

CONDITIONS OF PURCHASE FOR SUPPLY CONTRACT

(September 2013 edition)

INDEX

1.	Definitions
2.	Effectiveness of the Order
3.	Scope of Supply and Execution of the Subject of Order
4.	Sub-Contact
5.	Price
6.	Taxes and Duties
7.	Payment
8.	Progress Report (where applicable)
9.	Price reduction for delay
10.	Guarantee & Warranty
11.	Substitution or Wrong Supplies
12.	Termination
13.	Amendments/Modification/Supplement
14.	Documentation
15.	Delivery Dates and Progress Status
16.	Expediting and Inspection
17.	Royalties and Patents
18.	Reserve Parts
19.	Dispatch & Storage
20.	Packing and forwarding
21.	Acceptance
22.	Passing of Risk and Transfer of Property
23.	Insurance
24.	Transportation
25.	Indemnity
26.	Payment by the Sellers and Liens
27.	Assertion of Rights
28.	Assignments and Bankruptcy
29.	Drawings
30.	Property of Drawings and Information
31.	Quality Control
32.	Consequential Damages
33.	Supervision of Installation till Performance Guarantee Tests
34.	Rights not waived by Payment or Certificate
35.	Insolvency and Breach of Order Conditions
36.	Remedies of Buyer
37.	Secrecy, Property, Models
38.	Force Majeure
39.	Applicable Law
40.	Arbitration
41.	Jurisdiction
42.	Most Favoured Customer
43.	Order Confirmation
44.	Free Issue Material
45.	Limitation of Liability
46.	Severability
47.	Seller Code of Conduct
48.	Micro Small and Medium Development Act
49.	Bank Guarantee
Exhibit A	E-Payment Form

1. Definitions:

In the Order (as defined below) the words and expressions defined below shall have the meanings assigned to them, except where the context requires otherwise. Any capitalized term not defined herein under shall have the meaning assigned to it in the Conditions of Purchase for Supply Contract.

1.1	"Approval" shall mean and include the written consent, either manuscript, type written or printed statement under signature or seal as the case may be of the Buyer or their authorized representative on documents / drawings or other particulars in relation to the Order.
1.2	"Battery limits" shall mean the batteries of continuous area, within which the Plant is to be erected.
1.3	"Buyer" means Linde Engineering India Pvt. Limited, Linde House, Opp. VUDA Office, VIP Road, Karelbaug, Vadodara- 390 018 including its successors, affiliates and assigns.
1.4	"Change" / "Changes" shall mean and include the written amendment, revision, modification, supplement, change, addition, deletion and correction wherever asked by either Party.
1.5	"Client" means the owner of the Plant or the entity with whom the Buyer has a contract of supply which includes the Subject of the Order.
1.6	"Consultant" means Project management consultant retained by Client.
1.7	"Delivery Dates" shall mean the dates stated in the Order on which the Seller must have commenced /projected / completed the respective documentation /

activities for the Supplies / Services in whole or in specified parts at the place(s) specified therein.

1.8	"Drawings" shall mean the design calculations, drawings, analysis patterns, specifications, construction and fabrication drawings and documents, certificates, test results, installation, operating and maintenance manuals and any other documentation or materials related to the Order together with the modifications and revisions thereto or thereafter that are made from time to time (whether recorded in physical form or on electronic storage media).
1.9	"Engineer in-charge/Site manager" shall mean the engineer or officer who is in charge of the work at Site nominated by Buyer / Client / Consultant.
1.10	"Inspector" shall mean any person, firm, company or any agency nominated by Buyer / Client / Consultant to inspect Subject of Order at any given location at any stage before dispatch and after receipt at Site as per terms of Order.
1.11	"Latent Defect" means a defect in the Supplies/ Goods, which defect could not have been discovered by reasonable diligence, examination, inspection or testing of the Supplies/Goods.
1.12	"Latent Defects Warranty Period" shall have meaning as defined in sub clause 10.2 (iii).
1.13	"Order" means the written purchase order duly signed with all the terms and condition thereof including all the documents, Drawings, exhibition and attachment mentioned therein along with any supplements and amendments thereto.
1.14	"Party" means Buyer or Seller. "Parties," means Buyer and Seller.
1.15	"Plant" means plant for Client, wherein Subject of Order is meant to be incorporated or utilized.
1.16	"Purchase Price" shall mean the price, as stipulated in the Order, to be paid by Buyer to Seller and shall represent the full compensation payable by Buyer to Seller for supply of Goods and satisfactory compliance of all the Seller's obligation under the Order. However, Purchase Price doesn't include taxes and duties.
1.17	"Reserve parts" shall mean spare and wear parts of the Subject of Order.
1.18	"Seller" means the natural or juristic person (firm, company or any legal establishment including its various agents & Sub-sellers) with whom the Buyer has placed the Order.
1.19	"Services" shall mean physical installation, testing, commissioning, operating, training & any other manpower assistance regarding the Subject of Order to be rendered/ supplied by the Seller to the Buyer.
1.20	"Site" means the location where the Plant shall be erected and the surrounding area if any designated by the Client as part of the site.
1.21	"Subject of Order" means all supplies and services, which the Seller has to execute according to Order.
1.22	"Sub-Seller" means any person / firm / company to whom/ which the Seller subcontracts any portion / whole of the supplies of this Order under the terms and conditions stipulated hereunder, with prior approval of Buyer.
1.23	"Supplies" / "Goods" shall mean and include all equipment, hardware, materials of any nature, software, Drawings, design & data and any other item along with all its parts, accessories to be supplied by the Seller under the Order.
1.24	"Tests" shall mean such process or processes to be carried out by the Seller as one prescribed in the Order or considered necessary.
1.25	"Work" shall mean and include all activities by Seller after the placement of the order for the Subject of Order.

INTERPRETATION

In this Order:

- i) References in the singular shall include references in the plural and vice versa;
- ii) References to a particular clause or schedule shall, except where the context otherwise requires, be a reference to that Article or Schedule only;
- iii) The headings and subtitles in the Order are included solely for convenience and shall not be deemed to be part of it and shall not affect the meaning or operation of the Order;

- iv) The words "including" and "include(s)" are not to be construed as words of limitation;
- v) The schedules form part of this Order and will be of full force and effect as though they were expressly set out in the main body of the Order;
- vi) Whenever provision is made for the giving of any 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;
- vii) The rule of construction, if any, that an order should be interpreted against the Party responsible for the drafting and preparation thereof, shall not apply to this Order;

2. Effectiveness of the Order:

- 2.1 The Order is effective only if it is issued in Buyer's order form duly signed by the Buyer's authorized signatories.
- 2.2 Contradictory or deviating conditions in the Seller's quotation and/or in the confirmation of order shall be valid only, if these have been accepted expressly in writing by the Buyer as an integral part of the Order. All terms, conditions, specifications, standards and other annexures attached to or mentioned in the Order are integral parts thereof.
- 2.3 The following sequences shall prevail for the contents of the order, especially in case of contradictions
 - i) the wording of the Order, commercial protocol,
 - ii) the conditions of Purchase for Supply Contract (this document)
 - iii) the technical specification / protocol
 - iv) the general specifications and the Buyer's blank forms,
 - v) general standards (DIN, VDE UUV, VDI, ASME, ADI etc.)
- 2.4 The Seller shall without any delay carefully review the Order with regard to any errors and contradictions in and between individual parts of the Order and, if any, shall inform and substantiate to the Buyer in writing without any delay about those doubts. If the Seller fails to inform the Buyer accordingly, within 7 days from the date of issue of Order, the Seller shall be liable to the Buyer for any damages occurring thereof.

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

- 3.1 The Subject of Order as specified in the Order shall be delivered so completely that it shall fulfil all the required functions and that it shall guarantee safe operation, even if supplies and services necessary therefor might not have been mentioned expressly in the Order. Only such Supplies and Services (which are mentioned expressly in the order as such) shall be deemed to be excluded from the subject of order.
- 3.2 Even if not particularly mentioned in the Order, the Seller shall deliver to the Buyer (at his named Site) the Subject of Order along with the technical documentation necessary for erection, installation, commissioning, operation and maintenance as well as to adjust, supplement or modify (this documentation) in any other respect without any delay in any case according to the changes which might occur during the execution of the Order.
- 3.3 Furthermore, the Seller shall observe all statutory and relevant professional regulations, recommendations and guidelines, environmental protection, accident prevention and protective labour legislation etc. which are effective at the time & place of application of the Subject of Order. The Seller shall obtain at his own cost all permits eventually necessary for execution of the Order.
- 3.4 The Seller shall supply the Subject of Order in accordance with the latest recognized state of the art technology applicable at the time of placing of the order and only out of new materials of best quality and suitability considering modern operating conditions and the requirements / specification of the order.
- 3.5 Data and material of all parts specified in the Order do not release the Seller in any case to check with regard to the requirement of a faultless continuous operation, as far as such checks are possible by the Seller. The eventual participation of the Buyer in design and engineering including the selection and process of materials as well as selection of Sub-Sellers of the Seller shall be in an advisory capacity only and does not limit in any way the sole responsibility of the Seller for the execution of the Order with the exception of cooperative obligations expressly accepted by the Buyer.

4. Sub-Contract:

- 4.1 The Seller shall not transfer or assign the Order nor any part thereof, without the express prior written consent of Buyer other than the purchase of bought-out items normally purchased from outside sources (Seller should not sub contract whole or part of the work under the Order in any manner whatsoever).
- 4.2 In the event Seller contravenes this condition, Buyer shall be entitled at its discretion, to terminate the Order and to procure the Subject of Order elsewhere at Seller's risk and expense and Seller shall be liable for any loss or damage which Buyer or Seller may sustain in consequence or arising out of such termination and replacement of the Seller by another seller.
- 4.3 Upon subcontracting any item of major importance the Seller shall furnish the Buyer with copies of un-priced sub-orders no later than one (1) week after execution of any such sub-orders. Such copies shall be in the English language and shall be complete with all attachments, drawings and specifications applicable. All sub-orders shall quote the Buyer's Order number(s) and the Buyer's item number(s) of the Goods where applicable. The Seller shall ensure that the Sub-Seller complies with the terms of the Order applicable to such Sub-

Seller. The Seller shall ensure that sub-orders reflect the requirements of the Order.

- 4.4 The appointment of any Sub-Seller does not in any way relieve the Seller from its obligations and liabilities under the Order and the Seller remains liable for the performance of all Sub-Sellers at all times.

