

Standard Conditions of Purchase for Goods and Services

INDIA - May 2020-

1. Specification and Warranties

- (a) The goods delivered and services performed shall be of the description and quality set out in the Purchase Order and conform with INDIAN OILTANKING LIMITED ("INDIAN OILTANKING") specifications, as attached hereto, with the enquiry specifications, set out in the tender documents, and with nationally recognized and accepted practices, codes and standards of the respective industry. In the absence of such practices, codes or standards the goods or services shall conform with the pertinent standards and codes of practice published by the European Committee for Standardization (CEN) or the International Organization for Standardization (ISO).
- (b) The goods and services shall be:
 - (i) Free from any defect in design, workmanship or materials and in compliance with any sample, model, drawing or technical specification furnished by INDIAN OILTANKING to the Supplier; and
 - (ii) To the reasonable satisfaction of INDIAN OILTANKING; and
 - (iii) Fit for the particular purpose for which they are intended.
- (c) Where the Purchase Order sets out any performance characteristics of the goods or services, these shall also be satisfied.
- (d) The Supplier shall warrant the goods and services for the term set out in the Purchase Order. If no warranty term is so specified, the Supplier shall warrant the goods and services for a period of 24 months from the date that the goods or services are delivered, installed put into use or operation or otherwise furnished (whichever is the later). If the warranties set forth in this Clause 1 are breached within the warranty term and INDIAN OILTANKING has provided written notice to Supplier thereof, Supplier shall correct the defect at the Supplier's expense. The expense of refinishing and uncovering, or of removal and replacement, as the case may be, and of making good other work affected by such removal and replacement shall be borne by the Supplier. Any corrective work shall be similarly warranted for a period of 24 months from the date such corrective work is completed. If, after notification of a defect, Supplier unreasonably delays corrective action, then INDIAN OILTANKING may upon written notice to Supplier correct the defect and Supplier shall be liable for all necessary cost incurred by INDIAN OILTANKING in connection therewith and shall reimburse INDIAN OILTANKING for the cost within 30 days after receipt of a verifiable invoice from INDIAN OILTANKING.
- (e) The Supplier shall furnish instruction and maintenance manuals and installation information, together with any relevant advice on INDIAN OILTANKING's use of the goods or services. Such information shall be provided upon or before the delivery of the goods or completion of the services.
- (f) The Supplier shall furnish such samples, specifications, drawings or other documentation in connection with the goods or services as INDIAN OILTANKING may reasonably require.

2. Compliance

The Supplier shall comply with all laws, rules, ordinances and regulations applicable to the manufacture, sale, shipment and delivery/performance of the goods or services, and shall indemnify INDIAN OILTANKING against all costs, losses and expenses incurred in consequence of any breach of same.

3. Inspection and Testing

- (a) The Supplier shall at its cost carry out such tests and quality control procedures necessary to ensure that the goods or services comply with Clause 1, and shall provide INDIAN OILTANKING with copies of the test results.
- (b) INDIAN OILTANKING or its authorised representative shall at all reasonable times have access to the premises of the Supplier and his sub-contractors and suppliers to monitor progress, carry out inspections and witness tests.
- (c) The exercise by INDIAN OILTANKING of any right under this Clause 3 shall not relieve the Supplier from any of its obligations under the Contract.

4. Price and Terms of Payment

- (a) INDIAN OILTANKING shall pay for the goods or services in the amount, currency and at the times set out in the Purchase Order.
- (b) Unless otherwise provided in the Purchase Order, Supplier's price shall be inclusive of all delivery/performance costs and all taxes and duties of any kind assessed or otherwise imposed on Supplier and Supplier's employees.
- (c) Any invoice submitted by the Supplier at a price other than set out in the Purchase Order shall not be payable unless such changed price has been previously accepted by INDIAN OILTANKING by issue of an appropriate amendment to the Contract.
- (d) Invoices shall be submitted by the Supplier as directed in the Purchase Order together with adequate proof of delivery of the goods or performance of the services.
- (e) INDIAN OILTANKING may set off any sums due to Supplier under the Contract against any sum due from the Supplier to INDIAN OILTANKING under the Contract or any other contract.

Notwithstanding any other provision of the Contract, INDIAN OILTANKING shall have the right to withhold payment of any invoice of Supplier if Supplier is in breach of any of its obligations under the Contract

5. Changes

INDIAN OILTANKING shall have the right to order changes at any time in the quantity, specifications, drawings, requirements and time for delivery/performance of the goods or services or any part thereof. The Supplier shall comply with all written orders issued by INDIAN OILTANKING in such regard. Should any such order cause an increase or decrease in the purchase price of the goods or services or the time for performance, the price and/or time shall be equitably adjusted; provided that any claim of the Supplier for extra time or cost shall be submitted to INDIAN OILTANKING in writing

within 20 days of receipt of INDIAN OILTANKING's written order, failing which any such claim shall be deemed waived by the Supplier. No such requested increase shall be binding on INDIAN OILTANKING unless agreed to by appropriate amendment to the Contract.

