

Terms and Conditions of Sale India

1. DEFINITIONS

In these Terms and Conditions of Sale:

“**Seller**”: The Marathon entity specified in the Quotation.

“**Buyer**”: The person or company buying Goods from Seller under these Terms and Conditions of Sale.

“**Contract**”: The agreement between Buyer and Seller governing the sale of Goods by Seller to Buyer. These Terms and Conditions, the Offer (if one is issued by Seller), any purchase order acknowledgement (if one is issued by Seller), and Buyer's purchase order (except to the extent that it conflicts with these Terms and Conditions, the Offer, and/or the order acknowledgement) constitute the Contract.

“**Goods**”: Are the products and/or services provided by Seller to the Buyer.

2. VALIDITY

Unless otherwise specified, the Offer will be valid for a period of 30 days from the issue date of the offer and thereafter it will be subject to Seller's confirmation / revision.

3. SCOPE

Unless otherwise stated in the Offer, the scope of Seller includes the design, manufacturing and packing of items as quoted in the Offer. Item or work not expressly referred to therein shall be charged for separately.

4. PRICE AND TAXES

Unless otherwise stated in the Offer, the prices quoted are Ex-works basis and inclusive of suitable packing. The prices are exclusive of GST, which will be extra, at the rates prevailing at the time of supply. Wherever Way Bill/Road Permit is applicable, the same shall be issued by the Buyer.

Further should there be any new levies / duties imposed by the central government / state government / other statutory authorities, the same shall be reimbursed by buyer to seller at actual.

5. FREIGHT AND INSURANCE

Unless otherwise stated in the Offer, the standard delivery terms are on Ex works Basis also freight and insurance are in Buyer's scope.

6. PACKING AND FORWARDING

Offered Goods will be dispatched suitably packed as per Seller's factory standard. The fitting/assembling of loose parts/accessories at site is not in Seller's scope.

7. TERMS OF PAYMENT

Unless otherwise stated in the Offer, the following Payment Terms will be applicable.

- i. 30% interest free advance along with issue of order.
- ii. Balance 70% together with full GST, price variation amount, freight, insurance as well as testing charges, if any, against proforma invoice before dispatch of material.

In case of late payment, the price of each invoice may be increased by 2% per month from the date of invoice on account of interest.

8. DELIVERY

The delivery period quoted in the Offer is on Ex-Works basis. Delivery period will be reckoned from the date of receipt of technically and commercially clear purchase order containing agreed terms and the advance as per

the payment term. Date of successful completion of agreed tests at Seller's works shall be deemed as the date of delivery for contractual purposes.

These delivery times could be modified as per the load of the Seller's factory.

9. DRAWING AND DOCUMENTS APPROVAL

If applicable, Seller will submit the drawing and documents of standard jobs within 4 (four) weeks of Order receipt and for non-standard jobs as per agreement. Buyer has to provide the approval within 2 weeks of documents receipt. In the event of delay in receiving approval documents the Seller will be compensated as per "Compensation Due to Buyer's Default" clause.

10. DELAY IN MANUFACTURING CLEARANCE

In the event of not receiving the manufacturing clearing within three (3) months from the date of PO. The Seller shall be compensated as per "Compensation Due to Buyer's Default"

11. FORCE MAJEURE

Seller shall be under no liability if performance of contract on their part is prevented or delayed further in whole or in part due to any of the causes beyond their reasonable control such as but not limited to acts of God, acts of Government, acts of public enemy, war hostility, civil commotion, sabotage, fires, flood, explosions, epidemics, strike and lawful lock-out, then provided notice of happening of any such eventuality is given by the affected party to the other party within three (3) days from the date of occurrence and cessation of the Force Majeure, the period of Force Majeure shall be excluded accordingly.

If the Force Majeure event(s) exceeds ninety (90) days, that parties shall hold consultation to chalk out the further course of action.

Neither party can claim any compensation from the other party on account of Force Majeure.

12. STORAGE

If the Buyer does not take delivery of goods within thirty (7) days of notification that they are ready for delivery the Seller shall be entitled on behalf of the Buyer to put the goods into storage at the Buyer expenses.

13. WARRANTY

Unless otherwise stated in the Offer, the Goods shall be warranted for a period of 12 (twelve) months from the date of delivery, but in no case whatsoever longer than for a period of 18 (eighteen) months from the date of manufacture.

14. WEIGHTS AND DIMENSIONS

All weights and dimensions given in the technical data sheets are tentative. Final weights and dimensions will be given after design finalization in the event of an order.

15. TESTS

Routine tests as per relevant IS as applicable will be conducted on the Goods before dispatch at Seller's works. Type test/special test, if agreed, will be carried out on first unit of each rating only at extra cost. All the above tests shall be witnessed at extra cost if agreed at the time of order. For major bought out items, suppliers test certificates shall be furnished, wherever available.

16. STANDARDS

The Goods to be supplied in accordance with the technical part of the offer shall be manufactured and tested in accordance with IS recommendations.