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

5. Price:

- 5.1 Price shall be as per the basis specified in the Enquiry / Order Price (excluding taxes & duties) shall remain fixed and firm without any escalation until the complete execution of the Order. No increase in price on any account whatsoever including exchange rate and custom duty variations, increase in wages, labour rates, fuel prices etc. shall be admissible.
- 5.2 Price shall include all the direct and indirect costs to be incurred by Seller for the full and final execution of Order. The Buyer shall not bear any additional cost unless specifically negotiated and agreed with Seller in writing.
- 5.3 The price also includes the costs for the following items.
 - i) Providing manpower, tools, tackles, test equipment & facilities to Buyer / Client / Consultant or Buyer's representative for inspection of Ordered items at Seller's as well as Seller's Sub-Seller's works.
 - ii) Inspection charges of material for Seller's in-house quality control (including at Sub-Seller works).
 - iii) Inspection charges (material as well as personnel) if 1st inspection is unsuccessful due to reasons attributable to the Seller.
 - iv) Any other agency's approval, permits & certifications including submission of documents as required in technical part and as per statutory requirements.
 - v) In addition the price shall include all costs to execute the complete scope of the Order.
- 5.4 Buyer will not accept any invoice for overages in respect of items supplied under the Order unless expressly agreed in writing. Seller shall only invoice the quantity shown in the Order or less in the event Seller has not supplied the quantity in full.
- 5.5 The Purchase Price shall be as set forth under the Order. Any Central Sales Tax / State VAT for transactions between Buyer and Seller and Excise duties shall be payable additionally over the Purchase Price. However at all times during the execution of the Order, the Seller shall be under the obligation to comply with the guidelines of Clause No.42. Accordingly in the event Seller sells or offers to sell items of a similar type, quality and quantities to a third party, at any time between acceptance of the Order and final completion thereof at prices lower than those herein specified, the Purchase Price shall be reduced to the extent to match with the prices offers by the Seller to other customers / third party. In case payments already made the Seller will pay back to the Buyer promptly on demand the price difference. Seller further warrants that the above condition shall be applicable for all the Supplies/Goods where prorata price can be derived from the scope and price of this Order.
- 5.6 The agreed discount applies to all units' rates.
- 5.7 Octroi if applicable shall be paid by the Seller in the first instance which shall be reimbursed at actuals subject to production of documentary evidence.
- 5.8 In case of delivery on CPT Site basis, the transportation costs on 'freight paid basis' of the ordered Goods for 'delivery at Site' (CPT Site) shall be reimbursed at actuals subject to the upper limit stipulated in the Order and as supported by proper documents. In case of delivery on DAP Site basis, the Purchase Price shall include all costs arising out of and/or in relation with the delivery of the Subject of Order at Site. The Seller shall carry all the risks associated with the delivery.

6. Taxes and Duties:

- 6.1 Taxes and duties shall be as applicable at the time of dispatch provided the dispatch is within Delivery Dates. Any variation in taxes, duties and levies arising after the Delivery Dates shall be borne by Seller.
- 6.2 Seller shall consider the best tax advantage to Buyer and shall provide to Buyer all necessary documentation to complete the sale transaction and to avail tax concession, if any. Documents pertaining to excise duty and sales tax, i.e., invoice, lorry receipt etc., shall be as per Buyer's requirements for his Client to avail the available benefits.
- 6.3 Seller shall also issue all necessary form / declaration related / necessary to complete the sales / purchase transaction. In case of non - submission / delay in submission of required documents by Seller, Seller shall be liable to pay any levies arising out of this non - submission / delay in submission of required documents/ wrong documentation.
- 6.4 Seller shall include all taxes and duties as applicable on the Goods under supply and mention the taxes / duties as included in the price schedule submitted to the Buyer. Any omission / error noticed by Seller at later date for not having included

taxes / duties in the price shall not be considered good for consideration by Buyer.

7. Payment:

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

7.2 Order confirmation form attached to this Order issued by Buyer duly signed and stamped by Seller for having read, understood and unconditionally accepts this Order within a week from the date of receipt of this Order.

i) 10% of the Purchase Price shall be payable as advance against submission of a Bank Guarantee from a nationalised /reputed International bank for an amount equivalent to 10% of the Purchase Price in favour of the Buyer in a form and substance acceptable to the Buyer (in format as per Clause No. 49) to be valid till the entire advance amount is fully amortized.

ii) 80% of Purchase Price and 100% of applicable taxes and duties will be paid after receipt of the following and after settling Buyer's entitlements for any price reduction as specified in the price reduction Clause No. 9 "Price reduction for delay".

a. Complete delivery of all ordered Goods at project Site along with final invoice (both Excise and Commercial) with complete set of commercial dispatch documents i.e. Copy of lorry receipt, delivery challans, packing list etc. and Buyer's/ Client's Site confirmation for receipt of Goods.

b. All required technical documents, Quality Control Documents, certificates, manuals as well as inspection documents and all required statutory documents shall be submitted to Buyer as per Order terms.

iii) Balance 10% of Purchase Price will be paid after the expiry of Seller's guarantee obligation or after submission of Performance Bank Guarantee (PBG) (Clause No. 49) for an equivalent value as per Buyer's approved format from a nationalised / reputed International bank acceptable to Buyer with validity as per the Guarantee period specified in the Guarantee period clause and with a further claim period of 3 months thereafter. In case, if partial shipment is allowed, PBG to be submitted along with first shipment.

7.3 All the above payments will be released within 30 days of receipt of invoice and due documents at the Buyer's office at Vadodara as per Buyer's instructions.

All invoice amounts shall be paid by cheque payable at Vadodara / Mumbai or via E-payment option. If DD is required by Seller, bank commissions / charges for issuing DD, courier charges, etc. will be borne by Seller. E-payment form is attached as Exhibit A, to this Conditions of Purchase for Supply Contract.

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

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

80% of Purchase Price shall be paid on pro rata basis as per agreed delivery and billing schedule within 30 days of receipt of Supplies/Goods at Site on submission of following documents in original + 3 copies:

Documents to be submitted to Accounts Department are as follows:

- i) Invoice
- ii) Original Lorry Receipt
- iii) Delivery Challan
- iv) Detailed Packing list identifying contents of each package.
- v) Original Dispatch Instruction (DI) issued by Buyer.
- vi) Seller's certificate stating that one set of non-negotiable documents have been couriered to Buyer.
- vii) Copy of Fax/ E-Mail transmitted to Buyer and insurance company giving full particulars of dispatch of Supplies/Goods for covering transit insurance as per details listed under the insurance clause below.
- viii) Any other documents as per requirement (i.e. Certificate of origin, phytosanitary certificate for import Supplies/Goods etc).

Documents to be submitted to Documentation Department are as follows:

- i) Copy of Inspection Release Note (IRN) issued by Buyer.
- ii) Manufacturer's/Seller's guarantee/warranty certificate.
- iii) Any other document forming part of the Order.

7.6 Buyer shall have the right to adjust any claim of Buyer from the dues payable to the Seller. Buyer may give an advance written intimation in this regard shall be sent to the Seller.

8. Progress Report (where applicable):

8.1 The Seller agrees that the Seller's representative shall be available for and fully participate in any scheduling and progress meetings with the Buyer and the Sub-Sellers, if so requested by the Buyer.

8.2 Progress report shall cover the critical information, which may affect the Delivery Date for any reason for goods as well as documentation. This report alone shall be the basis for the consideration of any delays and shall indicate.

- i) Compliance by the Seller and its Sub-Seller with the last approved Delivery Dates;
- ii) A description of the obligations performed by the Seller in the previous Month;
- iii) Areas with foreseeable problems in achieving the Delivery Dates and any changes that the Seller proposes to the Delivery Dates;
- iv) Such other information and supporting documentation as the Buyer may reasonably request.

The progress reports shall be sufficiently detailed and accurate to permit the Buyer to assess performance, plan inspections and evaluate forecasts.

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

8.4 Progress report should state the following about the progress of the Work:

- i) Material Status
- ii) Milestones achieved
- iii) Status of Drawing/Document Submission & Approval
- iv) Status of Sub-Orders, if any
- v) Manufacturing/fabrication Status
- vi) Delivery Schedule/Dispatch Status
- vii) Constraints and Action Plan
- viii) Look ahead plan for the week/fortnight
- ix) Status of raw material and bought out items and attach updated bar chart

9. Price Reduction for Delay:

9.1 The Delivery Dates being an essential condition of this Order, if the Seller fails to submit the periodical progress reports and / or to meet the Delivery Dates vide the Order; the Seller shall be paid after deducting the amount at the rates specified below.

9.2 All items stated herein marked with "-P-" are subject to price reduction for delay beyond the Delivery Dates without having the necessity to submit any documentary support for any loss or damage suffered by the Buyer.

9.3 In addition Seller shall pay to Buyer interest at the prime lending rate of the State Bank of India as applicable on the date of delivery of Goods + 3% for the delayed period on any advance payment received by the Seller from Buyer.

i) In the case of Supplies/Goods: Price reduction as stated above shall be at the rate of 1 % (one per cent) of the Purchase Price of undelivered portion for each week of delay or part thereof up to a maximum of 8% (eight per cent) of the total Purchase Price.

ii) In the case of Technical Documents: Price reduction as stated above shall be at the rate of 0.2% (zero point two per cent) of the Purchase Price for each week of delay or part thereof up to a maximum of 2% (two per cent) of the Purchase Price.

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

(Documents and Delivery Dates requirement will be specified in Order)

10. Guarantee and Warranty:

10.1 The Seller shall guarantee that the Subject of Order

i) at the time of delivery is new and unused and in accordance with Order, agreed technical specifications and the specified standards and show the utmost skill, diligence and competence in workmanship and also be in accordance with all international codes as applicable to Goods, accompanied by all information, instructions and manuals necessary for the operation, maintenance, repair, proper storage, and proper and safe use of the Goods and shall fulfill all the functions as per the agreed technical specifications.

ii) has the guaranteed qualities provided in Clause No. 3 "Scope of Supply and Execution of the Subject Order" of these Conditions of Purchase for Supply Contract and elsewhere in the Order and allow appropriate smooth operation.

iii) is in accordance with latest recognized state of technology, also regarding quality and suitability of material, design, construction and execution with all technical documents which shall underlie the order as well as relevant regulations, ordinances, recommendations and guidelines according to Clause No. 3 "Scope of Supply and Execution of the Subject Order" of these Conditions of Purchase for Supply Contract valid for the Subject of Order.

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

v) all Goods with respect to any firmware or software be free from any viruses or malware (embedded or otherwise).

