GUJARAT ENERGY

# SECTION IV

# GENERAL TERMS OF CONTRACT (GTC)

# SUPPLY, INSTALLATION, TESTING AND COMMISSIONING OF OFFICE (ONLINE) TYPE UPS SYSTEM

# TENDER ID: 361296

**DEFINITIONS:**

Following definitions shall be applicable for the entire CONTRACT.

| | |
|---|---|
| AFFILIATE | Shall mean in relation to a Party, any Person that, directly or indirectly, through one or more intermediaries, controls or is controlled by that Party, or is under common control along with that Party. It being understood that the term "control" used herein means ownership by one Person of more than fifty percent (50%) of the voting securities of the other company, or such a Person having the power to direct, administer and dictate the policies of the other company or where such Person has the ability or entitlement to appoint a majority of the Board of Directors of the other Person even where the voting securities held by such a Person exercising such effective control in that other company is less than fifty percent (50%) and the term "controlled" shall be construed accordingly. |
| AMENDMENT | Shall mean the addition to, the deduction from quantity, scope of work, CONTRACT/Rate validity, or any other way of varying the CONTRACT. |
| BOOKS AND RECORDS | Shall comprise a Party's books and records in relation to the matters pertaining to this CONTRACT including, without limitation, its corporate books, bank statements, books of account and supporting documentation (including, without limitation, invoices), whether in paper or other form. |
| BUYER/OWNER | Shall mean Gujarat Energy Limited (GEL) - formerly known as Gujarat Gas Limited, having its registered office at Gujarat Gas CNG Station, Sector 5/C, Gandhinagar - 382006 and Corporate Office at Office No. 4 & 5, Ground Floor, IT Tower -2, Infocity, Gandhinagar – 382009; and shall include its successors and assigns. |
| BUYER GROUP | Shall mean the BUYER and its AFFILIATES, co-venturers, co-licensees and their suppliers, other than the SELLER and agents and its or their employees, directors and / or officers. |
| BUYER/BUYER'S REPRESENTATIVE or CONTRACT OWNER or ENGINEER-IN-CHARGE (EIC) | Shall mean the person appointed from time to time by the BUYER and notified in writing to the SELLER to act as the BUYER REPRESENTATIVE / CONTRACT OWNER for the purpose of this CONTRACT or, in absence of such notification, the BUYER. |
| CLAIMS | Shall mean liens, claims, judgments, penalties, awards, remedies, debts, liabilities, damages, demands, costs, losses, expenses or causes of action, of whatever nature, including without limitation, those made or enjoyed by dependents, heirs, claimants, executors, administrators, successors, survivors or assigns. |
| CONTRACT | Shall mean these GENERAL TERMS of CONTRACT, together with the SPECIAL TERMS of CONTRACT, Letter of Award (LOA) / Purchase Order/ Rate Contract/ Call out Order, including AMENDMENT(s) and all exhibits/ appendices attached hereto and/or incorporated by reference, as originally executed or, as may from time to time, be supplemented or amended in accordance with the applicable provisions hereof. |
| CONTRACT PERIOD | Shall mean the period in which CONTRACT shall be valid and in force, as defined in the CONTRACT. |
| CONTRACT VALUE | Shall mean the price payable to the SELLER under the CONTRACT for the full and proper performance of his contractual obligations and shall be based on the actual GOODS supplied & certified by BUYER and/or Third Party Inspection Agency (TPIA). |
| DELIVERY POINT | Shall mean the point/location for delivery of GOODS as designated by the BUYER |

| | |
|---|---|
| DELIVERY SCHEDULE | Shall mean date(s) of delivery of the GOODS, as specified in the CONTRACT, or as intimated by the BUYER REPRESENTATIVE, from time to time. |
| DISPUTE | Shall mean any disagreement, controversy, or claim of any kind or type, whether based on contract, tort, statute, regulation, or otherwise, arising out of, relating to, or connected with this CONTRACT, or the operations carried out under this CONTRACT, including any dispute concerning the existence, validity, interpretation, implementation, performance, breach, or termination of this CONTRACT or any provision hereof. |
| FORCE MAJEURE | Shall mean act of God, flood, drought, earthquake, cyclone or other disaster, epidemic, plague, fire, act of war or like event which are unpredictable and outside the reasonable control of the affected PARTY, and which could not have been prevented by Good Industry Practice or by the exercise of reasonable skill and care and which, or any consequences of which, have a material and adverse effect upon the performance by the affected PARTY of its obligations under this CONTRACT. |
| GTC | Shall mean the General Terms of the CONTRACT. |
| GOODS | Shall mean the goods/materials specified in this CONTRACT to be supplied by the SELLER pursuant to and in accordance with the performance parameters & terms of this CONTRACT and complete in all respects to comply with the specifications and requirements stipulated in this CONTRACT. |
| GOODS AND SERVICES TAX (GST) | Shall mean the tax chargeable under the relevant GST Act on the supply of goods or services or both in India and the importation of goods or services or both into India, as applicable from the date of enactment. More specifically,<br>• Central Goods and Service Tax ("CGST") shall mean the tax chargeable under Central Goods and Services Tax Act 2017.<br>• Integrated Goods and Service Tax ("IGST") shall mean the tax chargeable under Integrated Goods and Services Tax Act 2017.<br>• State Goods and Service Tax ("SGST") shall mean the tax chargeable under the respective State Goods and Services Tax Act 2017.<br>• Union Territory Goods and Service Tax ("UTGST") shall mean the tax chargeable under the respective Union Territory Goods and Services Tax Act 2017. |
| GST ACT/ GST LAW | Shall mean any Act/Law imposing or relating to the imposition or administration of Goods and Services Tax, including any Cess or Surcharge, in India and any regulation or rules made under that Act or similar provision governing the operation of the law. Unless expressly stated otherwise in the Contract, words and expressions which have a defined meaning in the GST Act have the same meaning as in this CONTRACT. |
| GOVERNMENT / GOVERNMENT AUTHORITY | Shall mean the Government of India or State Government or any department, authority, ministry, commission, instrumentality, or agency of the Government, or any central, regional, local or municipal authority; any court or governmental tribunal, quasi judicial or any regulatory authority or any other authority of the Government lawfully exercising jurisdiction over CONTRACT and/or the operations arising out of CONTRACT whether under an Act of Parliament, or any state legislature or otherwise. |
| HSE NORMS | Shall mean the Health, Safety and Environmental (HSE) norms of the BUYER which are to be followed by the SELLER to ensure safety in the BUYER's business and which are based on generally accepted standards, procedures and practices in the natural gas industry. |
| HSN | Shall mean Harmonized System of Nomenclature, as defined under GST LAW, for classification of materials for GST applicability. |
| INTELLECTUAL PROPERTY RIGHTS (IPR) | Shall mean and include any patent, copyright including the copyright in the signages, registered design/industrial design, trademark (whether or not |

| | |
|---|---|
| | registered), know-how, Confidential Information or other industrial or intellectual property right presently held or expected to be held by the BUYER/BUYER under the LAW or under law in any part of the world, including a right to apply for such intellectual property protection/registration. |
| PARTY OR PARTIES | Shall mean the BUYER and the SELLER together or individually as the context requires, hereinafter shall be jointly & severally be referred to as PARTY/ PARTIES |
| RATE VALIDITY PERIOD | Shall mean the period for which the SCHEDULE OF RATES will hold valid for ordering of GOODS. |
| SCHEDULE OF RATES (SOR) | Shall mean unit rates mentioned in/ attached to CONTRACT agreed between BUYER and SELLER. |
| SELLER/ MANUFACTURER/ CONTRACTOR | Shall mean the person, firm, Limited Liability Partnership/Company (LLP/LLC) or company with whom CONTRACT is entered into by BUYER for providing GOODS. The term includes its successors and assigns. |
| SELLER GROUP | Shall mean the SELLER and its AFFILIATES, agents and its or their employees, directors and / or officers. |
| SELLER'S EQUIPMENT | Shall mean any item supplied or used by the SELLER pursuant to this CONTRACT. |
| SELLER'S PERSONNEL | Shall mean the employees, directors and/or officers of the SELLER GROUP employed, engaged or provided under this CONTRACT. |
| SELLER'S/SELLER REPRESENTATIVE | Shall mean the person appointed from time to time by the SELLER and notified in writing to the BUYER to act as its representative for the purpose of this CONTRACT or, in absence of such notification, the SELLER. |
| SFMS | Structured Financial Messaging System. |
| STC | Shall mean the Special Terms of the CONTRACT. |

1. **GENERAL**:

1.1 The General Terms of CONTRACT (GTC) shall be read in conjunction with all other parts of the CONTRACT including the Scope of Work, Technical Specifications, Schedule of Rates (SoR), Drawings and any other exhibits, annexures, appendices, attachments, guidelines & any other documents forming part of, or referenced in the CONTRACT, wherever the context so requires.

1.2 Notwithstanding the sub-division of the CONTRACT documents into separate sections and volumes, every part of each shall be deemed to be supplementary to and complementary of every other part and shall be read with and into the CONTRACT.

1.3 In case of contradiction between any of the CONTRACT documents, the following shall prevail in order of precedence:

a. Schedule of rates (SOR)
b. Scope of Work/Technical Specifications
c. Special Terms of CONTRACT (STC)
d. General Terms of CONTRACT (GTC)
e. International Standards & Codes

1.4 Wherever it is mentioned in the CONTRACT that the SELLER shall perform certain work or provide certain facilities, it is understood that the SELLER shall do so at his cost and the unit rates in CONTRACT shall be deemed to have included cost of such performance and provisions, so mentioned.

