



FLSMIDTH PRIVATE LIMITED  
Plot No. 7, Sector 8  
HSI IDC Growth Center  
Phase III  
Bawal, Rewari

VTM Main Stores

Phone : +91 12 8433 7501

Fax : +91 44 2715 2801

ITPAN: AAACF4997N

CIN: U26941TN2000PTC044765

GST : 06AAACF4997N1Z0

PO Number: 103932

## Purchase Order

Page: 1 of 1

**Vendor:**

Shefali Shah  
A ONE SALASAR PRIVATE LIMITED  
Unit No 702, Plot No C-1, Opal Square  
Wagle Industrial Estate  
Thane Maharashtra 400604  
India

E-mail: info@aonesalasar.com

Fax:

Phone:

**Deliver To:**

FLSmidth Private Limited  
Plot No. 7, Sector 8  
HSI IDC Growth Center  
Phase III  
Bawal, Rewari Haryana 123 501  
India

Order Date: 7/03/2023  
Terms: 30 Days - Inv

Ship Via: BY ROAD  
Shipment Terms: FCA

Goods and Services are provided pursuant to this Purchase Order in accordance with the attached FLSmidth Terms and Conditions

Purchase Order for Auction Fee Payment.

Indian Rupees

Line	Part Number/Rev/Description	Order Qty.	Unit Price	Ext Price
1	VTM000C30 Technical Assistance >>Purchase Order for Auction Fee Payment. HSN/SAC code: 998333	1.00 EA	50,000.00 /1	50,000.00

- Shipping Release Requirement -

Due Date  
10/04/2023

Quantity  
1.00 EA

All prices shown are exclusive of taxes and charges.

**Raised By:** Pratap Singh  
Chennai  
pratap.singh@flsmidth.com

Line(s) Subtotal: 50,000.00

Misc. Charge Subtotal: 0.00

Total: **50,000.00 INR**

**Authorized By:** \_\_\_\_\_ **Sign:** \_\_\_\_\_

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# TERMS AND CONDITIONS FOR EQUIPMENT PURCHASE



## 1. DEFINITIONS:

- (a) "Contractor" means any person, other than Owner, with whom FLS has a contract.
- (b) "FLS" means the FLSmith Private Limited, a company registered under the Companies Act, 1956 and having its registered office at 34, Egatoot, Kelambakkam, Rajiv Gandhi Salai (Chennai), Tamil Nadu - 603 103, as indicated on the face thereof, which may where the context so permits include its successor(s) or permitted assigns.
- (c) "Goods" means any materials, machinery, equipment, components, or items provided for in the purchase order.
- (d) "Order" means the purchase order issued by FLS, these Standard Terms and Conditions for Equipment Purchase, and any specifications, drawings, supplemental or project specific terms and conditions or other documents incorporated by reference into such purchase order.
- (e) "Owner" means the person, firm, or corporation owning the plant for which the Goods are purchased or leased under this Order.
- (f) "Seller" means the person, firm, or corporation to whom the Order is issued.

## 2. PREVAILING DOCUMENTATION:

- (a) These terms and conditions are an essential part of FLS' purchase order.
- (b) This Order becomes a binding contract when accepted by Seller, upon beginning performance by Seller or upon any other method of acceptance expressly stated on the face of the Order. This Order shall be based upon the following terms and conditions as well as those set forth on the face of the Order and any attachments to the Order submitted by FLS, regardless of any rejection or statement to the contrary in any document soliciting the Order or issued in response hereto, which rejection, statement, and all additional or different terms or conditions are rejected unless expressly accepted in writing by an authorized representative of FLS. The Order is intended by the parties as a final expression of their agreement and as a complete and exclusive statement of its terms. This Order incorporates and supersedes all prior and contemporaneous agreements and negotiations, with the specific exception of any existing nondisclosure or confidentiality agreements between the parties, which are confirmed to remain in force according to their terms.
- (c) The Order may only be amended by a formal writing signed by both parties.
- (d) Article headings are provided for convenience and are not to be used in construing this Order.

## 3. DRAWINGS, SPECIFICATIONS AND TECHNICAL INFORMATION:

- (a) The true construction, interpretation and meaning of specifications, drawings and data shall be decided only by FLS. In case of conflict or inconsistency among the Order and any other Order documents, or in case of discrepancies, omissions or errors, Seller shall submit a written description of the matter immediately to FLS for determination.
- (b) No specification or specifications with respect to any part of this order shall constitute a warranty, express or implied, by FLS against any claims for infringement of patents, copyrights or trademarks and FLS shall not be responsible to Seller, as indemnitor or otherwise, for or on account of any such claim or liability.

## 4. CHANGES:

- (a) FLS may at any time, by written notice, without notice to any sureties or assignees, make changes to this Order, including, but not limited to, changes in quantity, size or capacity, in drawings and specifications, methods of shipment and packaging, performance schedules or place of delivery, or performance of technical advisory services. Should any change increase or decrease the cost of, or the time required for performance of this Order, an equitable adjustment shall be made to price or delivery schedule or both, as the case may be, to be reflected in a written modification of this Order. No claim by Seller for such adjustment will be valid unless received by FLS within ten days of such change, or such other period as may be authorized by FLS in writing, or as otherwise stated on the face of this Order. Nothing contained in this clause shall relieve Seller from proceeding without delay in performance of this Order as directed without regard to whether a proper adjustment has yet been made.
- (b) Seller may deviate from the specified requirements only with written approval of FLS. All proposed deviations shall be clearly shown on shop drawings and catalogs and shall be fully described in their transmittal letter. Any and all costs or damages incurred as result of deviations will be paid by Seller.

## 5. PRICE:

The price for each item covered by this Order shall be the lower of the price shown for such items on the face of this Order or Seller's price in effect on the date of delivery for like quantities of items of like grade and quality to customers in the same class as FLS.