10.2 The Seller warrants that the equipment, machinery and materials delivered by Seller will be free from any and all defects resulting from faulty design, material

	or workmanship and will be of merchantable quality for a period of 18 months from the date of commissioning of the plant or 24 months from the date of delivery of all ordered Goods, whichever is earlier.	immediate removal of defects is necessary for maintenance of operation of Buyer's Plant), even if the delay or non-execution of guarantee work is not due to reasons attributable to the Seller, upon prior notice, the Buyer is entitled at his discretion to carry out guarantee work by himself or have it done by a third party at the risk and cost of the Seller.
	<ul style="list-style-type: none"> i) If the acceptance of Plant is delayed, for reasons solely attributable to Seller, the period of warranty shall be extended so as to be valid for 12 months from the date of actual acceptance. ii) For replaced or repaired parts the same warranty conditions shall apply during a period of 12 months from the date of such repair or replacement. However, the extended warranty shall not exceed 12 months after the original warranty period has expired. iii) The Seller shall remain liable to the Buyer for any Latent Defects for a further period of six (6) months from the expiry of the warranty period ("Latent Defects Warranty Period") and all the Supplies/Goods warranties shall apply during such further period. iv) If in the reasonable opinion of the Buyer, a visit by the Seller's personnel to the Site where the Supplies/Goods are installed is required for the repair, replacement or correction of any defects, then the same shall be provided by the Seller at no additional cost to the Buyer. v) The Seller's liability hereunder shall extend to all damages incurred by the Buyer as a result of the breach of any of the Supplies/Goods warranties, including removal, inspection, re-installation and costs of return or warehousing. vi) The Seller shall be liable to the Buyer for any defects that existed in the Supplies/Goods during the Supplies/Goods warranty period, provided that the Buyer communicates the defects to the Seller within six (6) months after the expiration of the Supplies/Goods warranty period or Latent Defects Warranty Period, whichever occurs later. 	<ul style="list-style-type: none"> i) The Seller shall not be released from his guarantee obligation by such substituted performance in case guarantee work shall not be executed properly by third parties ordered by the Buyer. ii) Then the Seller is obliged only to fulfil guarantee obligations, if any, to that extent, which the third party executed without success. Upon request, in such a case, the Seller shall assign such claims, if any, regarding substituted performance to third parties.
10.10	If the Buyer terminates the Order, the Subject of Order or parts thereof shall remain at Buyer's disposal free of charge until a sufficient replacement is made available without any delay. Cost incurred for dismantling, transport and all other costs connected with such termination shall be borne by the Seller.	
10.11	The Buyer prior to acceptance can assert the claims arising out of this Clause of these conditions of purchase.	
		11. Substitution or Wrong Supplies:
11.1	In case of unauthorized substitution or materials delivered by error or of wrong description or defective quality or supplies in excess of the quantity ordered, rejected supplies shall be taken back by the Seller at his own expense within 30 days after due notification to Seller.	
11.2	This will include the revised settlement of payment, if payment is already received by the Seller. Buyer in no way shall be responsible for any shortage, wear and tear or any other damage to such material as above mentioned. In case of delay by Seller to take back such material, the Buyer at his sole discretion may dispose off the said material. Seller shall bear the responsibility and shall bear among other relevant charges, transportation charges both ways. Seller shall substitute correct approved material and deliver at his own cost within the Delivery Dates mutually agreed in writing by the Parties. Buyer shall in no way be responsible for any theft, deterioration, damage, or loss to rejected goods as aforementioned under any circumstances whatsoever.	
		12. Termination:
		12.1 Termination due to breach of Order conditions or default by Seller
12.1.1	Due to non-adherence to the technical and quantitative specification as required for the purposes for which the Subject of Order is intended for, the Buyer reserves the right to cancel the Order 'in part' or 'in toto'.	
12.1.2	The Buyer also reserves the right to cancel the Order in part or in toto if the Seller fails to make adequate post order progress and thereby delays in delivery is expected and/or fails to deliver the Subject of Order with due diligence and as per delivery dates and / or contravene any other condition of the Order.	
12.1.3	The Buyer may give a maximum of seven days' notice to the Seller about the Buyer's intention to cancel the subject Order. Also the Buyer will be entitled in following cases to claim damages for Seller's nonfulfillment of the Order conditions.	
12.1.4	Buyer reserves the right to recover any loss or damage from the Seller, and/or purchase the total Goods as per the Order or similar Goods or any part thereof from other sources on Seller's account. The Seller shall be liable to pay to the Buyer the difference between the price at which Goods/or similar Goods are actually purchased and the price mentioned in the Order including any loss or damage which the Buyer may suffer, and price reduction for late delivery as per Clause No. 9.	
12.1.5	Moreover, the Buyer shall be entitled to terminate the Order wholly or partly, if: <ul style="list-style-type: none"> i) Seller refuses to carry out the guaranteed Work or does not carry out this Work within a reasonable time limit. ii) in spite of executed repair or replacement the defects could not be removed within a reasonable grace period fixed by Buyer. iii) the Subject of Order executed is so defective that removal is not possible or not reasonable or iv) the Buyer has to accept difficulties and limitations by statutory / regulatory authorities regarding the operation of Plant because the Order is not executed by Seller in conformity with sub clause 12.1.1 of this Clause No. 12 of these conditions of purchase. v) the Seller (i) is insolvent, (ii) files a voluntary petition for winding up or has an involuntary petition for winding up filed against it that is not dismissed within thirty (30) days of such involuntary filing, (iii) admits the material allegations of any petition of winding-up filed against it, (iv) is adjudged insolvent, or (v) makes a general assignment for the benefit of its creditors, or a receiver is appointed for all or a substantial portion of its assets and is not discharged within thirty (30) days after its appointment; vi) the Seller commences any proceeding for relief from its creditors in any court under applicable law; 	
10.3	In the event, the Subject of Order is not as per the conditions stated above or if defects of the Subject of Order will accrue during the guarantee period, these defects will be notified to the Seller. At the latest, within one week after the notification, but, not later than 10 calendar days after expiry of the contractual guarantee period, the Seller shall in consultation with the Buyer remove such defects either through repair and/or replacement without any delay at Seller's own cost unless otherwise directed by the Buyer, after 02 attempts from the Seller to make good the defect, the decision regarding replacement/repair shall be Buyer's discretion. Such repair and/or replacement shall be free of cost to Buyer including packing, disassembly and reassemble (method of transport according to Buyer's discretion).	
	<ul style="list-style-type: none"> i) Removal of defects if urgently required shall be carried out with increased use of personnel and devices, working multiple shifts, doing overtime or by working on Sundays and official holidays. The Seller shall obtain at his own cost all permits eventually necessary. ii) Besides the costs for disassembly of repaired or replaced parts the Seller shall also bear other direct costs relating to removal of the defect e.g. Material, personnel, transport costs, daily allowance, living expenses, as well as damages accrued to the Buyer irrespective whether such costs accrued to the Buyer's Client or the Seller. iii) The Seller shall bear the personnel costs of the Buyer for the repeated acceptance test as well as other costs connected therewith (e.g. Costs of inspection authorities). 	
10.4	In case any part is modified or replaced by other parts under the guarantee, the Seller shall at Buyer's discretion also modify or replace already delivered respective reserve parts without any costs to Buyer provided that such modified/replaced part should be in equal conformity with the specifications of the Goods supplied earlier under this Order.	
10.5	Replaced part shall become the property of the Seller at the place of replacement and shall be removed by him from Site at his cost without any delay.	
10.6	In the event the Subject of Order wholly or partly cannot be utilized as intended due to a defect, then the guarantee period for the whole Subject of Order or its defective part as the case may be shall be extended by the period of interruption of use.	
10.7	In any case, to the extent technically possible and without any delay Seller has to make provisional arrangements and maintain them till rectification of defects in order to avoid interruption of use. These arrangements have to be in accordance with all regulations, recommendations and guidelines according to Clause No. 3 "Scope of Supply and Execution of the Subject Order" of these conditions of purchase. Such arrangements shall be economically reasonable and may accrue only with Buyer's prior consent in writing.	
10.8	In case the same parts of the Subject of Order have been repaired or replaced several times or an apparent defect raises apprehension that other parts of the Subject of Order are also affected by the same defect, the Seller shall remove the cause of these defects as well as of these parts by appropriate measures e.g. by changing the design or by using different material within a reasonable time limit fixed by the Buyer. In such a case, the Seller shall also agree to prolong the guarantee period to the reasonable extent as requested by the Buyer for the relevant parts.	
10.9	Failing prompt and sufficient action on the part of Seller, Buyer/Client reserves the right to effect or arrange for all of the necessary Work at Seller's risk and expense. Buyer/Client shall have the right to recover such costs from Seller. Seller's liability in respect of aforesaid rectification /replacement shall be unlimited without exception. If the Seller refuses to carry out repair and/or replacement work in general or as necessary or fails to execute these obligations without any delay or as a result of defects, delays are dangerous, or other cases of urgency shall occur (e.g. Damages of significant nature are imminent or	

