SPIRAX-SARCO INDIA PRIVATE LIMITED

GENERAL CONDITIONS OF THE SALE OF GOODS AND THE SUPPLY OF SERVICES

1. Definitions

(a) “Business Days” means any day (other than a Saturday, Sunday or public holiday) when banks in Mumbai are open for business.
(b) “Buyer” means a customer of the Seller.
(c) “Conditions” means these terms and conditions of the goods or the supply of services or both.
(d) “Contract” means a binding contract for the sale of goods or the supply of services or both made by the Seller and the Buyer.
(e) “Force Majeure Event” means an event beyond the reasonable control of the Seller including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the Seller or any other party), failure of a utility service or transport network, act of God, war, riot, terrorism, civil commotion, malicious damage, pandemics, epidemics, compliance with any law or governmental order, rule, regulation or direction whether local or national, breakdown of plant or machinery, fire, flood, storm, drought, fire, flood, storm, drought or similar risks.

2. Interpretation of Contracts


3. Formation of Contracts and Application of Terms and Conditions

(a) All contracts shall be deemed to incorporate these Conditions. No terms will be deemed to be incorporated except those expressly agreed in writing and signed by an authorised signatory of the Seller and any variation of a Contract shall not have any effect unless it is in writing and signed by the Seller (or their authorised representatives).
(b) A Contract shall constitute the entire agreement between the Buyer and the Seller and shall be governed by the “Purchase Order”. Each Purchase Order shall be deemed to be an offer to the prospective Buyer to buy the goods or services (or both) of the Seller that are identified in the Purchase Order subject to these Conditions (the “Order Acceptance”). A Contract between the Seller and the Buyer shall come into existence at the time and on the date when the Seller delivers the relevant goods or services or (both) to the Buyer, as the case may be.
(c) The Seller shall constitute the agreement between the Buyer and the Seller acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Seller and shall not have any effect unless expressly agreed in writing and signed by an authorised signatory of the Seller and any variation of a Contract shall not have any effect unless it is in writing and signed by the Seller (or their authorised representatives).
(d) The Seller reserves the right to give in writing notice of the withdrawal of a quotation at any time within the period of validity of the quotation and before the Contract is formed. In the event that the Seller changes the price of any of the goods or services (or both) offered for sale or supply, any existing quotation in respect of those goods or services (or both) shall be deemed to be automatically withdrawn and the Seller shall issue a new quotation.

4. Quotations and Purchase Orders

(a) Any quotation issued by the Seller shall not constitute an offer and is given on the basis that no Contract shall come into existence unless and until the Seller dispatches an Order Acceptance to the Buyer.
(b) The price of the goods or services (or both) is subject to the Buyer confirming its acceptance of the quotation and the Buyer shall complete the Seller’s purchase order form (or such other form as may be agreed with the Buyer) and return it to the Seller.
(c) The Seller may alter the Specification for Goods:

5.  The Goods

(a) The Goods are described in the Specification of Goods. The Goods shall comply with the Specification for Goods in material respects. Any stated dimension or weight set out in the Specification for Goods is an approximate only.
(b) All performance figures, descriptions (other than any description set out in the Specification for Goods), drawings and samples of Goods are approximate only being intended to serve merely as a guide. The Seller shall not be liable for their accuracy and they shall not form part of the Contract. No Contract shall be a contract by sample.
(c) The Seller may alter the Specification for Goods:

6.  Despatch and Delivery

(a) For the purposes of this Condition 6, the “Goods” shall mean the Goods in their entirety where delivery is not by instalments or where delivery is by instalments, each instalment of the Goods.
(b) Unless otherwise agreed in writing by the Seller, delivery of the Goods shall take place at the place of business of the Buyer in the Order Acceptance at the “Point of Delivery”.
(c) Any stated delivery dates are an estimate and time for delivery shall not be of the essence. The Seller will use reasonable endeavours to meet any stated delivery date. If no delivery date is specified, delivery shall be within a reasonable time.
(d) THE SELLER SHALL NOT BE LIABLE FOR ANY LOSSES (AS DEFINED), CAUSED DIRECTLY OR INDIRECTLY BY ANY DELAY IN THE DELIVERY OF THE GOODS EVEN IF CAUSED BY THE SELLER’S NEGLIGENCE.

