

GENERAL TERMS AND CONDITIONS

REF. NO. : PRAJ/08-09/GEN-T&C-R1.

1 DEFINITIONS AND INTERPRETATION

As used in these General Terms and Conditions, the following terms shall have the meaning assigned to them as mentioned here under:

- a) "Order" shall mean the Purchase Order executed between the Parties inclusive of the these General Terms and Conditions and the Special Terms and Conditions, all of its attachments, annexure, appendixes, specifications and exhibits;
- b) "Equipment" shall mean any materials, machinery, equipment, article, item, systems, plant provided for in the Order, the specifications annexed hereto ;
- c) "Plant" shall mean the process plant to be set up by the Purchaser for its customer in relation to which the Equipments are to be supplied by the Seller;
- d) "Purchaser" shall mean Praj Industries Limited
- e) "Seller" shall mean the person, proprietor, partnership, company, firm, corporation or other entity to whom/which the Order is issued.

The term Seller and Purchaser shall individually be referred to as "Party" and collectively as "Parties" as the case may be.

The Seller shall be deemed to have accepted the terms of the Order once the Purchaser receives the acceptance from the Seller. In the event the Seller fails to issue its acceptance to the Order within 15 days from the date of the Order, it shall be deemed that the Seller has accepted all the terms and conditions of the Order and shall be bound by the terms thereof. The Seller shall ensure that the Equipments supplied to the Purchaser are as per the Order and the general and special terms and conditions. The delivery of the Equipments will be complete only after the issue of the goods receipt cum inspection note. When the General Terms and Conditions apply to a specific contract, modifications of or deviations from them shall be agreed in writing.

2 GUARANTEE, WARRANTY AND LIABILITY FOR DEFECTS

- 2.1 The Seller shall provide a performance guarantee for the Equipments supplied by it, to be valid for a period of 24 months form the date of supply.
- 2.2 In the event of any defect / error in the Equipment, the Purchaser shall intimate to the Seller and the Seller shall forthwith be liable to rectify the error/ defect. In the event the error / defect cannot be rectified within a period of 15 days from the receipt of the intimation to rectify the defect / error from the Purchaser, the Seller shall replace the relevant equipment free of cost at the site as may be intimated by the Purchaser.

- 2.3 In case of Equipment with respect to which the Purchaser is unable to carry out the performance trials to confirm whether the Equipments shall comply with the requirements of the Order. The Seller shall, in addition to the supply of Equipment, be responsible for the installation, commissioning and testing of the said Equipments. In such a case the Seller shall depute its representative to carry out installation, commissioning and performance trials of the Equipments. On the completion of the performance guarantee runs, in case it is observed that the Equipments or any part thereof have not performed as per the technical specifications and requirements of the Purchaser, the Seller shall within 15 days from the receipt of intimation of such defects commence with the rectification of the defects and remedy the same within a reasonable period.
- 2.4 The Seller warrants that all Equipment / material shall conform to the Purchaser's specifications and requirements of the Purchase Order. Seller's warranty shall remain in effect for a period of 24 months from the date of supply of the respective Equipments. Neither approval by the Purchaser of the Seller's design nor acceptance of the Equipment shall release or discharge the Seller from liability for damages resulting from a breach of Seller's warranty.
- 2.5 The Seller further warrants that the Equipment shall be of satisfactory quality, safe and fit for use and shall be manufactured with due care and skill. The Equipments shall correspond to the quality and description specified in the Order and where the Order specifies the particular purpose for which the Equipments are ordered, the Equipments shall be of the quality and fitness for that particular purpose.
- 2.6 Unless otherwise stipulated or agreed to, the Purchaser is not bound to accept delivery of the Equipment in installments and is entitled to treat the Contract as breached if the entire quantity ordered for is not delivered in one installment.
- 2.7 The Purchaser has the right to reject the Equipments which do not conform with the description and / or which fail to perform as per the specifications and requirements of the Purchaser contained in the Order or if the bulk does not correspond with the sample, or where the Equipments ordered for a specific purpose are not of the quality or are unfit for the purpose for which they are intended.
- 2.8 Where the Seller delivers Equipments lesser than the quantity ordered for, the Purchaser shall be entitled to reject the Equipments offered for delivery and treat the Contract as terminated by the Seller. However, in the event the Purchaser accepts delivery of the quantity offered, such acceptance shall be deemed to be without prejudice to the right of the Purchaser to claim damages for non-delivery of the balance;
- 2.9 Where the Equipments are rejected by the Purchaser it shall not be obligatory on the part of the Purchaser to return the Equipment to the Seller. Intimation of rejection is sufficient. It is the responsibility of the Seller to have the Equipments re-delivered to it.

