| Sales of Goods Agreement | | | |
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| S.No. | Particulars | Buy Side | Sell Side |
|  | **Operative Clauses** | * **“Delivery Date and Delivery Location”**  1. Seller shall deliver the Goods on the Delivery Date specified in the Agreement as set forth in Annexure or Purchase Order. 2. All Goods shall be delivered to the address specified in the Agreement as set forth in Annexure [•] or Purchase Order during Buyer’s normal business hours or as otherwise instructed by Buyer. | * **“Delivery Date and Delivery Location”**  1. Seller shall deliver the Goods within a reasonable time after the date of this Agreement, subject to availability of finished Goods. Any time quoted by Seller for delivery is an estimate only. 2. All Goods shall be delivered to the address specified in the Agreement as set forth in Annexure [•] or Purchase Order. |
| * **“Quantity”**  1. Seller shall deliver the quantities of the Goods specified in this Agreement as set forth in Annexure or Purchase Order. 2. If Seller delivers more than [•]% or less than [•]% of the quantity of Goods specified in Annexure [•], Buyer may reject all or any of the Goods, including, without limitation, all or any excess Goods. 3. Any such rejected Goods shall be returned to Seller at Seller’s risk and expense. If Buyer does not reject the Goods and instead accepts the delivery of Goods at the increased or reduced quantity, the Price for the Goods shall be adjusted on a pro-rata basis. | * **“Quantity”**   If Seller delivers more than [•]% or less than [•]% of the quantity of Goods specified in Annexure [•], Buyer shall not be entitled to object to or reject the Goods or any portion of them by reason of the surplus or shortfall and shall pay for such Goods the price set forth in this Agreement or Purchase order adjusted on a pro rata basis.  Or  The quantity of any instalment of Goods as recorded by Seller on dispatch from Seller’s place of business is conclusive evidence of the quantity received by Buyer on delivery unless Buyer can provide conclusive evidence proving the contrary. Seller shall not be liable for any non-delivery of Goods (even if caused by Seller’s negligence) unless Buyer gives written notice to Seller of the non-delivery within [•] days of the date when the Goods would in the ordinary course of events have been received. |
| * **“Shipping Terms”**  1. Delivery of the Goods shall be made in accordance with the terms set forth in Annexure [•] of this Agreement or Purchase Order. 2. Seller shall be responsible for any delay, damage or any loss in transit. 3. Seller shall give written notice of shipment to Buyer when the Goods are delivered to a carrier for transportation. Seller shall provide Buyer all shipping documents, including the commercial invoice, details of Delivery Tracking System, packing list, [air waybill/bill of lading], and any other documents necessary to release the Goods to Buyer within [•] Business Day[s] after Seller delivers the Goods to the transportation carrier. 4. If delivery is not timely made, Buyer may, in addition to its other rights and remedies, direct Seller to make expedited routing at Seller's expense. 5. Unless Buyer instructs otherwise, the Goods shall be shipped in a manner that will permit the lowest transportation rates to apply. | * **“Shipping Terms”**  1. Delivery of the Goods shall be made in accordance with the terms set forth in Annexure [•]of this Agreement or Purchase Order. 2. Buyer shall be solely responsible for any damage or any loss in transit. 3. Unless expressly agreed to by the Parties in writing, Buyer shall select the method of shipment of, and the carrier for, the Goods to the Delivery Location. |
| * **“Packaging”**  1. Goods must be packed for shipment according to Buyer’s instructions or, if none, in a manner sufficient to ensure that the Goods are delivered in undamaged condition. 2. Goods shall be marked and labeled in compliance with all Applicable Laws, [•] standards and regulations. 3. Seller shall reimburse Buyer for all expenses incurred due to improper packing, marking, loading or routing. The risk of loss or damage in transit shall be upon Seller. | * **“Packaging”**   The Goods shall be packed, marked and loaded in accordance with Seller’s standard methods/policies. |
| * **“Late Delivery and Penalty”**  1. In case of delayed delivery except for Force Majeure, the Seller shall pay to the Buyer for every week of delay penalty amounting to [•] of the total value of the goods whose delivery has been delayed. 2. Any fractional part of a week is to be considered a full week. 3. The total amount of penalty shall not, however, exceed the total value of the goods involved in late delivery. |  |
| * **“Right to make changes”**  1. Buyer shall have the right to make any changes including but not limited to, Quantities, Delivery Location, Specifications, Delivery Date, drawings or designs. 2. Any request by Seller for an adjustment in Price or terms must be made within [•] days of any such change. Subject to Buyer’s satisfaction, if any such change causes an increase or decrease in the Price or the Delivery Date, an equitable adjustment shall be made in accordingly. 3. Any claim by Seller for such change must be asserted within [•] days from Seller’s receipt of the change notice, but such period may be extended upon Buyer’s written approval.   or   1. The Parties shall undertake to negotiate an appropriate adjustment in Price and terms where the Seller's direct costs are materially affected by such changes. | * **“No Change”**  1. Any changes including but not limited to change in Quantities, Delivery Location, Specifications, Delivery Date, drawings or designs, shall be intimated to the Seller in advance by providing [•] written days notice before the dispatch or shipment of Goods. 2. Buyer shall be solely responsible for any cost or extra cost that the Seller may suffer due to any such change including but not limited to labour costs and transportation costs.   or   1. The Parties shall undertake to negotiate an appropriate adjustment in Price and terms where the Seller's direct costs are materially affected by such changes. |
| * **“Authorization”**   Seller shall not procure, produce or ship any Goods unless authorized in writing by Buyer. Shipments in excess of those authorized by Buyer or shipments received by Buyer in advance of the scheduled Delivery Date may be returned to Seller at Seller's expense, and such determination shall be at the sole discretion of Buyer. |  |