## 6. PACKING AND SHIPPING:

No charges will be allowed for packing, crating, drayage or storage unless so specified in this Order. Seller shall pack or otherwise prepare all items for shipment so as to secure the lowest transportation rates consistent with timely delivery, meet carrier's requirements and safeguard against damage from weather and transportation. Seller shall mark the number of this Order on air containers, packing slips, bills of lading and invoices and enclose a packing slip with each shipment. Where applicable, any packing or crating materials which are to be returned to FLS by Seller will be returned to FLS in accordance with FLS' policies and to the point designated by FLS in this Order or as otherwise directed by FLS. When multiple packages comprise a single shipment, each package shall also be consecutively numbered. On the date shipment is made, Seller shall fax or E-Mail (followed by regular mail to FLS) invoices, shipping documents and a copy of the packing slip. Seller shall not make partial shipments or deviate from the shipping instructions of this Order without FLS' prior written consent. Furthermore, Seller shall make no shipment of

to Seller for use in connection with the manufacture of any item ordered hereby shall be and remain the property of FLS. Such special tooling and such materials shall be kept in good condition by Seller without expense to FLS. All risk of loss to such special tooling and such materials shall be and remain with Seller during the time they are in Seller's possession. The actual cost of changes to such special tooling or material resulting from FLS' change of design or specification shall be paid for by FLS. No such special tooling and no such material belonging to FLS or its customer shall be used in the production, manufacture, or design of any items other than those called for by this Order or other Order(s) of FLS. When such special tooling or such material is no longer required for use in connection with this Order or such other Order(s) the same shall be disposed of as FLS shall direct.

## 8. DELIVERY:

- (a) Delivery shall be made when and as directed by FLS, in strict accordance with any schedule or other conditions set forth in this Order. If, for any reason unforeseeable at the time of commencement of this Order, it is later learned by Seller that the Goods cannot be delivered within the time specified, Seller must immediately notify FLS in writing. Upon such notice, FLS may direct that the Goods be accelerated by means of overtime and additional crews or shifts, and Seller shall promptly provide a plan including recommendations for the most effective and economical acceleration. Costs for accelerated work are included in the Order price and Seller expressly waives any other compensation unless otherwise agreed to in writing in advance of performance.
- (b) Liquidated Damages: Time of performance is an essential element of this Order. Failure to make timely delivery or to comply with the notice requirement may result in the incurring of substantial additional costs or damages by FLS. The parties agree that such damages for failure to meet the delivery dates would be extremely difficult and impractical to calculate. Therefore, in the event the delivery dates are not met, excluding delay caused by FLS or a Force Majeure event, Seller shall pay, as liquidated damages and not as a penalty, one percent (1%) of the total purchase price for each calendar week or part thereof the delivery is delayed, up to a maximum of ten percent (10%) of the total Order price. In addition, FLS reserves the right to cancel without cancellation charge and without waiving any other rights under this Order, or at law, if any delivery is not made within thirty days of the delivery dates and in the event of such cancellation the Seller shall be responsible for the increased costs of substitute Goods.
- (c) If freight is allowed, or purchase made at delivered price, freight charges must be prepaid. Carrier claims resulting from in transit damage will be the sole responsibility of Seller for purchases made at delivered price. If Goods are shipped on a freight-collect basis, all Goods shall be forwarded in accordance with FLS' instructions or in the absence of such instructions by the route involving the lowest transportation rate. Excess transportation cost will be borne by Seller. All invoices with transportation charges must be supported by a receipted freight bill.

## 9. OVERSHIPMENTS:

Unless otherwise specified, an increase in the quantities called for by this Order will not be accepted by FLS. Any increased quantity shipped to FLS without prior acceptance may be returned by FLS to Seller at Seller's sole risk & expense.

## 10. EXPEDITING, INSPECTION AND TESTING:

- (a) The Goods furnished under this Order, including all warranty work, shall be subject to expediting by FLS and FLS' representatives shall be afforded free access during working hours to Seller's plants.
- (b) All inspections and tests shall be made as required herein, and copies of all test reports, test data, and other documents, in the number specified, shall be forwarded by Seller to FLS at the mailing address set forth in the Order. FLS shall be entitled but shall not be required to perform inspections at Seller's or its vendors' and subcontractors' premises of all items purchased hereunder at any stage in the manufacturing process, during normal business hours, and FLS shall be entitled to reject any partially completed work which fails to conform to the requirements of this Order. Seller shall advise FLS ten days in advance when the Goods are ready for inspection. No such inspection or failure to inspect shall relieve Seller of any responsibility or liability with respect to the Goods nor be interpreted in any way to imply acceptance thereof by FLS.
- (c) All Goods found to be nonconforming or defective will be repaired or replaced by Seller without expense to FLS or, at option of FLS, Seller will refund the price on all such nonconforming or defective Goods.

## 11. PAYMENT:

Payment will be made in accordance with the payment terms as shown on the face of the Order or, if no payment term is expressed, within forty-five (45) days after receipt and acceptance of the Goods. If discounts are offered, FLS shall have the option to pay invoices according to discount terms. Discount periods, if applicable, will be computed from the date of delivery of goods ordered with receipt of acceptable invoices or after the resolution of any dispute to render payment, whichever is later. Invoices shall be mailed to FLS at the address indicated in the Order. If advanced payments or progress payments are made by FLS to the Seller, all work in progress and Goods of Seller related to performance hereunder shall be identified to the Order, and the Seller hereby grants FLS a security interest therein to the extent of such advanced or progress payment.

## 12. TAXES:

GST CLAUSE - The following clause shall apply upon the GST Act becoming effective. Supplier shall ensure that appropriate details relating to the Supplier's invoice are entered in the GST Network on the date when the invoice is submitted to FLSmith. It is the sole responsibility of the Supplier to ensure that FLSmith is in a position to take credit for the Goods and Services Tax (GST) charged in the invoices issued by the Supplier on or before the

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# TERMS AND CONDITIONS FOR EQUIPMENT PURCHASE



## 13. TITLE AND RISK OF LOSS:

Title to the Goods shall pass to FLS upon the earlier of payment by FLS to the Seller for the Goods (prorated to the portion of the Order price paid) or receipt by FLS or the Owner (as applicable) of such Goods at the destination location designated in the Order. Risk of loss will pass to FLS upon receipt by FLS or the Owner (as applicable) of the Goods in undamaged condition at the destination location stated in the Order.

## 14. LIENS:

Seller shall discharge at once, or shall furnish to FLS a bond satisfactory to FLS against any mechanic's lien or other lien, encumbrance or claim which may be filed in connection with the work performed under this Order. Seller hereby expressly waives and releases any and all right of lien in connection with the Goods and agrees to furnish, or cause to be furnished, to FLS, such waiver of lien as may be requested by FLS as a condition precedent to any payment hereunder. If, at any time, there should be evidence of any lien or claim for which FLS might become liable, FLS shall have the right to retain out of any payment then due or thereafter to become due to Seller an amount sufficient to completely indemnify FLS against such lien or claim. If any lien or claim should remain unsatisfied after all payments are made to Seller, Seller will refund to FLS all monies that FLS may be compelled to pay in discharge of such lien or claim together with all costs and reasonable attorney's fees.