- 2.10 The Seller shall be liable for rectifying any defect and /or replacing the Equipments in the event they do not conform to the specifications, requirements, drawings as provided to the Seller by Purchaser. The Seller shall be liable for making good any loss, injury, damage in relation to the use of the Equipments or for making good any loss, damage on account of failure to perform and /or on account of mechanical defects and bad and faulty workmanship .
- 2.11 The Purchaser shall notify the Seller of any defects which appear with respect to the Equipments. On the receipt of the notice, the Seller shall remedy the defect at its cost without undue delay.
- 2.12 The Seller shall either repair the Equipments or any part thereof at the place where the Equipments are located or at its premises. In the event the Seller is required to carry out the repairs at its premises, the Seller shall at its costs and risk transport the Equipments to-&-fro from the place the Equipments are located to its premises and back. In the event the Equipments or any part thereof cannot be repaired, the same shall be replaced by the Seller.
- 2.13 In the event the Seller fails to rectify the defect or replace the faulty Equipment or part thereof within the period agreed between the Parties, the Purchaser shall by notice in writing intimate to the Seller the time within which the defects or replacement should be finally rectified. In case the Seller fails to rectify the defects and / or provide a replacement, within the time mentioned in the notice, Purchaser may undertake or employ a third party to undertake the necessary remedial work at the risk and expense of the Seller.
- 2.14 Where the Equipments are repaired or replaced the Seller warrants those repaired or replaced Equipments for a further period of 24 (twenty-four) months from the date of repair or replacement.
- 2.15 The Seller warrants that it shall pass to the Purchaser good title in the Equipments free from all liens, claims and encumbrances whatsoever. The Purchaser shall be entitled, at any time, to request the Seller to produce written evidence satisfactory to the Purchaser of the Purchaser's title in the Equipments and the absence of any such liens, claims and encumbrances and withhold payment for such Equipments pending receipt of such evidence.

3 QUALITY AND INSPECTION

The Equipments supplied hereunder shall be brand new and of good quality, free from any faults and defects, in conformance with the Contract, and shall at all times be subject to Purchaser's quality assurance plan inspection before acceptance by Purchaser. Neither, however, Purchaser's inspection nor failure to inspect shall relieve the Seller of any obligations, representations or warranties hereunder. If the Equipments fail to conform to Purchaser's specifications or are otherwise defective, Seller shall promptly replace same at Seller's sole expense. No payment for or acceptance of Equipments, including services, by Purchaser hereunder shall constitute a waiver of any of the foregoing nor shall anything herein contained be construed to exclude or limit any of Seller's warranties implied by law.

4 DELIVERY

Delivery of the equipments ordered within the delivery period mentioned in the purchase order shall be the essence of the contract. The purchaser shall at its sole discretion decide whether or not to receive / accept the equipments delayed beyond the delivery period mentioned in the purchase order.

5 LEGAL AND STATUTORY COMPLIANCES

The equipment / material supplied and services performed by the Seller shall comply with all central, state and local laws, ordinances, codes, rules, regulations or standards applicable to it, and shall furnish to Purchaser such evidence of compliance as Purchaser may require at any time and from time to time.

