

## TERMS AND CONDITIONS

### **1. APPLICABLE CONDITION:**

The terms and conditions set forth below constitute the complete and exclusive agreement of Seller and Buyer concerning the sale of goods or provision of services covered by the contract pursuant to which this document is issued. Except to the extent referenced in this document or in a contract pursuant to which this document is issued, no other terms and conditions whatsoever be controlling.

### **2. MODIFICATION:**

Neither party shall claim any modification, limitation or release from any of the terms and conditions contained herein except by written agreement to that effect signed by Seller and Buyer. No modification of, addition to, or deletion from the terms and conditions contained herein shall be affected by the acknowledgement or acceptance by Seller of purchase order, acknowledgement, confirmation, release or other form submitted by Buyer containing other or different terms and conditions, and Seller specifically rejects all such other or different terms and conditions. Buyer's acceptance of delivery of the goods covered by this document shall constitute Buyer's assent to the terms and conditions contained herein, regardless of any statement to the contrary contained in any purchase order, acknowledgement, confirmation, release or other form submitted by Buyer.

### **3. PRICE, PAYMENT & SECURITY:**

Except as set forth in the contract pursuant to which this document is issued, Seller may at any time upon notice change the price payable for the goods or modify delivery terms or terms of payment and such modified price, delivery terms or terms of payment shall apply for all shipments of goods after the effective date of such change or modification. If Seller is prevented by law or other government restriction from increasing its price or from continuing any price already in effect, Seller may terminate the contract pursuant to which this document is issued by written notice to buyer. Payment shall be as provided in the contract pursuant to which this document is issued. If payment is not made as provided herein, or if Buyer's financial responsibility becomes unsatisfactory to Seller, Seller may, at its option: (a) elect to withhold future deliveries of goods to Buyer until such breach has been cured or Buyer's financial responsibility becomes satisfactory; (b) require payment in advance as to future deliveries; or (c) demand return from the Buyer of any goods for which payment has not been made. If deliveries of goods are to be made in installments, the purchase price of each installment shall, at Seller's option, be recoverable as a separate sale. The remedies contained in this paragraph are cumulative and shall be in addition to any other remedies available to Seller under contract or applicable law. Unless otherwise agreed in writing payment is due immediately on receipt of invoice. Unless otherwise stated in this document, or in the contract pursuant to which this document is issued, Buyer agrees to pay Seller interest at the rate of 1.5 % per month ( or such lesser percentage as is the maximum rate allowable under applicable law ) on any delinquent invoices. Seller retains a security interest in goods sold until paid.

Any charge for consular invoices, if required, shall be for account of Buyer.

The Buyer shall pay the price specified on the face of this contract without availing of the benefit of any right of set-off, counterclaim, recoupment or other such rights which the Buyer may have against the Seller, which rights shall be exercised in separate proceedings between the Buyer and Seller.

### **4. TITLE:**

The absolute title to and ownership of the goods shall remain in Seller until Buyer pays the contract / invoice amount in full.

### **5. PACKING:**

The make-up, packing and packaging and making shall be at Seller's option unless otherwise agreed in writing.

### **6. INSPECTION:**

The inspection of goods shall be performed by Seller or its designee in the country (from which the goods are exported) according to the export regulations of the country and such inspection shall be considered as final and conclusive in all respects regarding the goods.

### **7. FORCE MAJEURE:**

If any performance of the contract is prevented or delayed in whole or part, by reason of any prohibition of export or import, flood, typhoon, Act of God, fire, war whether declared or not, armed conflict, civil commotion, riot, strike or other labor disputes of Seller or of the manufacturer or suppliers of the goods, severe economic dislocation, non-availability of raw material (including fuel and power), peril or accident of the sea, the bankruptcy or insolvency of the manufacturer or suppliers, or any other cause beyond the reasonable control of Seller or of the manufacturer or suppliers of the goods, Seller shall not be liable for the non performance of the contract including non-shipment or late shipment of the goods, and Buyer shall accept any shipment made within a reasonable time, or shall accept the cancellation of all or any part of the contract at Seller's option. Provided that nothing herein shall relieve Buyer from its obligation to pay for the goods.

### **8. INDEMNITY:**

Buyer shall indemnify and defend, hold Seller and its directors, officers, employees, agents, suppliers, parents, affiliates, subsidiaries, successors and assigns harmless from any and all fines, penalties, suits, actions, claims, liabilities, judgment, costs and expenses (including attorney's fees) resulting or arising from (a) Buyer's negligence (b) Buyer's use, sale handling, storage or disposal of the goods or any product or waste derived therefrom (c) Buyer's discharge or release of the goods or any product or waste derived therefrom into the water, onto land or into air, (d) Buyer's exposing any person (including Buyer's employee) to the goods or any product or waste derived therefrom, including failure to warn of such

exposure, or (e) the transportation of the goods to Buyer after tender of the goods by the Seller to the carrier at Seller's shipping point. The foregoing shall apply, without limitation, to injury to person (including death) or damage, or harm to property or the environment. This negligence or willful misconduct on the part of Seller and Buyer.