## 15. WARRANTY:

Seller expressly warrants that all Goods will be new, in accordance with Order documents, including, but not limited to, FLS' design specifications, drawings, samples or other descriptions furnished or adopted by FLS and free from defects in material, workmanship and design. If required by FLS, Seller shall furnish satisfactory evidence as to the kind and quality of all materials furnished hereunder. Unless otherwise stated on the face of the Order, this warranty shall run to FLS and its customers and all users of such Goods and shall remain in effect as to each item for a period of eighteen (18) months after the item is applied to the ultimate use for which it was intended or twenty-four (24) months after final delivery, whichever is shorter.

All warranties shall survive inspection, acceptance and final payment by FLS and shall run to FLS and subsequent purchasers of the items or end products of which they are a part. Seller agrees to save, defend, indemnify, and hold FLS and such purchasers harmless from all liability, loss, costs and expenses, including all court costs, expert witness fees, investigative costs and attorneys' fees, resulting from any breach of any or all such warranties. Notice of breach shall be deemed sufficient if given within ninety days after discovery thereof by FLS. Seller agrees to immediately repair or replace any nonconforming or defective items with conforming items at no cost to FLS and shall indemnify FLS for any and all costs, expenses, claims or damages (by whomever made) associated with any such nonconformance or defect. Seller further warrants that the repair or replacement shall not interrupt, delay or otherwise adversely impact FLS' or its customers' operations.

## 16. LAWS:

(a) Contractor shall comply with the provisions of Workmen's Compensation Act, 1923, Factories Act, 1948, Minimum Wages Act, 1948, Payment of Wages Act, 1936, Contract Labour (Abolition & Regulation) Act, 1979 Building and Other Construction Workers Cess Act, 1996 and any other applicable labour laws, as amended time to time and related rules and regulations, as applicable. Contractor shall indemnify and hold FLS, its customers harmless from any loss or damage arising out of non-compliance with applicable labour laws.

(b) Safety: Seller warrants that the Goods sold hereunder shall comply in all respects with the Occupational Health & Safety Standards and all applicable central, state and local safety laws, and all applicable regulations, rulings, orders and standards promulgated thereunder, or with analogous laws applicable in the country where the Goods originate. Seller further warrants that the Goods will comply with all generally recognized industrial safety standards. Seller agrees to correct any non-conformance at its expense.

(c) Hazardous and Toxic Materials: Seller warrants that the Goods comply with the hazardous substance handling rules prescribed pursuant to Environment Protection Act, 1986 and regulations promulgated thereunder, or with analogous laws applicable in the country where the Goods originate. Seller agrees to correct any non-conformance at its expense.

(d) Export Controls: Seller shall ensure to obtain proper number of the category of Goods being supplied as per Excise Rules and shall comply with all the requirements with respect to obtaining necessary license including clarifications from the relevant authorities to enable FLS to export the Goods.

(e) With respect to subparagraphs (a) through (d) hereof, Seller agrees to hold FLS, its customer(s) and Owner(s) harmless from any and all liabilities, claims, civil fines, penalties and awards, damages, losses, settlements and expenses, including attorney's fees, which may arise out of Seller's actions or omissions which do not meet these requirements.

## 17. CORPORATE SOCIAL RESPONSIBILITY:

(a) The FLSmidth Group, as a signatory to the UN Global Compact, expects its suppliers and contractors to maintain and apply policies and procedures that ensure compliance with the law and which support generally acknowledged sustainable business practices, including, but not limited to: (i) respecting basic human rights as set out in the principles of the UN Declaration of Human Rights, including to refrain from any use of forced labor, and to respect ethical, cultural, religious and political diversity; (ii) respecting the UN Convention on the Rights of the Child with respect to any use of child labor; (iii) respecting basic labor rights as stated by the International Labour Organization (ILO),

(b) Seller is responsible for the safe execution of the work under this Order in compliance with all local regulations, and shall take all necessary safety measures, including safe working conditions and training in safe working methods, appropriate personal safety equipment, and other precautions to protect all persons and property against injury or damage.

(c) Seller must ensure that its employees are provided with access to normal health services in the country where its work is performed, and that all mandatory social insurances for its employees are being complied with.

## 18. CONFIDENTIAL INFORMATION:

All supplies, blueprints, sketches, drawings, specifications, and other technical or commercial information furnished by or on behalf of FLS or created or produced by Seller for FLS in furtherance of this Order shall remain or become FLS' property and shall be deemed to be the confidential information of FLS. Such confidential information shall not be reproduced, given or disclosed to any third party by Seller without FLS' prior written consent and nothing in this Order shall be deemed to grant Seller any rights to use all or any of FLS' confidential information except for the purposes contemplated in this Order. All confidential information shall be returned to FLS or FLS' designated representative upon completion of this Order or upon FLS' demand. Any information which FLS may disclose to Seller with respect to the design, manufacture, sale or use of the items covered by this Order shall be deemed to have been disclosed to Seller for use only in connection with this Order. Seller, therefore, shall not supply such items to others without FLS' prior written consent.

## 19. PATENT INDEMNIFICATION:

To the extent the Goods are not manufactured or performed according to designs specified by FLS, Seller shall indemnify and hold FLS, its agents and customers harmless from any loss, damage or liability for infringement of United States or foreign patents or copyrights, or for unauthorized use of trade secrets or proprietary information of a third party with respect to such items and their process of manufacture, or the performance of such services. Seller shall, at its own expense, defend any action in which such infringement or unauthorized use is alleged with respect to the manufacture, sale or use of such items delivered hereunder or services performed hereunder. Notwithstanding the above, FLS may elect to maintain its own defense of such claims at the cost of Seller.

## 20. INDEMNIFICATION:

(a) Seller shall defend, indemnify, and hold harmless FLS from any and all third-person claims for damages, losses, costs and expenses (including all fines and penalties as well as reasonable attorneys' fees, consultant fees and litigation expenses) arising out of or resulting from or related to personal injury to or death of any person, and damage to or destruction of tangible third-person property to the extent arising out of defects in Goods furnished by, or acts or omissions, negligence, gross negligence, or willful misconduct of Seller, its subvendors of any tier, or their respective directors, officers or employees.

(b) FLS shall promptly notify Seller of any suit, claim, action or other proceeding covered by this Order that is threatened or asserted against it. The parties shall cooperate fully with one another in the defense and settlement of the suit, claim, action or other proceeding.

