



## **GENERAL TERMS AND CONDITIONS OF PURCHASE of Atotech India Private Limited**

### **1. DEFINITIONS**

These General Conditions of Purchase are hereinafter referred to as the “**Conditions**”. In these Conditions, the following terms shall have the meanings set out below:

“**Contract**”: the set of contractual documents concerning the Supply and governing relations between the Supplier and Purchaser;

“**Purchaser**” means **ATOTECH INDIA PRIVATE LIMITED**;

“**SubContractor**”: the natural person or legal entity selected by the Supplier to provide all or part of the Supply;

“**Supplier**”: the Supplier selected by the Purchaser to perform the Contract.

### **2. CONTRACTUAL DOCUMENTS**

These Conditions shall prevail and shall override any general conditions of sale as well as any provision contained in or on the back of any invoices and/or in any other document issued by the Supplier, and shall be applicable in so far as no legal contractual or specific condition set out in the Contract stipulates otherwise. Changes, amendments, or modification of this agreement including its exhibits shall be valid only if they are in writing and signed by the officers of the parties. Failure to exercise part of any right under this Contract in one or more instances shall not constitute a waiver of those rights in another instance, such waiver by one party of any of the rights established herein shall not be considered as a waiver of another right established herein. The Supplier shall not rely on these modifications and departures for other contracts. The Contract

constitutes the entire agreement of the parties and supersedes all previous exchanges, obligations and agreements relating to the Supply.

### **3. ACCEPTANCE**

The confirmation of this purchase order shall constitute the Contract which it and shall be sent by the Supplier within 3 days of receipt of this order failing which it would be assumed that the order has been accepted by the Supplier.

### **4. COMMENCEMENT**

The Contract shall be operative from the date of the order.

### **5. QUALITY**

Goods supplied against order must in all respects conform to the descriptions given out of this order and drawings / specifications/ samples approved and /or provided. Goods supplied against the order shall be perfect of material and workmanship and fully adaptable for the use intended.

#### **5.1 Quality control / audits**

On the condition it provides three (3) calendar days' notice in advance to the Supplier, the Purchaser shall be entitled, either itself or through its representatives, to carry out quality controls and/or audits at the Supplier's production sites before or during the performance of the Contract. These quality controls and/or audits carried out by the Purchaser shall not reduce the Supplier's contractual liability in any way whatsoever, for example regarding the extent of the Supplier's own required quality controls and further they shall not affect the Purchaser's right to subsequently reject all or part of the Supply on delivery. The Supplier shall provide to the Purchaser all assistance required to carry out such quality controls and/or audits.

## **5.2 Traceability**

Upon written request by the Purchaser, the Supplier undertakes to furnish to the Purchaser all information necessary to identify the origin, place and date of manufacture of the Supply; its components; the quality controls performed in relation to the Supply, the serial or batch numbers; and any other relevant information.

## **6. PACKING. LABELING MARKING**

The Supplier shall be responsible for packing the Supplies. The packing shall be suitable for the Supply delivered and the means of transport used to deliver the Supply. Furthermore, the packing shall be in conformity with all applicable legislation, be state of the art, and shall be adequate so as to prevent any damage to the Supply during transport, handling and storage at the place of delivery. The Supply shall be adequately labeled and packed in an appropriate manner and the parcels marked by the Supplier in compliance with all applicable laws and moreover as provided for in the Contract.

## **7. ACCEPTANCE OF THE SUPPLY**

Acceptance of the Supply is subjected to final approval of the Purchaser's works inspection regarding quality, quantity and specifications. Such inspection, however, does not absolve Supplier of his responsibility for any defects in material/manufacturing /workmanship and guarantee & warranty conditions. If the Supply is expressly rejected; it shall be kept available at the Purchaser's works at the Supplier's risk and expense. Purchaser's inspection report and decision shall be considered as final and binding on the Supplier. In the event of such rejection, and unless the Purchaser decides otherwise in writing, the Supply shall, at the choice of the Purchaser, either be repaired or be replaced not later than seven (7) calendar days following rejection

