

# ETA TECHNOLOGY PRIVATE LIMITED - GENERAL TERMS AND CONDITIONS OF SALE

## 1. INTERPRETATION AND DEFINITIONS

- 1.1. Clause headings in the Contract (*as defined herein*) are for ease of reference only and shall not affect the interpretation of the Contract.
- 1.2. ETA and the Client shall act as stated in the Contract and in a spirit of mutual trust and co-operation.
- 1.3. "**Client**" means the person, firm or company by whom the Purchase Order is addressed to ETA, and shall include the Client's personal representatives, successors and permitted assigns.
- 1.4. "**Completion Date**" means the date for delivery of the Equipment Ex Works or completion of the Services as specified in the Purchase Order.
- 1.5. "**Contract**" means the agreement between ETA and the Client, including the Purchase Order, Order Acceptance, these General Conditions and any Special Conditions, for the supply of the Equipment or performance of the Services.
- 1.6. "**Contract Price**" means the sum or sums stated as the price in the Purchase Order for delivery of the Equipment Ex Works.
- 1.7. "**Equipment**" means all goods, materials, plant, equipment and Services to be supplied by ETA under the Contract.
- 1.8. "**ETA**" means 'ETA Technology Private Limited' and includes ETA's successors and assigns.
- 1.9. "**Force Majeure**" means any circumstances, which could not have been contemplated and is beyond the reasonable control of the Parties, including but not limited to,:
  - a. any natural phenomena, including but not limited to, weather conditions, floods, drought, earthquakes and epidemics; or
  - b. acts of any governmental authority, domestic or foreign, including but not limited to, any emergency, declared or undeclared priorities, guarantees, embargoes, control or production or distribution, restrictions, power cuts/shortage; or
  - c. accidents and/or disruptions, including but not limited to, fires, explosions, break-down of essential machinery or equipments or power shortage; or
  - d. transportation delay due to any Force Majeure, non/availability of railway booking or accidents; or
  - e. strikes, slow down, lockouts and/or sabotage; or
  - f. failure or delay in availability of any raw materials or components etc. due to any Force Majeure.
- 1.10. "**General Conditions**" means these 'General Terms and Conditions of Sale' for the supply of Equipment or the performance of the Services.
- 1.11. "**INCOTERMS**" means the latest edition of trade terms published from time to time by the International Chamber of Commerce.
- 1.12. "**Intellectual Property Rights**" means all intellectual property whether registered or unregistered including, without limitation, patents, patentable inventions, trademarks, trade names, logos, know-how, copyrights, database rights, models, formulae, software, source codes, registered design, designs and trade secrets and all rights to use such intellectual property.
- 1.13. "**Party**" or "**Parties**" means, as the context so requires, ETA and the Client, individually or collectively.
- 1.14. "**Purchase Order**" means a document issued by Client to ETA detailing the Equipment, the Services, Contract Price and any Special Conditions.
- 1.15. "**Order Acceptance**" means a document by ETA to client accepting the Purchase Order along with deviations to Purchase Order conditions
- 1.16. "**Services**" means the provision of any installation work or other activity undertaken by ETA at site or otherwise
- 1.17. "**Site**" means a location stated in the Purchase Order where Services are to be provided.
- 1.18. "**Special Conditions**" means any additions or alterations to these General Conditions as stated in the Purchase Order.

## 2. PERFORMANCE OF THE CONTRACT

- 2.1. ETA shall supply the Equipment as per the terms of the relevant Purchase Order and shall ensure that the Equipment complies with the Contract. All Purchase Orders issued by the Client to ETA, shall be binding upon the Client and cannot be revoked without the prior written consent of ETA.
- 2.2. ETA shall be responsible for executing the Contract with all reasonable skill, care and diligence and in accordance with recognised industry standards, and any standards, specifications and codes specified, in writing, by ETA and the Client mutually in the Contract. Whilst on Site, the Supplier shall also comply with all regulations, statutory requirements, Site safety rules and all directions of the Client, if any, as communicated to ETA in writing by the Client.