## 21. INSURANCE:

During the term of the Order and through the end of the warranty period, Seller shall maintain primary insurance coverage listed below with insurers satisfactory to FLS: (a) Workers' Compensation as required by statute and Seller shall provide for or require all subcontractors to maintain similar coverage for the subcontractor's employees employed; (b) Commercial General Liability including products liability and completed operation coverage with Public Liability insurance, if applicable, including "contractual" coverage for indemnity clauses set forth in this Order; (c) Automobile Liability coverage for non-owned hired vehicles and owned vehicle as per applicable law and (d) Property Damage and transportation coverage at 110% of the Order price for loss of or damage to the Goods while in manufacture and through delivery of such Goods if and to the extent FLS has made payments prior to delivery. Seller shall cause FLS to be named as an Additional Insured under Seller's insurance required under clause (b) and (c) above and loss payee under (d) to the extent of payments made by FLS prior to delivery. Certificate(s) evidencing this fact shall be submitted to FLS and must be approved by FLS before work commences under this Order. The insurance coverages above shall be primary to and not in excess of any other insurance available to FLS. Seller shall obtain from its insurers for insurance coverage in clause (b) and (c) a waiver of subrogation in favor of FLS. In the event that Seller fails to furnish such insurance coverages, FLS may, without prejudice to any other remedy available to it, terminate the Order, or, at its option, upon the giving of fifteen days notice by ordinary mail to Seller, obtain any required insurance and charge the cost thereof to Seller. All certificates must contain a clause reading in substance as follows: "The Insurance Company will endeavor to notify FLSmidth, in writing, at the site of the work, at least thirty days prior to any cancellation, or any change in or reduction of the coverages shown herein."

## 22. TERMINATION AND SUSPENSION:

(a) Default: FLS may at its election, by delivery to Seller of written notice of termination or suspension, cancel or suspend this Order or any part hereof without any obligation or liability whatsoever, if Seller (i) fails to deliver the Goods within thirty (30) days from the Order's delivery date schedule or perform the work or services in accordance with the delivery or any other schedule specified in this Order, or (ii) fails to comply with any of the other material provisions of the Order. In the event of any such failure by Seller, and whether or not this Order shall be canceled, FLS may purchase similar materials elsewhere or secure the manufacture and delivery thereof and Seller shall be liable to FLS for all costs and damages suffered or incurred by FLS arising or resulting from such failure or failures by Seller. If it is determined that Seller was not in default, or that the default was excusable, the termination will be deemed to have been

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# TERMS AND CONDITIONS FOR EQUIPMENT PURCHASE



(b)Convenience: FLS reserves the right to cancel or suspend this Order in whole or part by written notice, for its convenience. FLS may further cancel this Order after any period of suspension. In the event of such termination or suspension, Seller may claim reasonable costs incurred plus a reasonable allowance for profit (in the case of termination only) and overhead only on work completed as of the effective date of termination or suspension, to be determined in accordance with (i) and (ii) below. Any claim by Seller must be made in writing no later than ten (10) business days after receipt of the notice of cancellation or suspension from FLS. If it appears that Seller would have sustained a loss on the entire Order had it been completed, no allowance for profit and overhead shall be allowed.

(i)If this Order covers materials manufactured or fabricated to FLS' specifications or specifications especially prepared by Seller for FLS, the following provisions shall apply: (A) immediately upon receipt of such notice of termination or suspension, or upon such other date as may be specified in said notice, Seller shall stop all work in connection with this Order, except as otherwise directed by FLS; (B) In the case of cancellation for convenience, FLS shall pay and Seller shall accept as full compensation, Seller's reasonable costs to the date work is stopped, including Seller's reasonable expense in connection with termination or suspension of any subcontracts, all as approved by FLS, plus ten percent (10%) of such costs as full overhead and profit, provided, however, that in no event shall the total amount to be paid to Seller upon such termination or suspension plus payments previously made exceed that proportion of the aggregate total purchase price specified herein that the work actually completed hereunder to the date work is stopped bears to the entire work to be performed hereunder;

(C) all completed Goods and work in progress shall become and remain the property of FLS and Seller shall safely hold the same for a reasonable time subject to receipt of FLS' written shipping or other disposition instructions; and (D) in the case of suspension of this Order, Seller shall resume production and deliveries in accordance with FLS' written instructions. Upon completion of the resumed work, Seller shall receive the total purchase price in the manner and amount as specified herein, less any payments previously made under this Order.

(ii)If the Goods covered by this Order are standard stock merchandise, FLS shall have no obligation for cancellation charges or otherwise hereunder, except to make payment subject to other applicable terms hereof, for the materials actually shipped and in transit prior to such termination or suspension, and to make payment for any materials as to which this order is not terminated or suspended which are shipped subsequent to such termination or suspension. Upon completion of this Order after resumption, Seller shall receive the total purchase price in the manner and amount as specified herein, less any payments previously made under this Order.

(c)Upon termination under any of the foregoing circumstances, Seller will be deemed to have offered to FLS an assignment of all of its subcontracts and purchase orders related to this Order.

## 23.FORCE MAJEURE:

If Seller is unable by reason of Force Majeure to carry out any of its obligations under this Order, then upon Seller giving notice and particulars in writing to FLS within a reasonable time after the occurrence of the cause relied upon, such obligations shall be suspended for the duration of Force Majeure. "Force Majeure" shall include: catastrophic events (for example, fires and explosions); Acts of God (including, but not limited to, floods, tornadoes, hurricanes and earthquakes); riots, insurrections, or civil unrest; acts or threatened acts of terrorists; war, blockades or other acts or threatened acts of war or military action; trade embargoes or restrictions imposed after the date of the Order, the imposition of which was not generally known or anticipated before that date; changes in applicable law after the date of the Order; governmental or judicial acts, decrees, injunctions, restrictions or other orders that were not requested, promoted or caused by the affected party; or any other unforeseeable causes that are not reasonably within the control of Seller.

## 24.LIMITATION OF LIABILITY:

(a)Neither Seller nor FLS shall be liable to the other, nor to any parent company, affiliate, subsidiary or subcontractor of the other, nor shall the parties be liable to the other party's partners or participants, for special, indirect, incidental, exemplary, or consequential damages.

(b)Each party's maximum aggregate liability to the other party for any claim whether in contract, warranty, tort (including, but not limited to, negligence and strict liability), or other theory of recovery for any loss or damage concerning, arising out of, or resulting from the Goods or the Purchase Order shall be capped at one hundred percent (100%) of the Order price. The limitations and caps on liability that are stated or referenced herein shall not apply to the following: (i) Seller's duty to defend, indemnify, and hold harmless FLS from any and all third party claims for damages, losses, costs and expenses (including all fines and penalties as well as reasonable attorneys' fees, consultant fees and litigation expenses) arising out of or resulting from or related to personal injury to or death of any person, and damage to or destruction of tangible third party property; (ii) Seller's duty to defend, indemnify and hold harmless FLS against claims for infringement of patents,

## 25.GOVERNING LAW AND FORUM:

(a)The Order shall be governed by and construed in accordance with the laws of India, notwithstanding the result that otherwise may arise from application of the conflict of law rules of any competent jurisdiction, notwithstanding the result that otherwise may arise from application of the conflict of law rules of any competent jurisdiction.