| * **“Inspection”**  1. Buyer has the right to inspect the Goods on or after the Delivery Date. 2. Buyer, at its sole option, may inspect all or a sample of the Goods, and may reject all or any portion of the Goods if it determines the Goods are Non-Conforming Goods. 3. If Buyer rejects any portion of the Goods, Buyer has the right in its sole discretion to: 4. rescind this Agreement in its entirety; 5. reject the Non-Conforming Goods and 6. require replacement of the Non-Conforming Goods. If Buyer requires replacement of the Non-Conforming Goods, Seller shall, at its expense, within [•] days replace the Non-Conforming Goods and pay for all related expenses, including, but not limited to, transportation charges for the return of the Non-Conforming Goods. 7. Any inspection or other action by Buyer under this clause shall not reduce or otherwise affect Seller’s obligations under this Agreement, and Buyer shall have the right to conduct further inspections after Seller has carried out its remedial actions. | * **“Inspection”**  1. Buyer has the right to inspect the Goods on or after the Delivery Date within [•] Business Days. 2. In the event, the Goods are Non-Conforming Goods, Buyer shall in writing notify Seller within [•] days after receipt of the Goods and furnish such written evidence or other documentation as reasonably required by Seller, specifying the basis for its claim. Failure to notify Seller by such date shall constitute an acceptance of delivery of the Goods as is. 3. If Buyer timely notifies Seller of any Non-Conforming Goods, Seller shall determine, in its sole discretion to: 4. require Buyer to ship, at its own cost (subject to reimbursement by Seller) and risk of loss, the Non-Conforming Goods to Seller’s facility as provided by Seller 5. replace such Non-Conforming Goods with Goods. 6. refund the Price for such Non-Conforming Goods. 7. The above shall be the sole remedy of Buyer and only obligation of Seller with respect to any Non-Conforming Goods |
| * **“Performance Guarantee”**  1. Seller guarantees that the Goods shall be delivered as per the terms given under this Agreement or Purchase Order. 2. Seller shall provide Buyer with an irrevocable and unconditional Letter of Guarantee issued by [•] for the due and faithful performance by Seller as set out under this Agreement. |  |
| * **“Pre-Inspection”**  1. Buyer or third-party agency appointed by Buyer, at its sole discretion, shall have the right to enter into Seller’s premises at reasonable times to inspect that the Goods conform to all specified requirements. 2. Seller agrees to provide any and all supporting documentation required by Buyer or third-party agency appointed by Buyer in the course of such investigation. 3. Notwithstanding payment or pre-inspection, if any of the Goods are found to be Non- Conforming Goods, in addition to any other remedies that it may have, Buyer at its sole discretion shall reject or request Seller to replace such Non-Conforming Goods with Goods at Seller's expense. | * **“Pre-Inspection”**  1. Buyer or third-party agency mutually appointed by the Parties shall have the right to inspect that the Goods conform to all specified requirements by providing advance written notice of [•] Business Days at business hours.   Or  Seller, in its sole discretion, may arrange for a pre-shipment inspection of the Goods by an independent third-party inspection agency of its choice, or require Buyer to cause the Goods to be inspected by an independent third-party agency chosen by Buyer and approved by Seller in writing at the time of shipment of goods.  b). Buyer agrees that any such inspection by its representative or third-party agency shall be valid and binding on the Buyer. Buyer cannot disregard the Goods to be Non-Confirming Goods at later stage |
| * **“Title Retention and Risk of Loss”**  1. Title passes to Buyer upon delivery of the Goods to the Delivery Location and terms set forth in this Agreement or Purchase Order. 2. The risk of loss from any casualty to the Goods, regardless of the cause, shall be incurred by Seller until the Goods have been delivered to the Buyer. 3. Passing of title of Goods shall not affect the Buyer’s right to reject the Goods. | * **“Title Retention and Risk of Loss”**  1. Title passes to Buyer upon fulfilment of payment obligations as set forth in clause [•] of this Agreement or Purchase Order. Seller shall, in its sole discretion, without notice to Buyer, be entitled to take possession of any such Goods which have not been paid for and in respect of which payment is overdue. 2. The risk of loss from any casualty to the Goods, regardless of the cause, shall pass to Buyer upon shipment of the Goods in accordance with this Agreement. |
| * **“Insurance”**  1. The Seller shall on its own cost comply and maintain policies of insurance for a period of [•] with reputable insurers with [•] or similar which have a financial rating of not less than [•] or the equivalent from a reputable rating agency. 2. The policies of insurance shall be written on an occurrence basis or on a claims made basis in which event insurance shall be maintained during the term of this Agreement.      1. The Seller must cover Buyer, its parent, subsidiaries and affiliates and their respective officers, directors, and employees as additional insureds and listed on the executed Certificate of Insurance. 2. Upon the execution and agreement of this document, Seller shall furnish certificates of insurance setting forth the amounts of coverage, policy numbers and dates of expiration for insurance maintained by Seller. 3. Such certificates shall provide that Buyer will receive [•] days prior written notification from the insurer of any termination or reduction in the amount or scope of coverages. 4. In the event of Seller's breach of this provision, Buyer shall have the right to cancel the undelivered portion of any Goods covered by this Agreement or Purchase Order and shall not be required to make further payments except for conforming Goods delivered or services rendered prior to cancellation |  |
| * **“Remedies”**   Buyer's rights and remedies shall be cumulative and in addition to any other rights or remedies provided by law or equity. A waiver by Buyer of any right or remedy shall not affect any rights or remedies. | * **“Remedies”**   Seller's rights and remedies shall be cumulative and in addition to any other rights or remedies provided by law or equity. A waiver by Seller of any right or remedy shall not affect any rights or remedies. |
|  | **Consideration** | * **“Purchase Price”**   Buyer shall purchase the Goods from Seller at Prices set forth in Annexure [•] or Purchase Order. | * **“Purchase Price”**   Buyer shall purchase the Goods from Seller at Prices set forth in Annexure [•] or Purchase Order. |
| * **“Payment Terms”**  1. Seller shall issue an invoice to Buyer within [•] days after the completion of delivery of the Goods. Any invoice received by Buyer later than said [•] shall be payable at Buyer’s sole discretion. 2. Prices shall be inclusive of all costs and expenses related to the Goods including but not limited to delivery cost. 3. All payments hereunder must be in <<currency>> and made by <<methodofpayment>>. 4. Buyer shall only make payment for the undisputed payments. Notwithstanding any such dispute, Seller shall continue performing its obligations under this Agreement. 5. In case of delayed delivery except for Force Majeure cases, the Seller shall pay to the Buyer for every day/week/month of delay penalty amounting to [•] % of the total value of the Goods whose delivery has been delayed. If the delay is more than [•] days/weeks/months, the Buyer is entitled to terminate this Agreement. Notwithstanding the foregoing, the Seller shall still be responsible for penalty/charges/damages set forth in this Agreement. 6. Unless prohibited by Applicable Law, all duties and taxes, if any, which may be levied, shall be borne by the Seller. 7. Seller shall not increase Price of the Goods unilaterally under this Agreement. Any such increase in Price shall be made by the consent of Buyer. | * **“Payment Terms”**  1. Seller shall issue an invoice to Buyer upon shipment of the Goods. The Buyer shall make the payment for Goods to the Seller before the Seller delivers the Goods. Before the Seller receives the full payment for Goods, the Seller is entitled to refuse to deliver the Goods to the Buyer. 