

## Terms and Conditions of Purchase India

1. This Terms and Conditions of Purchase are applicable to the commercial relationship between the Marathon entity identified in the applicable Order (“Buyer”) and the individual, corporation or entity contracted to supply goods or provide services (“Goods”) identified in the Order (“Seller”), jointly the companies are referred to as “Parties”.

2. **SCOPE:** The Goods shall be supplied in strictly accordance with specifications and agreements between the Parties, as well as the relevant standards specified by Seller in the Offer.

3. **PRICES:** The prices shall be firm and fixed for the entire project duration, if applicable, or at least for a period of 12 (twelve) months from the signature/acceptance of this Terms and Conditions of Purchase by the Seller. Parties commit themselves to negotiate any eventual price changes previous to its application.

### 4. ALL INCLUSIVE PRICES AND OTHER TERMS

4.1. The agreed prices of this purchase order are firm as mentioned unless otherwise stated till delivery of the material. Goods and Services Tax (GST): This is payable Extra over the base price if stated in the Order against documentary evidence along with Invoice/Bill/E-way bill. In the absence of such stipulation, prices are deemed to include all such duties and no claim will be entertained subsequently. Concession form whenever applicable will be issued on receipt of Invoice only. The GST Number/HSN Number or any other statutorily required number as per laws, rules and regulations shall be specified on all copies of Invoice/Bill/E-way bill.

4.2. The offered Goods shall be supplied at the risk of the Seller. Buyer does not assume any risk relating to the Goods supplied by Seller until it is received by Buyer at the site for inspection and test by the Inspection Department of the Buyer.

4.3. Any benefit available to supplier post introduction of Goods and Service Tax (GST) in India with respect to this Order is required to be passed on Buyer. Buyer reserves right to renegotiate the value of such benefits determined.

4.4. If any demand to tax, rejection of input tax credit, interest, penalty, fine is imposed on Buyer on account of non-payment to the Government of taxes by the Seller, or non-submission/inadequate/incorrect submission of information prescribed by the tax department on the part of the supplier, then said demand including tax, interest and penalties shall be recoverable from the supplier.

5. **TERMS OF PAYMENT:** Detailed in the Order.

6. **STANDARDS:** All the Goods and accessories shall comply in all respects with the requirements of the latest edition of the relevant Indian or International Standards and its latest amendments except in so far as they are modified by the Buyer. When a certain Good is stated not to comply with any of the above standards adopted, then the applicable standards shall be clearly brought out by the Seller, making at the same time necessary correction for operation under the conditions specified herein. It is essential that the Goods offered shall comply with one consistent set of standards, except in so far as they are modified by the requirements of the Buyer.

7. **QUALITY OF GOODS & WORKMANSHIP:** The Goods shall be manufactured in a most workmanship like manner, applying the best quality materials and workmanship, ensuring the correct functioning to the intended purpose.

Supplier shall be deemed to have carefully examined and to have knowledge of general and other conditions, specifications, schedules, drawings etc. related to the Goods supplied, and also to have satisfied himself as to the nature and character of the work to be executed and where necessary of the site conditions and other relevant matters and details. Any information thus obtained from the company shall not in any way relieve the Seller from his responsibility for supplying the equipment and executing the work in terms of the contract but necessary for ensuring complete erection and efficient working of the equipment. If Seller shall has any doubt as to be meaning

of any portion of the supply, he shall, before signing the contract set-forth the particulars thereto and submit them to the company in writing in order that such doubt may be clarified. The contract work shall be of the best quality and workmanship according to the latest engineering practice at the time of award of the contract and the items shall be manufactured from material of the best quality or high class for their purpose. They shall be designed, manufactured and supplied in accordance with requirements of the contract.

**8. RESPONSIBILITY FOR COMPLETENESS:** Even though the enclosed specifications give the details of the scope of supply, Seller shall be responsible for the completeness of the supply of all the Goods under his scope of supply which is required for the smooth and satisfactory performance of the system under order.

**9. PACKING, MARKING:** The Goods shall be packed strictly as per the specifications of Indian Standard/Our Requirement. All packages will be marked properly with Order number and date. Each packet must contain packing slip and literature if any.

**10. DISPATCH INSTRUCTIONS:** The dispatch documents shall be made available well in time to avoid demurrage etc. All demurrage, wharfage and other expenses incurred by the Buyer due to causes attributable to the Seller shall be borne by the Seller. The dispatch documents shall be prepared by the Seller in such a way as to enable Buyer to identify the accessories in every package with reference to assembly drawings. It shall be possible to put up a claim for any material lost or damaged in transit, after obtaining break-up prices from the Seller and for this purpose the parts contained in the package shall be easily identifiable.

**11. CONDITIONS OF DELIVERY:** The specific delivery conditions, such as Incoterm ® 2020, delivery term and others, if any, will be detailed in the Order.