(b)The parties expressly waive application and jurisdiction of the UN Convention on the International Sale of Goods.

(c)All disputes and claims between the parties concerning, arising from or relating in any way to the Contract (collectively for the purpose of this Article, "Disputes") that cannot be settled by good faith discussion, shall be resolved through binding arbitration by the Arbitration and Conciliation Act, 1996 as amended time to time. The arbitration process, including any interim relief or challenge, to the extent allowed by the Act of 1996, to an arbitrator award may only be governed by courts at Chennai, India. The arbitration shall be held at a mutually agreed upon location and conducted in English. The arbitration award shall not be appealable or subject to recourse to or review by any court or other arbitration.

## 26.NOTICE:

Service of all notices under the Order shall be sufficient if given personally by the registered post, overnight mail, fax, electronically scanned e-mail attachment or other similar means at the address set forth in the Order, or to such address as such party may provide in writing from time to time. All notices shall be effective upon receipt.

## 27.ASSIGNMENTS:

Any assignment or sublet of this Order or of any right or interest herein, or of any money due or to become due hereunder, without the written consent of FLS shall be void. FLS reserves the right to make direct settlements and adjustments in price or otherwise with Seller in accordance with this Order notwithstanding any assignment of claims for monies due or to become due hereunder, without notice to any assignee. Should FLS provide its written consent to Seller to assign any monies due or to become due hereunder, payment to any assignee shall be subject to set off or recoupment for any present or future claim or claims which FLS may have against Seller, except to the extent that any such claims are expressly waived in writing by FLS.

## 28.SUBCONTRACTING:

Seller shall not procure, nor contract for the procurement of, any items covered by this Order in completed or substantially completed form without first securing the written approval of FLS. In the event that Seller subcontracts without first securing the written approval of FLS, FLS may cancel that portion of this Order relating to such items without any liability to FLS.

## 29.DOCUMENTATION, PREVAILING LANGUAGE AND DATES:

Unless specifically provided for elsewhere in the Order, all documentation, including drawings and written materials, shall be in the English language. In the event the text of the Order is translated into a language other than English, the English text shall prevail, control and be binding in the event of any conflict or discrepancy. All dates shall be based on the Gregorian calendar.

## 30.ADVERTISING:

Seller shall not advertise or publish the fact of or details relating to this Order to any third party except as specified in this Order, permitted by FLS, or as required to perform this Order.

## 31.WAIVER OF BREACH:

Neither payment, failure by FLS to insist on strict performance, acceptance, nor waiver, by FLS of any breach hereof, shall constitute a waiver of any other breach of this Order. In any legal action between FLS and Seller arising out of this Order, or its breach, FLS shall be entitled to recover reasonable attorney's fees and all legal costs and expenses, together with interest and all losses or damages which FLS may suffer, including any damages, liquidated or otherwise, or settlements required to be paid by FLS to Owner or any Contractor or because of the failure of Seller to provide any item in full accordance with this Contract.

## 32.SEVERABILITY:

In the event that any of the provisions, or portions, or applications thereof, of the Order are held to be unenforceable or invalid by any court or tribunal of competent jurisdiction, the parties shall negotiate an equitable adjustment in the provisions of the Order with a view toward effecting the purpose of the Order and the validity and enforceability of the remaining provisions, or portions, or applications thereof, shall not be affected thereby.

## 33.SURVIVAL OF TERMS:

Articles 12 (Taxes), 16 (Laws), 18 (Confidential Information), 19 (Patent Indemnification), 20 (Indemnification), 24 (Limitation of Liability), 25 (Governing Law and Forum), 30 (Advertising) and 31 (Waiver of Breach) shall survive completion or termination of the Order.



# STANDARD TERMS AND CONDITIONS FOR PURCHASE OF ON-SITE SERVICES



## 1. DEFINITIONS:

- (a) "Consultant" means the person or entity named on the face of the PO to whom/which the PO is issued.
- (b) "FLS" means the FLSmith Private Limited, a company registered under the Companies Act, 1956 and having its registered office at 34, Egatoor, Kelambakkam, Rajiv Gandhi Salai (Chennai), Tamil Nadu - 603 103, as indicated on the face thereof, which may where the context so permits include its successor(s) or permitted assigns.
- (c) "Owner" means the person or entity identified in the PO for whose Project the Work is to be performed.
- (d) "PO" is an acronym for this purchase order and includes all terms, conditions and provisions stated on the face of the purchase order, these Terms and Conditions, annexes to the purchase order (if any) and any documents referenced in the purchase order.
- (e) "Project" means the totality of the work to be performed by FLS and others under separate contracts with the Owner in connection with the design, supply, installation, and commissioning of a particular plant, systems or items of equipment.
- (f) "Site" is the location where the Project will be constructed and/or the Work performed.
- (g) "Subcontractor" means any person or entity of any tier approved by FLS in writing to whom/which Consultant subcontracts part of the Work.
- (h) "Work" means the services that Consultant is to perform or provide under this PO as described more fully in Article 3 (Scope of Work) below.

## 2. PREVAILING DOCUMENTATION:

- (a) These terms and conditions are an essential part of the PO.
- (b) This PO becomes a binding contract when accepted by Consultant, upon beginning performance by Consultant or upon any other method of acceptance expressly stated in the PO (the "Contract") and all additional or different terms or conditions, are rejected unless expressly accepted in writing by an authorized representative of FLS. This PO is intended by the parties as a final expression of their agreement and as a complete and exclusive statement of its terms.
- (c) Article headings are provided for convenience and are not to be used in construing this Contract.