6. Delivery and Title

- (a) Time and place of the delivery of goods or performance of the services is of the essence.
- (b) The Supplier shall (without additional compensation) maintain all governmental permits, certificates and licenses (including professional licenses) necessary for Supplier to deliver the goods or perform the services.

The Supplier warrants that the goods will be free of all liens, claims, charges, security interests, encumbrances or defects in title. Title to the goods or results of the services and risk of loss will pass to INDIAN OILTANKING upon their actual delivery to INDIAN OILTANKING. However, if completion is carried out in instalments, title to each such instalment and risk of loss shall pass to INDIAN OILTANKING upon each such partial completion.

7. Default of Supplier

In case, delivery of the goods or performance of the services are not completed or not likely to be completed as per the stipulated schedule in the order, INDIAN OILTANKING reserves the right to cancel the order in part or full and source these goods or get the services completed from any other source at the risk and cost of the Supplier. INDIAN OILTANKING shall also have the right to recover any extra cost incurred in connection therewith from the supplier. In case, the delivered material cannot be put to intended use in absence of the undelivered material, INDIAN OILTANKING shall have the right to buy the entire quantity from any other source at the risk and cost of Supplier. Consequential losses incurred by INDIAN OILTANKING due to non-supply of balance quantity in time, will also be recovered from the supplier. However, such risk purchase clause shall not apply in case of extension granted by INDIAN OILTANKING under force majeure clause.

8. Assignment

The Supplier shall not assign any obligation under the Contract without the prior written consent of INDIAN OILTANKING.

9. Property Rights

- (a) The Supplier shall defend, indemnify and hold harmless INDIAN OILTANKING from and against any claim, cost, loss, expense or liability for infringement or breach of any patent, copyright, trademark or other intellectual property right arising out of the delivery of the goods or performance of the services.
- (b) With regard to any pre-existing intellectual property supplied to INDIAN OILTANKING such as catalogues, manuals or other literature ("Data"), Supplier hereby grants INDIAN OILTANKING a license to use the Data in connection with the operation, maintenance, and/or sale of the facilities for which the goods were delivered or the services were performed.
- (c) All materials that Supplier develops under the

Contract, including any inventions or copyrightable work product becomes the sole and exclusive property of INDIAN OILTANKING upon development. Supplier shall deliver the materials to INDIAN OILTANKING, together with any materials furnished to Supplier by INDIAN OILTANKING, at the delivery of the goods or termination, completion or suspension of the services. The Supplier shall at INDIAN OILTANKING's request and cost complete all documentation which may be necessary to obtain patent and any similar protections in INDIAN OILTANKING's name.

10. Indemnities and Insurance

- (a) The Supplier shall defend, indemnify and hold INDIAN OILTANKING harmless against all loss or damage including any claim made by any third party in connection with any injury or damage to persons or property arising out of the delivery of the goods or performance of the services or any breach by the Supplier of any of its obligations under the Contract.
- (b) Without in any way limiting Supplier's liability under the Contract, the Supplier shall secure and maintain (i) third party liability insurance as mentioned in the Purchase Order, and (ii) such occupational disease and accident insurance as is mandated or customary in the location where the goods are delivered or the services are performed to cover the liability of the Supplier and of any sub-contractor for personal injury or the death of any person employed by the Supplier or a sub-contractor that occurs in connection with the delivery of the goods or the performance of the services whether on or off the site. A copy of the policies shall be furnished by the Supplier to INDIAN OILTANKING promptly upon signing of the Purchase/Work Order and in no event any later than when delivery of the goods or performance of the services is commenced.

11. Termination for Default

If the Supplier breaches any of its obligations under the Contract and does not correct the breach within fifteen working days following written notice thereof from INDIAN OILTANKING, INDIAN OILTANKING may, without prejudice to any other rights or remedies it may have, terminate all or any part of the Contract by written notice to Supplier specifying the date of termination.

12. Termination for Convenience

INDIAN OILTANKING shall have the right to terminate the Contract in whole or in part at any time and without cause by written notice to the Supplier and the Supplier shall immediately cease work. Provided that the Supplier is not in breach of any obligation under the Contract, INDIAN OILTANKING shall pay to the Supplier the value of the goods delivered or services performed up to the date of notice (based on the prices agreed to in the Contract). Provided further, that goods delivered are stock goods rather than specially manufactured goods, INDIAN OILTANKING shall only pay to the Supplier its reasonable re-stocking cost. The payment of such cost to the Supplier shall be INDIAN OILTANKING's sole liability in respect of any such cancellation. In no event shall the Supplier be entitled to loss of any anticipated profits, indirect or consequential losses.

13. Terms

- (a) These Standard Conditions are unconditionally accepted when the Supplier signs the Purchase Order or when the Supplier starts delivery of the goods or performance of the services. Any conditions or modifications to the Standard Conditions or any reference to Supplier's own terms and conditions contained in a written acceptance, delivery note or other document issued by the Supplier shall be of no force and effect.
- (b) No quotation, estimate or other document issued by the Supplier ("Quotation") and referenced in the Purchase Order shall be deemed to be incorporated into the Purchase Order, save
 - (i) to the extent that the Quotation is reproduced in full in the Purchase Order, or
 - (ii) to the extent that the reference is express and specific.
- (c) These Standard Conditions and any exhibits attached to the Purchase Order, as well as the enquiry specifications set out in the tender documents are an integral part of the Purchase Order, and together form the contract between the parties (the "Contract").