The Seller shall indemnify Purchaser against all damages, claims, expenses, losses if as a result of the Seller's non-compliance with the above laws, orders, rules, ordinances, codes and regulations, Purchaser is held liable for such Seller's non-compliance.

6 PATENT AND OTHER INFRINGEMENT

The Seller shall indemnify Purchaser and hold it harmless from and against any and all loss, liability or expense by reason of any claim or suit for alleged infringement of any copyright, trademark, patent, trade secret or other intellectual property resulting from or arising in connection with the manufacture, sale, normal use or other normal disposition of any Equipments furnished hereunder, or the performance of any work hereunder, and shall defend any such claim or suite and pay all costs and expenses incidental thereto; but at its option Purchaser shall have the right to participate in the defense of any such claim or suit without relieving Seller of any obligations hereunder.

7 CONFIDENTIALITY

7.1 The Seller acknowledges that it shall have access to or be provided with Confidential Information. The Seller agrees not to disclose the Confidential Information to third parties except its employees or consultants or representatives who are required to be informed and who have executed confidentiality agreements with the Seller to protect the Confidential Information of Purchaser.

7.2 The Seller or its consultants/ employees/representatives shall neither disclose such data, information, designs, drawings, process know-how, and other such documentation to any other third party nor use it for any other purpose other than its intended use under this Contract without the prior written permission from Purchaser.

7.3 The term "Confidential Information" shall mean any information transmitted by Purchaser to the Seller in any form either written or oral and whether marked as confidential or not. The Confidential Information shall without limitation include all information, specifications, standards, drawings, designs, know-how, processes, proprietary knowledge, details of specifications, drawings, etc., and all such information and data which is available and which is held by Purchaser on trust or as a licensee.

- 7.4 However, the following shall not be considered Confidential Information: -
- (i) that which is in the public domain other than by the Seller's breach of this Contract;
 - (ii) that which was previously known as established by written records of the Seller prior to receipt from the Purchaser; and
 - (iii) that which was lawfully obtained by the Seller from a third party under circumstances which caused the Seller to reasonably believe that such disclosure and use were lawful.

7.5 The exceptions set forth above shall apply only in the event and to the extent that the Seller provides to Purchaser with written documentation or records of the Confidential Information in substantially the same degree of specificity as the disclosure of the Confidential Information is made hereunder.

8 SUSPENSION / TERMINATION

The Purchaser shall, at its sole discretion, any time during the execution of this Contract, be entitled to suspend / terminate the execution of the Order whether partly or completely. In the event of suspension / termination of the Order, the Parties shall after mutual discussions decide the further course of action.

9 WAIVER

No relaxation, forbearance, delay or failure of the Purchaser to exercise any right or remedy available to it hereunder shall constitute a waiver of it or them and any of Purchaser's rights or remedies may be enforced separately or concurrently with any other right or remedy now or in the future accruing to Purchaser to the effect that such rights are cumulative and not exclusive of each other.

10 INDEMNITY

The Seller shall indemnify and hold harmless Purchaser from and against any and all losses, liabilities, damages, demands, claims, suits, actions, judgments or causes of action, assessments, costs and expenses, including without limitation interest, penalties, reasonable attorneys' fees, any and all expenses incurred in investigating, preparing or defending against any litigation, commenced or threatened, or any claim whatsoever, and any and all amounts paid in settlement of any claim or litigation (collectively, "Damages"), asserted against, resulting to, imposed upon, or incurred or suffered by Purchaser, directly or indirectly, as a result of or arising from (i) any inaccuracy in or breach or non-fulfilment of any of the representations, warranties or covenants made by the Seller in this Contract, (ii) non-fulfillment of any of the terms of this Contract (iii) any delay in completing its obligations in terms of this Contract.

Further, the Purchaser shall not be liable for any personal injury or death of property damage construction or use of the Equipments due to the Seller's violation of the statutory requirements. The Seller shall hold the Purchaser harmless from any and all claims, demands or causes of action and all costs of defence incurred by the Purchaser (including court costs and reasonable advocate fees actually incurred) which claims, demands or causes of action are asserted by any third party and are caused or alleged to be caused by reason of: (i) defective design, (ii) defective construction of the Plant, (iii) defective operation of the Equipment and (iv) acts which, violate the applicable laws.