## 3. SCOPE OF THE WORK:

- (a) The scope of Consultant's Work is stated in the PO. Consultant shall promptly take all actions at its expense that are necessary to correct errors or defects in the Work for which Consultant is responsible. Consultant shall pay costs that are incurred by, backcharged to or claimed against FLS as a result of such errors or defects. Consultant will supervise and direct work efficiently and with its best skill and attention. Consultant shall have exclusive control of the means, methods, techniques, sequences and procedures of the Work. Consultant shall be solely responsible for the acts of its agents, employees, servants and Subcontractors during the performance of the Work. No agent, employee, servant, or Subcontractor of Consultant shall be deemed to be the agent, employee or servant of FLS.
- (b) Consultant shall perform all work hereunder in a good and workmanlike manner, exercising the degree of skill, care and diligence in the performance of its Work as normally is exercised by parties performing similar work in the Consultant's profession and industry, and to the satisfaction of FLS. If deviations, defects, or deficiencies in the Work are not remedied to the satisfaction of FLS within a reasonable time after FLS's having given Consultant notice of such, or if Consultant shall fail or neglect to perform any of its obligations in a good and workmanlike manner, then FLS, without any prejudice to any other right or remedy, may correct any such deviations, defects, or deficiencies itself, and Consultant agrees to reimburse FLS for the entire cost thereof either by way of deduction from any payment then or thereafter to be made to Consultant or by payment of the invoice of FLS thereof.
- (c) Consultant shall perform all work hereunder in such a manner that it does not pose a threat of harm to FLS's and/or Owner's property or interfere with or hinder FLS's and/or Owner's operations or the operations of others. Consultant agrees to keep the work premises free of waste material and rubbish caused by his work. Consultant further agrees to remove all such waste material and rubbish on the termination of the contract, together with all his tools, equipment, machinery and surplus materials. If Consultant fails to perform this requirement, FLS may have this work performed at Consultant's expense.
- (d) Consultant warrants that if any materials or equipment are furnished under this contract they will be new (unless otherwise specified) and free from faults or defects for a period of one year, commencing with the date of final payment under this contract. Consultant further warrants that all materials, equipment, and work furnished under this contract will be in compliance with the Occupational Health & Safety Standards applicable to the Work and the standards and regulations issued thereunder, and that Consultant shall hold and save harmless FLS from all damages or penalties assessed against FLS as a result of Consultant's breach of this warranty.
- (e) Consultant shall inform FLS of any obvious defects in the installation, overhaul, repair, maintenance, or operation or its equipment for which Work was/is requested and which are reasonably observable at the time the Work is performed.
- (f) Should the Work provided by Consultant hereunder be defective, Consultant will furnish Work which FLS deems necessary and adequate to correct such defect at its expense.

## 4. CHANGES:

- (a) FLS may at any time, by written notice, without notice to any assignees, make changes to this Contract. Should any change increase or decrease the time required for performance of this Contract, the increase or decrease in such time will be compensated at the daily rates applicable to such Work as provided in the PO. No claim by Consultant for such adjustment will be valid unless received by FLS within ten days of such change, or such longer period as may be authorized by FLS in writing. Nothing contained in this clause shall relieve Consultant from proceeding without delay in performance of this Contract as directed without regard to whether a proper adjustment has yet been made.
- (b) Consultant may deviate from the specified requirements only with written approval of FLS. Any and all costs or damages incurred as result of deviation will be paid by Consultant.

## 5. TIME OF PERFORMANCE OF THE WORK AND PROGRESS REPORTS:

- (a) All time limits stated on the face of the PO are of the essence of the PO. The Work shall be completed by the interim/milestone and completion date(s) set forth in the PO; however, if Consultant is unable by reason of Force Majeure to carry out any of its obligations under this Contract, then upon Consultant giving notice and particulars in writing to FLS within a reasonable time after the occurrence of the cause relied upon, such obligations shall be suspended for the duration of the Force Majeure. "Force Majeure" shall include, catastrophic events (for example, fires and explosions); Acts of God (including, but not limited to, floods, tornadoes, hurricanes and earthquakes); riots, insurrections, or civil unrest; acts or threatened acts of terrorists; war, blockades or other acts or threatened acts of war or military action; trade embargoes or restrictions imposed after the date of the Contract, the imposition of which was not generally known or anticipated before that date; changes in applicable law after the date of the Contract; governmental or judicial acts, decrees, injunctions, restrictions or other orders that were not requested, promoted or caused by the affected party; unavailability of parts, goods or any other causes that are not reasonably within the control of Consultant.
- (b) In the event of any dispute or disagreement between the parties, Consultant shall continue with the Work and shall not suspend or fail to proceed with any part of the Work.
- (c) Consultant shall submit to FLS reports as set forth in the PO.

## 6. PRICE AND TRAVEL EXPENSE REIMBURSEMENT:

- (a) The Contract price and terms of payment are stated in the PO. Except as stated in Article 6(b), and unless otherwise stated in the PO, the Contract price is all-inclusive for all Work performed under this PO, including but not limited to telephone calls, facsimiles, mail, courier services and copying costs. The Contract price shall be paid in Indian Rupees.
- (b) Reimbursement of travel expenses is limited to Work performed with FLS' prior consent. The following travel expenses will be reimbursed at cost: economy class air or rail fare; lodging and meals; car rental fees; tolls and parking fees and taxi fees. Reimbursement does not apply to expenses for travel by personal vehicle or vehicle owned by Consultant. Such travel expenses shall be reimbursed at the Internal Revenue rate existing at the time of travel. Consultant shall itemize the foregoing reimbursable travel expenses in its invoices and attach to its invoices copies of all supporting receipts and other documents substantiating the expenses.

## 7. TAXES:

Consultant is responsible for all central, state/provincial and local taxes as they might apply to the Work and/or Consultant's performance of this PO. FLS shall, to the extent required by applicable law, be entitled to deduct any taxes, duties, levies or cess while releasing the payment. If the Consultant is a person registered outside India, it shall produce relevant certificate from or determination by the Indian income tax authorities with respect to applicable tax and, if requested, by FLS shall also obtain a tax residency certificate from its country.

## 8. LIENS:

If and to the extent permitted by the law of the state where the Site is located, Consultant (a) expressly waives and releases any right that it may have to file liens against the Site with respect to payments it claims to be due for performing Work on the Project; (b) shall obtain the same waiver from each Subcontractor in writing; (c) shall provide FLS with such written lien waivers when and in such forms as FLS may be required to provide under its contract with Owner; (d) shall withdraw, remove or cause to be withdrawn or removed any lien or notice of lien asserted or threatened by Consultant or a Subcontractor with respect to any payments claimed to be due for performance of the Work; and, (e) shall defend, indemnify and hold FLS, Owner and Owner's property harmless against any lien, notice of lien or claim on the lien asserted by Consultant or a Subcontractor and related costs (including, but not limited to attorneys' fees) that FLS and/or Owner may incur.