2. Prices shall be exclusive of all costs and expenses related to the Goods including but not limited to [delivery cost], [assembly], [installation], [configuration of the Goods] and [off-loading of the Goods]. 3. All payments hereunder must be in <<currency>> and made by <<methodofpayment>>. 4. Buyer will be deemed to have accepted all invoices for which Seller does not receive timely notification of disputes and shall pay all undisputed amounts due under such invoices within [•]. Buyer shall notify Seller in writing of any dispute with any invoice (along with a reasonably detailed description of the dispute) within [•] Business Days from the date [of delivery of the Goods / receipt of invoice]. Notwithstanding any such dispute, Seller shall continue performing its obligations under this Agreement. 5. Seller shall have the right to increase the Price of Goods, at its sole discretion, if any factor including but not limited to economies of scale, material costs, labor costs, equipment, etc. 6. Seller shall be entitled to raise separate invoice for the said extra services and Buyer agrees to make payments towards such invoices within [•] days. |
| * **“Right to Set Off”**   Without prejudice to any other right or remedy it may have, Buyer reserves the right toset off at any time any amount owing to it by Seller against any amount payable by Buyer to Seller under this Agreement or Purchase Order. | * **“No Set Off”**   Buyer shall not, and acknowledges that it will have no right, under this Agreement, to set off any amount owing to Seller against any amount payable by Buyer under this Agreement or Purchase Order. |
| * **“Most Favoring Price”**   Seller warrants that the Price for the Goods is no less favorable than those currently extended to any other customer for the same or similar Goods in similar quantities. In the event Seller reduces the Price for the Goods, Seller agrees to reduce the Price to Buyer correspondingly. |  |
| * **“Right to Withhold”**   The Buyer shall have the right to withhold payments or back charge amounts owed to the Non-Conforming Goods. Such non-conformities include, but are not limited to:   1. Failure to supply a sufficient number or quality of personnel or Goods appropriate to perform the work; 2. Failure to provide Goods in a timely manner; and   e) Failure to complete the delivery of Goods such that Sellers actions or omissions does not result in the stoppage, delay or interference with any obligations of Buyer with any other parties under this Agreement. |  |
| * **“Right to Cancel”**   Buyer shall have right to cancel all or portion of Goods of any order placed with Seller, at no charge/cancellation fee, if the order is non-conformity with the terms of the Agreement or Purchase Order.   * **“Penalty for Late Delivery and last-minute cancellation”**  1. In case of delayed delivery except for Force Majeure cases, the Seller shall pay to the Buyer for every day/week/month of delay penalty amounting to [•] % of the total value of the Goods whose delivery has been delayed. 2. If the delay is more than [•] days/weeks/months, the Buyer is entitled to terminate this Agreement. Notwithstanding the foregoing, the Seller shall still be responsible for penalty/charges/damages set forth in this Agreement. 3. Buyer shall be entitled for the penalty amounting to [•] % of the total value of the Goods in the event there is last minute cancellation of Goods from the Seller. | * **“Cancellation Fee”**  1. No Goods may be cancelled or changed by Buyer, except by Seller’s express written consent, which may be conditioned upon a cancellation fee. If Seller does not consent in writing to Buyer’s cancellation of the Goods, Buyer shall still be liable for the full payment of the Price and any [freight], [delivery], [transportation] charges and other charges and taxes that Seller may have incurred and shall continue to be subject to the late fees and interest provisions contained in this Agreement. 2. If the any Purchase Order provides for Goods which are subject of a special order, such that the Goods are not part of Seller’s existing product range or inventory or Seller discovers that it cannot manufacture or produce or provide such special order, then Seller shall be entitled to cancel the Purchase Order without any liability whatsoever. 3. Goods cancelled less than [•] weeks/days from the scheduled date of shipment will forfeit the advance payment fee and will entail liabilities on Buyer to pay the Seller for materials used and time spent (charged at the normal hourly recovery rate) upto and including the date of cancellation, and the Buyer consents to make any such payment towards cancellation cost within [•] days of the receipt of final invoice from Seller. |
| * **“Opportunity to Cure”**   In the event of a non-conformity, Buyer, on its sole discretion shall allow the Seller to cure the deficiency. The Buyer shall execute and deliver to the Seller a notice of Non-Conformance Goods directing the Seller in writing to cure the deficiency within [•] Business Days, and in the event the deficiency is not cured, the Buyer shall make a Payment Adjustment equal to any costs so incurred. |  |
|  | **Termination** | * **“Termination for Convenience”**   Buyer reserves the right to terminate this Agreement or Purchase Order under this Agreement for its sole convenience, without reason or cause upon providing notice to Seller. | * **“Termination for Convenience”**   Seller reserves the right to terminate this Agreement or Purchase Order under this Agreement for its sole convenience, without reason or cause upon providing notice to Buyer. |
| * **“Termination for Material Breach”**   Buyer shall terminate this Agreement forthwith or any Purchase Order under this Agreement for the following cause by providing a notice to Seller:   1. in the event of late delivery, 2. in the event Goods are defective or do not conform to this Agreement or Purchase Order, 3. upon its failure to provide Buyer with reasonable assurances of future performance. 4. If the Buyer’s representations and/or warranties under this Agreement cease to be true or are proved to be false. 5. upon its failure to satisfy any of the express or implied conditions agreed under this Agreement or Purchase Order. | * **“Termination for Material Breach”**   Seller shall terminate this Agreement forthwith or any Purchase Order under this Agreement for the following cause by providing a notice to Buyer:   1. in the event of non-payment; 2. if Buyer breaches any material provision of this Agreement other than payment obligations as agreed under Clause [•] of this Agreement or Purchase Order. 3. If the Buyer’s representations and/or warranties under this Agreement cease to be true or are proved to be false. 4. upon its failure to satisfy any of the express or implied conditions agreed under this Agreement or Purchase Order. |