7.  Force Majeure

(a) If the Buyer has not provided appropriate instructions, documents, licences or authorizations for the Goods when they are tendered by the Seller for delivery then, except where such failure is caused by a Force Majeure Event, the Buyer shall have no liability for any losses or losses for the Buyer to the give the Seller adequate and accurate information or instructions in respect of the Goods.
(b) All drawings, designs, and quotations for which goods are not subsequently ordered by the Buyer shall remain the property of the Seller and be treated as confidential by the Buyer and not used in any way. The Seller shall have no liability in relation to any such drawings, designs or quotation.

8.  Sale of Goods

(a) The price of any of the goods or services (or both) offered for sale or supply, any existing quotation in respect of those goods or services (or both) shall be deemed to be automatically withdrawn and the Seller shall issue a new quotation.

9.  Delivery of the Goods

(a) Any delivery notices of a quotation at any time within the period of validity of the quotation and before the Contract is formed. In the event that the Seller changes the price of any of the goods or services (or both) offered for sale or supply, any existing quotation in respect of those goods or services (or both) shall be deemed to be automatically withdrawn and the Seller shall issue a new quotation.

10.  Losses

(a) The prices stated in the quotations are exclusive of GST and any other applicable taxes and duties or similar charges.
(b) All other Conditions may be extended by additional terms and conditions issued by the Seller in writing and confirmed in the Order Acceptance.
(c) Any quotations issued by the Seller shall not constitute an offer and is given on the basis that no Contract shall come into existence unless and until the Seller dispatches an Order Acceptance to the Buyer.
(d) All performance figures, descriptions (other than any description set out in the Specification for Goods), drawings and samples of Goods are approximate only being intended to serve merely as a guide. The Seller shall not be liable for their accuracy and they shall not form part of the Contract. No Contract shall be a contract by sample.
(e) The Seller may alter the Specification for Goods:

11.  Terms and Conditions

(a) The Supplier shall be deemed not to be liable for any losses or losses for the Buyer to the give the Seller adequate and accurate information or instructions in respect of the Goods.
(b) All drawings, designs, and quotations for which goods are not subsequently ordered by the Buyer shall remain the property of the Seller and be treated as confidential by the Buyer and not used in any way. The Seller shall have no liability in relation to any such drawings, designs or quotation.

12.  Sale of Goods

(a) The price of any of the goods or services (or both) offered for sale or supply, any existing quotation in respect of those goods or services (or both) shall be deemed to be automatically withdrawn and the Seller shall issue a new quotation.
7. Title

(a) The title in the Goods supplied shall not pass to the Buyer until receipt by the Seller in cleared funds of payment in full (including payment of any default interest) for:

(i) any other goods or services the Seller has supplied to the Buyer and in respect of which payment is due.

(b) Unless otherwise agreed in writing by the Seller, the title in the Goods passes to the Buyer shall:

(i) be a takeover of the Goods;

(ii) the Goods separately from all other goods held by the Seller so that the Goods remain readily identifiable as the Seller’s property;

(iii) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;

(iv) not fix or annex the Goods to or merge the Goods with any part of the Buyer’s premises, plant or equipment without the Seller’s prior consent in writing;

(v) be free of material defects in material or workmanship;

(vi) keep the Goods in good working condition;

(vii) keep the Goods insured against the loss or damage for which the Seller would be liable under a policy noted on the insurance policy until title in the Goods passes to the Buyer. If the Buyer fails to insure the Goods the Seller may do so instead on behalf of the Buyer, who shall reimburse the Seller on demand.