- 2.3. The Equipment or Services supplied shall be of the quality and shall conform to the performance requirements stated in the Contract, or where not stated shall be fit for the purposes intended, and shall conform to all applicable laws and regulations, and any other requirements made known to ETA by the Client.
- 2.4. If any of the Equipment or Services to be supplied under the Contract contains or uses any hazardous substances, or requires any special precautions to be taken to ensure safety in handling, transport, storage or use, then ETA shall, prior to Equipment delivery or commencement of Services, provide to the Client written details of the nature of those substances and the precautions to be taken. Further, ETA shall ensure that, before despatch or commencement of Services, appropriate instructions and warnings are clearly and prominently marked on the Equipment and on any containers into which it is packed.

## 3. INSPECTION, TESTING, ACCEPTANCE AND DELIVERY

- 3.1. ETA shall deliver the Equipment Ex/our Works by the Completion Date. Delivery shall be in accordance with the latest edition of INCOTERMS as stated on the Purchase Order. Where Services are to be provided, they shall commence on the date stated in the Purchase Order and continue for the duration stated therein, or by the stated Completion Date.
- 3.2. Transit insurance is excluded from the Contract Price and the same has to be arranged by the Client.
- 3.3. Upon delivery by ETA Ex Works, inspection and testing of the Equipment as per mutually agreed acceptance criteria, shall have to be carried out by the authorized representative of the Client at the sole cost of the Client.
- 3.4. When the Equipment has been delivered and installed in accordance with the mutually agreed Contract, and has passed all required inspection and testing, it shall be deemed to have been accepted by the Client.
- 3.5. The Client or its nominated representatives shall have the right, on reasonable prior notice, to inspect the Equipment at any time prior to despatch and if, in its reasonable opinion, any part of the Equipment is defective or otherwise does not conform with the Contract, the Client may request ETA, in writing, to rectify the defect or the non-conformity. ETA shall give the Client at least five (5) working days notice in writing of any tests that the Client requires to have witnessed.]
- 3.6. The Client shall have the right for its representatives to carry out quality audits and expediting activities, at the sole cost of the Client, at ETA's premises, on reasonable prior notice to ETA and during normal working hours of ETA, in respect of any part of the Contract requirements

## 4. EXTENSION OF TIME

- 4.1. If ETA is delayed in completing the Contract by any act or omission of the Client, then ETA shall promptly notify the Client of such delay. The Client shall grant ETA such extension of time, as may be reasonably required by ETA towards completion of the Contract.
- 4.2. Orders once placed by the Client by way of the Purchase Order can only be cancelled/altered, when ETA receives such written request for cancellation/alteration prior to commencement of any design or drawing work, material procurement and/or manufacture. In such an event, the Client shall be required and hereby agrees to additionally pay to ETA, [ten (10) of the value of incidental expenses borne by ETA towards such orders, including any costs of materials or other goods ordered for which ETA is legally liable to accept delivery. However, if such written intimation is received by ETA after the design or drawing work, material procurement and/or manufacture has already progressed, the Client will be required to pay in addition to the incidental expenses, the full amount as quoted in the relevant Purchase Order that has become due for payment to ETA, to the extent of work completed, and as determined by ETA and the consequences as enumerated in Clause 12 shall follow.
- 4.3. Either Party will not be liable to the other for any delay in or failure to perform its obligations as a result of an event of Force Majeure. The Party, which is affected by Force Majeure, shall notify the other Party within five (5) days from the date of occurrence of such circumstances. The Parties shall take all reasonable measures to mitigate the effects of any such delay or failure. In the event of Force Majeure, the Completion Date hereunder shall be extended according to the time during which such Force Majeure and/or their consequences take place.

## 5. PATENTS, DESIGNS AND COPYRIGHT

- 5.1. The Intellectual Property Rights in all plans, drawings, designs, specifications and all other documents provided by ETA (which shall not include any materials, drawings, specifications and other data or information provided to ETA by the Client) shall remain with ETA. ETA shall provide the Client, worldwide and royalty-free right to use copies of such documents, which are provided to the Client under the Contract for use in the operation, maintenance and repair of the Equipment and Services and the design of other works necessary for operation in association with the Equipment and Services.