| * **“Termination for Cause”**  1. Buyer shall forthwith terminate this Agreement by giving a written notice to the Seller in the event of any of the following: 2. insolvency of Seller; or 3. the filing of an involuntary or voluntary petition of bankruptcy against Seller; or 4. the execution by Seller of an assignment for the benefit of creditors; or 5. the appointment of a receiver over Seller's assets. 6. In the event of any change in ownership and/or control of the Seller. 7. if (Related Agreement) is terminated in accordance of the terms thereof. | * **“Termination for Cause”**  1. Buyer shall forthwith terminate this Agreement by giving a written notice to the Buyer in the event of any of the following: 2. insolvency of Buyer; or 3. the filing of an involuntary or voluntary petition of bankruptcy against Buyer; or 4. the execution by Buyer of an assignment for the benefit of creditors; or 5. the appointment of a receiver over Buyer's assets. 6. In the event of any change in ownership and/or control of the Buyer. 7. if (Related Agreement) is terminated in accordance of the terms thereof. |
|  | **Effects of Termination** | * **“Effects of Termination”**  1. Upon the expiration or earlier termination of this Agreement, Seller shall promptly: 2. refund any payments received but not yet earned, including payments for Goods not delivered, work not performed, or deliveries not yet made, and expenses forwarded. 3. return or destroy original and copies of Confidential Information including but not limited to information or data, under its direct or indirect control to Buyer and certify in writing to Buyer that it has complied with the requirements of this clause. 4. make any deliveries already ordered but not delivered in accordance with this Agreement or purchase Order. 5. provide to Buyer all of the most current versions of Seller’s sales records related to this Goods delivered under this Agreement or Purchase Order. 6. cease to use Buyer’s trademarks, name, logos, and any other identifiers, and cease representing to third parties that it is affiliated with Buyer. 7. In the event of termination of this Agreement, Buyer shall not be liable to the Seller for any damage of any kind (whether direct or indirect) incurred by the Seller by reason of the earlier termination of this Agreement. Termination of this Agreement will not constitute a waiver of any of Buyer’s rights, remedies or defences under this Agreement, at law, in equity, or otherwise. 8. After the expiration or termination of this agreement, on Buyer's request, Seller shall, for a period designated by the Buyer of up to [•] months/years after the expiration or termination, continue to provide maintenance and similar product services, on a non-exclusive basis, to existing end users. | * **“Effects of Termination”**  1. Upon the expiration or earlier termination of this Agreement, Buyer shall promptly: 2. clear all payments accrued till the date of termination (if any) to the Seller and seek a no dues certificate from the Seller. 3. return or destroy original and copies of Confidential Information including but not limited to information or data, under its direct or indirect control to Seller and certify in writing to Seller that it has complied with the requirements of this clause. 4. Any notice of termination under this Agreement automatically operates as a cancellation of any deliveries of Goods to Buyer that are scheduled to be made subsequent to the effective date of termination, provided, however if requested by Buyer Seller may deliver any Goods that are the subject of an executed Purchase Order at the time of cancellation and provided further that full payment for such Goods are made in advance 5. In the event of termination of this Agreement, Seller shall not be liable to the Buyer for any damage of any kind (whether direct or indirect) incurred by the Buyer by reason of the earlier termination of this Agreement. Termination of this Agreement will not constitute a waiver of any of Seller’s rights, remedies or defenses under this Agreement, at law, in equity, or otherwise. |
|  | **Entire Agreement** | This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all other prior agreements and understandings, both written and oral, between the parties with respect to the subject matter hereof. Notwithstanding the aforesaid, this clause shall limit or exclude any liability for fraud, misrepresentation or estoppel by representation. | This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all other prior agreements and understandings, both written and oral, between the parties with respect to the subject matter hereof. |
|  | **Disclaimer** | * **“DISCLAIMER”**   EXCEPT AS OTHERWISE EXPRESSLY SET FORTH OR REFERRED IN THIS AGREEMENT, REQUIREMENTS OF APPLICABLE LAW, SCOPE OF WORK, REPRESENTATION & WARRANTIES AND OBLIGATIONS OF THE SELLER OR EACH STATEMENT OF WORK, NEITHER PARTY MAKES ANY WARRANTIES, GUARANTEES, OR REPRESENTATIONS OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRAN OFf MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. | * **“DISCLAIMER”**   THE GOODS ARE BEING PROVIDED ‘AS IS.’ SELLER MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS INCLUDING ANY WARRANTY OF MERCHANTABILITY, WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE AND WARRANTY OF TITLE; WHETHER ARISING BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE. BUYER ACKNOWLEDGES THAT IT HAS NOT RELIED UPON ANY REPRESENTATION OR WARRANTY MADE BY SELLER, OR ANY OTHER PERSON ON SELLER’S BEHALF, EXCEPT AS SPECIFICALLY PROVIDED IN THIS AGREEMENT. |
|  | **Indemnification** | * **“Indemnity”**   Seller shall defend, indemnify and hold harmless Buyer and Buyer’s parent company and their subsidiaries, affiliates, successors or assigns and their respective directors, officers and employees and Buyer’s customers (‘Indemnitees’) against any and all loss, injury, death, damage, liability, claim, deficiency, action, judgment, interest, award, penalty, fine, cost or expense, including reasonable attorney and professional fees and costs, and the cost of enforcing any rights hereunder and the cost of pursuing any insurance providers (‘Losses’) arising out of or occurring in connection with the Goods received from Seller under this Agreement or Seller’s negligence, willful misconduct or breach of any provision agreed under this Agreement . | * **“Indemnity”**   Buyer shall defend, indemnify and hold harmless Seller and Seller’s parent company and their subsidiaries, affiliates, successors or assigns and their respective directors, officers and employees and Buyer’s customers (‘Indemnitees’) against any and all loss, injury, death, damage, liability, claim, deficiency, action, judgment, interest, award, penalty, fine, cost or expense, including reasonable attorney and professional fees and costs, and the cost of enforcing any rights hereunder and the cost of pursuing any insurance providers (‘Losses’) arising out of or occurring in connection with the Goods received from Buyer under this Agreement or Seller’s negligence, willful misconduct or breach of any provision agreed under this Agreement . |