by the Purchaser. The Supplier shall not raise any objection, including regarding its own manufacturing or delivery schedule, with regards to fulfilling the above obligation to repair or to replace. Supplier shall make suitable arrangements on their own to collect the rejected goods from Purchaser's works. Supplier shall bear all handling, transportation, octroi and any other miscellaneous incidental charges both ways (inward & outward). Supplier must collect rejected goods within 7 days of intimation of rejection. In case Supplier does not lift the rejected material within 7 days, Purchaser reserves the right to dispose off the goods without any reference to the Supplier. Payment made by the Purchaser shall not constitute acceptance of the material. In case during further process of the supplied goods, any defect of whatsoever nature is observed, Purchaser reserves the right to reject full / part qty of such material event if in the first instance approved / paid by the Purchaser. Quantity as received at the Purchaser's works shall be treated as final.

## **8. PRICES**

The prices stated in the purchase order shall be firm till the execution of this order in full.

## **9. DELIVERY**

Delivery is the essence of the Contract and supplies must be made as per the given schedule in the Contract, Purchaser can amend / postpone the delivery schedule on informing the same to Supplier in writing.

## **10. VALIDITY**

Purchaser reserves the right to cancel the order wholly or in part without any reference/liability to the Supplier.

## **11. INVOICING AND PAYMENT**

The Purchaser shall have no obligation / responsibility of payment where proof of delivery cannot be given satisfactorily. Invoices shall be prepared by the Supplier in duplicate, in compliance with all applicable laws, and indeed the provisions of the Contract. The invoices shall be addressed to the Purchaser at the address specified by the Purchaser in the Order Form and shall quote the references of the Contract. All invoices shall be made out in the currency specified in the Contract. Details of batch no/ nose of the goods supplied must be mentioned on the invoice. The item code and description mentioned in the purchase order should be written on the invoice. No interest shall be paid on the overdue amount. Purchaser reserves the right at all times to set off any amount which is due from the Purchaser against any amount recoverable from the Supplier in respect of any other transactions. Payment of the invoice shall not affect the Purchaser's right to dispute in writing any Unjustified charge.

## **12. TEST CERTIFICATES**

The Supplier shall send relevant test certificates along with the supplies.

## **13. TRANSPORTATION**

Supplier shall ensure to send the goods through nominated transporters for destination as mentioned in the order. Seller shall have to bear all consequential losses if goods are not shipped as per shipment instructions given in the order.

## **14 WARRANTIES AND OTHER UNDERTAKINGS**

### **14.1 Purpose**

The Supplier shall, irrespective of the Purchaser having any prior competence or knowledge, give the Purchaser all necessary information, advice and warnings in relation to the nature and composition of

the Supply. The Supplier shall warn the Purchaser about the risks related to the Supply, including but not limited to health and safety risks or concerns and any other hazardous risks. The Supplier warrants that it has the full right to sell the Supply and that the Supply is free from any encumbrances, rights and privileges of any third party. The Supplier warrants that the Supply corresponds to any description, specification and to any samples referred to in the Contract. The Supplier further warrants that the Supply is fit for the purpose(s) and objective(s), specified by the Purchaser and shall have no recourse to any purported lack of accuracy in the documents attached to the Contract. The Supplier shall observe all laws, rules, provisions and highest professional standards applicable to the Supply, in particular with regard to production, manufacture, repair, price definition and delivery, in order to ensure that the said Supply may be legally purchased, sold, transported and exported. Purchaser shall under no circumstances be liable for any penalty / compensation that may be levied upon the supplier for noncompliance of various statutory rules and regulations.

