

## **STANDARD TERMS AND CONDITIONS OF PURCHASE**

### **1. DEFINITIONS**

- 1.1 The following expressions used in these Terms and Conditions/Purchase Orders shall have the meanings indicated against each of these, unless repugnant to the context and meaning thereof.
- 1.2 FACT/COMPANY/PURCHASER means The Fertilizers and Chemicals Travancore Limited; a company registered under Indian Companies Act with registered office at Eloor, Udyogamandal, Kerala State, India and the term includes its Divisions as applicable.
- 1.3 SELLER/SUPPLIER/VENDOR/CONTRACTOR/MANUFACTURER means the person or company, with whom ORDER is placed by FACT for supply of equipment, materials, stores and /or services.
- 1.4 ORDER means the Purchase ORDER or Work ORDER and all of its Annexures /Attachments (including this Attachment) and documents referred therein together with any subsequent modifications thereto.
- 1.5 ITEM (S) means the MATERIALS (S)/EQUIPMENT (S)/ SPARE PART (S)/ to be supplied by the SELLER as per the ORDER

### **2. ACCEPTANCE**

Seller shall acknowledge receipt of ORDER within 15 days of the date of its issue by returning a copy of the ORDER duly signed by an authorized person in confirmation that Seller accepts the ORDER and is proceeding accordingly. If acknowledgement is not received within 15 days, it will be deemed that the ORDER is accepted in TOTO.

### **3. SECURITY DEPOSIT**

The Seller shall, within 15 days of receipt of order, furnish towards security for faithful performance of ORDER a cash deposit or a Bank Guarantee for a value equal to 5% of the ORDER Value in the Proforma attached. Any delay in activities of FACT due to non-submission of the Acceptance copy of ORDER or Security Deposit by Seller, shall not constitute reasons for extension to Seller's Delivery Promise or waiver of liquidated damages for late delivery. Such Security Deposit shall not be required for ORDERS with price up to INR 5,00,000/- (Rupees Five Lakh only). Security Deposit shall be kept valid until Seller discharges all his/her obligations under ORDER except warranty obligations under the relevant clause of the order.

### **4. SCOPE OF ORDER**

- 4.1 The items described in the ORDER are to be supplied according to the data sheets, tables, specifications and drawings attached thereto and /or enclosed with the ORDER itself and according

to all conditions both general and specific, attached with the ORDER, unless any of them has been modified or cancelled in writing by FACT either as a whole or in part.

- 4.2 Any apparent omission or error in the specifications shall be met by the Seller if such omitted portion is unnecessary for the functioning of the item. The Seller, prior to proceeding with the work under ORDER, shall call to the attention of FACT, any such omission or error or ambiguity in the specifications requiring clarification.

### **5. PRICES**

- 5.1 Unless otherwise agreed to specifically in ORDER, the Price shall remain firm throughout the period of order, including extended periods, if any, and shall not be subject to any escalation on any account.
- 5.2 In the case of overseas supplies, Shipping Terms referred to shall be governed by the definitions of latest INCOTERMS unless otherwise specified in the ORDER.

### **6. TAXES, DUTIES & LEVIES**

- 6.1 All Central, State or Municipal taxes, duties and levies payable on the item/s are deemed to be included in the Price unless otherwise specified. In case the rates of these levies are increased by the Government or any new Tax/Duty/Levy becomes legally payable during the delivery period stipulated in the ORDER, the extra cost so incurred shall be paid by FACT. The benefit of any reduction in respect of these levies shall be passed on to FACT. If the delivery is delayed beyond the time stipulated in the ORDER and the above rates go up or new levies imposed, during this period of delay, the extra costs so incurred shall be borne by the Seller. Claim for variations in the levies shall be supported by documentary evidence and proof of payment.
- 6.2 In the case of overseas supplies, the Seller shall make payment of all taxes, duties and levies chargeable to the export of items in the country of origin and port of shipment/gateway airport.

### **7. BANK GUARANTEES**

All Bank Guarantees required as per the ORDER shall be issued / confirmed by a nationalized/scheduled Indian bank. If the bank guarantee is issued by a bank outside India, a counter guarantee as per our format from an Indian nationalized/scheduled bank in India shall also be furnished.

### **8. DELIVERY**

- 8.1 Equipment/item/s ordered shall be despatched completely assembled and shall require no assembly at FACT site, unless specified otherwise.
- 8.2 Delivery shall be deemed to be completed on the date shown on the lorry receipt, railway receipt, Bill of Lading or Airway Bill in case of delivery ex-works/FOR/FOB/FAS despatch station / seaport / gateway airport.