1.5 Generally the materials, design, and workmanship shall satisfy the relevant Indian Standards, the Specifications & scope of work contained herein, and Petroleum and Natural Gas Regulatory Board (PNGRB) requirements and codes referred to. Where the job specifications stipulate requirements in addition to those contained in the standard codes and specifications, these additional requirements shall also be fulfilled.

1.6 It will be the SELLER's responsibility to bring to the notice of the BUYER REPRESENTATIVE, any conflict in the CONTRACT documents before acceptance of the CONTRACT or commencement of any activities under the CONTRACT, with references for which the conflict exists.

1.7 In the absence of any specifications covering any material or design of work, the same shall be performed / supplied / executed in accordance with Standard Engineering Practices as per the instructions / directions of the BUYER REPRESENTATIVE, which will be binding on the SELLER.

1.8 In CONTRACT documents, unless otherwise stated specifically, the singular shall include the plural and vice versa wherever the context so requires.

1.9 All headings, subtitles and notes in any part of CONTRACT documents are solely for the purpose of giving a concise indication and not a summary of the contents thereof, and they shall never be deemed to be part thereof or be used in the interpretation or construction thereof.

1.10 The terms fully capitalized and/or initial capitalized shall be interchangeable and shall have the meaning as assigned to fully capitalized term or initial capitalized term.

1.11 The BUYER shall not be bound by any printed conditions or provisions in the SELLER's quotation, bid forms or acknowledgment of CONTRACT, invoices, packing list or any other documents, submitted at any stage before or after the award of the CONTRACT, which imposes any conditions at variance with or supplemental to CONTRACT.

2. **SCOPE OF SUPPLY:**

2.1 The Scope of Supply is defined in the CONTRACT. The SELLER shall provide all necessary materials, equipment, labor, etc. unless otherwise specified in the CONTRACT.

3. **THE SELLER'S PERFORMANCE:**

3.1 It is a condition of this CONTRACT that the GOODS shall (unless otherwise agreed in writing):

a. Be of good and sound design, materials and workmanship;
b. Be of merchantable quality and fit for the purpose for which they are supplied under this CONTRACT;
c. Conform to quantity and description with the particulars stated in this CONTRACT;
d. Correspond with samples or patterns, if any, referred to in this CONTRACT;
e. Comply with the Specifications and the appropriate standards relevant to the GOODS;
f. Comply with all laws/legislations applicable to the GOODS including (but not limited to) the Acts and rules as applicable; and
g. Be free from any defect in title.

3.2 The SELLER has represented to have requisite expertise in the provision of the GOODS and the BUYER is at all times relying on the skill, knowledge and workmanship of the SELLER. The provisions of sub-clause 3.1 hereof shall apply notwithstanding that the BUYER may have included in this CONTRACT certain specifications as to, for example, the materials from which or the manner in which the GOODS are to be constructed.

3.3 The SELLER shall perform its obligations under this CONTRACT with all due diligence, in good and workmanlike manner to the highest standards and in accordance with the provisions of this CONTRACT and to the satisfaction of the BUYER.

3.4 The SELLER shall have informed itself fully and studied carefully the specifications, drawings and all other data relating to and necessary for the performance of this CONTRACT and shall have obtained for itself a full understanding and knowledge of the nature and scope of this CONTRACT and of the prevailing conditions relevant thereto, under which the GOODS will operate. Any information which the BUYER may give to the SELLER shall be the best information available to the BUYER but the BUYER shall not be responsible for the exactness and sufficiency of the information provided.

3.5 The SELLER confirms that it is familiar with all conditions, risks, contingencies and other circumstances which may impact this CONTRACT and that it has taken them into account in determining the Schedule of Rates, the schedule for delivery of the GOODS and all other factors affecting its performance of this CONTRACT.

3.6 The SELLER shall check CONTRACT with care for any error, omission or ambiguity, and if any be discovered, shall immediately inform the BUYER in writing within three days from the date of receipt of CONTRACT. Any work associated with the GOODS affected by such discovery which is thereafter performed is at the SELLER's risk and expense.

3.7 Transportation of all items covered in the scope of the CONTRACT, i.e BUYER's free issue materials & the materials to be supplied by the SELLER, as applicable, will be arranged by SELLER at his own cost including insurance, storage, handling, transportation etc. SELLER will also be responsible for taking delivery of free issue material from BUYER'S designated warehouses and transportation to place of work, including its coverage for transit insurance.

4. **SECURITY & GUARANTEE:**

4.1 The Contract-cum-Performance Bank Guarantee (CPBG) shall be denominated in the currency of the CONTRACT.

4.2 Contract-cum-Performance Bank Guarantee (CPBG) shall be acceptable from any bank as directed by the latest Government of Gujarat Resolution (GR), applicable at the time of submission of any fresh CPBG. (Refer website https://financedepartment.gujarat.gov.in/gr.html), in the format stipulated in Section VI (Forms and Formats) of the TENDER.

4.3 The CPBG proceeds shall be appropriated by the BUYER as compensation for any loss resulting from the SELLER's failure to complete its obligations under the CONTRACT, including, but not limited to, shortfall/damage/loss of free issue materials, damage/breakage/defacing or destruction of any property belonging to the BUYER or non-fulfilment of any of the SELLER's obligations during the execution of the CONTRACT.

4.4 The CPBG proceeds shall also govern the successful performance of GOODS during the entire period of Warranty as specified in the CONTRACT.

4.5 Wherever possible, SELLER has to inform the issuing Bank to provide confirmation regarding the issuance of Bank Guarantee through SFMS to BUYER's (Beneficiary) Bank/ Advising Bank (i.e. HDFC Bank, IFSC : (HDFC0000006).

5. **SCHEDULE OF RATES:**

5.1 Rates as set forth in the CONTRACT for all GOODS to be delivered shall be on firm price basis and no escalation will be entertained during RATE VALIDITY PERIOD, with the exception of any price variation specified in the CONTRACT.

5.2 The SELLER is deemed to have satisfied itself as to the circumstances (including risks and contingencies) affecting the price for the provision of the GOODS and/or the cost to the SELLER of supplying the GOODS and to the correctness and the sufficiency of the rates specified in this CONTRACT for the GOODS which shall, except insofar as it is otherwise provided in this CONTRACT, cover all its obligations under this CONTRACT and all matters and things necessary for the proper supply of the GOODS, whether specifically stated or incorporated by reference to this CONTRACT.

6. **TAXES & DUTIES:**

6.1 The SELLER shall pay all income, corporation, revenue or similar taxes, howsoever described, and all fines, penalties and interest thereon assessed on the income, profits and gains accruing to the SELLER from the execution of this CONTRACT. The SELLER shall be responsible for, indemnify, defend and hold harmless the BUYER against any claims, whatsoever arising, in connection with the liability of the SELLER for any such taxes, penalties and interest. Further the SELLER shall be responsible for, indemnify, defend and hold harmless the BUYER against any claims, whatsoever arising, in connection with all taxes assessed or levied against or on account of wages, salaries, benefits, or deemed benefits paid to the SELLER's PERSONNEL.

6.2 The SELLER shall be required to furnish the BUYER with such particulars as are known to the SELLER in relation to its activities under this CONTRACT as may be required by the BUYER to fulfil information requests received from any competent tax or GOVERNMENT AUTHORITY. Where requested information is not known to the SELLER, it shall take reasonable steps to obtain the information necessary to enable it to comply with the request.

6.3 The BUYER may, without liability to the SELLER, withhold sums in respect of any payments which would otherwise be made by the BUYER to the SELLER to the extent that such withholding may be required by legislation or orders, rules or directions of any competent tax authority or GOVERNMENT AUTHORITY. Where the requirement for any withholding is avoided by the SELLER holding an appropriate exemption certificate, it is the duty of the SELLER to inform the BUYER that such a certificate is held and to inform the BUYER of any change to or cancellation of the certificate and to provide copies of the certificate or any further information that may be required by the BUYER to satisfy itself that it can make payment without any withholding. The SELLER shall be responsible for, indemnify, defend and hold harmless the BUYER against any claims, whatsoever arising, in connection with such withholding or failure to withhold, as may arise due to the SELLER's failure to inform the BUYER of any relevant matter in a timely fashion.

6.4 The BUYER shall pay to the SELLER the Goods and Service Tax (GST) or any other applicable indirect taxes/duties, howsoever described, levied by any competent GOVERNMENT AUTHORITY, chargeable in respect of GOODS properly supplied by the SELLER under this CONTRACT, provided that the SELLER provides the BUYER with a valid tax invoice, as required under the applicable GST LAW or other legislation, to enable a tax credit to be obtained by the BUYER, wherever applicable. The BUYER shall have no liability to pay the SELLER for any amount to the extent such amount is eligible for relief, reduction, exemption or recovery by the actions of the SELLER.

6.5 The SELLER shall indemnify, defend and hold harmless the BUYER from and against any taxes levied against it on account of any property or equipment (including the SELLER's EQUIPMENT) of the SELLER, including but not limited to customs duties, Goods and Service Tax (GST), occupation and other like taxes and imposts.

6.6 The SELLER shall be responsible for, and pay when due, all taxes and duties, as prevailing from time to time, relating to the GOODS supplied. BUYER shall not be responsible for any such liability of the SELLER. BUYER shall have the right to withhold required amount from payments due to the SELLER under CONTRACT to the extent that such withholding may be required by any GOVERNMENT AUTHORITY, and the payment by BUYER to the respective GOVERNMENT AUTHORITY of the amount of money so withheld shall relieve the BUYER from any further obligation to SELLER with respect to the amount so withheld. The SELLER undertakes to indemnify BUYER for any loss, outgoing, fine, penalty etc. that SELLER suffers for GST purposes for the GOODS supplied to BUYER.