### **14.2 Duration and scope**

The Supplier warrants, for a minimum period of twelve (12) months, from the date of the Purchaser's acceptance of delivery, that the Supply is free of all defects, faults Contamination and abnormal wear of whatsoever nature. Should the Supplier breach this warranty, the Purchaser shall at its option either require the Supplier to repair or to replace the Supply or if the Supplier does not do so within seven (7) calendar days as of the date of the request by the Purchaser, take appropriate measures to arrange the same itself or through a third party. In any event, the Supplier shall bear all costs of any replacement and repair of the Supply, including but not limited to travel expenses, the costs of returning the Supply to the

factory and any parts and labour, but without prejudice to any other rights or remedies the Purchaser may have. Any replacement or repair of the Supply under warranty shall give rise to a new warranty for a minimum period of twelve (12) months from the date of the Purchaser's acceptance of delivery of the repaired or replaced Supply. The Supplier remains bound by all applicable statutory warranties and product liability guarantees as well as for hidden defects.

#### **14.3 Availability of spare parts**

The Supplier warrants that it shall promptly supply all spare parts required for the correct operation of the Supply for a minimum period of ten (10) years from the date of delivery unless otherwise specified in the Contract.

### **15. HEALTH, SAFETY AND THE ENVIRONMENT**

When delivering the Supply to a site designated by the Purchaser, the Supplier shall observe and ensure that all of its employees, representatives or subcontractors comply with all rules and regulations in force on the site designated by the Purchaser regarding health, safety, working conditions and the environment as well as all applicable legislation and regulations. If the Supplier, its contractors, employees or representatives do not comply with any of these obligations, the Purchaser reserves the right to refuse the Supplier and/or any of its employees or subcontractors access to or continued presence at the site. All consequences of noncompliance with any of these obligations, and the denial of access to or of continued presence on the site, including any costs incurred by the Supplier as a result of such denial, shall solely be borne by the Supplier.

**15.1** Supplier is responsible to carry the risk assessment and organize for preventive controls measures to avoid the risk by adequate primary and secondary controls.

**15.2** Supplier is responsible to provide supervision.

**15.3** Supplier is responsible for providing personal protective equipment to their employees at our premises and ensure to compliance of the same.

**15.4** Supplier is responsible to ensure the compliance to applicable rule and regulations for Health, Safety and Environment before execution of work.

**15.5** Before execution of work, Supplier is responsible to inform past safety records for any near miss or incident which could or leads loss to Health, Environment & Safety.

**15.6** On demand, Supplier is responsible to show the ability to complies with loss control & regulatory requirements.

**15.7** Supplier is responsible to ensure compliance to applicable loss control rules & emergency response plan at our premises.

### **16 ASSIGNMENT OF ORDER / SUBCONTRACTORS**

#### **16.1 Assignment and Change of Control**

The Supplier shall not assign the Contract to any third party, in whole or in part, without the prior written consent of the Purchaser. The Purchaser shall be entitled to assign all or part of the Contract to an affiliated company subject to prior written information regarding such assignment being sent to the Supplier.

#### **16.2 SubContractors**

Under no circumstances shall the manufacturing of the Supply to be performed accordance with specifications of the Purchaser and the operations associated with such performance under the Contract be subcontracted or entrusted to another person or company by the Supplier without the prior written consent of the Purchaser and the same shall only be so subcontracted subject to the condition that the Supplier and the said third party both comply with all statutory provisions applicable. In all cases, the Supplier shall remain solely liable for the proper

performance of the entire Contract. The Supplier shall indemnify and hold the Purchaser harmless from and against any and all claims by the Supplier's employees or SubContractors or by the personnel of said SubContractors.

#### **17. ANTI-CORRUPTION**

(a) Supplier to whom this purchase order is being issued warrants that neither it nor to its knowledge anyone on its behalf, has made or offered nor will make or offer any payment of money, gift, service or advantage or anything of value to or for the use of any:

(i) Public Official (or to a Close Family Member of a Public Official), in order to influence any act or decision of the Public Official or to secure any other improper advantage in order to obtain or retain business; or

(ii) Person (other than a Public Official) insofar as such payment, gift, service or advantage would be for purposes of inducing such person to do or omit to do any act in violation of applicable laws or of his or her professional duty or where such payment, gift, promise or advantage would

violate (1) the laws applicable to this Purchase Order; and/or (2) the laws of the country of incorporation of Supplier.