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- 5.2. Notwithstanding anything contained hereinabove, ETA will have no obligation under this section if an alleged breach, infringement or violation is based upon the use of the Equipment in combination with other equipment/ hardware/ software/services not furnished by ETA or if such claim arises from ETA's compliance with the Client's designs, specifications or instructions. In this regard, the Client will indemnify ETA and hold it harmless from any claims by third parties arising from, or related to such breach, infringement or violation.
- 5.3. Unless agreed otherwise in writing by authorised representatives of both Parties, and notwithstanding anything stated herein, in the event the Purchase Order requires the purchase of any software ("Software"), then,
- all Intellectual Property Rights created and/or owned by ETA prior to the date of this Contract in relation to the Equipment and/or Services, including any derivatives, enhancements or modifications to such material, shall remain the exclusive property of ETA and ETA shall retain all rights to any residual know-how, ideas and concepts and knowledge used for delivering the Equipment and/or the Services;
  - ETA shall license such Intellectual Property Rights contained in the Software, to the Client on an irrevocable, worldwide, royalty-free and perpetual basis to the extent necessary to enable the Client to use, operate, maintain, repair or otherwise supply and deal in the Equipment or the Services (including any modification, alteration or extension of the same); and
  - all Intellectual Property Rights created and/or developed during the course of this Contract and/or in connection with the Equipment or Services shall be owned exclusively by ETA. The Client agrees to assist ETA, to obtain for ETA and enforce patents, copyrights, mask work rights, trade secret rights and other legal protections for all Intellectual Property Rights created and/or developed during the course of this Contract and/or in connection with the Equipment or Services, in any and all countries at the sole and entire cost of ETA. The Client agrees to execute documents that ETA may request for use in obtaining or enforcing such patents, copyrights, mask work rights, trade secrets and other legal protections at the sole and entire cost of ETA.
- 6. SUBCONTRACTING AND ASSIGNMENT**
- 6.1. ETA may subcontract the Contract or any part thereof, without the requirement to take any prior approval of the Client.
- 6.2. ETA shall not assign or transfer the Contract without the prior written approval of the Client.
- 7. LIABILITIES, INDEMNITIES AND INSURANCE**
- 7.1. Equipment and/or Services will be provided wholly in accordance with the instructions and specifications provided by the Client to ETA. ETA, its officers, directors, employees, consultants, shareholders, contractors, associates, representatives, agents and authorized personnel shall be indemnified and held indemnified against all claims, demands, losses, liabilities, damages and expenses, including but not limited to legal fees, arising from, (a) ETA's supply of Equipment and/or Services as per the Contract; whether for infringement, breach or damage to any intellectual or other proprietary rights of any third party, provided that any such claims, demands, losses, liabilities, damages or expenses do not arise directly from ETA's or its personnel's negligence or wilful misconduct, or (b) the Client's material breach of any obligations, representations or warranty provided under the Contract.
- 7.2. Notwithstanding anything else in the Contract or otherwise, neither ETA nor any of its employees, officers, shareholders, contractors, associates, directors, representatives, consultants, agents/authorized personnel shall be liable under the Contract or under any other contract, tort, negligence (except where the conduct of ETA or its personnel is intentional), strict liability or other legal or equitable theory, in connection with the Contract:
- for any loss or damage caused to the Client or other parties arising out of or in connection with, any delay in ETA's performance hereunder, or, the Client or other parties' inability to use the Equipment, or, any defect or nonconformity therein.
  - towards expressed or implied warranty, negligence or any other tort for loss or damage to property or loss of use thereof, increased or additional costs or expenses incurred by the Client, or, claims of any kind by the Client's customers or other third parties.
  - for any indirect, special, incidental or consequential damages, including, but not limited to, loss of business, loss of profits, loss of data or use of data or interruption of business, regardless of whether it has been advised of the possibility of such damages.
