedy of the Purchaser under the Contract is without prejudice to any other right or remedy of the Purchaser whether under the Contract or otherwise. All rights, powers and remedies of the Purchaser under the Contract are cumulative and not exclusive of any right or remedy provided by law.

- 28.6. Binding Effect: This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.
- 28.7. Assignment: Neither this Agreement nor any right, duty or obligation of any Party hereunder may be assigned or delegated by any Party (in whole or in part) without the prior written consent of the other Party(ies) hereto. The Purchaser, however, may assign, novate or otherwise transfer any of its rights or obligations under the Contract or any part of it and/or any rights and obligations arising under it (including the benefits of any guarantee or warranty) to any person, firm or company at any time and the Supplier shall if required by the Purchaser, enter into a novation agreement with the Purchaser and the transferee or such other documentation as is necessary to give effect to any such assignment or transfer.
- 28.8. Amendments: This Agreement may be amended, modified, renewed or extended only by a written instrument signed by each of the Parties hereto.
- 28.9. Validation: This Agreement shall come into effect when authorized representatives of both Company and Supplier execute and affix their signature hereto in their due capacity, within 3 working days after confirmation of business by Company and constitutes the entire agreement between the Parties relating to its subject matter. Any alteration, amendment or addition to any of the terms of this Agreement shall become binding only when such alteration, amendment or addition is evidenced in writing and is executed by the authorized representatives of the both Parties in their due capacity.
- 28.10. Costs: Each Party shall bear its own legal, professional and advisory fees, commissions and other costs and expenses incurred by it in connection with this Agreement.
- 28.11. Language of the Agreement: English shall be the language of the Agreement and all documentation prepared in relation to it. All of the parties management staff engaged in work arising out of or in connection with this Agreement shall be fluent in English.
- 28.12. Site Information :The Supplier shall be deemed to have inspected the Site and have satisfied itself as to the extent and nature of the work and materials necessary for the carrying out and completion of the Works and the means of transportation. The Supplier shall not, except as expressly provided in this Contract, be entitled to any extension of the Completion Schedule or to any adjustment of the Contract Price on grounds of misinterpretation or misunderstanding of any such matter.



- 28.13. **Audit and Investigation:** At all reasonable times during the Term and/or any Purchase Order, and for a period of four (4) years after the completion of any Purchase Order, Supplier agrees that the Supplier Group's books and records shall be subject to audit with Supplier's assistance and at reasonable times as Purchasing Group shall consider necessary. Purchaser's auditors shall have full and unrestricted access to all records for the purposes of auditing and verifying that the charges or costs presented by Supplier to Purchaser for payment are in accordance with the Agreement / Purchase Order, or for any other reasonable purpose, including verifying Supplier's compliance with its obligations under the Agreement / Purchase Order. In addition, if Purchaser has a reasonable basis to believe that Supplier Group has taken or failed to take any action that may subject Purchasing Group to liability under any laws including the anti-corruption laws, Supplier agrees that Purchaser shall have the right (but not the obligation) upon written notice to Supplier, to conduct an investigation of Supplier Group to determine to Purchaser's reasonable satisfaction whether any actions or failures to act on behalf of Supplier Group may subject Purchaser to such liability.
- 28.14. **Exit clause:** The Purchaser may, at any point of time, due to commercial reasons, change in business scenario or may be due to legal /regulatory restrictions etc., come out of the Contract with the Supplier, when it feels appropriate to do so.
- 28.15. **Rights of third parties:** This Contract shall not be construed as creating any rights or benefits in any person or entity, other than the Parties hereto and their respective successors and permitted assigns. No person who is not a party to this contract shall have any right under any law to enforce any term of this Contract.
- 28.16. **Further acts:** Each party to the Contract undertake to execute, do and take all such steps as may be in their respective powers to execute, do and take or procure to be executed, taken or done and to execute all such further documents, agreements and deeds (in form and content reasonably satisfactory to the other party of the contract) and do all further acts, deeds, matters and things as may be required to give effect to the provisions of the Contract.
- 28.17. **Remedies cumulative:** Except as expressly provided in this Agreement, all remedies available to the Parties for breach of this Agreement are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.
- 28.18. **THIS DOCUMENT "STANDARD TERMS & CONDITIONS" SHALL BE AN INTEGRAL PART OF ANY OF THE PURCHASE ORDERS, INVOICE OR MOU OR OTHER DOCUMENT WHATSOEVER ENTERED BETWEEN THE PARTIES AND SHALL SUPERCEDE ANY CONTRARY TERMS IN SUCH PURCHASE ORDER, INVOICE OR MOU OR OTHER DOCUMENT WHATSOEVER INCLUDING ANY ORDER ACKNOWLEDGEMENT BY THE SUPPLIER AND THIS DOCUMENT AND THE GENERAL TERMS AND CONDITIONS MENTIONED HEREIN SHALL APPLY FOR ALL PURPOSES.**