OR the date of arrival of consignment at destination or date of receipt of despatch-documents endorsed in favour of FACT, whichever is later, in case of delivery at destination

#### **9. DELAY IN DELIVERY/LIQUIDATED DAMAGES**

- 9.1 Time is the essence of this contract and the delivery period mentioned in this ORDER shall be strictly adhered to.
- 9.2 If SELLER fails to deliver the equipment and materials covered under ORDER within the delivery time stipulated therein, liquidated damages at the rate of half of one percent (0.5%) of the total Price of ORDER / value of the items which are delayed per week or part thereof subject to a maximum of seven and one half percent (7.5%) of the total price of the ORDER shall be payable by SELLER. Such liquidated damages shall be deducted from Seller's invoices and/or any other payments due to the SELLER. This is without prejudice to Art.11.0.0 below.
- 9.3 Even if supplies are made on time, but Installation & Commissioning gets delayed due to reasons attributable to vendor, then Liquidated Damages (as per relevant clauses of Terms and Conditions of Purchase and Terms and Conditions of Erection & Commissioning) will be applicable for the total order value shown in ORDERS. Also, if supplies get delayed but Erection & Commissioning activity is completed in time and within the total delivery schedule stipulated for supply and erection & commissioning, then Liquidated Damages shall not be applicable.

#### **10. PERFORMANCE WARRANTY**

- 10.1 The equipment /spare parts /materials supplied shall be brand new and the Seller shall guarantee that all items shall perform in accordance with the specifications and to be free of all defects in design, material and workmanship. Should any item not perform as intended or should the design, material or workmanship prove defective within a period of twelve (12) months from the date of putting the item into operation or eighteen (18) months from the date of dispatch, whichever is earlier, and the Seller shall be notified thereof, the Seller shall promptly, at his own expense, correct the deficiency so that the item performs in accordance with ORDER specifications. If the Seller fails to take proper corrective action to repair or replace the item within a reasonable time (as decided by FACT) of FACT's notice, FACT shall be free to take such corrective action at the Seller's risk and cost.
- 10.2 In the event of any rectification / replacement, the warranty shall be extended to cover a period of twelve months in operation from the date of such rectification / replacement.
- 10.3 Spare parts supplied shall be perfectly interchangeable with those originally installed in the equipment. Since the interchangeability can normally be checked by FACT only at the time when the spares are used, the Seller shall guarantee the interchangeability without time limit, provided that no modifications have been

carried out to the equipment or the spare part without the Seller's prior written permission.

- 10.4 Even if relevant drawings are approved and/or the item(s) is/are cleared during pre-despatch inspection by FACT, the Seller is not absolved of his responsibility to ensure that the items supplied comply strictly with requirements of the ORDER and FACT shall be free to point out any defect till the warranty period is over.

#### **11. DEFAULT**

- 11.1 In the event of any default by Seller to comply with any of the provisions or requirements of the ORDER, FACT shall have the right to terminate / cancel the ORDER with or without notice and without prejudice to any other rights, options, or remedies FACT may have. In the event of such termination /cancellation of the ORDER, FACT shall be entitled to arrange for the procurement of items from alternative suppliers at the risk and cost of the Seller. The waiver of one default shall not be considered as an automatic waiver of any other default.
- 11.2 Any failure by FACT at any time or from time to time to enforce or require strict observance and performance of any of the terms of the ORDER or to exercise any rights herein shall not constitute a waiver of such terms and conditions or rights and shall not affect or impair same or the rights any time to avail of the same.

#### **12. SUSPENSION AND TERMINATION**

- 12.1 FACT reserves the right to suspend the ORDER in whole or in part by written notice to Seller at any time prior to despatch of item/s by Seller. On receipt of notice of suspension from FACT, Seller shall immediately stop all activities related to ORDER. On receipt of notice removing the suspension Seller shall re-commence the execution of the ORDER and complete it as per the terms of the ORDER, provided that the delivery period specified in ORDER shall be extended corresponding to the period of suspension including reasonable remobilisation period. If period of suspension exceeds six (6) months, ORDER shall be deemed to have been terminated under Clause 12.2 below unless otherwise agreed to.
- 12.2 Reasonable termination expenses in connection with termination of ORDER shall be as mutually agreed.
- 12.3 However, the above Clauses 12.1 and 12.2 shall not be applicable in case of termination by FACT due to default by Seller.

#### **13. EXPEDITING**

When deemed necessary by FACT, this ORDER shall be subject to physical expediting by representatives of FACT or of agents nominated for the purpose, who shall be granted access to any and all parts of Seller's or Seller's sub-suppliers; plants involved in manufacture of items covered by ORDER. Expediting performed by such representative/agent shall in no way relieve the Seller of delivery obligations under the terms of ORDER.

#### **14. OFFICIAL INSTITUTION TESTING**

Seller shall ensure the prompt execution of all approval steps and/or tests made by official institutions, if required in connection with equipment and materials covered under ORDER and the installation thereof. Seller shall be held responsible for any delay in the approval or testing phase as well as for any delay in the submission of necessary certificates. Delay on the part of the above institution will not be considered a reason for extension of delivery period. All expenses related to such official testing shall be to Seller's account.