- 7.3. To the maximum extent permitted at law, and notwithstanding anything contained in this Contract to the contrary, ETA's total liability to the Client, whether arising in contract, tort, negligence, warranty or otherwise, shall not exceed the Contract Price (including any agreed amendment thereto) in relation to which the liability arose.
- 7.4. Client shall be responsible for maintaining any product liability insurance covering all Equipment delivered by ETA to the Client, at its expense, if required by law or policies.
- 8. TERMS OF PAYMENT**
- 8.1. Timely payment of the Contract Price due and payable under the Contract, is the essence of the Contract.
- 8.2. The Contract Price is firm and shall exclude all applicable taxes, customs, fees, duties and delivery, in accordance with INCOTERMS as stated on the Purchase Order.
- 8.3. Invoicing schedule towards the Contract Price, shall be as enumerated under the Purchase Order.
- 8.4. ETA shall raise invoice on the Client as per the invoicing schedule and the Client shall make payment to ETA within Seven (7) days from the date of the invoice. Any amount not paid when due, will bear interest until paid at a rate of interest equal to the lesser of One (1) % per month or the maximum rate of interest allowed by applicable law. In addition, Client will reimburse ETA for any reasonable legal fees and other costs and expenses incurred in collecting past due amounts.
- 8.5. If the Client fails to make such payments together with the applicable rate of interest, if any, within **Forty Five (45)** days from the due date, ETA shall have the right to forthwith terminate this Contract by intimating the Client of the same in writing and the consequences of termination as enumerated in Clause 12 below shall follow.
- 8.6. Each Party shall be responsible for the payment of all applicable taxes in accordance with the laws governing such Party.
- 9. OWNERSHIP AND RISK**
- 9.1. Since Equipments are delivered Ex Works, All risk in the Equipment or Services will be transferred to the Client on the Completion Date.
- 9.2. Title or property in the Equipment or Services shall pass to the Client, only upon complete payment of the Contract Price by the Client to ETA.
- 10. WARRANTY**
- 10.1. Standard Equipments and/or Services purchased by the Client shall carry the guarantee/warranty only as provided by the original manufacturers/suppliers and it is expressly understood that ETA's liability for the same shall be confined to that extent only.
- 10.2. ETA manufactured Equipment/parts and/or ETA provided Services shall carry a warranty for a period of 12 (twelve) months from the Completion Date or one month from the machine reaches at customer site ("**Warranty Period**"), whichever is earlier and shall cover free replacement/ repair due to defective material, faulty design, or inferior workmanship which can be solely attributable to ETA. Upon completion of the Warranty Period, ETA shall have no further liability whatsoever in this regard.
- 10.3. Notwithstanding anything stated herein, ETA shall not be liable for any guarantee/warranty claim which may arise under the below mentioned circumstances:
- Improper handling or storage or abuse or misuse by the Client or its personnel after despatch by ETA; or
  - Faulty erection / installation / operation by the Client or its personnel; or
  - Overload of the Equipments by the Client or its personnel; or
  - Unauthorized alteration or modification or repair or use of the Equipments by the Client or its personnel; or
  - Use of the Equipments not being in accordance with ETA's user manual or operational manual or any usage instructions, if any, or
  - Normal wear and tear of the Equipments; or
  - As a result of an event of Force Majeure; or
- 10.4. No consequential liabilities or damages are accepted by ETA.
- 10.5. Disclaimer: ETA does not warrant that the operation of the Equipment will be uninterrupted or error free, nor that the Equipment are vulnerable to fraud or unauthorized use. EXCEPT FOR THE WARRANTIES STATED HEREIN, ETA DISCLAIMS ALL WARRANTIES, CONDITIONS OR OTHER TERMS, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, ON EQUIPMENT AND/OR SERVICES FURNISHED HEREUNDER INCLUDING WITHOUT LIMITATION THE WARRANTIES OF DESIGN, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
- 11. CONFIDENTIALITY**
- 11.1. Parties shall keep all information communicated to the other Party in connection with the Contract, or otherwise concerning the Party's business, secret and confidential, and will not use the same except for the purposes of performing the Contract.
- 12. CONSEQUENCE OF CANCELLATION/ALTERATION INITIATED BY THE CLIENT AND/OR TERMINATION**