8. Warranty for Goods

(a) Subject to Condition 8(b), the Seller warrants that on delivery, and for a period of twelve (12) months from the date of delivery the Goods shall:

(i) conform with the Specification for Goods; and

(ii) be free from any defects in material or workmanship;

(b) In respect of Goods which are packaged or electrically or electronically controlled or actuated Goods, the Seller warrants that on delivery, and for a period of 12 months from the date of delivery such Goods shall:

(i) conform with the Specification for Goods; and

(ii) be free from material defects in material or workmanship;

(c) Subject to the remainder of this Condition 8, the Seller warrants that if the Buyer returns the Goods within the relevant warranty period for such Goods (as set out in either Condition 8(a) or 8(b)) and on the Seller’s examination such Goods prove defective as to material or workmanship or as to compliance with the relevant Specification for Goods the Seller shall:

(i) give notice to the Buyer that such Goods prove defective as to material or workmanship or as to compliance with the relevant Specification for Goods and

(ii) following give notice thereof to the Buyer;

(aa) with respect as the Goods which have been manufactured by the Seller, make good the defect without charge by (at the Seller’s option) replacing the defective Goods, replacing defective components of the defective Goods, repairing the defective Goods or otherwise correcting as the case may be the defect or its consequences;

(bb) with respect to Goods which have been supplied, but not manufactured by the Seller, and to the extent that it is entitled to do so, assign or at its discretion use its reasonable endeavours otherwise to make available to the Buyer, at the Buyer’s cost and on the basis of an indemnity (secured if appropriate) against all Losses that may be incurred by the Buyer in relation thereto, the benefit of any obligations that may be owed to the Seller by the manufacturer and/or supplier of the Goods or any part or component thereof

(d) The above warranties shall apply except where the defect in the Goods:

(i) is a result of fair wear and tear or partial or deterioration of the Goods which is necessarily incidental to the transit of the Goods;

(ii) has been caused while the Goods were at the Buyer’s risk:

(aa) as a result of the fault of the Buyer or its employees, agents, consultants or subcontractors;

(bb) as a result of the occurrence of an accident;

(cc) failure by the Buyer to follow the Seller’s instructions in relation to the storage, use, installation, commissioning or maintenance of the Goods;

(dd) failure by the Buyer to follow good trade practice;

(ee) the Buyer altering or repairing such Goods without the consent in writing of the Seller;

(ff) the application by the Buyer of any abnormal conditions such as (without limitation) waterhammer, corrosive attack or excessive dirt in the system, RFI or electrical supply failure.

(e) As provided in this Condition 8, the Seller shall have no liability to the Buyer in respect of the Goods failure to comply with the warranties set out in this Condition 8.

(f) The terms of these Conditions shall apply to any repaired or replaced Goods supplied by the Seller under Condition 8(c).

9. Returns

(a) The Buyer shall not return the Buyer for any amounts paid by the Buyer in the event that the Buyer returns the Goods (or part thereof) except with the Seller’s prior consent in writing. Where such consent is given, the Buyer agrees to pay to the Seller a minimum handling charge of thirty percent (30%) of the invoiced value.

(b) In the event that the Buyer returns the Goods for any reason other than for a defect in the Goods, the Buyer shall be solely responsible for and shall keep the Seller indemnified against all losses incurred by the Seller in relation to any use of the Goods other than in strict accordance with the Seller’s installation, operating, and maintenance instructions.

10. Export Sales

(a) Where goods are supplied for export from India following additional Conditions shall apply, and where there is any conflict between the provisions of this Condition 11 and any other Conditions, the provisions of this Condition 11 shall prevail.

(b) Charges for the cost of export delivery and documentation shall be as stated in the Contract.