(b) Supplier shall ensure that its affiliates, directors, officers, employees, representatives, agents, legal advisers and subcontractors (and its affiliates directors, officers, employees, representatives, agents, legal advisers and subcontractors) shall be bound by, and comply with, the obligations set forth in sub-paragraph (a) above.

(c) Any invoice rendered to Atotech India shall accurately and in reasonable detail reflect all activities and transactions undertaken and related to the Purchase Order. We shall have the right to reasonably request documentation from you to

substantiate any invoice. In the event that Supplier should breach any of its representations or obligations under this Section 17, we shall have the right to immediately terminate the purchase order.

For the purposes of this paragraph, the defined terms below have the following meanings:

**"Public Official"** means an elected or appointed official, employee or agent of any national, regional or local government/state or department, agency or instrumentality of any such government/state or any enterprise in which such a government/state owns, directly or indirectly, a majority or controlling interest; an official of a political party; a candidate for public office; and any official, employee or agent of any public international organization;

**"Close Family Member of a Public Official"** means a husband/spouse or partner, one of his/her children, siblings or parents; the husband/ spouse or partner of his/her children or siblings; or any household member.

#### **18. STANDARD ELEMENTS**

To the extent that the Supply contains standard elements (including but not limited to plans, manuals or brochures, documents, standard software included in or incidental to the Supply) subject to intellectual property rights and handed over by the Supplier to the Purchaser for utilizing the Supply, the Supplier grants to the Purchaser and to the third parties acting on behalf of or for the benefit of the Purchaser a personal and nonexclusive right to use, reproduce, represent, translate and adapt the said standard elements for its own purposes. This right shall be granted without additional cost for the entire duration of the applicable intellectual property right protection, and where permitted by law, in perpetuity, for all countries and for all media. In case of transfer by the Purchaser of the Supply to a third party, the above right to use on standard elements shall be

transferable by the Purchaser to such third party without necessitating specific consent to such transfer from the Supplier and without additional cost to the Purchaser.

## **19. INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS**

The Supplier declares that all intellectual property rights relating to the Supply are either the exclusive property of the Supplier or subject to a license granted to the Supplier by a third party holding these rights, under conditions allowing the Purchaser to freely use and/or transfer the Supply. Consequently, the Supplier shall indemnify and hold harmless the Purchaser against any and all claims, costs, damages, expenses or legal action by third parties in connection with any actual or alleged infringement of intellectual property rights in relation to the Supply. If in the opinion of the Purchaser the Supply carries a risk of claim or legal action, the Supplier shall take all steps necessary to ensure that such risk of infringement is eliminated. If an allegation is made that the Purchaser may not use the Supply without infringing a third party's intellectual property right, the Supplier shall, at its own cost and at the sole option of the Purchaser, either replace or modify the Supply in respect of which such allegation is made, in such a way so as to ensure that the infringement of Intellectual Property rights no longer exist and at all times in accordance with its contractual obligations. Such replacement or modification shall be performed within time scales compatible with the requirements of the Purchaser. Failing such replacement or modification, the Supplier shall refund to the Purchaser the price of the Supplies. The above provisions do not affect the Purchaser's right to claim further damages from the Supplier.

## **20. CODE OF CONDUCT**

The Supplier shall acquaint itself and comply with the principles of Purchaser's code of Conduct. The Supplier shall also ensure that all of its SubContractors comply with the same.

- (a) Complies with all applicable laws;
- (b) Respects the decisions of the United Nations;
- (c) Acknowledges the principles of the Universal Declaration of Human Rights, the key conventions of the ILO, the OECD Guidelines for Multinational Enterprises, and the principles of the United Nations Global Compact;
- (d) Often goes beyond the minimum requirements of health, safety and environmental laws;
- (e) Is committed to the principles of free and fair competition;
- (f) Rejects fraud, bribery and corruption in all forms, whether public or private, active or passive;
- (g) Collects and processes personal data only for legitimate business reasons in full compliance with the applicable data protection laws.

You may download a copy of our Code of Conduct from our website at [www.atotech.com/our-values](http://www.atotech.com/our-values). Atotech expects its suppliers, contractors and business partners to adhere to principles and ethical values equivalent to those in our Code of Conduct.