## 9. LICENSING LAWS, CODES, STANDARDS CONTROLLING THE WORK:

- (a) If any part of the Work constitutes the practice of "engineering" under the statutes of the country, state or province where the Project is located, Consultant shall: (i) comply with the licensing, certification and registration requirements of that country, state or province to the extent they are applicable to Consultant; and (ii) ensure that plans, drawings, calculations and other documents are prepared, signed and sealed in accordance with such statutes.
- (b) In addition to the requirements and standards stated or referenced in the PO, Consultant shall comply with the following (if applicable to the Work), as prevailing at the time of the Work: (i) laws, regulations, and ordinances (including applicable requirements of Occupational Health & Safety Standards), if any, that are pertinent to Consultant's Work; and (ii) generally accepted practices relating to the Work. If there is an inconsistency or conflict between or among any of these requirements, the more stringent requirements shall apply.

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(c) If Consultant does not comply with its obligations under this Article, it shall: (i) take all steps reasonably necessary to cure its non-compliance as expeditiously as circumstances will reasonably permit after receipt of notice of non-compliance from FLS or Owner; and, (ii) defend, indemnify and hold FLS and Owner harmless from any costs (including but not limited to costs of repair or replacement and reasonable attorney's fees), damages or actions incurred by them or asserted against them as a result of Consultant's non-compliance.

## 10. CERTIFICATION OF COMPLIANCE WITH LAWS:

Consultant shall comply with the provisions of Workmen's Compensation Act, 1923, Factories Act, 1948, Minimum Wages Act, 1948, Payment of Wages Act, 1936, Contract Labour (Abolition & Regulation) Act, 1979 Building and Other Construction Workers Cess Act, 1996 and any other applicable labour laws, as amended time to time and related rules and regulations, as applicable. Consultant shall indemnify and hold FLS, its customers harmless from any compliance to applicable labour laws.

## 11. CORPORATE SOCIAL RESPONSIBILITY:

(a) The FLSmith Group, as a signatory to the UN Global Compact, expects its suppliers and contractors to maintain and apply policies and procedures that ensure compliance with the law and which support generally acknowledged sustainable business practices, including, but not limited to: (i) respecting basic human rights as set out in the principles of the UN Declaration of Human Rights, including to refrain from any use of forced labor, and to respect ethical, cultural, religious and political diversity; (ii) respecting the UN Convention on the Rights of the Child

(c) Consultant must ensure that its employees are provided with access to normal health services in the country where the Work is performed, and that all mandatory social insurances for its employees are being complied with.

## 12. CONFIDENTIALITY:

All supplies, blueprints, sketches, drawings, specifications, and other technical or commercial information furnished by or on behalf of FLS or created or produced by Consultant for FLS in furtherance of this Contract shall remain or become FLS' property and shall be deemed to be the confidential information of FLS. Such confidential information shall not be reproduced, given or disclosed to any third party by Consultant without FLS' prior written consent and nothing in this Contract shall be deemed to grant Consultant any rights to use all or any of FLS' confidential information except for the purposes contemplated in this Contract. All confidential information shall be returned to FLS or FLS' designated representative, upon completion of this Contract or upon FLS' demand. Any information which FLS may disclose to Consultant with respect to the design, manufacture, sale or use of the items covered by this Contract shall be deemed to have been disclosed to Consultant for use only in connection with this Order. Consultant, therefore, shall not supply such items to others without FLS' prior written consent. Consultant shall not advertise or publish the fact of or details relating to this Contract to any third party except as specified in this Contract, permitted by FLS, or as required to perform this Order.

## 13. PATENT INDEMNIFICATION:

To the extent the Work is not solely based on design or technical know-how that FLS provided to Consultant, Consultant shall indemnify and hold FLS, its agents and Owner harmless from any loss, damage or liability for infringement of Australian or foreign patents or copyrights, or for unauthorized use of trade secrets or proprietary information of a third party with respect to such items and their process of manufacture, or the performance of such services. Consultant shall, at its own expense, defend any action in which such infringement or unauthorized use is alleged with respect to the manufacture, sale or use of such items delivered hereunder or services performed hereunder. Notwithstanding the above, FLS may elect to maintain its own defense of such claims at the cost of Consultant.

## 13. INDEMNIFICATION:

Consultant shall defend, indemnify, and hold harmless FLS from any and all third-person claims for damages, losses, costs and expenses (including all fines and penalties as well as reasonable attorneys' fees, consultant fees and litigation expenses) arising out of or resulting from or related to personal injury to or death of any person, and damage to or destruction of tangible third-person property to the extent caused by the negligence, gross negligence, or willful misconduct of Consultant, its subvendors of any tier or their respective directors, officers or employees. FLS shall promptly notify Consultant of any suit, claim, action or other proceeding covered by this Article that is threatened or asserted against it. The parties shall cooperate fully with one another in the defense and settlement of the suit, claim, action or other proceeding.

## 15. INSURANCE:

Unless otherwise stated on the face of the PO or in the PO, Consultant shall maintain throughout the Work the following minimum insurance coverages and limits: (a) Public and Product Liability Insurance: \$10,000,000 combined single limit per occurrence; (b) Commercial Automobile Liability Insurance: \$1,000,000 combined single limit per occurrence; and (c) Workers Compensation Insurance fulfilling statutory requirements of the state (or country in the case of foreign consultants) where the Work is performed; (d) Excess (or Umbrella) Liability Insurance: a minimum of \$2 million. Except as otherwise may be stated on the face of the PO, each policy (excluding Workers Compensation Insurance,) shall be primary as to any claim arising from or in connection with this PO that falls within its coverage, name FLS and Owner as additional insureds, and contain a waiver

## 16. TERMINATION AND SUSPENSION:

(a) Termination for Default. FLS may terminate this PO if Consultant is in default of this PO and Consultant (i) fails to initiate actions reasonably acceptable to FLS to cure the breach within seven days after receipt of written notice from FLS of such breach and/or (ii) fails to diligently pursue such actions to completion as expeditiously as circumstances reasonably permit after receipt of FLS' notice. FLS shall specify in its notice with reasonable precision the part of the PO that it believes Consultant has breached; the act, omission or conduct that constitutes the breach; why FLS believes the breach to be material; and actions that are required to cure the breach. If the event of termination by FLS, FLS may purchase similar services elsewhere, and Consultant shall be liable to FLS for all net costs and damages suffered or incurred by FLS that result from Consultant's breach. If it is determined that Consultant was not in default, or that the breach was excusable, termination shall be deemed to have been made for FLS' convenience.

(b) Termination for Convenience. FLS may terminate this PO in whole or part for its convenience by written notice to Consultant. The effective date of termination shall be the date stated in the notice. Upon the effective date, Consultant FLS shall pay Consultant for On-Site Technical Services, if any, performed through the date of such termination, at the rates provided in the PO, plus reimbursable expenses under Article 6(b) hereof.