(c) Unless otherwise agreed between the Seller and the Buyer in writing, payment shall be made by the Buyer by an irrevocable letter of credit satisfactory to the Seller, established by the Buyer in favour of the Seller in accordance with the letter of credit:

(i) issued by a bank in India which is a member of the International Chamber of Commerce (INCOTERMS);

(ii) in the event the documents set out in the letter of credit are for delivery ex works India, the Seller will invoice the Goods at a pro rata contract rate against any invoice submitted to the Buyer for the Services.

(d) The party which is exporting, in the case of exports, or the party which is importing, in the case of imports, will be responsible for obtaining all necessary licences, or other governmental authorisations required in connection with any export, re-export, or imports, as the case may be, under the relevant laws of the country of import other than the country of export. The party Exporting will be responsible for obtaining all necessary export licences, insurance and documents required in connection with the Goods.

(e) The Buyer shall be responsible for paying all costs of transport and insurance associated with the Goods.

(f) In the event the party exporting, is the party importing, the Buyer shall be responsible for obtaining all necessary licences, or other governmental authorisations required in connection with any export, re-export, or imports, as the case may be, under the relevant laws of the country of import other than the country of export. The party Exporting will be responsible for obtaining all necessary export licences, insurance and documents required in connection with the Goods.

(g) The party Exporting shall:

(i) offer the Goods for resale in any country where the Buyer knows the export of the Goods is prohibited by the US Government, the UK Government, the UN, the EU, the Government of India, or any other relevant organisation;

(ii) notify the Seller to that effect and that person the Buyer knows or suspects will subsequently resell the Goods in a country where the Goods prohibited by the US Government, the UK Government, the UN, the EU, the Government of India or any other relevant organisation.

(h) The Buyer acknowledges that the Buyer for all liabilities, losses, damages, costs and expenses awarded against or incurred by the Seller arising out of in connection with any breach of the Seller’s obligations contained in Condition 11(g).

(i) The Buyer agrees to provide the Seller with any information the Seller reasonably requires concerning the destination and use of the Goods, to allow the Seller to comply in full with any relevant export legislation.

SUPPLY OF SERVICES

12. Period of Supply

(a) Any dates specified in the Order Acknowledgement, the agreement for the supply of the Services shall be for a period of one (1) year from the date the Seller issues an Order Acknowledgement to the Buyer in accordance with Condition 3(d) (the “Term for Services”).

(b) The Seller reserves the right to increase its price for the Services at any time during the Term for Services. The Seller will give the Buyer notice in writing of any such increase not less than eight (8) weeks before the proposed date of the increase. If such increase is not acceptable to the Buyer, it shall notify the Seller in writing within two (2) weeks of the Seller’s notice and the Seller shall have the right, without limiting its other rights or remedies, to terminate the Contract by giving four (4) week’s notice in writing to the Buyer.

13. Performance of Services

(a) The Seller agrees to provide the Services in accordance with the Specification for Services in all material respects, and to supply as necessary spare or replacement parts and/or consumables, to the Buyer’s plant and/or equipment at the Site(s) specified in the Seller’s Order Acknowledgment.

(b) The Seller shall use reasonable endeavours to ensure that the Services are performed to a level of performance that such supply will be strictly in accordance with the terms of this Conditions.

(c) Any stated performance date is an estimate only and time for performance of the Services shall not be of the essence. The Seller shall use reasonable endeavours to meet any stated performance date. If no date for performance of any of its obligations to the Buyer is specified, the Services shall be performed within a reasonable time.

(d) Any delays in performance of the Services shall not entitle the Buyer to terminate or rescind the Contract unless such delay exceeds one hundred and eighty (180) days.

(e) The Seller’s performance is conditioned upon the Buyer’s compliance with the Seller’s performance is conditioned upon the Buyer’s reasonable performance of its obligations to the Seller. The Buyer agrees to take all reasonable steps to ensure the Buyer’s performance of its obligations to the Seller.