**12. LIQUIDATED DAMAGES FOR DELAY:** Time and date stipulated in the contract or Order for the supply of Goods shall be deemed to be the essence of the contract. Seller shall complete the delivery of the Goods as agreed between the Parties in the Order. If, however the Seller fails to supply the Goods in accordance with the agreed time schedule, it shall pay of 1% (one percent) of the Offer price per day of delay for late delivery.

**13. GUARANTEE OF QUALITY:** The Seller shall guarantee among other things the following:

- a. Quality and strength of materials used.
- b. Adequate factors of safety for all parts of the Goods to withstand the mechanical and/or electrical stresses developed therein. These shall be stated in the specifications.
- c. Suitability of design and workmanship of the Goods for the conditions envisaged in these specifications.
- d. The efficiencies, temperature rises and other performance data and guarantees furnished for the Goods.

13.1. The Goods supplied shall be guaranteed for minimum period of twelve months (12) from the date of the delivery or eighteen months (18) from the date of manufacture whichever is earlier and during this period all rectification/replacements/spares required shall be executed by Seller without any additional cost. Any part which proves defective either in design of materials and/or manufacture within the above guaranteed period shall be replaced free of cost at Buyer's site, unless otherwise agreed between the Parties.

13.2 For the purpose of commitment of guaranteeing the conditions defined herein, Seller will provide an undertaking to this effect or provide equivalent liquidated damages (LD) document.

13.3 If it becomes necessary for the Seller to replace or renew any defective portions of the Goods under this clause, the provisions of this clause shall apply to the portions of the Goods so replaced or renewed until the expiration of six (6) months from the date of such replacement or renewal or until the end of the above-mentioned period of twelve (12) months whichever may be later.

13.4 If the defects are not remedied within a reasonable time, Buyer is allowed to remedied by itself or by third-party at Seller's risk and expenses, but without prejudice to any other rights to which Buyer may have against the Seller in respect of such defects.

**14. REPLACEMENT OF DEFECTIVE WORK OF MATERIALS**

14.1. If during of the execution of the Agreement Buyer identify that the Seller has supplied Goods inferior in quality or quantity to those specified, Buyer will notify the Seller. Seller on receiving the notice must proceed to alter, reconstruct or remove such Goods, or supply fresh materials up to the standard of the specification at site.

14.2. In case the Seller fails to act as the above-mentioned clause, Buyer may on giving the Seller seven (7) days' notice in writing regarding his intention to remediate, proceed to alter, reconstruct or remove such Goods and provide all such materials at Seller's cost.

**15. CONSIGNEE:** The delivery of the supplied Goods shall be effected at the place indicated by Buyer in the Order.

**16. CANCELLATION OF THE CONTRACT:** The Buyer shall be entitled, at any time and at his discretion, to cancel the Order, if in his opinion the cessation of the work becomes necessary owing to any cause whatsoever. The Seller shall not be entitled to any compensation, in addition to the payment for the Goods actually accepted by the Buyer calculated on the basis of Bill of Quantities and rates as a result of such cancellation. In case, at the time of cancellation of Order, if the Seller has some amount of unadjusted advance lying against his name, the same should be refunded forthwith, failing which the Buyer will be entitled to recovery thereof together with interest thereon at the rate of 24% per annum.

**17. TERMINATION OF CONTRACT:** Notwithstanding anything elsewhere provided under this document and in addition to any other right or remedy of the Buyer or otherwise including the right of the Buyer to claim compensation for delay in completion of the Goods, the Buyer shall be entitled to terminate the Order by written notice at any time during its term after the occurrence of any of the following events/contingencies viz. i. Default or failure by the Seller of any of the obligations under this document including but not limited to: a. Failure to execute the Goods in accordance with the Order; b. Abandonment of the Order or any part thereof; c. Committing breach of any terms, conditions or provisions of this document; d. If the Seller becomes unable of carrying out the Goods; ii. Commencement of liquidation or winding up proceedings against the Seller's firm or insolvency of the Seller; iii. Distress execution or other legal process levied upon Seller's goods and/or assets. If the Seller shall assign his rights and/or obligations or any part thereof in this document to a third-party without prior approval from the Buyer in writing. The decision of the Buyer as to whether any event mentioned above entitles them to terminate the contract has occurred or not, shall be final and conclusive and binding upon the Seller.

If the Supplier does not demonstrate executing the work with due diligence or expedition or shall refuse or neglect to comply with any reasonable orders, or shall contravene the production of the contract including timely delivery, the Buyer shall have the option to declare the contract as at an end at the risk and cost of the Seller in every way. The cancellation of the contract as stated above may be either for whole or part of the contract at the Buyer's option. In the event of the Buyer's terminating the contract in whole or in part, he may procure, on such terms and in such manner as he deems appropriate, materials similar to these mentioned in the contract to the extent possible. Seller shall be liable to pay to the Buyer any extra amount incurred by the Buyer for procurement from alternative sources. Such recovery however shall not absolve the Supplier from his obligations under the contract to the extent it is not terminated.