- vii) the Seller commits any misrepresentation, fraud or wilful misconduct or breaches any provision of the Conditions of Purchase for Supply Contract (this document);
- viii) the Seller subcontracts or assigns any of its obligations under this Order other than in compliance with the terms of this Order.
- ix) in above-mentioned cases the Buyer shall be entitled to claim damages for non-fulfilment instead of/ or besides termination provided that the fault is solely attributable to the Seller. The right to a price reduction shall not be affected thereby.
- 12.2 Termination by Buyer by Convenience.
- 12.2.1 In the case of termination by the Buyer pursuant to sub clause 12.2 within 4 weeks after placement of Order, no termination cost whatsoever shall be borne by Buyer. Subsequent to the first four weeks, the Buyer shall, if termination shall have occurred prior to Clause No. 21 "Acceptance" pay to the Seller an amount equal to A minus B where
- A equals (i) any portion of the Purchase Price due on the date of termination and therefore unpaid (the "Purchase Price Portion") and (ii) reasonable, proper and unavoidable costs incurred as a direct result of such termination, including costs of returning Seller's personnel to their countries of domicile and any cancellation charges that the Seller must pay to Sub-Seller as a result of such termination and
- B equals the excess, if any, of (x) the aggregate amount of the Purchase Price paid prior to the termination plus the Purchase Price Portion over (y) an amount equal to the supply actually completed by the termination date multiplied by the Purchase Price (the "Supply Value").
- If when finally determined the amount B above exceeds the amount A above, the Seller shall pay to the Buyer the amount of such excess within thirty (30) days after receipt of an invoice thereof. The Seller shall make every effort to minimize the charges referred to in sub clause (ii) above, including the application of equipment to other projects where practicable. The Seller, as a condition of receiving payment under this clause shall execute all papers and take all other steps which may be required to vest in the Buyer all rights, set-offs, benefits, title and interest of the Seller, equipment and materials, orders and other commitments (as specified by the Buyer) entered into by the Seller for the benefit of the Order. The Seller shall furnish certificate issued by its Auditors in respect of expenses, costs and various disbursements incurred by the Seller pursuant to cancellation of this Order. All amounts payable to the Seller pursuant to this clause shall be mutually agreed upon by the Buyer and the Seller. 12.2.2. Upon receipt of such notice, the Seller shall promptly discontinue any further work / performance under the Order / place no further sub-orders or purchase orders to the extent that they relate to the performance of the terminated portion of the Order, except so as may be necessary to protect the Work already completed or as may be requested by the Buyer. Seller shall mitigate any loss, cost or damage which the Seller may incur as a result of a termination of all or part of the Order. However, the Seller shall not be entitled to any additional compensation relating to any termination of the Order under this Clause.
- 12.2.3 Buyer shall be entitled to withhold from any amount due to Seller under sub clause 12.2.1, the amount of any claims Buyer may have against Seller.
- 12.2.4 Seller shall deliver to Buyer as per terms mutually agreed upon, all Supplies/ Goods, in its then current location and state of completion and condition of the date of termination. Seller shall not be obliged to retain in its plant any such equipment and material, for more than 180 days after such termination.
- 12.3 Termination in case of Merger
- 12.3.1 In the event that Seller has the intention to merge with another business entity and/or Seller shall dissolve its entity, Seller shall as early as possible, prior to the date of the merger, advise Buyer in writing and shall identify and appoint the new business entity, and obtain the prior written agreement of Buyer as Seller under Order.
- 12.3.2 Seller shall make, prior to the merger, all legal and other arrangements necessary to the effect that the new business entity shall be fully responsible for all engagements, obligation and guarantees under Order.
- 12.3.3 If Buyer does not accept the arrangements made, Buyer shall have the right to stop all payments and Buyer shall be discharged of all obligations towards Seller, without prejudice to the financial compensation to which Buyer has the right to claim and or request for additional security which Buyer may consider necessary.
- 12.4 During execution of this order if standard or stock parts of the equipment is/are cancelled from Seller's scope of supply. Seller agrees to take back the same parts at the respective Purchase Price mentioned in this order.
- 12.5 Buy back of materials : Notwithstanding the provisions of "cancellation" it is provided in the Order that if the Buyer deems that all or part of the supplied goods are surplus to the project requirements, Seller shall accept return of the surplus goods at the original Purchase Price.
13. Amendments / Modifications / Supplement.
- 13.1 The Buyer shall be entitled to make any change with regard to the Order. The Seller shall carryout such changes and be bound by the same terms and conditions to the extent applicable as though the said changes were incorporated in the initial Order.
- 13.2 The Seller at the latest within two weeks after the request by Buyer or contractual amendment of the Order shall notify the Buyer any comment in writing especially about changes in prices and Delivery Dates. After the receipt of notification, the Buyer shall without any delay submit his comments to the Seller.
- 13.3 If any such changes affect the agreed price or delivery, the same shall be subject to adjustment of price/ delivery wherever required on reasonable basis by mutual agreement in writing. All such changes shall be incorporated through a written Order supplement and Seller shall confirm the acceptance of such Order supplement.
- 13.4 The Seller shall execute the changes of the Subject of Order as requested by the Buyer as per agreed time schedule.
- 13.5 The Seller shall not be entitled to any compensation for work additional to that specified unless written Order supplement to carry out such work has been issued or confirmed on the Buyer. The value of all Order Supplements or amendments shall be ascertained by measurement and by reference to the rates and prices stated in the Order for like or analogous Work but if there are no such rates and prices or if the same are not applicable then, such value shall be as is fair and reasonable in all circumstances and the Buyer shall have access to such Seller's information as will prove this to be the case. In case any portion of the Subject of Order are changed under sub clause 13. 3 of this Clause and for which already reserve parts have been delivered to the Buyer, the Seller shall also adopt such reserve parts according to this modification or shall redeliver them at its own cost.
- 13.6 Seller must make claims for adjustment within 15 days from the date of the changes or cancellation of Order. Seller shall not be entitled to any compensation whatsoever for revision, changes, variations and/or cancellations except where agreed by Buyer in writing.
14. Documentation.
- 14.1 Any changes, review or approval remark by the Buyer in Seller's technical documentation shall not release the Seller from his obligation for the correctness of all information contained therein, such as dimensions, constructions, calculations and function of the Subject of Order.
- 14.2 It is Seller's responsibility to check any Drawings, specifications and other documents provided by the Buyer before using them for the Subject of Order. Upon completion of the Subject of Order the Seller shall return all documentation supplied by the Buyer without any request.
- 14.3 The Buyer reserves the right to back charge the Seller for the additional man hours spent by the Buyer/ Buyer's authorized agency due to delayed submission, bad quality, incomplete submission, non-incorporation of Buyer's / Buyer's authorized agency's comments resulting in repeated review / approval of the Drawings/documents.
- 14.4 Any changes in Drawings and any other documents made by the Seller shall be notified to the Buyer in writing without any delay and be marked distinctly for each item.
15. Delivery Dates & Progress Status:
- 15.1 Timely completion is an essential condition of the Order. The Seller shall adhere to the Delivery Dates by all means. Within seven days of receiving the letter of intent / Order, the Seller shall submit to Buyer a clear progress schedule as per Clause No. 8 for the Subject of Order for Buyer's approval. Any revision to this progress schedule shall be updated by Seller without delay and shall be notified immediately to the Buyer. This weekly progress status report shall be submitted to the Buyer without delay. Any circumstances relating to an actual or expected delay or any other difficulties in manufacturing of the Subject of Order shall be notified by the Seller to the Buyer by giving reasons without any delay, not later than three working days after their detection. However, any justification/consent for extension of the Delivery Dates should not be derived from this notification. If Seller does not notify the Buyer for reasons solely attributable to the Seller, the Seller shall be liable for any damages occurring thereof.
- 15.2 In case of insufficient progress of Work during the execution of the Order or if delivery of Subject of Order in due time or if another condition of the Order appears to be jeopardized, in all such cases if the reasons are attributable to the Seller, the Seller shall expedite the Work at his own cost and shall bear all extra costs required for all the steps necessary to avoid delay in the Delivery Dates, e.g. by increased use of personnel and devices, working in multiple shifts & doing overtime, working on Sundays and official holidays as well as support and control of manufacture by the Buyer. The Seller shall obtain at his own cost all permits eventually necessary.
- 15.3 Supply of the Subject of Order before the Delivery Dates are subject to the Buyer's prior written consent, all other rights and obligations of the Seller remaining unchanged. Delivery of Supplies/Goods along with necessary documents shall be made available at the place, time and manner specified in the Order.
- 15.4 If the Seller does not adhere to the Delivery Dates due to reasons solely attributable to the Seller, the agreed price reduction (reference Clause No. 9) shall become due, even if the Buyer has not reserved/invoiced such right at the time of any payment to Seller. Where the Subject of Order has been delivered in due time but with defects, the Seller shall be liable to reduce the prices as prescribed in the Order under the head "Price Reduction for delay" for the period commencing on the date of receipt of the Goods by the Buyer and ending with the date of satisfactory acceptance by the Buyer/Client subject to the ceiling specified in the Clause No. 9 as stated in the Order. Such defect shall be communicated by the Buyer to the Seller prior to acceptance in accordance with Clause No. 21 "Acceptance" of these conditions of purchase.

- In addition Seller shall pay to Buyer interest at the prevailing prime rate for overdraft from Buyer's Bank (or SBI whichever is higher) for the delayed period on advance payment (if any) received by the Seller.
- 15.5 In case of any actual / expected delays, Buyer has the right to take all necessary actions to reduce / avoid delays including cancellation of Order and recover the incidental costs and damages from the Seller as stated in Clause No.12 "Cancellation".
- 15.6 If the delay in the Delivery Dates is solely attributable to Buyer no price reduction shall be made, provided that the Seller has notified the Buyer in due time the expected delay according to sub clause 15.1 of this Clause "Delivery Dates and Progress Status".
- 15.7 Should the Buyer chooses to terminate or to cancel the Order as per Clause No.12.1, it shall not prejudice the rights of the Buyer to claim any sum due from the Seller or any of his claims of price reduction existing at that time shall remain unchanged.
- 15.8 In the event, that the Seller fails to keep a reasonable grace period fixed by the Buyer or if it becomes evident that it cannot be kept, the Buyer reserves the right.
- i) To reject further delivery or rectification of the Subject of Order wholly or partly and get the Subject of Order executed or rectified through a third party at Seller's costs and expense or
- ii) To cancel the Order wholly or partly and/or to claim incidental costs and damages. In either cases, the reasons shall be solely attributable to Seller.
- 15.9 If damages or defects occurs during the progress of work and it is unclear to identify the Party responsible, the Seller shall remedy those damages or defects and adhere to the Delivery Dates. If the Seller refuses to do so although requested by the Buyer, until final clarification, the Buyer shall be entitled to correct / fix the damages or defects of the Subject of Order by himself or by a third party at risk and cost of the Seller. After final clarification the cost to remedy damages or defects shall be borne by the Party responsible for it.
- 15.10 The clause regarding the Delivery Dates shall apply accordingly for revised Delivery Dates mutually agreed in writing.

16. Expediting and Inspection:

- 16.1 The Supplies/ Goods shall be delivered in strict accordance with the Delivery Dates and the requirements of this Order. The Seller shall be solely responsible for ensuring the timely execution of the Order and its sub-orders and with all parties relating to the execution of the Order/sub-order. The Seller shall promptly notify the Buyer in writing of any actual or anticipated delays in the manufacturing or delivery of the Supplies/ Goods immediately upon becoming aware of the same. Such notice shall include all details regarding the causes of any delay, an estimate of the period of delay, and corrective actions being taken or to be taken by the Seller and the Sub-Sellers. The Seller shall keep the Buyer informed of its expediting plan and shall adopt the Buyer's requirements for expediting.
- 16.2 If the Buyer reasonably believes that, the corrective actions being taken by the Seller are insufficient or the Seller does not improve its performance to fully comply with the requirements of the Order within a reasonable period, the Buyer may require the Seller, at Seller's cost, to make changes or modifications to its manufacturing or delivery operations or require specific additional measures including an increase in the Seller's management, staff and work forces, overtime operations, additional days of work per week and similar measures.
- 16.3 If the Buyer reasonably believes that the Seller will not meet the Delivery Dates or the Seller is not promptly devising the expediting plan or not taking adequate measures for expediting the matters, the Buyer may, at its option, at Seller's risk and cost undertake expediting measures. Whether or not the Buyer has undertaken any expediting measures, the Seller shall not be absolved from its responsibility for delivery of the Supplies /Goods in accordance with the requirements of the Order.
- 16.4 However, the Buyer, Client / Consultant - the latter in co- ordination with the former - and their representatives are entitled to expedite and check the progress of work at Seller's and his Sub-Sellers premises, especially to follow up the Delivery Dates and quality control and for compliance with all applicable codes and standards. For this purpose they shall be granted free access during normal office hours to the workshops and to such Drawings and other documents which are required for this purpose and the Seller shall provide the means to do this during all phases of the Work. The Seller shall impose this obligation on his various agents including Sub-Sellers. The Buyer shall hereby consider the justified interest of the Seller in exercising this right.
- 16.5 Buyer/ Client/Consultant shall have the right to give Seller instructions relating to the timely preparation of and the Seller's actual adherence to the Delivery Dates, covering activities in engineering, issue of Drawings and data, material acquisition, fabrication, assembly, inspection, testing and shipping.
- 16.6 Seller shall carry out inspection and tests and issue the related certificates to the Buyer.
- 16.7 Seller shall issue notice to Buyer for inspection 15 days prior to the proposed date of inspection.
- 16.8 The Seller shall as its own expense provide such assistance, labour, material, electricity, fuel, stores, apparatus and instruments as may be required to carry out efficiently such shop tests.
- 16.9 When stipulated in the Order that the Seller is to provide a witness test, the Seller shall provide due notice to Buyer/ Client/Consultant of the test date and the Seller shall arrange said test and not proceed with the work until said tests are witnessed by Buyer/ Client's authorized agents/ Third Party Inspector (TPI)

appointed by Buyer or a written waiver is issued by Buyer/ Client/Consultant. In cases of doubt regarding the proper execution of the terms of the Order on generally recognized regulations and standards for selection of engineering material, proper manufacture, ability to function and safety in operation, the Buyer and Client / consultant - the latter in co- ordination with the former - and their representatives are entitled to carry out non-destructive random tests (e.g. x-ray and ultrasonic tests) at the costs of the Seller. Any such action by the Buyer will not relieve the Seller of his obligation and liabilities under the concerned Order.