(f) If the Seller’s performance of the Services is prevented or delayed by the Buyer or by the failure of the Buyer to perform any of its obligations under the Contract ("Buyer Default") then upon the Seller giving the Buyer notice in writing the Buyer shall:

(i) the Seller shall not be liable for any Losses incurred by the Buyer arising directly or indirectly from the Buyer Default until the Buyer Default is cured; or

(ii) the Seller shall not be liable for any Losses incurred by the Buyer arising directly or indirectly from the Buyer Default until the Buyer Default is cured; or

(iii) the Seller shall be liable for all Losses incurred by the Buyer arising directly or indirectly from the Buyer Default until the Buyer Default is cured.

(g) The Seller reserves the right, at the Seller’s discretion, to employ subcontractors to perform all or any part of the Services (including, without limitation, to commission, install, maintain or repair any parts or equipment) on behalf of the Buyer.

14. Indemnity

(a) The Seller warrants that in providing the Services shall reason care and attention and that it will comply with all applicable laws and regulations. However the Seller excludes liability for all Losses arising directly or indirectly out of any failure or diminution in performance of the Buyer’s plant or equipment caused by the plant or equipment, or any part thereof.

(i) being used or operated otherwise than in accordance with any applicable instruction, maintenance or operational instructions; or
18. Trade Prohibitions

The Buyer agrees to forward the reconditioning invoice or the invoice of any part of the Buyer's plant or equipment that, in the reasonable opinion of the Buyer, cannot be suitably or economically repaired on site. The Seller reserves the right to amend the scope of the Services as its absolute discretion it considers necessary.

14. Access to Buyer’s Site(s)

The Buyer agrees (at the Seller's request and expense) to do all such things as may be reasonably required to assist the Seller in taking or resisting any proceedings in relation to any infringement or claim referred to in sub-paragraph (d) above. Following any visits by the Seller's employees, agents, consultants or subcontractors, the Buyer will be responsible for the reinstatement of any pipe lagging and the dismantling of any scaffolding erected.

The Buyer shall not re-package the Goods and shall not without the Seller's prior consent in writing allow any trade marks of the Seller or other words or marks applied to the Goods to be obliterated, obscured or

All Intellectual Property Rights in the materials, equipment, documents and other property of the Seller are the exclusive property of the Seller or of its licensors and shall be returned to the Seller on demand.

The Buyer undertakes to the Seller that the Buyer shall not re-sell or otherwise supply the Goods to a third party which is the subject of any statutory trade prohibition of the United Stated of America or a member state of the United Kingdom. The Buyer warrants to the Seller that the Buyer's plant and equipment is supplied with water at a quality that complies with BS2486 or any other applicable equivalent standard, and is compliant with any additional safety laws or regulations or common law in relation to any part of the Buyer's site(s).

The Buyer agrees to pay each invoice submitted by the Seller:

(i) within the earlier of 30 (thirty) days of the invoice or such other period of time after the issue of the invoice as has been agreed in the Contract;

(ii) no later than the time the payment is due for the supply of the Services or the Goods.

The Buyer shall pay each invoice submitted by the Seller:

(i) no later than the time the payment is due for the supply of the Services or the Goods.

(ii) no later than the time the payment is due for any Services.

(iii) on demand

The Buyer will provide the Buyer with an estimate of reconditioning charges for each item and if the Buyer does not agree to have the item(s) reconditioned, the Seller reserves the right to amend the scope of the Services as its absolute discretion it considers necessary.

10. Payment and Other Buyer Obligations

(a) In respect of the Goods, subject to Condition 15(d) the Seller shall invoice the Buyer for the full purchase price of the Goods on or at any time after the despatch of the Goods.

(b) The Buyer agrees to pay, or procure payment on behalf of the Buyer, for each item of Goods ordered either at the time of order or at any time thereafter as stated in the Contract.

(c) No contract shall be cancelled by the Buyer except with the Seller's prior consent in writing.

(d) If the Buyer shall not make payment of the invoice or any part thereof at the time the payment is due, the Buyer shall pay interest on the outstanding amount at the rate the Seller applies to its own equipment.