6.7 SELLER shall defend, indemnify and hold BUYER harmless from and against any and all claims, expenses and proceedings howsoever arising in connection with the liabilities of SELLER for any such taxes, fines penalties and interest levied by any GOVERNMENT AUTHORITY or any competent tax authority.

6.8 All taxes levied on SELLER's corporate income or profits shall be for the account of SELLER and shall not be reimbursed by BUYER.

6.9 The BUYER shall also deduct/withhold/charge required amount corresponding to any taxes, prevailing from time to time, levied at the prevailing rates on the Liquidated Damages/ Penalty/ any other such amount deducted/ withheld/ recovered from SELLER, wherever applicable. BUYER shall have the right to recover/ deduct such amount from SELLER's invoice, Bank Guarantee or from any outstanding payments due to the SELLER.

6.10 Any statutory variation on account of taxes & duties, as applicable in the CONTRACT, shall be reimbursed by BUYER or refunded by the SELLER, as the case may be. Such variation shall be limited to direct transactions between the BUYER and the SELLER, shown as taxes and duties in SELLER's invoice. However, any additional tax implication, resulting from delay in delivery of GOODS due to reasons not attributable to the BUYER and/or any change in the taxation (e.g. GST) registration status of the SELLER shall be borne by the SELLER.

7. **INVOICING:**

7.1 BUYER has implemented Vendor Invoice Submission Application (VISA) for office automation, digitization and transparency in processing of vendor invoices. SELLER shall upload the invoices and other specified supporting documents on VISA before submitting physical set of Invoice & documents along with covering letter generated from application to respective BUYER Offices. Additional reports/documents (not specified on VISA portal), may be directly submitted to concerned BUYER-Contract Owner / EIC as per requirements. The onus of selecting relevant name of BUYER Contract Owner & BUYER GA/Office (where physical invoice is to be submitted by vendor) is on the SELLER for timely processing of invoices and for further certification / payment.

7.2 Subject to the completion of the SELLER's obligations in a manner satisfactory to the BUYER in all respects and strictly in accordance with the terms of this CONTRACT, the SELLER shall submit the invoices to the BUYER for the value ascertained in accordance with the SCHEDULE OF RATES, along with the applicable documents, such as Packing List, Delivery Challan, Lorry Receipt, Test Certificates, TPI release note and other related documents.

7.3 The invoice shall be broken down into individual items in such detail as to enable BUYER to calculate how the total value of the invoice has been reached in accordance to the SOR and shall contain such further information which the BUYER may request. The taxes chargeable in respect of GOODS supplied by the SELLER under CONTRACT, as applicable, shall be itemized separately.

7.4 The SELLER shall provide proper invoices to BUYER, for the GOODS supplied, containing the below details:

a. CONTRACT number
b. Material code(s) with description, unit of measurement and quantity delivered
c. Required details as prescribed under the GST ACT, and including but not limited to:
    i) Correct GSTIN of BUYER
    ii) The applicable HSN Code of the GOODS
    iii) The applicable taxes under GST ACT for GOODS
    iv) State Code and the place of supply as applicable as per billing and delivery address mentioned in the CONTRACT

7.5 BUYER shall make payment after making deductions, as applicable, but not limited to:

a. Tax Deduction at Source (TDS)
b. Liquidated Damages and/or Penalty charges
c. Retention amount
d. Any other taxes/statutory deductions as applicable from time to time including applicable taxes levied at prevailing rates on Liquidated Damages / Penalty/ any other such amount deducted/ withheld/ recovered from the SELLER.
e. Any sums owed to the BUYER (as per Clause 7.12) or in case the SELLER has committed a breach of its obligations under this CONTRACT.
f. GST TDS: BUYER may, in relation to any payment it is required to make to the SELLER, withhold from that payment any amount it is required to withhold under the GST ACT and shall provide such document to the SELLER as may be prescribed under the GST ACT.

BUYER's decision regarding the above shall be final and binding to the SELLER.

7.6 SELLER shall submit the invoices along with GOODS supplied, unless otherwise agreed by the BUYER, but not later than 5 days from the date of invoice to avoid non-compliance under Indirect Tax Laws. If any interest, penalties, loss or damage is caused to the BUYER, on account of non-compliance of any existing tax laws due to delayed submission of invoice or submission of defective/incomplete invoice by the SELLER (including but not limited to interest or penalties caused to BUYER on account of delayed payment of tax or loss due to non-availability of any tax credit), such interest, penalties, loss or damage will be recovered from the SELLER.

7.7 The SELLER must remit the GST amount to the respective authority in accordance with the GST ACT. The SELLER shall be liable to BUYER for any cost, liability, dues, penalty, fees, interest, outgoing, as the case may be, or for any loss occurring to BUYER on account of non-availability of input tax credit to BUYER due to non-compliance of applicable tax laws, including but not limited to GST laws in force or otherwise, on the part of the SELLER. An amount equivalent to such liability or loss accruing to BUYER shall be deducted from the payment due to the SELLER or shall be reimbursed by the SELLER to BUYER within 15 days of any such demand made by BUYER. The amount withheld by BUYER or reimbursed by the SELLER will be retained by BUYER till such default is either rectified or made good by the SELLER to the satisfaction of BUYER.

7.8 To the extent that it is permitted under the GST Act, BUYER reserves the right to create and issue a Tax Invoice in relation to GOODS supplied under this CONTRACT to discharge its obligation under the reverse charge mechanism as per GST Act. The SELLER shall raise an invoice and only charge the GST portion applicable to the SELLER as the supplier of such GOODS.

7.9 In the event an adjustment arises in connection with a supply made under the CONTRACT, the SELLER must give the BUYER a credit note or debit note (referred to as Adjustment Notes), as the case may be, in accordance with the GST Act. The adjustment note must identify the GOODS relevant to the adjustment event and should bear reference to the corresponding original tax invoice for the supply made.

7.10 The SELLER will ensure that all tax invoices and Adjustment Notes rendered to BUYER under the CONTRACT are in a format that identifies any GST paid, and which permits BUYER to claim a valid input tax credit, wherever applicable. The SELLER shall issue the Adjustment Notes within 15 days from discrepancy/error identified, but not later than 6 months from the end of the relevant financial year within which taxable supplies are made. SELLER shall submit such Adjustment Notes to BUYER immediately but not later than 5 days from the date of the Adjustment Note.

7.11 Invoices which are incomplete, incorrect or in a form which is unacceptable to the BUYER, shall be returned to SELLER un-actioned. If the SELLER submits invoices that contain erroneous billings repetitively in a manner perceived by the BUYER to be excessive, the SELLER will be assessed a penalty being a percentage of the value of the erroneous invoice, as decided by BUYER.

7.12 If the BUYER disputes any item in any invoice, in whole or in part, then the BUYER, at its sole discretion, may pay only the undisputed portion of such invoice, until such time as the BUYER and the SELLER have reached agreement as to what payment, if any, is due or what other action will be taken by the BUYER in respect of the disputed amount. The BUYER shall promptly notify the SELLER of any such disputed amount. The BUYER and the SELLER shall endeavor to settle expeditiously and in good faith, at the earliest possible date, any such dispute and any agreed adjustment and subsequent payment shall be made promptly following the date of such settlement.

7.13 The BUYER shall be entitled to set-off against the amounts payable to the SELLER under this CONTRACT any sums owed to the BUYER by the SELLER GROUP on any account and howsoever arising.

7.14 The BUYER shall pay or cause to be paid the due amount within a period of **30 days from the date of receipt of the complete and correct invoice, duly certified by BUYER REPRESENTATIVE** as per the terms and conditions of the CONTRACT.

7.15 SELLERs registered as Micro and Small Enterprise (MSE) under the “Micro, Small And Medium Enterprises Development Act, 2006” (MSME Act) shall submit valid copy of 'Udyam Certificate' at the beginning of each financial year. In case if the SELLER has applied for registration or renewal of registration and have not received the valid Udyam Certificate for the new Financial year, they will not be eligible for benefits pertaining to Payment Terms under the MSME Act.

7.16 BUYER shall not be liable for delay in payments or any other benefits/relaxations/concessions under the MSME Act owing to non-compliance of any of the SELLER's obligations including but not limited to any of the following;

i) submission of valid copy of Udyam Certificate for respective financial years to BUYER in advance,
ii) submission of Correct & Valid Bank Account details to BUYER in time as per BUYER's policy,
iii) submission of valid e-Invoice/IRN Invoice complete in all respect with supporting documents as applicable,
iv) GOODS delivered by the SELLER listed in their Udyam Registration Certificate.
v) Udyam Registration Number with valid date mentioned on the Invoice.

7.17 For calculation of interest on delayed payment as per the MSME Act, Payment terms will be considered as 45 days from the date of receipt of the complete, correct and undisputed invoice, duly certified by BUYER REPRESENTATIVE.

7.18 Benefits, relaxations and concessions for SELLERs registered as Micro and Small Enterprise (MSE) under the MSME Act are available as per guidelines adopted/allowed by BUYER from time to time, subject to production of requisite documents/proofs etc. mentioned above.

7.19 Any additional tax liability including interest and penalty (if any), under the provisions of Income Tax Act, 1961 and rules thereto, arising out of non-compliance to the provisions of the MSME Act on the part of the SELLER; will be borne/ reimbursed/ compensated by the SELLER.