17. LIMITATION OF LIABILITY

Notwithstanding anything contained in this Contract, with respect to any and all claims arising out of the performance or non-performance of obligations under this Contract, whether arising in contract, tort, warranty, strict liability or otherwise, Seller's liability shall not exceed in the 10% (ten per cent) of the Order price or payments received against this Order whatever is lower.

18. CONSEQUENTIAL LOSSES

Seller shall in no event be liable for loss of profit, loss of revenues, loss of use, loss of production, costs of capital or costs connected with interruption of operation, loss of anticipated savings or for any special, indirect or consequential damage or loss of any nature whatsoever.

19. ARBITRATION

All disputes arising in connection with this Contract shall be finally settled and governed by the provisions of Arbitration and Conciliation Act, 1996. The arbitration panel shall consist of three arbitrators, one to be appointed by each Party and the third arbitrator shall be appointed by the two appointed arbitrators. The third arbitrator shall serve as a chairman. The award of the arbitral tribunal shall be final and binding on both Parties. The place of arbitration shall be Kolkata, India. The proceedings shall be conducted in English language.

20. LANGUAGE

English shall be the official language of the Order and the Contract and will prevail over any translation, if any.

21. GOVERNING LAW

This Contract shall be governed and construed in accordance with the laws of India.

22. VARIATION IN QUANTITY

Any Variation i.e. increase or decrease, in the ordered quantity of Goods' and components will not be binding on the Seller unless mutually agreed between the Buyer and the Seller in writing.

23. TRANSFER OF RISK AND PROPERTY

The risk of Goods will be transferred to Buyer according to the agreed Incoterm® 2020, in turn the property of Goods will be transferred to Buyer with the integral payment of the agreed price.

24. CONFIDENTIAL TREATMENT AND SECRECY

Seller shall retain the ownership of its studies, drawings, models and any documents issued/ communicated to Buyer, or of which Buyer may have had knowledge in fulfilment of this contract. Such information and documents may be used only by the Buyer exclusively for execution of the contract. These documents and information shall be treated as confidential and shall not be distributed, published or generally communicated to any third parties without prior express permission in writing by the Seller.

25. COMPENSATION DUE TO BUYER'S DEFAULT

The Seller shall be compensated for any delay or default attributable to Buyer during the execution of the Contract. Such compensation shall include but not limited to Price escalation claims. Increase in Freight, Storage & Port handling charges & refixation of contractual delivery etc.

26. SUSPENSION AND TERMINATION

Suspension

If the Buyer fails to make any payment when due or perform on time any of its other obligations under the contract:

- The Seller shall be entitled to suspend performance of the contract until the failure is remedied;
- The time for performance of the contract by the Seller shall be extended accordingly;
- Any cost (including financial cost and storage) thereby incurred by the Seller shall be borne by the Buyer.

If performance of the contract is for any reason suspended and such suspension continues for more than 3 months the Seller shall be entitled at any time during that continued suspension by not less than 30 days' written notice to terminate the contract forthwith, in which event the provisions of the termination clause below shall apply.

Termination

In case of termination of the Contract in whole or in part under any sub-clause of these Terms and Conditions of Sale, Buyer shall pay to the Seller, without prejudice to any other remedy the Seller may have:

- The outstanding balance of the contract value of the goods and services which have been duly delivered or performed;
- The cost incurred by the Seller up to the date of termination in performing work on goods and services which are not then in a deliverable status, plus a reasonable sum to compensate the loss of profit.

27. BANKRUPTCY

If the Buyer becomes bankrupt or insolvent or makes any agreement with its creditors compounding debts or if, being a limited company, any proceedings is initiated in respect of it applying for the appointment of a liquidator, administrator, receiver or similar official for it or all or any substantial part of its assets or seeking an order or relief against it as debtor or under any law relating to insolvency, readjustment of debt, reorganization, administration or liquidation, the Seller may at any time by written notice terminate the contract forthwith, in which event the provisions of the termination clause above shall apply.

28. ACCEPTANCE

The acceptance of the Goods by the Buyer shall be deemed complete on successful testing of the same at the plant of the Seller's or its agents suppliers or subcontractors, before dispatch to the site.

29. LIMIT OF SUPPLY

The Goods will be supplied complete with fittings and accessories stated in Seller's Offer standard and generally confirming to Buyer's Specification.

30. CHANGE IN SCOPE

The prices quoted are in accordance with the scope of work specified in our Offer enclosed. If subsequent to the Offer evaluation and placement of order, changes in the specification alter the quoted scope of supply and services, seller reserve the right to re-negotiate the price.

Any change in Seller's scope of work shall be compensated by buyer. Seller shall maintain a record of such changes. Any increase or decrease in the price shall be mutually discussed and agreed before seller undertakes the manufacturing of the corresponding Goods.

31. GENERAL

These Terms and Conditions of Sale will be supplementary to any other terms and conditions mentioned in the enclosed offer. In case of any contradiction the relevant terms and condition of the enclosed offer will prevail.

Both Parties are under obligation to maintain secrecy of the documents, data, information, IP right etc. supplied by either of the Parties.