|  | **Confidential Information** | * **“Confidential Information”**  1. The Buyer (‘Discloser’) may disclose Confidential Information to the Seller or its representatives (‘Recipient’). The Recipient undertakes to maintain the confidentiality of all Confidential Information. 2. The Recipient acknowledges that the Confidential Information has been supplied by the Discloser in confidence, may have considerable value and is of significant importance to the Discloser, and agrees to use the Confidential Information solely in furtherance of this Agreement, and subject to the terms of this Agreement. 3. The Recipient may disclose Confidential Information or part thereof, solely on a need-to-know basis, to any employee, director, consultant, agent and/or legal advisor (‘Authorised Person’). 4. The Recipient shall ensure that the Authorised Persons are fully aware of, have agreed to be bound by, and have executed documentation which reflect similar, and in any event not less onerous than, the confidentiality obligations stipulated herein. The Recipient shall be solely responsible and liable for any non-compliance by the Authorised Persons, of such obligations. 5. If the Recipient is compelled to disclose any Confidential Information or part thereof to comply by the request and/or order of any competent authority, or is otherwise required under Applicable Laws, the Recipient shall: (i) duly and diligently challenge such requirements promptly, (ii) in any event prior to disclosure, give a prompt and sufficient written notice of the requirement of such disclosure, along with a copy of the request/ requirement, the reason that such disclosure is required and the time and place such disclosure is expected to be made, in each case with sufficient specificity, so the Discloser may obtain an appropriate protective order and/or other remedy, and (iii) if requested by the Discloser, assist the Discloser (at the Discloser’s expense) in seeking such protective order and/or other remedy. Further, the Recipient shall disclose only such portion of the Confidential Information that it’s advised, by its legal counsel in written form, is legally required to be compulsorily disclosed for its compliance and shall exercise its best efforts to obtain reliable assurance that confidential treatment shall be accorded to the Confidential Information. 6. The Recipient shall, immediately upon becoming aware of any potential, actual or suspected misuse, misappropriation or unauthorized disclosure of Confidential Information, notify the Discloser in this regard and shall co-operate with and provide all assistance to the Discloser to protect the confidentiality of such information, including without limitation, in procuring protective orders and/or remedies. 7. The Recipient agrees not to disclose, use, copy in whole or in part or modify, reverse-engineer, decompile, create derivative works of, or adapt the Confidential Information in any way without the Discloser’s prior written consent, and the Recipient agrees that it will not use any of the Confidential Information to the detriment of the Discloser, and/or to procure any advantage over the Discloser. 8. The confidentiality obligations under this Agreement shall survive the expiry or earlier termination of this Agreement. | * **“Confidential Information”**  1. The Seller (‘Discloser’) may disclose Confidential Information to the Buyer or its representatives (‘Recipient’). The Recipient undertakes to maintain the confidentiality of all Confidential Information. 2. The Recipient acknowledges that the Confidential Information has been supplied by the Discloser in confidence, may have considerable value and is of significant importance to the Discloser, and agrees to use the Confidential Information solely in furtherance of this Agreement, and subject to the terms of this Agreement. 3. The Recipient may disclose Confidential Information or part thereof, solely on a need-to-know basis, to any employee, director, consultant, agent and/or legal advisor (‘Authorised Person’). 4. The Recipient shall ensure that the Authorised Persons are fully aware of, have agreed to be bound by, and have executed documentation which reflect similar, and in any event not less onerous than, the confidentiality obligations stipulated herein. The Recipient shall be solely responsible and liable for any non-compliance by the Authorised Persons, of such obligations. 5. If the Recipient is compelled to disclose any Confidential Information or part thereof to comply by the request and/or order of any competent authority, or is otherwise required under Applicable Laws, the Recipient shall: (i) duly and diligently challenge such requirements promptly, (ii) in any event prior to disclosure, give a prompt and sufficient written notice of the requirement of such disclosure, along with a copy of the request/ requirement, the reason that such disclosure is required and the time and place such disclosure is expected to be made, in each case with sufficient specificity, so the Discloser may obtain an appropriate protective order and/or other remedy, and (iii) if requested by the Discloser, assist the Discloser (at the Discloser’s expense) in seeking such protective order and/or other remedy. Further, the Recipient shall disclose only such portion of the Confidential Information that it’s advised, by its legal counsel in written form, is legally required to be compulsorily disclosed for its compliance and shall exercise its best efforts to obtain reliable assurance that confidential treatment shall be accorded to the Confidential Information. 6. The Recipient shall, immediately upon becoming aware of any potential, actual or suspected misuse, misappropriation or unauthorized disclosure of Confidential Information, notify the Discloser in this regard and shall co-operate with and provide all assistance to the Discloser to protect the confidentiality of such information, including without limitation, in procuring protective orders and/or remedies. 7. The Recipient agrees not to disclose, use, copy in whole or in part or modify, reverse-engineer, decompile, create derivative works of, or adapt the Confidential Information in any way without the Discloser’s prior written consent, and the Recipient agrees that it will not use any of the Confidential Information to the detriment of the Discloser, and/or to procure any advantage over the Discloser. 8. The confidentiality obligations under this Agreement shall survive the expiry or earlier termination of this Agreement. |
|  | **Intellectual Property Rights** | * **“Intellectual Property Rights “**  1. Buyer is the sole legal and beneficial owner of all its Intellectual Property, free of all encumbrances, and has the valid right to use all other Intellectual Property used in or for the conduct of business as currently conducted.   Unless explicitly stipulated, nothing in this Agreement shall transfer, assign or grant, or be deemed to transfer, assign or grant, to Selller, any right, title or interest in any Intellectual Property owned by Buyer, and nothing in this Agreement shall entitle Seller to use Buyer’s Intellectual Property in any manner whatsoever, without the prior written consent of Buyer.   1. The Seller represents, warrants and/or covenants that: 2. its prior and current use of its Intellectual Property has not and does not infringe, violate, dilute, or misappropriate the Intellectual Property of any third party, 3. to the best of its knowledge, no third party is infringing, misappropriating, diluting, or otherwise violating any of its Intellectual Property, to the best of its knowledge, there are no actions settled, pending, threatened (i) alleging any infringement, misappropriation, dilution, or violation by Buyer of the Intellectual Property of any third party, or (ii) challenging the validity, enforceability, registrability, or ownership of any of Buyer’s Intellectual Property, or .(iii) by Buyer or any third party alleging any infringement, misappropriation, dilution, or violation by any third party of Customer’s Intellectual Property. 