7.20 Provisions of the CONTRACT pertaining to MSME Act will be triggered only after receipt of valid 'Udyam Certificate' from the SELLER.

## 8. DEDUCTIONS FROM THE SELLER

8.1 All costs, damages or expenses which BUYER may have paid or incurred, which under the provisions of the CONTRACT fall under the SELLER's liability, will be claimed by the BUYER. All such claims shall be billed/notified by the BUYER to the SELLER regularly as and when they fall due. Such claims shall be paid by the SELLER within 15 (fifteen) days of the receipt of the corresponding intimation from BUYER, and if not paid by the SELLER within the said period, the BUYER may, then, deduct the amount from any moneys due, such as Contract/ Performance Security, retention money, Bank Guarantee, or payments becoming due to the SELLER under the CONTRACT or may be recovered by actions of law or otherwise, if the SELLER fails to satisfy the BUYER of such claims.

## 9. PRINTS, DRAWINGS & SPECIFICATIONS:

9.1 The SELLER shall prepare at its own expense and submit to the BUYER such drawings and data as necessary for the performance of this CONTRACT. The BUYER REPRESENTATIVE shall have the right to generally approve all drawings and/or data but such approval or acceptance shall not relieve the SELLER of any of its responsibilities under this CONTRACT. The SELLER shall supply, at no extra cost, legible copies of such drawings and data, as applicable.

## 10. INSPECTION, MONITORING, TESTING AND EXPEDITING:

10.1 The BUYER, by its authorized officers and agents, shall at all times be granted access to the SELLER's premises for expediting, inspecting, monitoring and testing of the GOODS during and on completion of manufacture prior to delivery.

10.2 Any expediting, monitoring, review, approval, acknowledgement, test or acceptance or waiver thereof by the BUYER shall not relieve the SELLER from any of its obligations under this CONTRACT in respect

of any subsequent defects in the design, quality, materials, workmanship or fitness for purpose of the GOODS.

10.3 Wherever applicable, before delivering the GOODS, the SELLER shall, at no extra cost to the BUYER, unless otherwise specified in the CONTRACT, inspect and test the GOODS for compliance with this CONTRACT and supply to the BUYER legible certificates of the results of such inspection and testing, duly signed & stamped by authorized representative of the SELLER, as may be reasonably required by the BUYER or required by legislation.

10.4 The GOODS shall be inspected (i) At DELIVERY POINT by BUYER; and/or (ii) At factory premises of the SELLER by BUYER and/or Third party inspection (TPI) agency duly approved by BUYER. The SELLER shall extend all necessary cooperation to BUYER / TPI in carrying out the inspection, as the case may be.

10.5 In case if the SELLER offers the GOODS for inspection and the same fails, then third party re-inspection costs as per CONTRACT terms will be borne by the SELLER, unless explicitly specified otherwise in the CONTRACT.

## 11. MARKING OF THE GOODS:

11.1 The SELLER shall ensure that the GOODS and, where the components of the GOODS are manufactured by different parties, those components are clearly and permanently marked with the manufacturer's name, trademark or distinguishing mark which clearly identifies the manufacturer. In addition, where the SELLER is not the manufacturer, the SELLER shall ensure that the GOODS are, without infringing third parties' rights including IPR, clearly and permanently marked as having been supplied by the SELLER to the BUYER.

11.2 The SELLER shall ensure that prior to delivery; the GOODS and all components are marked in accordance with the provisions of the CONTRACT. Where the CONTRACT makes no such provision, the GOODS or any components shall not (without the prior written consent of the BUYER) be marked with the name, badge or any other mark used exclusively by the BUYER. Any GOODS or components so marked shall not be disposed off to any third party without the prior written consent of the BUYER unless such markings are first erased to the satisfaction of the BUYER.

## 12. PACKAGING AND CARRIAGE:

12.1 The GOODS shall be crated, paletted or packed in any such manner so as to reach the DELIVERY POINT undamaged and in good condition.

12.2 Unless otherwise stated in this CONTRACT, all costs such as packaging & carriage shall be included in the CONTRACT VALUE. Returnable cases, packages and other containers shall be supplied by the SELLER free of charge, unless agreed otherwise previously in writing. Where previously requested in writing, such returnable cases, packages and other containers will be returned to the SELLER but, whilst reasonable care shall be taken to ensure that they are received by the SELLER in good condition, such return shall be at the SELLER’s risk and expense.

12.3 The SELLER shall send with each consignment of the GOODS, as applicable:

a. A packing note (together with a copy of material test certificate(s), where applicable) with the GOODS, detailing the number of this CONTRACT, description, code number (if any) and the quantity of Goods consigned;
b. An advice note or notes, as instructed in CONTRACT, including details as mentioned in sub-clause a above;
c. Additional documentation as detailed in the CONTRACT;

d. The SELLER's clear and full instructions with regard to all hazards affecting the GOODS; and
e. Documentation to prove the GOODS supplied have been inspected and, if applicable, are properly completed and therefore fit for purpose.

13. **DELIVERY:**

13.1 The SELLER shall deliver the GOODS to the DELIVERY POINT and as specified in the DELIVERY SCHEDULE.

13.2 Delivery shall be deemed to have been made on acknowledgement of receipt of the GOODS by the BUYER. Delivery of the GOODS to a carrier (whether named by the BUYER or not) for the purpose of transmission to the BUYER is not deemed to be and shall not constitute delivery of the GOODS to the BUYER.

13.3 The BUYER, acting reasonably, may alter the DELIVERY POINT and/or DELIVERY SCHEDULE upon giving the SELLER reasonable notice in writing of such alterations.

13.4 If the SELLER fails to deliver any GOODS in accordance with the CONTRACT, then the BUYER may terminate this CONTRACT or any part of it and reserves all rights in damages and otherwise arising.

13.5 If the GOODS are incorrectly delivered, the SELLER shall be responsible for any additional expense incurred in redelivering such GOODS in the correct manner/to the correct destination and/or at the correct schedule.

13.6 The quantity of GOODS delivered must not exceed the quantity specified in the CONTRACT or intimation by BUYER REPRESENTATIVE. GOODS in excess of the quantity specified shall, at the BUYER's option, be returned to the SELLER at the SELLER's expense.

13.7 Acceptance of the GOODS by the BUYER shall not relieve the SELLER of any of its obligations under this CONTRACT.

14. **LIQUIDATED DAMAGES**

14.1 SELLER acknowledges the importance to the BUYER of receiving the GOODS as per the DELIVERY SCHEDULE, and undertakes to take all steps necessary to achieve the DELIVERY SCHEDULE so specified. In this respect, time shall be of the essence. No other activity of the SELLER shall take precedence over the supply of GOODS.

14.2 Without prejudice to the BUYER's other rights available under the CONTRACT and/or Law, in case the SELLER fails to meet the DELIVERY SCHEDULE, for the reasons other than (i) Force Majeure; and/or (ii) reasons attributable to BUYER alone, the BUYER shall, unless otherwise specified differently in the STC, recover, as ascertained and agreed, liquidated damages (LD), and not by way of penalty, a sum equivalent to half percent (0.5%) of the value of delayed GOODS per week of delay or part thereof, on basic value of delayed GOODS, subject to maximum of 5% of the basic value of the delayed portion of the GOODS. The decision of BUYER in regard to the actual delay shall be final and binding to the SELLER.

14.3 The SELLER shall immediately notify the BUYER, prior to the applicable DELIVERY SCHEDULE, of any event or circumstance that may give rise to any delay in the delivery of the GOODS, other than arising from reasons covered by the provisions of Clause 40 on Force Majeure. The SELLER shall immediately give details to the BUYER REPRESENTATIVE of the effect or anticipated effect on the performance of its obligations under the CONTRACT along with the actions it intends to take to mitigate the same.

14.4 If the BUYER agrees that delivery of the GOODS or part thereof, is likely to be delayed beyond the stipulated DELIVERY SCHEDULE, and that such delay is not attributable to the SELLER, then the BUYER shall grant such revised DELIVERY SCHEDULE as the BUYER considers reasonable in all the circumstances, provided such intimation is received from SELLER prior to the applicable DELIVERY SCHEDULE.

15. **FREE ISSUE MATERIAL:**

15.1 If, for the purposes of this CONTRACT, materials are to be supplied by or on behalf of the BUYER for incorporation into the GOODS (hereafter referred to as "Free Issue Materials"), they shall be and remain the property of the BUYER, but upon delivery to the SELLER, become and remain thereafter at the sole risk of the SELLER, until the delivery of the GOODS and the return of any surplus Free Issue Materials to the BUYER.

15.2 SELLER shall clearly identify and mark as "the property of GEL", separately store, safeguard, maintain in good order and condition and keep such records as the BUYER may require of all Free Issue Materials for audit purpose. All such materials shall be deemed to be in good condition when received by or on behalf of the SELLER unless it otherwise notifies the BUYER within seven (7) days of receipt.

15.3 SELLER shall use all Free Issue Materials economically and solely in connection with this CONTRACT. Damage to or loss or waste of any Free Issue Materials arising from bad workmanship, carelessness or the SELLER's failure to comply with the provisions of sub-clause 15.2 shall be made good at the expense of the SELLER either by the SELLER or as the BUYER otherwise instructs, by replacement of materials of at least the equivalent quality.

15.4 All scrap and surplus Free Issue Materials are to be marked as "the property of GEL", kept separately and reported at regular intervals to the BUYER.