14. Applicable Law and dispute resolution

The Contract shall be governed by and construed in accordance with the laws of India and the parties agree to submit themselves to the exclusive jurisdiction of the courts of competent jurisdiction in Mumbai and in relation to the interim reliefs as provided under the Arbitration and Conciliation Act, 1996. Application to the Contract of the United Nations Convention on International Sale of Goods is expressly excluded.

Any dispute, controversies and differences which may arise between the parties hereto in, relation to or in connection with the Contract shall be settled amicably by the parties through mutual discussions, within a period of thirty (30) days from the date of receipt of a written notice of such dispute by a Party from the other party, failing which the dispute shall be referred and settled through arbitration proceedings under the Arbitration and Conciliation Act, 1996 or any modification or re-enactment thereof, and by an arbitral tribunal consisting of a sole arbitrator. The arbitration proceedings shall be conducted in English, the venue for the arbitration proceedings will be Mumbai and the award given by the arbitral tribunal shall be final and binding. The costs, charges, fees and expenses of the Arbitrator shall be borne equally by the parties. The parties shall bear their own legal and other costs pertaining to the arbitration proceedings.

15. Rights Cumulative

INDIAN OILTANKING's rights and remedies under the Contract shall be cumulative and nothing contained herein shall limit or restrict INDIAN OILTANKING's exercise of rights and remedies available to it under the applicable law. Any failure of INDIAN OILTANKING to enforce any of the provisions of the Contract or to require compliance with any of its provisions shall not be deemed a waiver of the right of INDIAN OILTANKING thereafter to enforce any and each such provision.

16. Consequential Damages

Supplier and INDIAN OILTANKING shall not be liable to each other for loss of profits, loss of use, loss of contracts, or consequential damages ("Consequential Damage") arising

out of the delivery of the goods or performance of the services, provided, however, that the foregoing waiver shall not apply to (a) Consequential Damages asserted by third parties against INDIAN OILTANKING for which Supplier has agreed to indemnify INDIAN OILTANKING and (b) Consequential Damages of INDIAN OILTANKING to the extent covered by Supplier's insurance.

17. Safety

If services are performed on INDIAN OILTANKING premises the following shall apply: Supplier shall fully comply with the safety procedures required by INDIAN OILTANKING for site access or on-site work. Notwithstanding the existence of such safety procedures, the Supplier shall establish and maintain its own programs and procedures for the safety of its employees and the Supplier shall be solely responsible for the safety of its personnel while performing services on INDIAN OILTANKING premises.

18. Amendment or supplement of an individual contract.

If not otherwise agreed in the Contract, the required written form shall also be fulfilled by sending an e-mail or fax of the respective documentor with an electronically transmitted signature (meaning facsimile transmission, e-mail transmission with scanned signatures, or other agreed form of electronic contract conclusion provided by or on behalf of the undersigning party, such as the DocuSign™ procedure). This also applies to termination of or withdrawal from a contract, amendment or supplement to the Contract or individual contract as well as to the conclusion, amendment or supplement of an individual contract."

19. Confidentiality

Throughout the term of the Contract and for a period of two (2) years after its termination or expiry, the Supplier shall maintain strict confidentiality of the information/data of INDIAN OILTANKING that is disclosed to the Supplier and shall not disclose such confidential information/ data to any third party without the prior written consent of INDIAN OILTANKING. The Supplier may however disclose the confidential information to its employees, directors, officers, who have a need to know such confidential information in connection with the execution of the Contract.

20. Intellectual Property Rights

- a. The Supplier hereby warrants to INDIAN OILTANKING that the goods supplied or its parts to be supplied by the Supplier does not infringe any patent and/or intellectual property rights existing validly as of the date of delivery of the goods.
- b. The Supplier agrees to defend at its own cost any suit proceeding brought against INDIAN OILTANKING based on a claim raised by third parties that any goods/part of the goods constitutes an infringement of any such patent and/or intellectual property.

21. Severability

If any of the terms and conditions of the Contract shall become unenforceable for any cause or reason whatsoever, the ensuing lack of enforceability shall not affect the other provisions hereof, and in such event the parties hereto shall endeavour to substitute forthwith such other enforceable provision as will most closely correspond to the legal and economic contents of the said terms and conditions.

22. Survival

Termination of the Contract will not affect clauses which are of survival in nature shall survive on expiry or termination of the Contract.

23. Relationship of the Parties

Unless the Contract expressly provides otherwise, nothing in the Contract may be construed as creating a relationship of partnership, or a joint venture or of principal and agent or of trustee and beneficiary between the parties. For the purpose of the Contract the Supplier shall be an independent contractor and will have no authority to enter into any contractual obligations in the name and on behalf of INDIAN OILTANKING.