4. Seller shall, immediately upon becoming aware of any potential, actual or suspected misuse, misappropriation or unauthorized usage or infringement of Buyer’s Intellectual Property, notify Buyer in this regard, and shall co-operate with and provide all assistance to Buyer to protect its rights, title and interest in such Intellectual Property, including without limitation, in procuring protective injunctive remedies. | * **“Intellectual Property Rights”**  1. Seller is the sole legal and beneficial owner of all its Intellectual Property, free of all encumbrances, and has the valid right to use all other Intellectual Property used in or for the conduct of business as currently conducted.   Unless explicitly stipulated, nothing in this Agreement shall transfer, assign or grant, or be deemed to transfer, assign or grant, to Buyer, any right, title or interest in any Intellectual Property owned by Seller, and nothing in this Agreement shall entitle Buyer to use Seller’s logos or Trademarks or any other Intellectual Property in any way whatsoever, without the prior written consent of Seller.   1. The Buyer represents, warrants and/or covenants that: 2. its prior and current use of its Intellectual Property has not and does not infringe, violate, dilute, or misappropriate the Intellectual Property of any third party, 3. to the best of its knowledge, no third party is infringing, misappropriating, diluting, or otherwise violating any of its Intellectual Property, to the best of its knowledge, there are no actions settled, pending, threatened (i) alleging any infringement, misappropriation, dilution, or violation by Buyer of the Intellectual Property of any third party, or (ii) challenging the validity, enforceability, registrability, or ownership of any of Buyer’s Intellectual Property, or .(iii) by Buyer or any third party alleging any infringement, misappropriation, dilution, or violation by any third party of Customer’s Intellectual Property. 4. Buyer shall, immediately upon becoming aware of any potential, actual or suspected misuse, misappropriation or unauthorized usage or infringement of Seller’s Intellectual Property, notify Seller in this regard, and shall co-operate with and provide all assistance to Seller to protect its rights, title and interest in such Intellectual Property, including without limitation, in procuring protective injunctive remedies. |
|  | **Limitation of Liability** | * **“Limitation to Liability”**  1. In the event Seller breaches any provisions, obligations, representations, warranty, covenant given under this Agreement or Purchase Order or any terms implied by usage, Seller shall pay damages to upto [•].   Notwithstanding the foregoing, Seller shall be liable for actual amount of damages suffered by the Buyer in case of:   1. breach of the confidentiality provisions 2. infringement by Seller of a third party’s IPR 3. indirect damages, special damages and consequential damages 4. arising out of gross negligence, intent or personal injury or death or of any loss or damages for which limitation is expressly prohibited by Applicable Laws, shall be unlimited. 5. any other liability that cannot be capped or excluded as a matter of Applicable Laws. 6. Buyer's liability to pay any amount to Seller for any reason shall not exceed the amount Buyer has agreed to pay Seller for the Goods purchased under this Agreement or Purchase Order. 7. In no event Buyer shall be liable for any consequential, indirect, incidental, special, exemplary, punitive, or enhanced damages, lost profits or revenues, or diminution in value, arising out of, or relating to, and/or in connection with any breach of this agreement, regardless of whether such damages were foreseeable, whether or not Buyer was advised of the possibility of such damages, the legal or equitable theory (contract, tort, or otherwise) upon which the claim is based, and the failure of any agreed or other remedy of its essential purpose. | **“Limitation to Liability”**   1. Either Party’s liability arising out of gross negligence, intent or personal injury or death or of any loss or damages for which limitation is expressly prohibited by Applicable Laws, shall be unlimited. In the event Buyer breaches any provisions, obligations, representations, warranty, covenant given under this Agreement or Purchase Order or any terms implied by usage, Buyer shall pay damages to upto [•].   Notwithstanding anything else contained in this Agreement, the total aggregate liability of Seller shall not exceed [•].   1. In no event Seller shall be liable for any consequential, indirect, incidental, special, exemplary, punitive, or enhanced damages, lost profits or revenues, or diminution in value, arising out of, or relating to, and/or in connection with any breach of this agreement, regardless of whether such damages were foreseeable, whether or not Buyer was advised of the possibility of such damages, the legal or equitable theory (contract, tort, or otherwise) upon which the claim is based, and the failure of any agreed or other remedy of its essential purpose. 2. The Seller shall not be liable for the Goods failure to comply with the Specifications in any of the following events: 3. the defect arises because the Buyer failed to follow the Seller's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods (if there are none) good trade practice regarding the same; 4. the defect arises as a result of lack of instructions or information from Buyer which are incorrect, inadequate, illegible, out of sequence or in the wrong form, or arising from their late arrival or non-arrival, or any other fault of the Buyer; 5. the Buyer alters, modifies or repairs such Goods; 6. the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or 7. the Goods differ from their Specifications as a result of changes made to ensure they comply with applicable statutory or regulatory requirements. |
|  | **Force Majeure** | * “Force Majeure Event” shall mean any unforeseen event which arises after the date of the Agreement, which obstructs the Agreement, and/or either Party from executing part or all of the its obligations under the Agreement, and which by the exercise of reasonable diligence of the said Party is unable to prevent, including without limitation:   + 1. Acts of God (such as, but not limited to, fires, explosions, storm, earthquakes, drought, tidal waves and floods), except to the extent that such an act of God is caused, or its effects contributed to, by the Party claiming force majeure, and/or     2. War, hostilities (whether declared or not), invasion, act of public or enemies, mobilization, requisition, or embargoes or other import restrictions, acts of terrorism, rebellion, revolution, insurrection, or military or usurped power, or civil war, and/or     3. contamination by radioactivity from any nuclear fuel, or from any nuclear waste from the combustion of nuclear fuel, radio-active toxic explosive, or other hazardous properties of any explosive nuclear assembly or nuclear component of such assembly, and/or     4. Riot, commotion, strikes, go slows, industrial disturbances, sabotage, lock outs or disorder, except where solely restricted to employees of the Party, or breakdown of or injury to any facilities used for production, and/or     5. change in governmental law and/or policies, government prohibitions, lockdown, epidemic, pandemic, strike and/or