- 16.10 The fact that any material or workmanship has been inspected by Buyer/ Client/Consultant shall not release the Seller from the responsibility of making good any defects discovered after such inspection. The inspection release note in no way will be treated as final acceptance of the Goods.
- 16.11 In the event of any defects becoming apparent during inspection and/or testing, the Seller shall at his own expense make good the defects discovered to the satisfaction of Buyer/ Client/Consultant. Should control be required repeatedly due to defects and/or delays regarding manufacture or delivery attributable to the Seller, the resulting costs shall be borne by the Seller.
- 16.12 All Goods rejected by Buyer/ Client/Consultant as not in accordance with Drawings, specification and/or the Order, shall be replaced promptly by the Seller with other equipment and material or Goods in accordance with the specifications, Drawings and/or the Order at the Seller's expense.
- 16.13 If any equipment or material, for any reasons whatsoever, has not been inspected during the fabrication or before packing, Buyer/ Client/Consultant shall have the right to inspect such Goods at the delivery point, designated in the Order. In case of any expected delay in obtaining the components / materials / Drawings / information by Seller from any source including Buyer such expected delay should be immediately informed to the Buyer.
- 16.14 After final satisfactory inspection by Buyer / Client /Consultant / TPI, the Seller shall submit to Buyer all technical documents and certification as per the Order terms based on which the inspection release note duly signed by technical department of Buyer shall be issued to Seller.
- 16.15 The Seller shall dispatch the ordered material only after receipt of the inspection release note accompanied / followed by Dispatch Instructions (DI) duly issued by Buyer. The Seller shall comply strictly to such instruction to avoid any loss and delay at destination.
- 16.16 The Seller shall comply strictly to such instruction to avoid any loss and delay at destination.

17. Royalties and Patents:

Seller represents and warrants:

- 17.1 That Goods provided under Order and the sale or use of them does not infringe, directly or indirectly, on any patent, copyright or trademark, foreign or domestic owned or controlled by any third party and
- 17.2 That Seller shall at its, own expense, defend, indemnify and hold Buyer/Client and its subsidiaries and associated companies harmless from and against any and all present and future claims, based on or arising out of any alleged or actual infringement thereof, and
- 17.3 That Seller will promptly pay, on Buyer/Client's demand all losses, expenses, costs, damages, liabilities and judgment suffered or incurred by Buyer/Client's arising from said claims and / or infringement, without any limitations or restrictions.
- 17.4 The Seller represents that the sale or use of Goods by Buyer will not in any way infringe directly or indirectly or contribute to the infringement on any third parties' patent, design, trademark, copyrights or any other form of intellectual property.
- 17.5 The Seller shall at its own expense indemnify and undertakes to hold Buyer harmless from and against any demand or claim by any party, cost and expense incurred (including legal costs) in connection with such legal action any jurisdiction in relation to an alleged or actual infringement of intellectual property rights.
- 17.6 In addition, the Seller shall immediately upon allegations of an infringement of intellectual property rights, remove the relevant Goods and, at its sole costs and risk, (i) procures for Buyer the right to continue using such Goods, (ii) replaces the same with non-infringing Goods having functionality similar to that of the Goods, (iii) modifies the Goods to make them non-infringing while retaining similar functionality. No matter any option is exercised the obligation of Seller to hold harmless and indemnify Buyer against all claims shall survive.
- 17.7 The Seller hereby grants to the Buyer an irrevocable, perpetual, royalty-free, fully paid-up license to use the Seller IP as incorporated in the Supplies/ Goods, for all uses of the Goods in the business operations of the Buyer group.
- 17.8 The Buyer hereby grants the Seller a limited right to use the Buyer IP for the sole purpose of manufacturing the Goods.

18. Reserve Parts:

- 18.1 The Seller shall supply sufficient reserve parts for the Supplies/Goods which shall be available to the Buyer to enable the Buyer to effectively maintain the Supplies/Goods for their normal design life. Upon Buyer's request the Seller shall maintain reserve parts (supply of consumable parts, and spare and replacements parts for the equipment and material covered under the Order, at reasonable

- Prices and within reasonable time) till termination of the average useful life of the Subject of Order, at least for 10 years from the effective date of the Order.
- 18.2 If the Seller or Sub-Sellers stops manufacturing the reserve parts, the Seller shall give a one (1) year prior written notice to the Buyer in the event the Seller will be unable to supply the reserve parts or to obtain another source of supply for the Buyer. Without waiving any of its rights or remedies under the Order or under applicable law, the Buyer may at its sole option, allow the Seller to provide the Buyer with drawings required to either manufacture or buy such reserve parts and technical information or any other rights the Seller may have so that the Buyer can manufacture or obtain such reserve parts from other sources. The technical information shall include:
- manufacturing drawings and specifications of raw materials and components comprising such parts to enable full production of the reserve parts;
- i) manufacturing drawings and specifications covering special tooling and the operation thereof;
 - ii) a detailed list of all commercially available parts and components purchased by the Seller on the open market disclosing the part number, name and location of the supplier and price lists, for the purchase thereof; and
 - iii) detailed test specifications and procedures describing the methods of testing and repairing the spares.
- 18.3 Regardless of whether or not reserve parts are included in the Subject of the Order, the Seller shall provide details of the reserve parts required for normal operation of the Supplies/goods throughout their normal design life with complete specifications and inter-changeability details. The Seller shall incorporate all changes suggested by the Buyer no later than one (1) month prior to dispatch.
- 19. Dispatch & Storage:**
- 19.1 All dispatch documents including invoice must clearly show the information required by the Buyer, especially Order no., Item no., Job no., Code no., as well as quantity including unit of measurement per item. The documents should be prepared strictly according to the instruction of the Buyer to ensure that the Buyer is able to receive the expected taxes/duty benefits.
- 19.2 The Buyer may reject the Subject of Order which has been delivered without appropriate dispatch documents, test certificates or acceptance certificates, warranties, operating manual etc.
- 19.3 Dispatch documents have to be submitted to the Buyer before Subject of Order reaches destination as mentioned in the Order.
- i) The Seller shall be liable for all costs and/or damages arising from non-observance of the instructions for dispatch, delayed issue/not issuing at all and / or issuing incorrect declarations made by him in connection with dispatch.
 - ii) Deliveries to the destination as mentioned in the Order shall only be made during normal business hours. Any exceptions require express prior consent of the Buyer.
 - iii) The Subject of Order shall not be dispatched unless and until notified duly to the Buyer. If on receipt of Seller's notification of readiness for dispatch, the Buyer requests the Seller to hold back the dispatch of the Subject of Order, Seller shall store properly the subject of Order at his own cost and risk.
 - iv) On request of the Buyer – even after notification of readiness for shipment – the Seller shall postpone shipment of the Goods if take-over thereof is temporarily impossible, and store the Goods for up to three months at the cost and risk of the Seller. In case the Subject of Order is stored, payment of due instalment will be made only against transfer of property of the Subject of Order to Buyer.
 - v) Any approval, acceptance, payment made shall not prejudice the Buyer's/ Client's right to reject the Goods or any part thereof at any time if it is found that Goods or any part thereof are not in conformity with the terms and conditions of Order in all respects and Buyer shall claim for any additional expense incurred without prejudice to any other right which the Buyer may have against the Seller.
- 20. Packing & Forwarding:**
- 20.1 All equipment including its accessories & spares shall be adequately packed in damage free conditions to enable proper transportation through any common carrier. Such packing should also withstand all hazards in transit and also during handling and unloading at Site and storage till the time of erection and against all weather conditions. All protective actions like painting, greasing etc. shall be done for the equipment and its accessories against rusting, corrosion and any other damage during transit. All accessories and spares should be sent along with the main equipment inside the main packing. All parts shall be adequately coated with protective compound. Seller shall be responsible for all damages due to improper packing. Painting shall be as per Buyer's technical specification.
- 20.2 Two weeks prior to dispatch, Seller shall give complete shipping information concerning weight, size and contents of each package. All spares will be packed separately in a box clearly marked as 'Spares'.
- 20.3 In case of short receipt of any Goods in any apparently undamaged package, Seller shall on receipt of information from Buyer immediately deliver short supplied Goods to Buyer at no extra cost to the Buyer.
- 21. Acceptance:**
- 21.1 Unless expressly stipulated otherwise, the acceptance of the Subject of Order by the Buyer shall take place after delivery in conformity with the Order condition, satisfactory completion of all applicable/specified tests ("Acceptance Tests"), and commissioning of the Plant and with the formal confirmation of acceptance in writing by Buyer.
- 21.2 Acceptance is subject to presentation of all necessary documentation, governmental approval, certificates to be procured by the Seller at his own cost. However, this acceptance of the Subject of Order shall not relieve the Seller of its guarantee and warranty obligations as per Clause No.10.
- 21.3 The Seller shall provide free of charge any testing instruments or other resources required for Acceptance Tests.
- 21.4 Acceptance Tests shall be recorded in a test report jointly to be signed by the Seller and the Buyer. Should the Buyer waive a formal acceptance, then the date of payment of Seller's final invoice shall be construed to be the date of acceptance.
- 21.5 The material costs for Acceptance Tests shall be borne by the Seller. The personnel costs connected therewith shall be borne by the Buyer and the Seller respectively for their respective personnel.
- 21.6 Should the Goods fail to conform with the Order, whether by reason of not being of the quality or in the quantity or measurement stipulated or being unfit for the purpose for which they are required, the Buyer/Consultant shall have the right, after allowing the Seller the opportunity to correct the non-conformance at Seller's own risk and cost, to reject the Goods within a reasonable time of their delivery and inspection and to purchase elsewhere and to claim for any additional expense incurred without prejudice to any other right which the Buyer may have against the Seller. The making of any prior payments by the Buyer shall not prejudice Buyer's right of rejection.
- 21.7 In case the located defects do not affect the functions of the Subject of Order, provisional acceptance may be given subject to such defects being rectified during a reasonable period to be agreed mutually. In that case the Buyer shall retain a reasonable amount from the balance payment due to Seller till the rectification of these defects.
- 21.8 **Non-waiver:** Failure of Buyer to insist upon strict performance of any of terms and conditions hereof or failure or delay to exercise any rights of remedies provided herein or by law or failure to properly notify Seller in the event of breach, or the acceptance of or payment for any goods hereunder or approval of design, shall not release Seller of any of the warranties or obligations of this Order and shall not be deemed a waiver of any of right of Buyer to insist upon strict performance hereof or of any of its rights or remedies as to any such goods regardless when shipped received or accepted, nor shall any purported verbal modification or recession of this order by Buyer operate as a waiver of the terms hereof.
- 21.9 Moreover the acceptance shall be subject to the Clause No. 10 "Guarantee and Warranty".
- 22. Passing of Risk and transfer of Property:**
- 22.1 Unless otherwise stipulated in Order, transfer of property of the Subject of Order to the Buyer coincides with transfer of risk. Transfer of property by itself does not result into any acceptance of the Subject of Order.
- 22.2 Unless otherwise agreed, the Seller shall, at its sole risk and cost, self-insure or purchase insurance for the Supplies/Goods against the risk of loss of or damage to the Supplies /Goods for the full Purchase Price of the Supplies /Goods until delivery of the Supplies /Goods is in accordance with the conditions set forth under Clause No. 21.
- 22.3 Unless expressly agreed to in writing in the Order, the Buyer shall not be obliged to accept the delivery of the Supplies/Goods by instalments. If the Seller delivers and Buyer accepts the delivery of the Supplies/Goods by instalments, such acceptance shall be without prejudice to all the rights or remedies of the Buyer.
- 22.4 Goods shall become the property of Buyer either:
- i) When Goods have been delivered at the destination place as specified in Order or
 - ii) When a progress payment has been made in respect of Goods prior to aforesaid delivery.
- In either event the risk in Goods shall remain with Seller until Goods are delivered to Buyer at the destination place as specified in Order.
- 22.5 Seller agrees to pay, discharge and hold Buyer harmless from all liens, claims, suits, including but not limited to counsel fees and other expenses of suits or judgment which may whether before or after final payment is made to Seller arise out of or have any connection with Goods. Seller shall, whenever Buyer requests, furnish Buyer with proof satisfactory to Buyer that all such liens, claims, suits, judgment and awards have been satisfied and released.