15.5 BUYER reserves the right to physically inspect/verify the Free Issue Materials at any time. If any loss/shortage/damage is found during such verification by BUYER or in the Free Issue Materials returned by SELLER, then such lost/short/damaged material cost shall be borne by the SELLER and necessary amount towards such shortage/damaged material will be recovered from the SELLER, as per rate decided by BUYER.

16. **MATERIAL INSPECTION:**

16.1 Upon receipt of GOODS at DELIVERY POINT, BUYER will inspect the packaging for damage or tampering. In case of no damage or tampering of the package, the GOODS will be stored at BUYER's site for further inspection.

16.2 BUYER will, at its option, proceed to examine the GOODS to ascertain precise extent of any breakage/ shortage/ tampering/ damage, if any, and in the absence of a representative from SELLER, the BUYER's report will be deemed accepted by the SELLER. In case of breakage/ shortage/ tampering/ damage, intimation regarding the same shall be referred to the SELLER within thirty (30) days from the date of receipt at DELIVERY POINT by the BUYER, which shall be replaced / made good by the SELLER at their own cost. All risk of loss or damage to the GOODS shall be upon the SELLER till it is delivered to the BUYER.

16.3 If BUYER finds that GOODS supplied are not in accordance to CONTRACT or received in damaged or tampered condition or otherwise not satisfactory owing to any reason, of which the BUYER shall be the sole judge, the BUYER is entitled to take actions such as, but not limited to, rejection of the GOODS, termination of the CONTRACT, procurement of GOODS from other agencies, and recover the loss, if any, from the SELLER.

16.4 The BUYER shall have the right to require the SELLER at the SELLER's own risk and expense, expeditiously to collect and replace any rejected GOODS, not later than fifteen (15) days from the date of written communication of rejection from BUYER. Should the nature or size of the rejected GOODS or other circumstances make it impracticable for the rejected GOODS, or part thereof, to be removed prior to delivery of the replacement GOODS, the BUYER may require the SELLER to carry out the necessary replacement at site at the SELLER's expense.

16.5 If the SELLER fails to fulfill its obligations under this clause within thirty (30) days from the date of intimation of rejection; the BUYER may:

a. Dispose the material to any party and expenses, if any, incurred for such disposal, shall be payable by the SELLER; and/or
b. Terminate this CONTRACT, or any part thereof, in accordance with clause 42 of GTC and/or debar the SELLER for future tendering/award of contract, without prejudice to its existing rights and remedies; and/or
c. Recover as a debt due from the SELLER, all extra costs and expenses arising from or in connection with any GOODS being found to be defective, including but not limited to, those of employing others, repairing, modifying or testing defective GOODS, purchasing alternative GOODS elsewhere and storage, as appropriate.

16.6 Where the SELLER replaces any GOODS in accordance with this Clause, the provisions of this CONTRACT shall apply to the replacement GOODS.

17. **RIGHT TO GET GOODS THROUGH OTHER AGENCIES:**

17.1 Nothing contained herein shall restrict BUYER from accepting similar GOODS from other agencies at its sole discretion and at the risk and cost of the SELLER, if the SELLER fails to fulfil any of its obligations under the CONTRACT.

17.2 In such event, the BUYER, at its sole discretion, shall be entitled to recover the additional expenses incurred for procuring the GOODS from alternate agencies, in addition to administrative and other expenses incurred by BUYER for the same. The decision of BUYER in determining such amount to be recovered from the SELLER shall be final and binding on the SELLER. The SELLER's liability in this respect shall be unlimited without exception.

18. **WARRANTY:**

18.1 SELLER warrants that the quality of GOODS supplied shall be in accordance with CONTRACT and specified standards and shall show the utmost skill, diligence and competency in workmanship. SELLER also warrants that such GOODS shall meet the requirements of, and be in conformity with all applicable laws, rules, regulations and ordinances of any GOVERNMENT AUTHORITY.

18.2 Without prejudice to the rights of the BUYER under this CONTRACT, wherever applicable and unless otherwise specified differently in SPECIAL TERMS OF CONTRACT, the SELLER warrants the GOODS against the SELLER's faulty design, workmanship or materials arising or becoming apparent within a period of 12 months from commissioning or 18 months from delivery, whichever is earlier, (henceforth referred to as the "Warranty Period") from the date of delivery of GOODS at DELIVERY POINT, either following delivery or following the repair, modification or replacement of the GOODS, or any part thereof, unless otherwise stated differently in the SPECIAL TERMS OF CONTRACT.

18.3 SELLER warrants that GOODS under this CONTRACT will be new and of recent manufacture, of specified quality and free of all defects and all malfunctions, including latent defects, and compete and fit for the use for the specific purpose for which they are purchased and that they are in strict accordance

with the drawings and Specifications, and all relevant codes as applicable to GOODS in India or any sub division thereof.

18.4 If any fault, defect or nonconformity is discovered during the Warranty Period, SELLER shall take or arrange for all measures necessary to correct, or have corrected, any and all defects, or to replace or have replaced the defective parts (the decision regarding replacement/repair shall be at BUYER's discretion) with the greatest diligence and at SELLER's expense to the full satisfaction of BUYER. The SELLER shall also provide supervision as required and accept charges for the dismantling and re-assembly of work on site. All transport costs for the parts to be repaired or replaced will be paid by SELLER.

18.5 Where the SELLER repairs, modifies or replaces any GOODS in accordance with this Clause, the provisions of this CONTRACT shall apply to the repaired, modified or replaced GOODS.

18.6 Failing prompt and sufficient action on the part of SELLER, BUYER reserves the right to carry out the necessary work at SELLER's risk and expense. BUYER shall have the right to recover such costs from SELLER. SELLER's liability in respect of aforesaid rectification and/or replacement shall be unlimited without exception.

18.7 All the spares shall be supplied with fitment certificate to the original equipment, as applicable.

18.8 Should the nature or size of the defective GOODS or other circumstances make it impracticable for the defective GOODS or part thereof to be removed, the BUYER may require the SELLER or others to carry out the work necessary for repair, modification, or replacement of the GOODS on site at the SELLER's expense and cost for the same shall be recovered /deducted from the SELLER.

18.9 If the SELLER fails to fulfil its obligations under this clause, the BUYER may:

a. Terminate this CONTRACT or any part thereof in accordance with clause 42 of GTC, and/or debar the SELLER as per Clause 43 of GTC, without prejudice to its existing rights and remedies; and/or
b. Recover as a debt due from the SELLER, all extra costs and expenses arising from or in connection with any GOODS being found to be defective, including but not limited to, those of employing others, repairing, modifying or testing defective GOODS, purchasing alternative GOODS elsewhere and storage.

18.10 Where applicable, the BUYER shall have the right to assign the benefit of this guarantee to the BUYER's successors and/or assignees. When requested by the BUYER, the SELLER shall assign to the BUYER the full benefits of all guarantees obtained by the SELLER.

19. **AMENDMENT(S):**

19.1 BUYER may, by written notice to SELLER, order extra quantity or make changes by altering, adding to or deducting from the GOODS, by way of an AMENDMENT, with no other variation in the unit rates, terms & conditions of the CONTRACT, except as explicitly specified in the AMENDMENT.

19.2 Any modifications leading to changes in the CONTRACT with respect to technical and/or commercial aspects shall be considered valid only when accepted or issued in writing by BUYER. Any other cases shall not be any ground for extension of agreed DELIVERY SCHEDULE and also shall not affect the SELLER's obligations under the CONTRACT in any manner, except to the extent mutually agreed through an AMENDMENT.

19.3 SELLER shall not commence to carry out any AMENDMENT nor shall any claim be valid in respect thereof, until the SELLER has received the formal AMENDMENT issued by BUYER in writing for carrying out such AMENDMENT.

20. **PROPERTY & RISK:**

20.1 Without prejudice to the rights and obligations of the Parties under this CONTRACT and unless otherwise agreed in writing, the property in the GOODS or any part thereof shall pass to the BUYER on delivery or on payment by the BUYER (whichever is earlier). In the event of part payments prior to delivery, property in the GOODS shall pass in proportion to payments made. Notwithstanding passing of property to the BUYER, the risk shall not pass to the BUYER until all of the GOODS have been delivered in accordance with this CONTRACT at the DELIVERY POINT.

20.2 Where the property in any of the GOODS passes to the BUYER before delivery, such GOODS shall be stored separately, clearly identified and marked as "the property of GEL" or in such other manner as the BUYER may require.

20.3 Unless otherwise agreed in writing, all tools, patterns, drawings, designs, other documents, equipment or materials supplied by or on behalf of the BUYER shall be stored separately, marked as "the property of GEL" and remain the property of the BUYER and the SELLER shall be responsible for their safe custody and return. They shall not, without the prior written consent of the BUYER, be disposed of by the SELLER to any third party nor used except for the purpose of carrying out this CONTRACT.

21. **SUB-LETTING OF CONTRACT:**

21.1 No part of this CONTRACT, nor any share or interest therein, in any manner or extent, will be transferred or assigned or sub-let, directly or indirectly, to any person / firm or organization by the SELLER without written consent of BUYER, provided nevertheless that any such consent shall not relieve the SELLER from any obligation, duty or responsibility under the CONTRACT.

22. **ASSIGNMENT:**

22.1 CONTRACT shall be binding on and ensure to the benefit of BUYER and SELLER and to their respective heirs, executors, administrators, successors and assigns, but the SELLER shall not assign this CONTRACT in whole or in part or any benefit of any legal or equitable interest herein, without the prior written consent of the BUYER.

22.2 The BUYER shall be permitted to assign and re-assign (whether on one or several occasions) all or any of the provisions of this CONTRACT to any of its AFFILIATES and/or Group Companies by giving advance intimation to the SELLER.