### **9. WARRANTY:**

(i). All recommendations or statements about the goods by Seller, including statements concerning substances present or not present in the goods, or anticipated performance of the goods, are based upon Seller's research and experience and are believed to be reliable, but such recommendations or statement shall not constitute a warranty, and no employee, agent or representative of Seller is authorized to give any such warranty. Buyer must determine for itself, by tests or otherwise, the suitability of the goods for Buyer's purpose. Seller warrants only that the goods the goods shall conform to the description given in this document or in the contract pursuant to which this document is issued or in the absence thereof, to Seller's standard

specification for the goods, that the Seller will convey good title thereto, and that such goods shall be delivered free from any lawful security interest or encumbrance unknown to Buyer. SELLER MAKES NO OTHER WARRANTY, EXPRESS OR IMPLIED, SELLER MAKES NO WARRANTY THAT THE GOODS ARE MERCHANTABILITY OR FIT FOR ANY PARTICULAR PURPOSE.

(ii). Except for the limited warranty referenced above, Seller grants no other warranties, express or implied, by statute or otherwise, regarding the ordered goods, and specifically disclaims any implied warranty of fitness for any purpose, quality, merchantability, or otherwise.

(iii). Claim(s) based on insignificant deviation from the agreed quality shall be excluded. The Seller shall not be responsible for any damage to the ordered goods or defect in the quality which occur after passing of the risk or resulting from any act or omission of the Buyer or its agent including but not limited to improper handling, improper storage etc.

### **10. LIMITATION OF LIABILITY:**

(i). In no event shall Seller's total liability hereunder exceed the amount paid by Buyer for ordered goods hereunder, and in no event shall Seller be liable for costs of procurement of substitute goods or services by anyone, or for any special consequential, incidental or other damages, however caused, whether for breach of contract, negligence or otherwise, and whether or not Seller has been advised of the possibility of such damage. This limitation shall apply notwithstanding any failure of essential purpose of any limited remedy provided herein.

(ii). The above exclusions of and limitations on liability shall also apply for the benefit of Seller's staff, executing aides and other third parties to whom Seller has recourse for performance of the agreement/Purchase Order.

### **11. RELATIONSHIP BETWEEN MANUFACTURER/ SELLER AND BUYER:**

Buyer is not an agent, employee or legal representative of Seller, but an independent entity or person. Buyer does not have any authority to assume or create any obligation or responsibility on behalf of Seller or bind Seller in any manner whatsoever. The relationship between Seller and Buyer is that of vendor and vendee. Buyer further agrees to defend, indemnify and hold Seller harmless from and against any and all claims of third parties that would not have arisen but for an act or omission by Buyer that is contrary to the above acknowledged relationship or any other term hereof.

### **12. PATENT:**

Buyer shall hold Seller harmless from liability, loss, or expenses in connection with any infringement with regard to patent, pattern, design, copyright, trademark and the likes originated or chosen by Buyer.

### **13. CLAIM :**

Buyer's claim of whatever nature arising under the contract shall be notified in writing by Buyer to Seller within fifteen (15) days after the arrival of the goods at the destination stipulated on the face hereof. Unless such notice is accompanied by particular of such claim together with proof certified by an authorized surveyor, Buyer shall be deemed to have waived such claim. In no event may Buyer assert a claim for any reason whatsoever after the goods are used, sold, cut, proceed or otherwise altered. In no event shall Seller be liable for prospective profits, or indirect, special, incidental or consequential damages.

### **14. ARBITRATION:**

Any dispute or claim arising out of, in relation to, or in connection with this Agreement, or the interpretation, making, performance, claims, breach or termination thereof, shall be finally settled by arbitration at New Delhi under the Rules of Arbitration of Indian Council of Arbitration (ICA) by the Sole Arbitrator appointed in accordance with said Rules of Arbitration of Indian Council of Arbitration (ICA). The Arbitration shall be held in English language.

### **15. GOVERNING LAW AND JURISDICTION:**

This contract shall be governed by the laws of India and not by any terms of the Convention in Contracts for International Sales of Goods. Arbitrator shall apply Indian law to the merits of any dispute or claim, without reference to rules of conflict of law. The courts at Delhi alone shall have the jurisdiction in this regard to the exclusion of the other courts.