(e) The Buyer shall, on receipt of a valid GST invoice from the Seller, pay to the Seller such additional amounts in respect of GST as are chargeable on the supply of the Goods or the Services at the same time as payment is due.

(f) The Buyer may re-sell the Goods subject to the Seller's right to control the use of its trade marks within the jurisdiction into which the Goods are sold and the Buyer shall assist the Seller as required in preventing or stopping parallel importers from diluting the Seller's rights; and

(g) The Buyer may re-sell the Goods subject to the Seller's right to control the use of its trade marks within the jurisdiction into which the Goods are sold and the Buyer shall assist the Seller as required in preventing or stopping parallel importers from diluting the Seller's rights; and

(h) The Buyer may re-sell the Goods subject to the Seller's right to control the use of its trade marks within the jurisdiction into which the Goods are sold and the Buyer shall assist the Seller as required in preventing or stopping parallel importers from diluting the Seller's rights; and

(i) The Buyer may re-sell the Goods subject to the Seller's right to control the use of its trade marks within the jurisdiction into which the Goods are sold and the Buyer shall assist the Seller as required in preventing or stopping parallel importers from diluting the Seller's rights; and

(j) No contract shall be cancelled by the Buyer except with the Seller's prior consent in writing.

(k) The Buyer undertakes to the Seller that the Buyer shall not re-sell or otherwise supply the Goods to a third party which is the subject of any statutory trade prohibition of the United Stated of America or a member state of the United European Union or the Republic of India ("Sanctioned Third Party").

(l) Without prejudice to Condition 16(a), if the Seller shall have notice of or reasonable grounds to believe that the Buyer intends to re-sell or otherwise supply the Goods to a Sanctioned Third Party the Seller may upon
22. Confidentiality
Each Party and the Buyer (the “Receiving Party”) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party (the “Disclosing Party”), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party’s business, its products and services which the Disclosing Party may obtain. The Receiving Party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the Receiving Party’s obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in Condition 22 as though they were a party to the Contract. The Receiving Party may also disclose such of the Disclosing Party’s confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction. This Condition 22 shall survive termination or cancellation of the Contract.

23. Miscellaneous
(a) The Seller’s rights under these Conditions are in addition to any other rights which the Seller may have under the general law or otherwise.
(b) If the Buyer comprises two or more persons, their obligations are joint and several.
(c) The Seller shall not assign, transfer, mortgage, charge, sub-contract, or otherwise dispose of or deal in any Contract or any rights or obligations (or both) (as applicable) thereunder in whole or in part without the Seller’s prior consent in writing. Any such action purported to be taken by the Buyer without the Seller’s prior consent in writing shall be void.
(d) The Seller may at any time assign, transfer, mortgage, charge, sub-contract or otherwise dispose of or deal in its rights or obligations (or both) (as applicable) under any Contract or any part of it to any person, firm or company.
(e) Any waiver by the Seller of any right under the Contract or law will only be effective if it is in writing. Any failure or delay by the Seller in exercising, or any partial exercise of the Seller, of any right or remedy under the Contract or by law shall not constitute as a waiver of that or any other right or remedy. No single exercise by the Seller shall prevent the further exercise of that or any other right or remedy.

24. Notices
Any notice to be given by the Buyer under these Conditions or any relevant Contract to the Seller shall be in writing and given by prepaid first class post or hand-delivered to Spirax-Sarco India Private Limited or to such other address or for the attention of such person as the Seller may notify to the Buyer.

Any notice to be given by the Buyer under these Conditions or any relevant Contract to the Seller shall be in writing and given by prepaid first class post or hand-delivered to any address from which the Seller has received communications from the Buyer in connection with those Conditions or the Contract.

Notices shall be deemed to have been received:
(i) if sent by prepaid first class post, two (2) Business Days after posting (exclusive of the day of posting); or
(ii) if delivered by hand, on the day of delivery.