22.3 The SELLER shall be responsible for acts, omissions and defaults of any of its representatives including its agents as fully as if they were the acts, omissions and defaults of the SELLER and any assignment shall not relieve the SELLER of any of its responsibilities under this CONTRACT or at Law.

23. **NON-WAIVER:**

23.1 No relaxation, forbearance, delay or indulgence by either PARTY in enforcing any of the terms and conditions of the CONTRACT or the granting of time by either PARTY to the other shall prejudice, affect or restrict the rights of that PARTY under the CONTRACT, nor shall any waiver by either PARTY of any breach of CONTRACT operate as waiver of any subsequent or continuing breach of CONTRACT.

23.2 Any waiver of a PARTY's rights, powers or remedies under the CONTRACT must be in writing, must be dated and signed by an authorized representative of the PARTY granting such waiver, and must specify the right and the extent to which it is being waived.

24. **SEVERABILITY**

24.1 If any provision or condition of the CONTRACT is prohibited or rendered invalid or unenforceable, such prohibition, invalidity or unenforceability shall not affect the validity or enforceability of any other provisions and conditions of the CONTRACT.

25. **SAVING OF RIGHTS:**

25.1 The expiry or earlier termination of CONTRACT, howsoever occasioned, shall be without prejudice to the rights and remedies of the PARTIES to the CONTRACT up to and including the date of such expiry or earlier termination, and shall not affect or prejudice any term of CONTRACT that is expressly or by implication provided to come into effect on or continue in effect after such expiry or earlier termination.

26. **STATUS OF BUYER AND THE SELLER:**

26.1 In performing its obligations under this CONTRACT the SELLER shall maintain complete employer control over the SELLER's PERSONNEL. This CONTRACT constitutes a principal to principal relationship between the SELLER and the BUYER and does not and shall in no manner create or be construed to create any employment, agency, partnership, joint venture or any other relationship between the PARTIES hereto.

26.2 The SELLER shall, as between the SELLER and the BUYER, be responsible for and shall be liable for, indemnify, defend and hold harmless the BUYER against all wages, fees, contributions, insurances, charges and taxes required by Law to be paid by an employer in respect of the SELLER's PERSONNEL and/or the supply of the GOODS and shall procure that all appropriate deductions are made in respect of all applicable taxes and other contributions.

27. **CHANGE IN CONSTITUTION:**

27.1 Where the SELLER is a partnership firm, the prior approval of the BUYER shall be obtained in writing, before any change is made in the constitution of the firm.

27.2 Where the SELLER is an individual or a Hindu Undivided Family (HUF) business concern, such approval as aforesaid shall, likewise be obtained before such SELLER enters into any agreement with other parties, where under the reconstituted firm would have the right to carry out the work hereby undertaken by the SELLER.

27.3 In either case if prior approval as aforesaid is not obtained; the CONTRACT shall be voidable at the option of the BUYER. The BUYER shall be entitled to terminate the CONTRACT in accordance with Clause 42 of GTC.

28. **REPRESENTATIVES:**

28.1 BUYER REPRESENTATIVE shall communicate to SELLER all information, instructions and decisions of BUYER. All information, instructions and decisions issued by BUYER REPRESENTATIVE shall be deemed to have been issued by BUYER.

28.2 BUYER REPRESENTATIVE may, from time to time, delegate any responsibilities to any nominated deputy and withdraw any such delegation. The terms of such delegation shall be the subject of a notice, issued in accordance with Clause 29. Information, instructions and decisions issued by any nominated deputy, acting within the terms of his delegated authority, shall be as if issued by BUYER REPRESENTATIVE.

28.3 SELLER REPRESENTATIVE shall be authorized to act on behalf of SELLER in all matters relating to the CONTRACT and any written order, instruction or Notice from BUYER to SELLER REPRESENTATIVE or SELLER's personnel shall be deemed to have been given to SELLER.

29. **NOTICES:**

29.1 All correspondences and documents relating to the CONTRACT exchanged by the SELLER and BUYER shall be in English language.

29.2 Any Notices shall be in writing and will take effect from the date of receipt at the communication address. Suitable proof of delivery like speed post acknowledgment receipt, registered AD acknowledgment receipt, hand-delivered acknowledgment & electronic mail are acceptable modes of acknowledgment.

29.3 In case of speed post and registered AD notices, a copy of Notice is required to be sent for acknowledgment of contents and acknowledgment on this copy of Notice by BUYER which will be returned to SELLER & shall be considered as valid acknowledgment of Notice.

29.4 All Notices shall be sent to respective representatives of PARTIES.

30. **CLAIMS:**

30.1 The SELLER shall protect and hold the GOODS and all property of the BUYER GROUP free from all liens, charges and other encumbrances.

30.2 Upon receipt of a Notice from the BUYER, the SELLER shall discharge or cause to be discharged all liens, charges or other encumbrances attaching to or upon any materials, goods, equipment, plant or other items provided by the SELLER GROUP for use for or in connection with the completion of the work associated with the GOODS, which in the opinion of the BUYER, may adversely affect the performance of the SELLER's obligations under the CONTRACT.

30.3 The SELLER shall be responsible for, indemnify, defend and hold harmless the BUYER GROUP against any and all CLAIMS in respect of liens, charges or other encumbrances irrespective of negligence and/or breach of duty (statutory or otherwise) of the BUYER GROUP.

30.4 The BUYER may discharge any lien, charge or other encumbrance and may deduct from payment due to the SELLER or recover by other means as a debt due from the SELLER all costs and expenses reasonably incurred in so doing.

30.5 If, at any time there should be evidence or any CLAIM for which the BUYER might have become liable and which is chargeable to the SELLER, the BUYER shall have the right to retain out of any payment then due or thereafter to become due an amount sufficient to completely indemnify the BUYER against such lien or claim and if such CLAIM be valid, the BUYER may pay and discharge the same and deduct the amount so paid from any money which may be or may become due and payable to the SELLER.

30.6 If any lien or claim remain unsettled after all payments are made, the SELLER shall refund or pay to the BUYER all money that the latter may be compelled to pay in discharging such lien or claim including all costs and reasonable expenses. BUYER reserves the right to do the same.

31. **INSURANCE:**

31.1 SELLER shall provide, maintain and pay for such insurance, as will protect replacement value of GOODS and all its plant, equipment, materials, tools, etc. until GOODS are delivered in accordance with

CONTRACT, and for any insurance for its supervisory or other personnel, who may be required to travel to and work at the site in India, in the execution of SELLER's obligations under the CONTRACT.

31.2 SELLER hereby waives all rights of recovery from BUYER in connection with its properties and the properties of its personnel while working at site and traveling to and from site.

31.3 In case a damage or loss is observed, BUYER shall inform to SELLER on receipt of GOODS at DELIVERY POINT and SELLER shall arrange the replacement based on first information received from the BUYER. It shall, however, be SELLER's responsibility to pay premium, lodge & settle the claim and / or any deductibles applicable on claim settlement.

31.4 SELLER shall be responsible for transit insurance for the GOODS.

32. **INDEMNITY:**

32.1 To the fullest extent permitted by Law, SELLER shall indemnify, defend, and hold harmless BUYER, its AFFILIATES, and subsidiary companies or entities, and its and their respective officers, directors, agents, and employees from and against all claims, liabilities, damages, losses, costs, and expenses including, but not limited to, attorneys' fees and costs of court (collectively, the "Claims"), arising out of, connected with, or alleged to arise from or be connected with any event or circumstance which occurs or exists, or is alleged to have occurred or existed, in any way related to the manufacture, delivery, or installation of the GOODS, either directly or indirectly, including (without limiting the generality of the foregoing) all Claims on account of personal injury, death, or property loss to SELLER, BUYER, or any other party, including any Claims based upon or arising out of SELLER's sole, joint, or contributory negligence or strict liability, except to the extent that any such Claim arises out of, or is attributable, to BUYER's gross negligence or wilful misconduct.

32.2 The SELLER shall at all times indemnify and keep indemnified BUYER against all Claims, loss, demands, proceedings, charges and expenses, liability of personal injury (including death), and/or damage omission or default by the SELLER or his representative and arising out of or connected with the performance of CONTRACT and arising out of non-compliance with the Law.

32.3 The SELLER undertakes responsibility for and shall indemnify BUYER or their employees from all liability, Claims, costs, expenses, taxes and assessments including penalties, punitive damages, attorney's fees and court cost with respect to any breach of the SELLER's obligation under the order or for which the SELLER has assumed under any order local or national Law or Laws.

33. **EMPLOYMENT LIABILITY OF SELLER:**

33.1 The SELLER shall indemnify BUYER & shall be solely and exclusively responsible for any liability arising due to any difference or dispute between him and his employee / Third Party for the execution of this contract at any time during / after the contract period is over. All workmen engaged by the SELLER shall preferably be on his roll and be paid by him and BUYER shall have no responsibility towards them.

33.2 The SELLER shall be directly responsible and indemnify the BUYER against all charges, claims, dues, etc. arising out of disputes relating to the dues and employment of personnel deployed by him.

33.3 The SELLER shall indemnify the BUYER against all losses or damages caused to it on account of acts of the personnel deployed by the SELLER.

33.4 The SELLER shall ensure regular and effective supervision of the personnel deployed by him. All liability arising out of accident and death while on duty shall be borne by SELLER.

34. **CONSEQUENTIAL & INDIRECT DAMAGES:**

34.1 Notwithstanding anything contained elsewhere in this CONTRACT neither party shall be liable for whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs.