23. Insurance:

23.1 Personnel Insurance

Seller shall provide, maintain and pay for any insurance for his supervisory or other personnel, who may be required to travel to and work at the Site, in the execution of Seller's obligations under the Order.

Seller hereby waives all rights of recovery from Buyer in connection with its properties and the properties of its personnel while working at Site and traveling to and from Site. Seller shall cause its insurance policy under Article 23.1 to provide for a waiver of subrogation in favor of Buyer.

23.2 Transit Insurance

Client shall arrange transit insurance. However, it shall be Seller's prime responsibility to inform Buyer/ Client to take / cover timely insurance failing which Seller shall be solely held responsible for any loss, damages, pilferage etc., costs and losses arising out of it shall be deducted from the due payment of the Seller or recovered from Seller.

Seller shall advise the Buyer/ Client the following packing and dispatch details by E-mail within 48 hours of the Goods are air freighted / shipped.

Quoting:

- Project Name
- Purchase Order No. and date
- Invoice No. and date
- Description of the consignment.
- No. of packages / gross weight (M. T.) , net weight (M. T.) / CBM
- Vessel name / flight No./Vehicle details.
- Place of dispatch
- ETA place of destination / ETA at Site

24. Transportation:

24.1 Seller shall arrange to transport the ordered Goods on 'freight prepaid basis' or as per Incoterm mentioned in the Order along with consignee copy of Lorry Receipt/consignment note/ Bill of Lading (BL). The consignment shall be accompanied by necessary documents and Seller shall ensure that these documents are handed over to the concerned personnel at Site for effecting proper delivery. In case there is any change, such change will be informed to the Seller before dispatch.

24.2 In case of Buyer's own arrangement of transport, Seller shall be responsible also for loading the ordered Goods on to the designated 'carrier'. However, it would be Seller's responsibility to inform the Buyer's/ Client's Insurance Company about Goods being shipped.

24.3 Failure to meet cargo deadline date.

If cargo readiness is delayed beyond the definite Delivery Date of cargo readiness, Seller shall be wholly responsible for all dead freight, accrued demurrage charges or extraordinary costs incurred to meet vessel/ aircraft departure date resulting from Buyer or Forwarding Agent's inability to load cargo aboard the vessel or aircraft by the date of the cargo booking commitment mutually agreed to with the carrier.

25. Indemnity:

25.1 Seller agrees to hold harmless and indemnify Buyer/ Client and its representatives or agents as well as subsidiaries, affiliated and associated companies and employees of any one of them from and against all claims, suits, summons, judgment and awards (including all legal expenses or costs) which may result from the execution of this Order including supply and acceptance of Goods.

25.2 Seller assumes all risks of damage or injury or death to Seller's own property or personnel or to third parties (including physical or mental injury, libel, slander, bodily injury or death) or loss or damage to real and/or tangible property of third parties, caused by or relating to any fraud, negligence or wilful misconduct of Seller or any representative, employee, and agent of the Seller.

25.3 Defects of title:

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

26. Payment by the Seller and Liens:

26.1 Seller shall be fully responsible for all payments in relation to his Sub-Seller as no contractual relation whatsoever shall exist between any Sub-Seller and Buyer.

26.2 Seller agrees to pay, discharge and hold Buyer harmless from all liens, claims, suits, including but not limited to counsel fees and other expenses of suits or judgment and award of Sub-Seller, (which includes material, men, supplies, labourers and others) which may, whether before or after final payment is made to Seller's arise out of or have any connection with Supplies/Goods. Seller shall, whenever Buyer requests, furnish Buyer with proof satisfactory to Buyer that all

such liens, claims, suits, judgment and awards have been satisfied and released. In emergencies Buyer shall also have the right to pay directly to any Sub-Seller or subcontractor of material, men any sum due or become due from Seller to such Sub-Seller or subcontractors of material, men for performing or furnishing any work, labour, material, supplies, tools, equipment or other things used, or intended for use, in connection with the execution of this Order and Buyer may charge any or all such payments to Seller's account.

26.3 Seller agrees to accept exclusive liability for the payment of any payroll taxes, holiday pay or contributions for unemployment insurance or old age pensions or annuities which are measured by true wages, salaries or other remuneration paid to Seller's employee and Sub-Seller's.

26.4 Seller agrees to comply with all laws and orders and regulations of public authorities relating to rates of wages, hours of labour and other similar or dissimilar matters which may be binding upon Seller in connection with any work or Order for or in connection with which Supplies/Goods, labour, material, supplies, tools, equipment or other things to be performed or furnished by Seller under this Order or are intended to be used.

26.5 Seller further certifies that all equipment and material provided under this Order shall have been produced and sold in compliance with applicable requirements of labour legislation as amended, and of regulations or orders issued thereunder in the country of manufacture. Seller shall indemnify Buyer from all liabilities arising out of this Order.

27. Assertion of Rights:

Failure by either Party to assert any of his rights under Order shall not be construed as a waiver thereof.

28. Assignment and Bankruptcy:

28.1 This Order shall be binding on and ensure for the benefit of Buyer and Seller and to their respective heirs, executors, administrators, successors and assigns, but neither Buyer nor Seller shall assign this Order or any portion thereof, or any benefit or money accruing to it thereunder, without the written consent of the other Party. Any assignment or other transfer of its rights and obligations under the Order or creation of any encumbrance in any manner, in whole or in part, without the consent of the Buyer shall be null and void and may result in termination of the Order.

28.2 The Buyer may however assign this Order to any of its group company. In such a case, mere advance information by Buyer to Seller shall entitle the Buyer to assign this Order to any of its group company.

28.3 Supplies/Goods shall not be or be deemed to be an asset in a bankruptcy if Seller, voluntarily or not, becomes or is declared bankrupt.

29. Drawings:

29.1 The Seller shall provide the Client / Buyer /Consultant all drawings and documents required under the Order and in the quantities and within the times set out in the Order.

29.2 In the event of any inconsistency, inaccuracy or ambiguity in the Drawings and documents, or if, in the opinion of the Buyer or the Seller, any modification is required; the Seller shall notify the Buyer immediately in writing and obtain the Buyer's instructions before proceeding to modify the Drawings and documents. The Seller shall perform any such modifications in compliance with instructions from the Buyer.

29.3 The Seller shall promptly correct at its own cost, any defective Drawings and documents. If the Seller neglects or refuses to make any such correction, the Buyer may, at the Seller's sole risk and cost and without prejudice to any other rights and after giving notice of its intention to do so to the Seller, either proceed on its own to make the correction or employ another party to do so and shall be entitled to price reduction from the Seller for such corrective work. The Seller shall reimburse the Buyer for any costs or expenses incurred or suffered by the Buyer to (i) remove, demolish or undo all work or services performed by or on behalf of the Buyer in reliance upon the defective Drawings and documents, and (ii) repair, correct, replace or redo such work or services.

29.4 The Seller shall furnish all Drawings and documents required for the Seller to perform its obligations and duties under the Order. The Drawings and documents shall be in sufficient detail to verify that the Supplies/ Goods fully comply with the specifications and the other requirements set forth in the Order. The Seller shall maintain and provide all of the documentation and records produced in connection with the supply of the Supplies/ Goods under the Order and any other documents that may be required by the Buyer to (i) fully comply with any applicable laws; and (ii) operate, maintain and repair the Supplies/ Goods.

29.5 Unless otherwise set forth in the Order, the Seller shall provide, along with the delivery of the Supplies/ Goods, all the Drawings and documents, both in physical form and electronic media, in such quantities as specified in the Order.

29.6 Client / Buyer /Consultant's review and approval of Drawings shall not relieve the Seller of responsibility to comply with the specifications of the Order or for any errors or omissions on the part of the Seller.

30. Property of Drawings and Information:

All Drawings and information exchanged by Buyer/Consultant and the Seller shall become the property of Client/ Buyer, who shall not however, utilize or transmit the same to any other third party for any other purpose than those of the project.

31. Quality Control:

31.1 Inspection Requirements

Supplies/Goods in this Order are subject to inspection by Buyer/Consultant appointed inspection agency. (Buyer will be responsible for the agency costs). However, Purchase Price includes cost, if any, for witnessed tests and material inspection, as required in the requisition and/or the relative specifications.

31.2 Procedure for non-conformance and repairs

Seller shall notify Consultant of any repair or procedure performed on non-conformance found during inspection or tests not witnessed by Inspector in material that will form part of the Supplies/Goods to be delivered against the Order. This includes any repair or procedure for dealing with non-conformance in material supplied by Sub-Sellers.

Any repair by Seller or its Sub-Seller shall be made in accordance with the rules of the relevant specification(s).

Inspector shall have full access to Seller's documentation on such dispositions and repairs.

31.3 Intermediate and final inspection

Seller is responsible for arranging of and bearing the cost for all intermediate and final (third party) inspection, with the exception of the Inspector's personal costs, which are to the account of Buyer.

32. Consequential Damages:

Notwithstanding any other provision of the Order, neither Party shall, under any circumstances be liable to the other for loss of profit, loss of use, loss of opportunity or loss / short fall in production anticipated revenue, or any other consequential , special, exemplary or economic losses.

33. Supervision of Installation till Performance Guarantee Tests:

33.1 Upon Buyer's request, Seller shall make available qualified supervisory personnel capable of performing the supervisory and advisory services for the installation including testing, commissioning and performance testing of the Supplies/ Goods covered under this Order in the environment they will be called upon to work at the project Site. A separate contract for Services will be released by Client for the period above 30 days. The daily rate for 30 advisory service days (including training for Site personnel) is included in the Purchase Price. The terms and conditions will be settled/agreed for Services at a later date.

33.2 All the cost of traveling, local transportation, lodging, boarding etc in relation to its supervisory personnel shall be borne and paid by the Seller.

34. Rights not waived by Payment or Certificate:

34.1 No certificate given or payment made by Buyer prior to the acceptance of Supplies/Goods shall be considered as evidence of satisfactory performance of Supplies/Goods, either wholly or in part.

34.2 No certificate and/or payment shall be considered as acceptance of defective Supplies/Goods or improper Supplies/Goods or as relieving Seller from its full responsibility and obligations as stipulated in Order.

35. Insolvency and Breach of Order Conditions:

35.1 Buyer may, at any time, by notice, in writing terminate Order without additional compensation to Seller on the happening of any of the following events, that is to say:

- i) If Seller shall at any time, before final shipment, be adjudged insolvent or enter into any arrangement or composition with his creditors, or suspend payment, or if the firm be dissolved under the partnership Act.
- ii) If Seller, being a company, shall pass a resolution or a court shall make an order for the liquidation of its affairs.
- iii) If Seller commits any act of breach of this Order conditions not herein specifically provided for, provided always that such termination shall not prejudice any right or action or remedy which shall have accrued or shall accrue thereafter to Buyer and provided also that Seller shall be liable to pay Buyer for any extra expenditure Buyer is thereby put to.