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(c) Suspension. FLS may suspend the Work in whole or in part at any time for its convenience by providing written notice of suspension to Consultant. If the Consultant is demobilized from the Site at time of suspension, FLS will compensate the Consultant at the daily rates for services performed through suspension, plus reimbursable expenses of returning the Consultant to his point of departure and returning to the Site at time of resumption of the Services. Upon remobilization, FLS will compensate Consultant for the remaining Work at the contracted daily rate plus expense reimbursement under Article 6(b). If the Consultant is not demobilized at time of suspension, FLS will compensate Consultant at a standby rate to be negotiated by mutual agreement of the parties, not to exceed the agreed daily rate for on-Site Services, plus reimbursable expenses.

(d) Immediately upon the effective date of termination or suspension pursuant to this Article, Consultant shall no longer be authorized to and shall cease performance of the Work (except to the extent stated in the notice) and shall follow all instructions that FLS may give. Consultant shall deliver to FLS all completed Work and Work in progress unless FLS otherwise directs, in which case Consultant shall safely hold the same for a reasonable time subject to receipt of FLS' written instructions.

## 18. LIMITATION OF LIABILITY:

(a) Neither Consultant nor FLS shall be liable to the other, nor to any parent company, affiliate, subsidiary or subcontractor of the other, nor shall the parties be liable to the other Party's partners or participants, for special, indirect, incidental, exemplary, or consequential damages (hereinafter, collectively, "consequential damages").

(b) Each Party's maximum aggregate liability to the other Party for any claim whether in contract, warranty, tort (including, but not limited to, negligence and strict liability), or other theory of recovery for any loss or damage concerning, arising out of, or resulting from the Work furnished hereunder shall be capped at one hundred percent (100%) of the Contract price. The limitations and caps on liability that are stated or referenced herein shall not apply to the following: (i) Consultant's duty to defend, indemnify, and hold harmless FLS from any and all third party claims for damages, losses, costs and expenses (including all fines and penalties as well as reasonable attorneys' fees, consultant fees and litigation expenses) arising out of or resulting from or related to personal injury to or death of any person, and damage to or destruction of tangible third party property; (ii) Consultant's duty to defend, indemnify and hold harmless FLS against claims for infringement of patents, trademarks, trade secrets, copyrights or similar rights or intellectual property by Consultant in the performance of the Work and for all resulting direct costs, expenses (including but not limited to reasonable attorneys' fees), judgments and settlements incurred or imposed as set forth in Article 13 (Patent Indemnification); (iii) claims for willful misconduct, bad faith, or gross negligence; or (iv) claims that are covered by Consultant's insurance policies under Article 15 (Insurance), liability for which is capped at the limits shown in that Article, but with no cap applying to third-party personal injury/death claims.

## 19. GOVERNING LAW AND DISPUTE RESOLUTION:

(a) The PO and Contract shall be governed by and construed in accordance with the laws India, notwithstanding the result that otherwise may arise from application of the conflict of law rules of any competent jurisdiction.

(b) All disputes and claims between the parties concerning, arising from or relating in any way to the Contract (collectively for the purpose of this Article, "Disputes") that cannot be settled by good faith discussion, shall be resolved through binding arbitration by the Arbitration and Conciliation Act, 1996 as amended time to time. The arbitration process, including any interim relief or challenge, to the extent allowed by the Act of 1996, to an arbitrator award may only be governed by courts at Chennai, India. The arbitration shall be held at a mutually agreed upon location and conducted in English. The arbitration award shall not be appealable or subject to recourse to or review by any court or other arbitration.

## 20. NOTICE:

Service of all notices under the Contract shall be sufficient if given personally by the registered post, overnight mail, fax, electronically scanned e-mail attachment or other similar means at the address set forth in the Order, or to such address as such party may provide in writing from time to time. All notices shall be effective upon receipt.

## 21. ASSIGNMENTS:

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to Consultant to assign any monies due or to become due hereunder, payment to any assignee shall be subject to set off or recoupment for any present or future claim or claims which FLS may have against Consultant, except to the extent that any such claims are expressly waived in writing by FLS.

### **22.SUBCONTRACTING:**

Consultant shall not procure, nor contract for the procurement of, any work covered by this Contract in completed or substantially completed form without first securing the written approval of FLS. In the event that Consultant so subcontracts without first securing the written approval of FLS, FLS may cancel that portion of this Contract relating to such work without any liability to FLS.

### **23.DOCUMENTATION, PREVAILING LANGUAGE AND DATES:**

Unless specifically provided for elsewhere in the Contract, all documentation, including drawings and written materials, shall be in the English language. In the event the text of the Contract is translated into a language other than English, the English text shall prevail, control and be binding in the event of any conflict or discrepancy. All dates shall be based on the Gregorian calendar.

### **24.ADVERTISING:**

Consultant shall not advertise or publish the fact of or details relating to this Contract to any third party except as specified in this Contract, permitted by FLS, or as required to perform this Order

### **25.WAIVER OF BREACH:**

Neither payment nor receipt of payment by a Party; failure by a Party to insist on strict performance of this PO; acceptance of the Work by a Party; or waiver by a Party of any breach hereof shall constitute a waiver by that Party of any other breach of this PO. In any legal action between FLS and Consultant arising out of this Contract, or its breach, FLS shall be entitled to recover reasonable attorney's fees and all legal costs and expenses, together with interest and all losses or damages which FLS may suffer, including any damages, liquidated or otherwise, or settlements required to be paid by FLS to Owner or any contractor of FLS because of the failure of Consultant to provide any item in full accordance with this Contract.

### **26.SEVERABILITY**

In the event that any of the provisions, or portions, or applications thereof, of the Contract are held to be unenforceable or invalid by any court or tribunal of competent jurisdiction, the parties shall negotiate an equitable adjustment in the provisions of the Contract with a view toward effecting the purpose of the Contract and the validity and enforceability of the remaining provisions, or portions, or applications thereof, shall not be affected thereby.

### **27.SURVIVAL OF TERMS:**

Articles 7 (Taxes), 9 (Licensing Laws, Codes, Standards Controlling the Work), 10 (Certification of Compliance with Laws), 12 (Confidentiality), 13 (Patent Indemnification), 14 (Indemnification), 17 (Limitation of Liability), 18 (Governing Law and Dispute Resolution), 23 (Advertising) and 24 (Waiver of Breach) shall survive completion or termination of the Contract.