#### **15. INSPECTION**

- 15.1 Items supplied shall be subject to inspection and testing as per Codes, Standards and Procedures that are required to ensure quality of material / item/s as specified in the ORDER. Seller shall arrange such inspection in Seller's shop. Any and all expenses incurred in connection with test, with preparation of reports and with analysis issued by qualified laboratories shall be to Seller's account.
- 15.2 If pre-despatch inspection is specified in the ORDER, representative of FACT shall be granted access to any and all parts of Seller's / sub-supplier's plant(s). Seller shall notify FACT at least 15 working days in advance of the Scheduled date of inspection. Even if the item is cleared during pre-despatch inspection, the Seller is not absolved of his responsibility to ensure that the items supplied comply strictly with requirements of the ORDER.
- 15.3 Inspection waiver if granted shall not absolve the Seller of his responsibility to ensure that the items supplied comply strictly with requirements of the ORDER and shall not in any way impair FACT's right to reject non-conforming items or to avail of any remedies to which FACT is entitled.
- 15.4 Notwithstanding any inspection that may have been done at the Seller's site, final acceptance of items is subject to inspection at FACT site.

#### **16. PATENT INDEMNITY**

Seller hereby warrants that the use or sale of the items delivered under the ORDER does not infringe claims of any patent covering such items (to the extent the design for such items is not furnished by FACT) and the Seller agrees to be responsible for and to defend at its sole expense all suits and proceedings against FACT based on any such alleged patent infringement and to pay all costs, expenses on judgement and damages which FACT may have to pay or incur by reason of any such suit or proceedings and to secure the rights for FACT for the continued use of equipment.

#### **17. INDEMNIFICATION**

The Seller hereby indemnifies and hold FACT harmless from all claims, losses, demands, causes of action or suits arising out of the

services, labour, equipment and materials furnished by Seller under ORDER.

#### **18. FORCE MAJEURE**

- 18.1 Neither the PURCHASER nor the SELLER hereto shall be held responsible for any delay or failure to perform any or all the obligations under ORDER caused by Force Majeure. In such a case the time for performance or such obligations and the obligations of the other party to the extent that they are affected by such occurrence will be extended by such period as is duly justified. Notification of a circumstance of Force Majeure shall be given by fax/e-mail addressed to the other party within five (5) working days of its occurrence. This notice of Force Majeure shall be confirmed by a Registered letter despatched within one (1) week, along with appropriate documentary evidence confirming the existence of a situation of Force Majeure.
- 18.2 For the purposes of this clause, Force Majeure means
  - 18.2.1 War or hostilities
  - 18.2.2 Riot or civil commotion
  - 18.2.3 Earthquake, flood, tempest, lightning or other natural calamities, epidemics
  - 18.2.4 Accident, fire or explosion not caused by willful negligence of Seller
  - 18.2.5 Labour strikes or lockout exceeding ten (10) days in duration not caused by any deliberate act or indiscretion by Seller.
  - 18.2.6 Law and Order Proclamation
- 18.3 However, should such a delay, even if due to reason of Force Majeure be protracted for more than three (3) months, FACT shall have the right to cancel ORDER at no charge to FACT and FACT shall be entitled to the reimbursement of any amount already paid to the Seller.

#### **19. SUBLETTING / ASSIGNMENT**

SUB-LETTING or assignment of whole or part of the order shall not be permitted except with the prior approval of FACT obtained in writing.

#### **20. APPLICABLE LAW AND SETTLEMENT OF DISPUTES**

- 20.1 This ORDER shall be subject to and shall in all respects be governed by Indian Law.
- 20.2 Except in the cases referred to in the Clause 20.3 below, if any dispute arises out of or relating to or in connection with this contract, between the Contractor and the Owner / FACT, the same shall be amicably settled through mutual discussions, failing which, the unresolved dispute(s) shall be referred to arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996, as amended from time to time and number of Arbitrator shall be one. The venue of the Arbitration shall be at Ernakulam and proceedings shall be in English.
- 20.3 In the event of any dispute or difference relating

to the interpretation and application of the provisions of this contract(s) between Central Public Sector Enterprises (CPSEs) / Port Trusts inter-se and also between CPSEs and Government Departments / Organizations (excluding disputes concerning taxation), such dispute / difference shall be taken up by either party for resolution through AMRCD (Administrative Mechanism for Resolution of CPSEs Disputes) as mentioned in DPE OM No. 4(1)/2013-DPE(GM)/FTS-1835 dated 22-05-2018.

- 20.4 Any legal proceedings relating to or in connection with this Contract shall be limited to the exclusive jurisdiction of the High Court of Kerala.

#### **21. COMPLETE AGREEMENT**

The terms and conditions of this ORDER shall constitute the entire agreement between the parties hereto. Changes will be binding only if the amendments are made in writing and signed by an authorized representative of FACT.

#### **22. TRANSIT INSURANCE**

Unless otherwise agreed, transit insurance shall be arranged by FACT under FACT's open cover policy.

#### **23. ORDER OF PRECEDENCE**

In case of any conflict between these STANDARD TERM AND CONDITIONS and the SPECIAL TERMS&CONDITIONS agreed to for a particular ORDER, the latter shall prevail to the extent applicable.