36. Remedies of Buyer:

36.1 Notwithstanding anything stated elsewhere in the Conditions of Purchase for Supply Contract, If Seller:-

- i) become bankrupt or go in liquidation (other than voluntary liquidation for the purpose of amalgamation or reconstruction).

(or)

- ii) has an execution levied on its goods

(or)

- iii) assigns Order without the previous written consent of Buyer

(or)

- iv) has to the detriment of good workmanship or in defiance of Buyer's instruction to the contrary, subcontracted for any part of the work.

(or)

- v) repudiates or abandons Order.

(or)

- vi) without reasonable excuse, fails to commence the work or suspends the progress of the work for 30 days after receiving written notice to proceed, from Buyer.

(or)

- vii) fail to remove or pull down or replace the Supplies/ Goods after receiving notice from Buyer / Client or its authorised representative that the said material has been condemned and rejected by them under the provisions of Order.

(or)

- viii) is not executing the work in accordance with Order or is persistently neglecting to carry out his obligations.

then Buyer may give reasonable notice period depending upon exigency in writing to Seller, forthwith carry out the balance work / replacement/repair/procure at the sole risk and cost of Seller. All expenses incurred by Buyer in this respect will be to the account of Seller without any limitation.

37. Secrecy, Property, Models:

37.1 All Drawings, information exchanged, data, systems, operating procedures, figures, illustrations and other information, irrespective of nature and origin, forwarded to or coming to the knowledge of the Seller in connection with inquiry and execution of the Order shall be treated strictly confidential by Seller and shall at all times remain the property of the Buyer.

37.2 Without Buyer's prior consent such documents/information may neither be copied, published or made available to third parties nor used for any purpose other than that laid down in the Order. The Seller shall instruct and oblige his personnel/Sub-Seller/agents accordingly. The approving authorities shall not be considered as third parties, however, the Seller shall direct such authorities about the confidential nature of said information. Seller shall be responsible also for the safe custody of these items. Seller undertakes to limit the dissemination of such technical information to only those of its employees on need to know basis, provided said employees have signed personal secrecy agreement containing the same conditions as this declaration.

37.3 Upon completion of the Order and upon receipt of a written request of the other Party, parties agrees to return all documents, Drawings, electronic storage media and other tangible manifestations of the confidential information of the requesting Party; (b) permanently destroy, erase or render unreadable all copies of any analyses, compilations, studies or other documents prepared by or on behalf of it or for internal use which reflect the confidential information of the requesting Party; and (c) provide the requesting Party with a certificate signed by an authorized representative of the returning party attesting to such destruction. The returning Party shall thereafter retain no copies, transcriptions or summaries of any portion of the confidential information of the requesting Party, except that the returning Party may retain an archive copy of the confidential information of the requesting Party in a secure manner only for use in enforcing rights and responding to claims based on an alleged breach of the confidentiality and non-disclosure obligations of this Section 37.

37.4 Notwithstanding anything else to the contrary herein, the Buyer may disclose confidential information of the Seller to any governmental authority, local government bodies in India, banks, financial institutions, and insurance companies and any other agency acting on behalf of any of the foregoing, in each case only as requested or required by such persons.

37.5 Any Drawings and other documents which the Seller has prepared in connection with the Order shall become the property of Client and can be used by the Buyer and Client unrestrictedly for their own purposes.

37.6 Models manufactured by the Seller under the Order at Buyer's expense shall become the property of the Buyer. Unless Buyer instructs otherwise, the Seller shall store such models carefully free of charge for a period of 06 months and during the storage time shall insure them as property of Buyer.

38. Force Majeure:

- 38.1 Any delay in or failure of performance of this Order by either Party hereto, shall not constitute defaults by such Party or give rise to any claim for damages, if, and to the extent of such delay or failure of performance is caused by acts of God, war, invasions, revolution, civil commotion, natural disasters like flood, severe earthquake, typhoon and cyclones, plague and epidemic, embargoes, nationwide strikes.
- 38.2 The Party so affected by an event of Force Majeure shall notify the other Party of the occurrence thereof within fifteen (15) days of its commencement, specifying the matter constituting Force Majeure and with evidence of its adverse effect on performance of Order.
- 38.3 Except as provided below, neither Party shall by reason of any event of Force Majeure be entitled to terminate this Order, nor shall either Party have any claim for damages against the other in respect of such non-performance or delay in performance.
- 38.4 Notwithstanding anything to the contrary stated herein, Buyer shall have the right prior to the end of the event Force Majeure, to terminate Order, if Order is suspended or likely to be suspended by the occurrence of Force Majeure for a period of more than sixty (60) days. In such an event the Parties shall within the shortest time possible, meet to examine the incidence of the said occurrences and fix the conditions to fulfil Order. In case of termination the Buyer shall pay to the Seller such amount of Purchase Price which is equivalent to the value of manufacture already completed as part of the Subject of Order. If in such case it is not possible for the Seller to execute the Order, he for his part can terminate the Order. In any event Seller will not be entitled to claim an increase in Order price on this account. Failing agreement, the Party other than the one prevented from fulfilling its obligations, shall have the right to terminate Order.
- 38.5 The obligations affected by a case of Force Majeure shall be automatically adjusted for a number of days equal to the period of the delay resulting from the Force Majeure. However, the Seller shall undertake all reasonable precautions and measures in order to keep the original delivery dates and periods or to shorten the postponement as far as possible.

39. Applicable Law:

The application and performance of this Order shall be governed by and construed in accordance with the laws of the Republic of India excluding its conflicts of laws provisions which would refer construction hereof to the laws of another jurisdiction.

40. Arbitration:

- 40.1 Should any disagreement, dispute or difference arise out of or in connection with the Order, whether during the continuance of Order or thereafter, Parties hereto agree promptly to settle the grievances by mutual understanding between the Parties. If the Parties are unable to act within a reasonable period of time, then the disagreement, dispute or difference shall be referred to arbitration in accordance with following Clause.
- 40.2 If at any time any disagreement, dispute or difference whatsoever shall arise between Parties upon or in relation to or in connection with Order, either Party may forthwith give to other Party notice in writing of existing of such question, disputes or difference and the same shall be referred to the adjudication of two arbitrators. One to be nominated by Buyer and other to be nominated by Seller or in the case of the said arbitrator not agreeing, then to the adjudication of an umpire to be appointed by the arbitrators in writing before proceeding with reference the award of the arbitrators, or in the event of their not agreeing that of the umpire appointed by them shall be final and binding on the Parties and the provision of the Indian arbitration and conciliation act, 1996 ("Arbitration Act") and the arbitration proceedings shall be conducted in accordance with the rules of procedure designated in the LCIA (London Court of International Arbitration) India Arbitration Rules, which are incorporated herein by reference and any statutory amendments thereof shall be deemed to apply.
- 40.3 Such arbitration shall be conducted in the English language. The arbitration award shall be final and binding on the Parties. The venue of arbitration proceedings shall be held in Mumbai, India.
- 40.4 Neither Party to this Order shall take any action or steps which will hinder, delay or otherwise interfere with the commencement of, or proceedings, in arbitration.
- 40.5 The award must be in writing and signed by each of the arbitrators and shall specify in reasonable detail the evidence and factors considered by the arbitration tribunal and the reasons for the decision on each issue including dissenting opinion of any arbitrator. The award may be enforced and entered as a judgment in any court of competent jurisdiction.
- 40.6 The arbitrators shall not be an employee of either Party or in any way financially interested in this Order or the dispute.
- 40.7 Continuing Obligations: Pending settlement of any dispute, the Parties shall abide by their obligations under this Order without prejudice to a final adjustment in accordance with an award rendered in any arbitration. For such dispute as herein above referred, the Buyer shall be entitled to direct the Seller not to perform specified work pending completion of the arbitration.

41. Jurisdiction:

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

42. Most Favoured Customer:

Seller agrees that throughout the execution of the order, Buyer will be treated as most favoured customer. Seller confirms that no other customer will receive higher priority. In the event Seller sells or offers to sell items of a similar type, quality and quantities to a third party, at any time between acceptance of the Order and final completion thereof at prices lower than those herein specified, the Purchase Price shall be reduced to the extent the Seller lowered its prices to other customers/ third party or else the Seller will pay back to the Buyer promptly the price difference. Seller further warrants that the above condition shall be applicable for all the Supplies/Goods where prorata price can be derived from the scope and price of this Order.

43. Order confirmation:

Within 7 calendar days of the receipt of Order, the Seller shall sign, stamp & return the order confirmation form attached to the Order for having accepted the Order without any changes. In the event the Buyer has not received the acceptance / confirmation of Order within 10 calendar days from the date of the Order, Buyer may at his own discretion treat the order as accepted by the Seller without his written confirmation. But, in this case otherwise due payment may not be effected.

44. Free Issue Material:

- 44.1 If any material required to execute the Order is issued by Buyer to the Seller free of cost, due deduction shall be made from the relevant Order price. The Seller shall inform the Buyer in writing at the time of submitting the offer, about any possible implication of statutory levies, taxes etc.
- 44.2 When material is provided to the Seller on a free-issue basis, the Seller undertakes to replace at its own expense any such material scrapped in excess of any scrap allowance given and further shall not be hypothecated or transferred or disposed off or subjected to any lien by Seller. All free-issue material shall remain the Buyer's property and all work done thereon shall immediately vest in the Buyer.
- 44.3 All such property shall be deemed to be in good condition when received by or on behalf of the Seller unless it otherwise notifies the Buyer/ Consultant within fourteen (14) days of receipt.
- 44.4 The Seller is required to maintain separate records of receipts and disposals for audit purposes. Seller shall reimburse Buyer for any loss or damage to materials issued to the Seller by Buyer.
- 44.5 Seller shall collect such free issue material at his cost from the premises/destination indicated by Buyer. The free issue material shall be separately marked and stored and shall not be used for any purpose other than what is mentioned in the Order.
- 44.6 In the event of any termination of the Order, all Buyer's material in the custody or control of the Seller or any Sub-Seller shall be returned immediately to the Buyer in the same condition (fair wear and tear excepted) in which it was handed over to the Seller or such Sub-Seller free and clear from all encumbrances. The Seller grants to the Buyer free and unencumbered rights of access at all times to the premises where the Buyer's material is stored by the Seller.

45. Limitation of Liability:

Notwithstanding anything contained in this Order, its appendices, to the contrary, with respect to claims arising under this Order, whether arising in Contract, tort, warranty, strict liability, or otherwise, Seller's liability shall not exceed 100% (One Hundred Per cent) of this Order value, except for liabilities arising out of willful misconduct and gross negligence and liabilities arising out of Clauses No. 17 and Clause No. 25 which shall be unlimited.

46. Severability:

Should any of the provision of the Order or these Conditions of Purchase for Supply Contract or other documents be invalid or become invalid and/or become non-conceivable, the validity of the remaining provisions shall not be affected. In case of invalidity and/or non-practicability of any of the provisions/terms and conditions, the Buyer and the Seller shall be obliged to agree on such provision which as closely as it is practicable approximating the invalid and/or non-conceivable provision economical.