35. **LIMITATION OF LIABILITY:**

35.1 Notwithstanding anything contrary contained herein, the aggregate total liability of the SELLER under the CONTRACT or otherwise shall be limited to 100% of the CONTRACT VALUE. However, the aforesaid cap for limitation of liability shall not be limited and the SELLER shall continue to remain responsible for all liabilities which arise on account of:

a. Breach of Applicable Laws by the SELLER
b. Gross negligence, fraud, or willful misconduct of the SELLER.
c. Infringement of any Intellectual Property Rights of the BUYER.
d. Indemnification of BUYER as per Clause 32 of GTC and as specified elsewhere in the CONTRACT.
e. Provisions under Clause 17.2 of GTC

36. **CONFIDENTIALITY:**

36.1 The SELLER and/or the SELLER's PERSONNEL shall not, during the continuance of this CONTRACT, or at any time thereafter, publish or disclose to any third party, except with the written consent of the BUYER or by requirement of the Legislation, any information, data or process which is confidential or of a commercially sensitive nature connected with the business or affairs of the BUYER which shall come or have come to its or their knowledge in or by reason of the engagement by the BUYER of the SELLER under this CONTRACT, provided that this restriction shall not apply to any information.

However, these obligations do not apply to documents for which it can be demonstrated that:

a. Such documents were already in the public domain before these were communicated to the other party, or have become part of the public domain since without any fault or negligence of the PARTY concerned, or
b. Such documents were already in its possession without having obtained them directly or indirectly from the other PARTY, or
c. Such documents were obtained from an independent source that had neither direct nor indirect secrecy commitment to the other PARTY.

36.2 The experts appointed by the BUYER are not considered as third parties, and for this reason they have to respect, towards the SELLER, the same obligations as the BUYER in these matters.

36.3 Any document, other than the CONTRACT itself, enumerated shall remain the property of the BUYER and shall be returned (all copies) to the BUYER on completion of the SELLER's obligations under the CONTRACT, if so required by the BUYER.

37. **PUBLICATION AND PRESS ANNOUNCEMENTS:**

37.1 SELLER, either alone or jointly with others, cannot publish material or make press releases or announcements regarding either this CONTRACT or the activities of the SELLER related to its participation in this CONTRACT. Such publication shall be subject to prior approval of the BUYER in writing.

38. **INTELLECTUAL PROPERTY RIGHTS (IPR) AND TRADEMARKS:**

38.1 All Intellectual Property Rights in all documents including (without limitation) drawings, transparencies, prints, photographs, negatives, computer files, working notes and books created, supplied or

developed by the BUYER and appertaining to the GOODS shall remain in the BUYER and the originals and all copies of them shall be delivered to the BUYER on completion of the work associated with the GOODS and the SELLER shall, if required, certify that none have been retained.

38.2 All documents, drawings, technical know-how, calculations, computer print-outs, computer files, computer software designs and inventions created, supplied or developed by the SELLER pursuant to or in the performance of this CONTRACT whether fully or partially completed and relating to the GOODS shall be the property of the BUYER and the copyright for the same shall be vested in the BUYER.

38.3 Subject to the BUYER's rights pursuant to this CONTRACT, the SELLER shall retain all intellectual property in all documents including (without limitation) drawings, transparencies, prints, photographs, negatives, computer files, working notes and books and inventions created by the SELLER prior to this CONTRACT and which shall not have been prepared by the SELLER at the request of the BUYER or pursuant to a previous contract or arrangement with the BUYER.

38.4 The SELLER shall be responsible for, indemnify, defend and hold harmless the BUYER from and against any and all CLAIMS, which arise out of, or in any way relate to, any patent, registered design, copyright, trademark or trade name or any patent application or other proprietary right asserted by the SELLER, any employee of either of the foregoing or any third party in respect of any device, apparatus, process or method used by the SELLER in performing its obligations under the CONTRACT.

38.5 Should the SELLER infringe, or allegedly infringe, any patent, registered design, copyright, trademark or trade name which delays or prevents the SELLER from carrying out its obligations under this CONTRACT, the BUYER may treat such cessation or delay to the completion of the work associated with the GOODS arising there from as a fundamental breach of this CONTRACT by the SELLER. The SELLER shall be liable for all additional costs incurred by the BUYER pursuant to its mitigation of the effects of such cessation or delay.

38.6 The SELLER shall promptly disclose to the BUYER all inventions which it may make which are wholly or in part based on or derived from information arising from the completion of the GOODS. All rights, titles and interest in and to such inventions shall belong to the BUYER. The SELLER shall execute or have executed all documents and shall perform or have performed all such acts as the BUYER may deem desirable or necessary to protect the BUYER's title to such inventions and to obtain and maintain patent coverage therein throughout the world.

38.7 Nothing in this contract confers upon the SELLER any right to use trademarks, trade names or service marks or even otherwise, nor shall any SELLER adopt any trademark which is confusingly similar to any a trademark of the BUYER.

39. **PERMITS, LICENSES, STATUTORY AND OTHER REQUIREMENTS:**

39.1 The SELLER shall obtain at its own risk and expense, all permits, licenses, registrations, certificates or other administrative authorizations as may be required by any GOVERNMENTAL AUTHORITY from time to time or may be necessary or incident to the SELLER's business in the jurisdictions where the SELLER has to fulfil its obligations under this CONTRACT.

39.2 The SELLER shall comply with the Legislations and any other requirements, including but not limited to, those pertaining to Health, Safety and Environment, affecting the manufacture of GOODS, completion of the work associated with the GOODS, including delivery as per the CONTRACT.

39.3 The SELLER shall not under any circumstances apply to, or enter into negotiations with, or agree with any GOVERNMENTAL AUTHORITY or agency for acceptance of variations from or revisions to Legislation without the BUYER's prior written consent, except to the extent such matters pertain only

to the SELLER's equipment and the SELLER's PERSONNEL, which do not and cannot directly or indirectly affect the BUYER's legal obligations, equipment, sites or personnel.

40. **FORCE MAJEURE:**

40.1 Neither PARTY shall be responsible for any loss or damage of any kind caused by a failure or delay in performance of any obligation hereunder if such failure or delay is attributable to FORCE MAJEURE.

40.2 For the purposes of CONTRACT only the following occurrences shall be deemed to constitute FORCE MAJEURE:

a. Riot, war, invasion, act of foreign enemies, hostilities (whether war be declared or not), act of terrorism, civil war, rebellion, revolution, insurrection of military or usurped power;
b. Earthquake, flood, drought, earthquake, cyclone, fire, explosion and/or other natural physical disaster, but excluding weather conditions as such, regardless of severity;
c. Changes to any general or local statute, ordinance, decree, or other LAW, or any regulation or bye-law of any local or other duly constituted authorized or the introduction of any such statute, ordinance, decree, law, regulation or bye-law.
d. In case of Epidemic / Pandemic declared for particular area(s) wherein PARTIES are unable to perform its obligations under the CONTRACT.

40.3 The SELLER shall not under any circumstances be relieved or excused from its obligation to perform to the extent that the cause of such failure or delay in performance is caused by:

a. unfavorable weather conditions which are reasonably expected for the climate in the geographic area where the work is to be performed; or
b. any delay, default or failure (direct or indirect) by the SELLER in obtaining materials, equipment or manpower required for performing any work; or
c. financial distress of the SELLER; or
d. strikes, disputes or other action solely among employees of SELLER or its sub-SELLERs or SELLER/sub-SELLER of the SELLER; or
e. mechanical breakdown.
f. shortage of labour, materials or other resources unless caused by circumstances which are themselves force majeure in nature.

40.4 A PARTY, which is, by reason of FORCE MAJEURE, unable to perform any obligation or condition required by this CONTRACT to be performed shall notify the other PARTY in writing within 24 hours, giving reasonably full particulars of the event or circumstance of FORCE MAJEURE, from the date of commencement of the event or circumstance and an estimate of the period of time required to enable it to resume full performance of its obligations.

40.5 The obligations of the PARTIES under this CONTRACT to the extent performance thereof is prevented by the event of FORCE MAJEURE shall be suspended and the PARTIES shall not be liable for the non-performance thereof for the duration of the period of FORCE MAJEURE.

40.6 If performance of the SELLER is suspended by FORCE MAJEURE conditions for a period of 2 (two) weeks or more, then BUYER may, at its sole discretion, terminate this CONTRACT with immediate effect either in whole or in part at any time thereafter by giving notice thereto.

41. **SUSPENSION OF CONTRACT:**

41.1 The SELLER shall, if instructed in writing by the BUYER REPRESENTATIVE, temporarily suspend the CONTRACT execution or any part thereof, for such written instruction, and resume the same only after receipt of written intimation to proceed therewith.

41.2 The SELLER shall not be entitled to claim compensation for any loss or damage sustained by reason of temporary suspension aforesaid. An extension of time for delivery, corresponding with the delay caused by any such suspension as aforesaid will be granted to the SELLER, should he apply for the same, provided that the suspension was not consequent to any default or failure on the part of the SELLER.

42. **TERMINATION AND EFFECT OF TERMINATION:**

42.1 BUYER reserves the right to terminate the CONTRACT either in whole or in part, upon occurrence of one or more of the following events by giving 30 days' notice in writing:

a. Breach of any contractual terms and conditions by the SELLER
b. Insolvency or bankruptcy of the SELLER, or being a buyer, entering into receivership, administrative receivership, administration or liquidation (or any equivalent thereof) whether compulsory or voluntary, except liquidation for the purpose of reconstruction or amalgamation while solvent.
c. Failure to fulfil any of the SELLER's obligations under the CONTRACT

The decision of BUYER regarding occurrence of any of the aforesaid events shall be final and binding on the PARTIES.