## **21. CONFIDENTIALITY**

Any document or information provided by the Purchaser to the Supplier in connection with the performance of the Contract, and all elements (including all statements, studies and other documents) prepared by Supplier for the performance of the Contract shall be treated as strictly confidential by the Supplier.

Furthermore, any document and information the Supplier may acquire in connection with the performance of the Contract (including but not limited to any documents or information concerning the Purchaser's organisation, business activities, or

financial results) shall be treated as strictly confidential by the Supplier. The Supplier shall only be entitled to use the documents, information and/or elements referred to above for the performance of the Contract and shall not disclose the same to any third party or to any staff or agent of the Supplier other than to those who are involved in the performance of the Contract.

This paragraph shall not apply to the extent disclosure is mandatory by virtue of any statutory, accounting or regulatory obligations. The Supplier undertakes to comply with these obligations of non-use and of confidentiality and shall cause that its employees, agents and subcontractors do the same, throughout the duration of the Contract and for a further period of five (5) years after the termination of the Contract. The Supplier shall however not be liable for the disclosure of information to the extent that such information is in the public domain or has been legitimately obtained from other sources. The Supplier shall at the expiry of the term of the Contract, return to the Purchaser every document and data and every copy of the same, which may have been kept in connection with the performance of the Contract.

## **22. REFERENCE TO THE PURCHASER'S BRANDS AND TRADE NAMES**

The Supplier shall not be entitled to refer to the company names, trademarks and or logos of the Purchaser's Group without the prior written consent of the Purchaser.

## **23. FORCE MAJEURE**

Neither party hereto shall be liable to the other party if the performance of its obligations is delayed by conditions constituting force majeure under this clause. Force majeure shall only mean and include compliance with statutory laws, regulations or orders of the Central, State or local Government, Statutory

Bodies, war and warlike conditions (irrespective of whether war has been declared or not), acts of civil and military authority, fires, floods, embargoes, sabotage, revolts, rebellion and strikes and lockouts provided that the strikes and lockouts which do not exceed continuous period of fifteen days shall not be a force majeure condition, for the purpose of this clause and provided further that none of the conditions mentioned in this clause shall be a force majeure condition unless such conditions or conditions actually affect the performance of the obligations of either party. It is expressly agreed that power cuts shall not be considered as force majeure condition. Should, however, any force majeure condition herein mentioned occur and continue for a period exceeding 15 days the parties hereto undertake to sit together and devise means for expeditious and proper performance of the obligations of the parties under this order.

## **24. ARBITRATION**

(a) In case any dispute relating to the terms and conditions of this Deed or the interpretation thereof arises between the parties, the same shall promptly and in good faith be negotiated with a view of its amicable resolution and settlement.

(b) In the event no amicable resolution or settlement is reached within a period of 30 days from the day on which the dispute(s) or difference(s) arose, such dispute(s) or difference(s) shall be referred to and settled by the arbitration. The arbitrator for this purpose, shall be appointed by the Purchaser, which person shall be a person of eminence from the field of Judicial community and proceedings thereafter shall be in accordance with the Arbitration and Conciliation Act 1996. Further award of arbitration would not be open to challenge on the ground that Arbitrator has been nominated by the Purchaser.



(c) The existence of any dispute (s) or difference (s) or the initiation to continuance of the arbitration proceedings shall not permit the parties to postpone or delay the performance by the parties of their respective obligations pursuant to this Deed.

(d) The place of arbitration shall be Gurgaon.

(e) The decision and award resulting from such arbitration shall be final and binding on the Parties.

## **25. JURISDICTION**

All suits, legal proceedings and arbitration award under this Contract shall be filed entertained and decided in the Court of Gurgaon, Haryana and the Courts at Gurgaon, Haryana shall have the exclusive jurisdiction over all such disputes/claims. Please send your acceptance for rates, terms and conditions as mentioned in this Purchase order within 7 days from PO receipt date. In case, we do not hear from you in this period, it will be deemed that these rates, terms and conditions are acceptable to you.