47. Seller Code of Conduct:

- 47.1 **Corporate Responsibility**
- Seller shall comply with the requirements of the 'Code of Conduct for Sellers of the Linde Group', a copy of which has been provided to the Seller and which may be found at www.linde.com/supplier-CoC (hereinafter referred to as the 'Seller Code of Conduct').
 - Seller shall demonstrate compliance with the requirements of the 'Seller Code of Conduct' at the request and to the satisfaction of Linde, e.g. by providing data or conducting self-assessments.
 - If Linde has reason to believe that Seller may be in material breach of the requirements laid out in the Seller Code of Conduct, Linde or a third party appointed by Linde may conduct inspections at Seller's premises in order to verify Seller's compliance with the requirements of the Seller Code of Conduct. Linde shall use all reasonable efforts to ensure that all inspections will be conducted in accordance with any applicable data protection law and shall neither unreasonably interfere with Seller's

business activities nor violate any of Seller's confidentiality agreements with third parties. Seller shall reasonably cooperate with any inspections conducted. Each Party shall bear its own expenses in connection with such inspection.

- iv) In addition to any other rights and remedies Linde shall also have the right to terminate this agreement and any purchase order issued hereunder without any liability whatsoever, if Seller is in material breach of the Seller Code of Conduct or fails to remedy any breach, after written notification about the breach by Linde.
- v) Material breaches include, but are not limited to, incidents of forced or child labour, corruption and bribery, and failure to comply with the Seller Code of Conduct's environmental protection requirements.

48. Micro Small and Medium Development Act, 2006

- 48.1 In case the Seller qualifies as a supplier under the "Micro, Small and Medium Enterprises Development Act 2006" ('MSMED') the same shall be mentioned in Seller's proposal as well as, in case of an order, in Seller's order acknowledgement. A copy of valid Entrepreneurs Memorandum (EM) duly signed by statutory authorities to be sent at below mentioned email id stating Seller's company name followed by "MSMED": vendorinfo@linde-le.com
- 48.2 A copy of such statutory letter qualifying Seller as Micro, Small or Medium Enterprise should be attached along with Seller's offer. Seller shall strictly adhere to the terms and condition of MSMED. Non-adherence to the above may result in disqualifying Seller's claim and any other benefit under the MSMED act whatsoever.

49. Bank Guarantee:

49.1 Advance Bank Guarantee (ABG):

Advance Bank Guarantee strictly as per the Buyer's approved Format shall be furnished by the Seller for 10% of the Purchase Price.

This Bank Guarantee shall be furnished from a Nationalised/ reputed International Bank acceptable to the Buyer and shall be valid till the advance amount is fully amortized.

49.2 Performance Bank Guarantee (PBG):

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

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

DRAFT FOR ADVANCE BANK GUARANTEE

Guarantee No.:

Whereas on the _____ day of _____, 200____, M/s. _____ at _____ (hereinafter referred to as **Supplier**, which expression shall unless repugnant to the context or contrary to the meaning thereof, include its successors and assigns), has accepted **Order bearing no.** _____ for a **total value of Rs.** _____ (inclusive of taxes, duties & other charges) from **Linde Engineering India Pvt. Limited** having its main office at **Linde House, Opp. VUDA Circle, New VIP road, Karelibaug, Vadodara- 390018**, (hereinafter referred to as **Buyer**, which expression shall unless repugnant to the context or contrary to the meaning thereof, include its successors and assigns), for supply of equipment / materials / services and fulfillment of the conditions and obligations as stated in the aforementioned Order.

And whereas the Buyer has agreed, in pursuance of the terms and conditions of the said Order, to make an advance payment Rs. _____ 10% of the Net Order value (exclusive of taxes, duties & other charges) to the Supplier against supplier providing a Bank Guarantee for the equivalent amount in favour of the buyer. Now, we _____ (Name of the Bank and Address), hereinafter called "The Bank", in consideration of the Buyer having agreed to make an advance payment of Rs. _____ of Net Order value (exclusive of taxes, duties & other charges) of equipment / materials hereby establish this irrevocable guarantee for the said amount being Rs. _____ in favour of the Buyer.

And we hereby undertake to pay a sum not exceeding Rs. _____ to the Buyer at its main office without any demur, dispute or objection of whatsoever nature, forthwith on receipt of a written notice from Buyer stating that the Supplier has not complied with his contractual obligations in respect of which such advance payment has been made. The decision of the Managing Director of the Buyer as to whether the Supplier has or has not committed breach of its contractual obligations and as to the amount due for payment under this Guarantee shall be final and binding on us. And this Guarantee shall be valid for such period as the advance payment or a part thereof remains upon to the debit of the Supplier.

And we (The Bank and Address) hereby agree that our liability under this Guarantee shall not be determined or affected by the liquidation or winding up or amalgamation or insolvency of the Supplier or by virtue of any arbitration or any arrangement between the Supplier and the Buyer with or without our knowledge and / or consent.

This is a continuing guarantee and this Guarantee and our obligations thereunder shall remain in full force, virtue and effect and shall be binding and operative until the proper and complete execution of the obligations under the said Order provided that the Buyer shall have the right to make its claim under this Guarantee any time during the period of three months from the expiry of the Guarantee.

In the event of cases of force majeure or in the event of recourse to arbitration according to the terms and conditions of Order, the validity period of our guarantee shall be accordingly extended at the request of the Buyer until the claims of the Buyer is finally settled.

Notwithstanding anything hereinabove contained including what is stated in clauses thereof, our liability under the guarantee is restricted to Rs. _____. Unless a demand or claim under this Guarantee has reached us in writing on or before the ending of the claim period / validity period (if validity period is inclusive of claim period) we shall be discharged from all liability under this Guarantee thereafter.

This Guarantee is to be returned to us upon expiration of our obligations thereunder.

This issue of this Guarantee is permitted according to the laws of Government of India.

Signed on the _____ day of _____, 20____.

LINDE ENGINEERING INDIA PVT. LIMITED

DRAFT FOR PERFORMANCE BANK GUARANTEE

Guarantee No. :

Whereas on the _____ day of _____, 200____, M/s. _____ at _____ (hereinafter referred to as **Supplier**, which expression shall unless repugnant to the context or contrary to the meaning thereof, include its successors and assigns), has accepted **Order bearing no.** _____ for a **total value of Rs.** _____ (**inclusive** of taxes, duties & other charges) from **Linde Engineering India Pvt. Ltd.** having its main office at **Linde House, Opp. VUDA Circle, New VIP road, Karelibaug, Vadodara- 390018**, (hereinafter referred to as **Buyer**, which expression shall unless repugnant to the context or contrary to the meaning thereof, include its successors and assigns), for supply of equipment / materials / services and fulfillment of the terms and conditions and obligations as stated in the aforementioned Order.

And whereas the Buyer has agreed, in pursuance of the terms and conditions of the said Order, to pay the last ____% (Rs. _____) of the Net Order value Rs. _____ (**exclusive** of taxes, duties & other charges) of equipment / material to the Supplier against the supplier providing a Bank Guarantee for the equivalent amount in favour of the buyer.

Now, we _____ (Name of the Bank and Address), hereinafter called "The Bank", in consideration of the Buyer having agreed to pay the last ____% (Rs. _____) of the Net Order value Rs. _____ (**exclusive** of taxes, duties & other charges) of the equipment / material, hereby establish this irrevocable guarantee for the said amount being Rs. _____ in favour of the Buyer.

And we 'The Bank' hereby undertake to pay a sum not exceeding Rs. _____ to the Buyer at its main office without any demur, dispute or objection of whatsoever nature, forthwith on a written demand from Buyer stating that the Supplier has not complied with its contractual terms and conditions and obligations in respect of which such last ____% payment has been made. The decision of the Managing Director of the Buyer as to whether the Supplier has or has not committed breach of its contractual terms, conditions and obligations and as to the amount due for payment under this Guarantee shall be final and binding to us.
And this Guarantee shall be valid for such period of time until the expiry of Supplier's Guarantee and Warranty obligations as per terms and conditions of the Order remain upon to the debit of the Supplier.

And we (The Bank - Name of Banker and Address) hereby agree that our liability under this Guarantee shall not be determined or affected by the liquidation or winding up or amalgamation or insolvency of the Supplier or by virtue of any arbitration or any arrangement between the Supplier and the Buyer with or without our knowledge and / or consent.

This guarantee shall remain in full force, virtue and effect and shall be binding and operative until the expiry of the Supplier's warranty for the equipment as per the terms, conditions and obligations of the Order provided that the Buyer shall have the right to make its claim under this Guarantee any time during the period of six months from the expiry of the Guarantee.

In the event of cases of force majeure or in the event of recourse to arbitration according to the terms and conditions of Order, the validity period of our guarantee shall be accordingly extended at the request of the Buyer until the claims of the Buyer is finally settled.

Notwithstanding anything hereinabove contained including what is stated in clauses thereof, our liability under the guarantee is restricted to Rs. _____. Unless a demand or claim under this Guarantee has reached us in writing on or before the ending of the claim period / / validity period (if validity period is inclusive of claim period) we shall be discharged from all liability under this Guarantee thereafter.

This Guarantee is to be returned to us upon expiration of our obligations thereunder.

The issue of this Guarantee is permitted according to the laws of Government of India.

Signed on the _____ day of _____, 20 ____.

Exhibit A

(E-Payment Form)

To,

Linde Engineering India Pvt. Ltd..
Linde House, OPP VUDA Office
VIP Road, Karelibaug,
Vadodara - 390018
Gujarat.

Dear Sir/ Madam,

The following is a confirmation of my bank account details and I hereby affirm my/our choice to opt for payment of amounts due to me, under various contracts, through electronics mode. I understand that Linde Engineering also reserves the right to send the payments due to me by a cheque / Demand Draft / electronic mode or through a banker.

1) Seller / Contractor Details

- a) Seller / Contractor Name :
- b) Seller / Contractor Code :
- c) Address including PIN code :

- d) Controlling office/ SBU Name :
- e) PAN No. :
- f) E-mail ID :
- g) Telephone No. :
- h) Fax no. :

2) Particulars Of Bank Account

- a) Bank Name :
- b) Branch Name / Branch Code :
- c) Branch Address (Including PIN Code) :
- d) 9 MICR Code No. of the bank and branch as appearing on the cheque :
- e) Account Type (Savings/Cash/Credit/Current) :
- f) Account No. (as appearing on cheque book) :
- g) IFSC code of branch (For RTGS) :
- h) IFSC code of branch (For NEFT) :

I hereby confirm that the particulars given above are correct and complete and also undertake to promptly advise any change to the above details to Linde. If the transaction is delayed and not effected for reasons of incomplete or incorrect information or banking delays, I shall not hold Linde Engineering India Pvt Ltd. responsible. I also agree for printing of bank details on the cheque or DD of the Payment ID affected by cheque or DD.

For

Signature of Bank Official

Official Rubber Stamp of Bank

Designation

Attachment:

- 1) This letter needs to be provided on the letter head of the Seller
- 2) Cancelled /Photocopy of Cheque
- 3) Photocopy of PAN card