**18. PATENT INFRINGEMENT:** The Seller shall protect, indemnify and hold harmless the Buyer, against all liabilities including costs, expenses, claims, suits, or proceedings at law in-equally or otherwise growing out of or in connection with any actual patent infringement or violation of any license with reference thereto by reason of manufacture and/or sale by, or on behalf of the Seller of the plant or any part thereof or the purchase thereof by the Buyer or the use thereof, for the purpose for which it is furnished and will defend to settle at the Seller own expense any such claims, suits, or proceedings.

**19. INDEMNITY:** The Seller assumes responsibility for, and shall indemnify and hold harmless, the Buyer from all liabilities, claims, costs, expenses, taxes and assessments including penalties, punitive damages, attorney's and court costs which are or may be required with respect to any breach of Sellers obligations under this document, including those imposed under any contract, local or national law/laws, or in respect to all salaries, wages or other compensation of all persons employed by the Seller or his sub-suppliers or suppliers, in connection with the performance of any work covered by the Seller. The Seller shall execute and deliver and shall cause his sub-suppliers and supplies to execute and deliver, such other further instruments and to comply with all the requirements of such laws and regulation as may be necessary there-under to confirm and effectuate

the contract and protect the company. The Seller shall fully indemnify the Buyer against all claims which may be made in respect of the offered Goods for infringement of any right protected by patent registration of design or trade mark.

## **20. SPECIAL INSTRUCTIONS:**

(a) Seller shall keep confidential any technical, process or economic information derived from drawings, specifications, oral communication and other data furnished by Buyer in connection with this Order and shall not divulge, export or use, directly or indirectly, such information for the benefit of any other party.

(b) Seller is prohibited from assigning any part or the full contract to any other party without the consent of the Buyer.

**21. FORCE MAJEURE:** The Parties shall not be held liable for the non-fulfilment of their obligations when motivated by unforeseeable circumstances or Force Majeure, being considered as Fortuitous Events of nature, and as reasons for Force Majeure those arising from acts performed by third parties and independent of the will of the Parties, among others: war, serious political commotions, sabotage, strikes or "lock out", acts of political authorities, epidemics, interruption in the supply of electricity, water and fuel, and floods.

**22. SETTLEMENT OF DISPUTES:** All disputes and differences of any kind whatsoever arising out of or in connection with the Order or this document, shall be referred by the Seller to the Buyer and the Buyer shall within a reasonable time after their presentation make and notify decisions thereon in writing. In the event of disagreement on the decision of the Buyer of such dispute or difference, the Seller after forty-five (45) days of presenting his final claim on the disputed matters, may demand in writing that the dispute or difference be referred to arbitration. Such demand for arbitration shall specify the matters which are in question and only such dispute or difference shall be referred to the arbitration of an officer of Buyer to be nominated and the provisions of the Arbitration and conciliation Act 1996 being in force or of any other act of the legislature passed in substitution thereof or modification thereof and for the time being in force shall apply to such arbitration. The Seller shall not, except with consent in writing of Buyer, in any way delay the carrying out of the Goods by reason of any such matter, question or dispute being referred to arbitration but shall proceed with the work with all due diligence and shall until the decision of the Buyer and no award of the arbitrator shall relieve the Seller of his obligations to adhere strictly to the Buyer's instructions with regard to the actual carrying out the work except as specifically affected by such award.

**23. GOVERNING LAW AND VENUE:** The Order and this Terms and Conditions shall be construed and operate as a contract according to the Indian Contract Act 1872 definition. The laws of India shall apply to these documents and to the documents in connection with this commercial operation.

Any lawsuit arising out or in connection to the Order and this Terms and Conditions shall be instituted only in the courts of the place where Buyer is located.

**24. COMPLIANCE:** Seller shall comply with all applicable national, state, provincial, and local laws, ordinances, rules, and regulations, relating to anti-corruption or anti-bribery, including, but not limited to, legislation implementing the Organization for Economic Co-operation and Development "Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (the "OECD Convention") or other applicable anti-corruption/anti-bribery convention, such as the Foreign Corrupt Practices Act, as amended ("FCPA")(15 U.S.C. sections 78dd-1, et. seq.), Canada's Corruption of Foreign Public Officials Act ("CCFPOA"), and the UK Bribery Act ("UKBA"), regardless of whether Seller is within the jurisdiction of the United States; Seller shall, neither directly nor indirectly, pay, offer, give, or promise to pay or give, any portion of monies or anything of value received from Buyer to a public official or any person in violation of any applicable laws, of any country, relating to anti-corruption or anti-bribery.

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