emergency, and/or     6. If Buy-Side] [If Sell-Side] If <Client\_Title> is unable to perform any of its obligations under this Agreement, for reasons beyond its control, or for any reasons which upset the underlying purpose and object of this Agreement, including without limitation any back-to-back orders on the basis of which this Agreement is being entered into. * “Occurrence of Force Majeure Event”: Neither Party shall be liable for any delay or non-performance of obligations under this Agreement, to the extent it can establish that the performance of such obligations is prevented by any Force Majeure Event which arises after the date of the Agreement, and which could not be reasonably foreseen at the date of the Agreement. * “Notice of Force Majeure Event”: If a Party considers that a Force Majeure Event has occurred which has materially affected the performance of its obligations, then it shall forthwith notify the other in writing to that effect giving full details of the circumstances giving rise to the Force Majeure Event, and the causality between the Force Majeure Event and its obligations, no later than seven (7) days from the advent of the purported Force Majeure Event. The affected Party should notify (a) the steps taken to remedy the non-execution of their obligations and to limit the ensuing consequences on the completion of the supplied, (b) the predictable duration of the halt of activity or of its obstruction, (c) the possible effect of this event on the contractual schedule. * “Consequences of a Force Majeure Event”:   + 1. In case the Force Majeure Event renders impossible the performance of obligations under this Agreement for a period exceeding [•], the Parties shall consult each other to (a) determine the measures to be taken during the suspension of the Agreement to recommence the execution of this Agreement, and/or (b) modify the agreement to take into account the new situation, and/or (c) terminate the agreement with effect from the date of the Force Majeure Event, without indemnity in favour of the other Party.     2. The timeline of delivery (if any) under the Agreement shall be extended by a period equal to the duration of the Force Majeure Event, and an additional period (if any), as may be mutually considered reasonably by the Parties.     3. The Parties agree that Seller shall not be liable to make any payments to the other Party, if the other Party is unable to perform its obligations owing to the said Force Majeure Event or otherwise.     4. Notwithstanding anything contained herein, Seller shall be entitled to procure the goods and/or services, forming subject matter of this Agreement, from any third-party during the subsistence of the Force Majeure Event, and shall resume availing the services of the other Party within thirty (30) days from notice therefrom in relation to readiness to resume services upon completion of the Force Majeure Event.     5. Notwithstanding anything contained herein, no compensation or extra monies will be payable by Seller by reason of one or more Force Majeure Events, the sole remedy of the Parties being the remedies expressly mentioned in this Clause. * “Termination due to Force Majeure”: If the Parties do not arrive at a mutually agreed arrangement within a period of thirty (30) days from the expiry of the [•] referred above, the Agreement shall be deemed to have expired at the end of the [•] referred above, and such expiry shall oblige both Parties to reach an arrangement regarding the winding up and financial settlement of the Agreement. * “Ending of Force Majeure Event”: Upon the ending of the Force Majeure Event, the contractual obligations of the Parties shall be reinstated with such reasonable modifications to take account of the consequences of the Force Majeure Event as may be agreed between the Parties |  |
|  | **Anti-Assignment** | * Neither this Agreement nor any of the rights, interests or obligations under this Agreement shall be assigned, in whole or in part, by operation of law or otherwise by Seller without the prior consent of the Buyer. Any purported assignment without such consent shall be void. Subject to the preceding sentences, this Agreement will be binding upon, inure to the benefit of, and be enforceable by, the Parties and their respective successors and assigns. |  |
|  | **Severability** | * If any term, provision or part of this Agreement is, becomes, or is held or declared to be, void, voidable, illegal, invalid or unenforceable under the Applicable Laws, such term, provision or part hereof shall be severed, and the remainder of the Agreement shall remain in full force and effect. * The Parties shall negotiate in good faith in order to agree the terms of a mutually satisfactory substitution, to the severed term, provision or part of this Agreement, which as nearly as possible gives effect to the Parties’ contractual intentions as expressed herein. * If any part of this Agreement is declared void, voidable, illegal, invalid or unenforceable, such part shall be severed, and the remainder of the Agreement will continue be valid and enforceable. |  |
|  | **Governing Law** | * This Agreement shall be governed by Indian laws without any reference to its or any other jurisdiction conflict of laws principle. |  |
|  | **Dispute Resolution** | * In the event of any dispute, controversy or claim arising out of or relating in any way to this Agreement, including without limitation any dispute concerning the construction, validity, interpretation, enforceability or breach of this Agreement, the complaining Party shall notify the other Party in writing about the said dispute, controversy, or claim, and within thirty (30) days of such notice, management level representatives of both Parties shall meet at an agreed location to attempt to resolve the dispute in good faith through amicable negotiations. * Should the dispute not be resolved within thirty (30) days after such initiation of such negotiations, the complaining Party shall seek remedies exclusively through arbitration which shall be conducted in accordance with the [•] Rules of Arbitration (‘[•] Rules’). The arbitration shall be conducted by sole arbitrator appointed in terms the [•] Rules. While the venue for final hearings of the arbitration proceedings (through virtual or physical mode) can be mutually decided as per the convenience of the arbitral tribunal and Parties, the Parties shall endeavour to undertake all preliminary hearings through virtual mode only. Irrespective of whether it is a virtual or physical hearing, the seat of the arbitration shall be deemed to be [•]. * Buyer may apply to any court with jurisdiction for interim or injunctive reliefs, including without limitation a proceeding to enforce this arbitration agreement. |  |
|  | **Non-Solicitation** | * Seller undertake that it shall not, without the prior written consent of the Buyer, during the term of this Agreement or thereafter, either directly or indirectly approach or solicit, and/or cause or assist to be approached or solicited, any personnel, officer, director, or employee to leave the other Party. |  |
|  | **Non-Compete Clause** | * In consideration of the aforesaid, Seller undertakes that it shall not, without the prior written consent of Buyer, directly or indirectly, whether on its own behalf or on behalf of another, own, manage, control, participate in, consult with, render services for, or in any other manner engage in any business, or invest in or lend money to any business directly competing against Buyer’s and similar/ related businesses thereto. (‘Competing Business’). |  |