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- 12.1. In the event of cancellation/alteration initiated by the Client as stated in Sub-Clause 4.2, or, in the event of forthwith termination of this Contract by ETA stated in Sub-Clause 8.5, in addition to any incidental expenses, including, any costs of materials or other goods ordered for which ETA is legally liable to accept delivery, the full amount of the Contract Price shall, forthwith, become due for payment to ETA, to the extent of work completed, and as determined by ETA. Further, ETA shall, on request, deliver the Equipment completed on "as-is-where-is" basis, only after full payment of all dues by the Client. Until full payment of all dues by the Client, ETA shall have the first and paramount lien on the Equipment (or any part thereof that has been completed). Notwithstanding anything stated herein, the Client confirms and agrees that, if the Client fails to make full payment of all dues within [Sixty] (60) days from the due date, all the rights of the Client in and to the Equipment (or any part thereof that has been completed) shall cease and ETA shall have the right to sell or dispose off to any third party, in any manner that ETA deems fit, the Equipment (or any part thereof that has been completed) on which ETA had the lien.
- 12.2. Upon expiry or termination of the Contract, all tools, materials, drawings, specifications and other data or information provided by the Client to ETA shall be returned to the Client by ETA.

## 13. SEVERANCE AND INVALIDITY

- 13.1. If any term or provision in this Contract shall, in whole or part, be held to any extent to be invalid, illegal or unenforceable under any enactment or rule of law, that term or provision or part shall to that extent be deemed not to form part of this Contract, and the enforceability of the remainder of this Contract shall not be affected. If any provision proves to be invalid, illegal or unenforceable, the Parties shall replace the invalid, illegal or unenforceable provision by a valid new one having an effect as close as possible to the invalid, illegal or unenforceable provision.

## 14. ENTIRE AGREEMENT

- 14.1. This Contract and any associated Purchase Order issued by the Client and the Order Acceptance issued by ETA to client constitutes the entire agreement between the Parties for the Equipment or Services, and supersedes all representations or agreements relating thereto prior to the date of issue of the relevant Purchase Order, provided always that nothing in this Contract excludes liability for fraud or fraudulent misrepresentation.
- 14.2. The terms and conditions of the Contract do not derogate from any of the Parties' statutory or common law rights, and are in addition to those rights and not in substitution for them.
- 14.3. Any alteration to this Contract must be confirmed in writing by an authorised representative of both Parties in the form of a Purchase Order/ Order Acceptance in order to be effective. In the event of any inconsistency between these General Conditions and any Special Conditions, the latter shall prevail. In the event of any conflict or ambiguity between any other documents forming part of the Contract either Party shall refer the conflict to the other Party as soon as it becomes apparent. Parties shall mutually decide within five (5) working days which provision shall prevail and/or extension to the Completion Date.

## 15. WAIVER

- 15.1. Any failure or delay by any Party to exercise a right, power or remedy shall not operate as a waiver of such, nor will any partial exercise preclude any further exercise of the same, or of some other right, power or remedy.

## 16. NOTICES

- 16.1. Any notice to be given under the Contract by either Party shall be in writing, and sent by either post or electronic mail to the other Party at the address provided under this Contract, or such other address as may be specified by the Parties by notice to the other. In providing service it shall be sufficient to show that the envelope containing the notice was properly addressed and posted, or that the transmission was duly despatched and acknowledged as the case may be.

## 17. RELATIONSHIP

- 17.1. Nothing in this Contract shall be deemed to constitute either Party as a partner, agent, joint venture or employee of or with the other Party. Each Party is an independent entity retaining complete control over and complete responsibility for its own operations and employees. Neither Party shall have the right or authority to assume or create any obligations or commitments on the other Party's behalf.

## 18. DISPUTE RESOLUTION AND JURISDICTION

- 18.1. Mediation: In case of any dispute between the Parties in connection with the Contract or the interpretation of any of the terms and/or conditions contained in the Contract, the dispute shall be referred to private Mediation by a sole mediator accredited or certified by any High Court of the Republic of India and appointed mutually by the Parties. If the Parties are unable to resolve the dispute through mediation within 30 (thirty) days from the date of referral and

after attending at least 2 (two) sessions of Mediation, then the Parties may urge the dispute further.

- 18.2. Arbitration: In the event of failure to resolve the dispute through Mediation as set out above, the Parties shall be at liberty to refer the same for arbitration by a sole arbitrator appointed mutually by the Parties. Such arbitration shall be conducted in accordance with the Arbitration and Conciliation Act, 1996, as amended by the Arbitration and Conciliation (Amendment) Act, 2015 or any statutory amendment or re-enactment thereof for the time being in force.

- 18.3. Language and Venue: The mediation or arbitration shall be conducted in English and the venue for the same shall be in Bangalore, India.

- 18.4. Subject to the foregoing, the courts at Bangalore, India shall have exclusive jurisdiction.

## 19. GOVERNING LAW AND REGULATIONS

- 19.1. The Contract shall in all respects be governed by and construed in accordance with laws of India.

## 20. MISCELLANEOUS

- 20.1. Any provisions which by their nature are intended to survive the termination, completion or expiration of the Contract shall continue as valid and enforceable obligations of the Parties, notwithstanding any such termination, completion or expiration.