11 INSURANCE BY THE SELLER

- 11.1 The Seller shall be responsible for arranging transit insurance of the Equipment / material transported up -to the destination of delivery.
- 11.2 Seller shall also be responsible to obtain and maintain at their end suitable insurance cover towards any liability arising out of professional, public or product liability.

12 FORCE MAJEURE

Neither Party shall be responsible for delay or default in the performance of its obligations due to contingencies beyond its control such as fire, flood, civil commotion, earthquake, war, strikes, and Government action / policies. If either Party is prevented by such force majeure from performing its obligations under the Contract, such Party shall promptly notify the other Party of that effect. In the event such force majeure has continued to exist for a period exceeding three (3) weeks at a stretch either Party may mutually decide the future course of action to be taken.

In case of termination due to force majeure final status shall be mutually settled giving due regards to completed responsibilities of both the Parties at the time of such premature termination.

13 SUB-CONTRACT

The Seller shall not be entitled to sub -contract its rights and obligations under this Contract to third parties unless prior approval of the Purchaser is obtained by the Seller.

14 LIABILITY TOWARDS CONSEQUENTIAL LOSS

Other than expressly mentioned in this Contract, neither Party shall under any circumstances or at any time be liable to the other under or in connection with the Contract for any special or any direct or indirect loss or damage or for any consequential loss or damage, whether direct or indirect, including e.g. but without limiting the generality of the foregoing, loss of profits, loss of production, reduced production or loss of contracts.

15 LIEN

The Seller shall not have a lien on the Equipments supplied by it in terms of this Order.

16 ARBITRATION

If any claim, dispute or difference shall arise between the Parties hereto arising out of and/or relating to and/or concerning and/or in connection with this Contract, the same shall be referred to arbitration. Purchaser shall appoint the arbitrator for the purpose of the said arbitration. The arbitration proceedings shall be conducted in accordance with the Arbitration and Conciliation Act, 1996 or any re-enactment thereof. The venue of such arbitration shall be Pune and the arbitration shall be conducted in English language. The award of the Arbitrator shall be final and binding on the parties.

- 17 RELATIONSHIP**
Nothing in this Contract shall create or be deemed to create a partnership or the relationship of principal and agent or employer and employee between the Parties herein.
- 18 ENTIRE CONTRACT**
This Contract contains the entire Contract between the Parties with respect to the subject matter hereof, supersedes all previous Contracts and understandings between the Parties with respect hereto and may not be modified except by a document in writing signed by the duly authorised representatives of the Parties herein.
- 19 SEVERABILITY**
If any provision of this Contract is held by any court or other competent authority to be null and void or unenforceable in whole or in part, this Contract shall continue to be valid as to the other provisions thereof and the remainder of the affected provision.
- 20 NOTICES**
Any notice or other information required or authorised by this Contract to be given by either Party to the other may be given by hand or sent by first class registered post or facsimile provided a copy is subsequently sent by registered post to the other Party at the address stated above.
- 21 CUMULATIVE RIGHTS**
All remedies of either Party under the Contract whether provided herein or conferred by statute, civil law, common law, custom, trade, or usage are cumulative and not alternative and may be enforced successively or concurrently.
- 22 ASSIGNMENT**
The Seller shall not be entitled to assign its rights and benefits under this Contract without the prior written consent of Purchaser.
- 23 AMENDMENTS**
This Contract may only be amended or modified by an instrument in writing of equal formality, signed by the duly authorised representatives of the respective Parties herein except that the annexures hereto, can be updated at regular intervals by written letter from one Party to the other and duly acknowledged by both Parties' representatives.
- 24 GOVERNING LAW AND JURISDICTION**
This Contract, shall be interpreted, construed and governed by the laws of India and the courts in Pune shall have exclusive jurisdiction.
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