|  | **Survival** | * All rights and remedies which may have accrued to the benefit of Buyer (or any Buyer Indemnified Parties), and any of provisions of this Master Agreement necessary for the exercise of such accrued rights and remedies prior to the termination of this Master Agreement, shall survive such termination. |  |
|  | **Relationship** | * Nothing in this Agreement creates any agency, joint venture, partnership or other form of joint enterprise, employment or fiduciary relationship between the Parties. Buyer is an independent contractor pursuant to this Agreement. Neither Party has any expressor implied right or authority to assume or create any obligations on behalf of or in the name of the other Party or to bind the other Party to any contract, agreement, or undertaking with any third party. |  |
|  | **Waiver** | * No delay, failure, neglect or forbearance Buyer in enforcing any terms of this Agreement, including without limitation any breach or default thereof, against the Seller shall be deemed to be a waiver, or in any way impair, preclude or prejudice any right, power or remedy of Buyer under this Agreement or otherwise. * No waiver by Buyer under this Agreement shall be effective unless it is in writing and executed by an authorised representative thereof. |  |
|  | **Amendment** | * This Agreement may be amended, modified or changed (in whole or in part) only upon the due execution of a formal, definitive written agreement mutually by the Parties, wherein there is express reference made to this Agreement and the provision(s) intended to be amended, modified or changed (in whole or in part). |  |
|  | **Counterparts** | * This Agreement may be executed in one or more counterparts, and shall be effective when at least one counterpart shall have been executed by each Party hereto. |  |
|  | **Anti-Bribery** | * The Parties hereto agree that it is, and shall be, in compliance with the Anti-Corruption Laws, and that it has not received any written communication alleging that the other Party is, or may be, in violation of, or has, or may have, any liability under the Anti-Corruption Laws. |  |
|  | **Notice** | * All notices under this Agreement shall be in writing, and all such notices shall be deemed to have been duly given when delivered, * by courier or other messenger (including registered mail with acknowledgement) during normal business hours of the recipient, it shall be deemed to be received five business days after posting, * by personal delivery, it shall be deemed to be received upon delivery thereof, * by fax, it shall be deemed to be received upon the generation of a success transmission report or return receipt. * by e-mail, it shall be deemed to have been received instantaneously unless an error or delay notification is received by the sender. * For the purposes of this clause, the Parties’ [respective postal addresses], [and] [e-mail addresses], [and] [facsimile numbers] and the person for whose attention any notice document or other material required to be delivered under this Agreement must be marked are as follows:  1. For Buyer   Postal Address:  [E-Mail Address:]  [Facsimile Number:]  [Contact Number:]   1. For Seller   Postal Address:  E-Mail Address:  Facsimile Number:  Contact Number: |  |
|  | **Interpretation** | * Headings used herein have been used for the convenience of the parties and are not to be used in construing the Agreement. * The language used in this Agreement shall be deemed to be the language chosen by the parties to express their mutual intent and no rule of strict construction shall be applied against any party. Unless otherwise expressly provided the word including whenever used in this Agreement shall not limit the preceding words or terms. |  |
|  | **Non-Circumvention** | * Seller shall not in any manner, directly or indirectly, circumvent or attempt to circumvent the operation of this Agreement so as to otherwise deprive Buyer of any of the benefits intended under or pursuant to this Agreement. |  |
|  | **Data Protection** | Service Provider undertakes to Client that it will maintain an appropriate data protection policy and comply with its obligations under Data Protection Legislations.  Service Provider undertakes that it will only act on the instructions of Client in relation to the processing of any Personal Data in connection with this Agreement, unless required under Data Protection Legislations to process such Personal Data.  Service Provider undertakes and warrants that it has appropriate technical and organisational measures in place against unauthorised or unlawful processing, accidental loss or destruction of, or damage to, personal data held or processed by it as may be required under Data Protection Legislations.  Service Provider agrees to allow Client or its representatives to any relevant records or premises on reasonable notice to inspect Service Provider’s procedures in relation to data protection.  This clause shall survive the expiry and/or earlier termination of this Agreement. |  |
|  | **Further Assurance** | * + Each Party shall, upon receipt of notice from the other Party, (i) execute and deliver any additional information, documents or agreements, and (ii) do or cause to be done all further acts, and (iii) provide all assurances, as may be reasonably necessary or desirable to give effect to the terms of this Agreement.   + The Party requesting such acts shall bear the reasonable costs of the other Party. |  |
|  | **Interlinking** | * + The Parties agree that this Agreement shall be read along with <Linked\_Agreement> [that may subsequently be executed by the Parties], and that this Agreement along with the <Linked\_Agreement> shall be deemed to be the Entire Agreement for the purposes of the Parties’ obligations.   + Except to the extent aforementioned, this Agreement shall supersede any previous understandings, arrangements, communications or agreements between the Parties in relation to the subject matter hereof. |  |
|  | **Right to Audit** | * Seller agrees to keep and maintain its Books and Records that relate to this Agreement, [for a period of <Books\_Rec\_Period> from the termination or expiry of this Agreement] in a manner reasonably consistent with standard practices, or as mutually agreed otherwise. * On reasonable notice from Buyer, which shall be of no less than <Audit\_Notice>,] Seller agrees to provide Buyer or an independent third-party auditor reasonable access, from time to time, to audit, inspect and makes copies of, Seller’s Books and Records, and/or its compliance with this Agreement. * The Parties acknowledge that the rights under this Clause cover Seller’s permitted assigns, sub-contractors, Affiliates, and representatives, to the extent applicable under this Agreement. * The Parties agree that, if Buyer’s audit/ inspection reveals any errors, discrepancies and/or non-compliance on part of Seller, Seller shall forthwith rectify/ correct such errors, discrepancies or non-compliance, and fully reimburse the costs incurred by Buyer in relation to such audit/ inspection. Subject to the aforesaid, Buyer agrees to conduct all audits and/or inspection under this Clause at its sole cost and expense. |  |