42.2 Without prejudice to, and in addition to, the BUYER's other rights under this CONTRACT; the BUYER shall have the right to terminate this CONTRACT or any part thereof without assigning any reason at any time by giving 24 hours written notice to the SELLER.

42.3 In the event BUYER terminates the CONTRACT in whole or in part, as above, BUYER may procure, upon such terms and in such manner as it deems appropriate, goods similar to those undelivered, with excess costs for such similar goods liable to be recovered from the SELLER. However, the SELLER shall continue performance of the CONTRACT to the extent not terminated. This is without prejudice to any of the BUYER's rights to deduct/ withhold any amount as specified elsewhere in this CONTRACT.

42.4 The SELLER shall be responsible for, indemnify, defend and hold harmless the BUYER against any costs incurred by the SELLER till the effective date of termination, including, but not limited to, input material/labour cost, etc. In case BUYER has to incur expenses due to the same, the same shall be recovered from the dues payable to the SELLER and / or security deposit held with BUYER.

42.5 GOODS shall not be or be deemed to be an asset in a bankruptcy if SELLER, voluntarily or not, becomes or is declared bankrupt.

43. **DEBARMENT OR SUSPENSION:**

43.1 BUYER reserves the right of Debarment or Suspension for the SELLER, upon occurrence of any events including but not limited to the following, in line with BUYER's prevailing Policy for ACTIONS TO BE TAKEN AGAINST VENDORS/ CONTRACTORS FOR DEFAULTS IN TENDER/CONTRACT TERMS, DISCHARGE OF CONTRACTUAL OBLIGATIONS, CORRUPT/FRAUDULENT / COLLUSIVE /COERCIVE PRACTICES, available on BUYER website, by giving written intimation to the SELLER:

a. In case of any conviction for criminal offence pertaining to the SELLER or its director or subcontract, or indicating a lack of business integrity or honesty which directly and seriously affects the business of the BUYER; or
b. In case of any serious breach of the CONTRACT indicating an unwillingness or inability to perform the CONTRACT in accordance with the terms and conditions or in accordance with the specifications, or a record of unsatisfactory performance of this CONTRACT or one or more related CONTRACTs in accordance with the terms and conditions thereof, or in accordance with its specifications; or
c. The breach of any ethical standard set out by the BUYER

43.2 The decision of BUYER regarding Debarment or Suspension and/or occurrence of any of the aforesaid events or Debarment for future tendering / award of any contract shall be final and binding on the PARTIES.

43.3 The Suspension or Debarment shall take effect immediately upon receipt of written intimation to the SELLER.

43.4 In case of termination of CONTRACT in accordance with the Clause-42, except under conditions of FORCE MAJEURE, Termination for convenience i.e. CONTRACT foreclosure/short-closure, the SELLER shall be debarred [i.e. neither any enquiry will be issued to the party by BUYER against any type of tender nor their offer will be considered by BUYER against any **ongoing tender**(s) where contract between BUYER and the SELLER (as a bidder) has not been finalized as per the BUYER's prevailing Policy for ACTIONS TO BE TAKEN AGAINST VENDORS/ CONTRACTORS FOR DEFAULTS IN TENDER/CONTRACT TERMS, DISCHARGE OF CONTRACTUAL OBLIGATIONS, CORRUPT/FRAUDULENT / COLLUSIVE /COERCIVE PRACTICES, available on BUYER website.

44. **GOVERNING LAW AND ARBITRATION:**

44.1 This CONTRACT is governed and construed by the Laws of India and the competent Courts at Ahmedabad, Gujarat (India) shall have exclusive jurisdiction to settle any dispute arising out of or in connection with this CONTRACT. Any dispute between the PARTIES shall be resolved mutually.

44.2 Any dispute whatsoever arising out of this CONTRACT which is not resolved by mutual agreement through negotiations between the PARTIES within thirty (30) days of the notice of the dispute, shall be referred to and shall be finally settled by binding arbitration conducted in accordance with the provisions of the Arbitration and Conciliation Act, 1996, and the rules made there under from time to time, and any statutory modifications thereof.

44.3 The arbitration shall be conducted by a sole arbitrator who shall be appointed by the BUYER.

44.4 The PARTIES shall bear all the costs and expenses related to the arbitration including the fees of the sole arbitrator in equal proportion. The PARTIES hereby waive their rights to claim or recover, and the sole arbitrator shall not award, any damages for Consequential Loss or any punitive, multiple, or other exemplary damages.

44.5 The final award passed by the sole arbitrator may include interest, as determined by the sole arbitrator, from the date of any default, breach, or other accrual of a claim until the arbitral award is paid in full. The arbitral award shall be made and payable in Indian Rupees, free of any tax or other deduction.

44.6 The sole arbitrator shall be authorized to award costs, attorneys' fees, and expert witness fees and to allocate them among the PARTIES.

44.7 The language of the arbitration shall be English and the place and venue of the arbitration shall Ahmedabad, Gujarat (India).

44.8 All the decisions and the final award of the sole arbitrator shall be final and binding on both PARTIES. Judgment on the final award passed by the sole arbitrator may be entered and enforced by any court of competent jurisdiction at Ahmedabad.

44.9 All negotiations and arbitration relating to a dispute (including a settlement resulting from such negotiation an arbitral award, documents exchanged or produced during arbitration proceedings, and memorials, briefs or other documents prepared for the arbitration) are Confidential Information and may not be disclosed by the PARTIES, their employees, officers, directors, counsel, consultants, and

expert witnesses, except to the extent necessary to enforce any settlement agreement or arbitration award to enforce other rights of a PARTY, as required by Law, or for a bona fide business purpose, such as disclosure to accountants, shareholders, or third-party BUYERs; provided that any breach of this confidentiality provision shall not void any settlement, or arbitration award.

44.10 While any dispute under this CONTRACT is pending, including the reference of any Dispute to arbitration and commencement of the arbitration proceedings, the PARTIES shall continue to perform all of their respective obligations under this CONTRACT without prejudice to the final determination in accordance with the provisions under this Clause.

44.11 All matters arising out of this CONTRACT shall be subject to the exclusive jurisdiction of the courts at Ahmedabad and the PARTIES hereby irrevocably attorn and submit to the jurisdiction of these courts. The PARTIES irrevocably waive any objection to venue in these Courts.

45. **CONFLICT OF INTEREST & ETHICAL STANDARDS:**

45.1 The SELLER shall not, without the prior approval of BUYER, participate in any business entity where use could be made of, or divulge to any third party, any information, knowledge or a relationship arising out of the CONTRACT or where such participation or action could conflict with the interests of BUYER.

45.2 No director, officer, employee, consultant or servant of the SELLER shall enter into any business arrangement with any director, officer, employee, consultant or servant of BUYER without full written and timely disclosure to BUYER.

45.3 The SELLER shall not accept any commission or any other payment from tenderers, sellers, vendors or any third party concerned with the CONTRACT.

45.4 Each PARTY represents and warrants that it has conducted and shall conduct its business in accordance with the highest ethical standards and it shall comply with all applicable Laws in the performance of its obligations under the CONTRACT including, but not limited to, Laws dealing with ethical business practices. If at any time during the term of the CONTRACT, a PARTY hereto is informed or information comes to such PARTY's attention that it is or may be in violation of any applicable Law (or if it is so determined by any court, tribunal or other governmental authority), such PARTY shall immediately take all appropriate steps to remedy such violation and comply with such Law in all respects. Further, each PARTY hereto shall establish and maintain all proper records (including accounting records) required by applicable Law.

46. **CORRUPT AND FRAUDULENT PRACTICES:**

46.1 The BUYER requires that SELLER observe the highest standard of ethics during the execution of CONTRACT. In pursuance of this policy, the BUYER defines, for the purposes of this provision, the terms set forth below as follows:

a. "Corrupt Practice" means the offering, giving, receiving, or soliciting of anything of value to influence the action of public official in contract execution; and
b. "Fraudulent Practice" means a misrepresentation of facts in order to influence the execution of a CONTRACT to the detriment of the BUYER, and includes collusive practice amongst SELLERs (prior to or after bid submission) designed to establish bid prices at artificial non-competitive levels and to deprive the BUYER of the benefits of free and open competition;
c. "Unfair trade practices" means supply of materials different from requirements specified in the CONTRACT
d. "Coercive Practices" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the execution of CONTRACT.

46.2 BUYER will reject a proposal for award, if it determines that the SELLER recommended for award is engaged in Corrupt or Fraudulent or Unfair trade or Coercive Practices in competing for the award in question;

46.3 BUYER will declare a firm ineligible, either indefinitely or for a stated period of time, if at any time the BUYER determines that the firm has engaged in Corrupt or Fraudulent or Unfair trade or Coercive Practices in competing for or in executing a contract.

47. **AGENTS AND INTERMEDIARIES**

47.1 SELLER represents warrants and undertakes to SELLER that it and each of its AFFILIATES and their respective officers, directors, employees or other representatives have not:

a. used, and will not use, the services of an agent or intermediary; or
b. made or offered to make, and will not make any payment or transfer of anything of value directly or indirectly to any agent or intermediary or to any SELLER Personnel,

in connection with SELLER's prequalification/short listing for, or the award of, the CONTRACT or in connection with any variation subsequently agreed under the CONTRACT.

47.2 Any breach of this provision shall be a material breach of the CONTRACT entitling BUYER to terminate the CONTRACT.