

## GENERAL TERMS AND CONDITIONS OF BHARAT FRITZ WERNER LIMITED

The General Terms and Conditions (“**T&Cs**”) of Bharat Fritz Werner Limited (“**Company**”) for any supply of products and/ or services to the Company are as set forth below:

### 1. INTERPRETATION

- 1.1. Capitalized terms defined by inclusion in quotations and/or parenthesis have the meanings so ascribed.
- 1.2. In these T&Cs the singular shall include the plural and vice versa; and use of gender shall be immaterial.
- 1.3. Any word or expression used in these terms shall, unless defined or construed in these T&Cs, bear its ordinary English meaning.
- 1.4. Clause headings are for ease of reference only and shall not be interpreted as part of these T&Cs.
- 1.5. Time is of the essence in the performance of the Vendor’s obligations under these T&Cs. If any time period specified herein is extended, such extended time period shall also be of the essence.
- 1.6. Payments under these T&Cs inter se the Company and the Vendor shall be made in INR. References to “INR” are to the lawful currency of India. References in these T&Cs to any amount in any currency other than INR shall be deemed to include reference to an equivalent amount in INR, using a rate of conversion from such currency to INR at the Reserve Bank of India’s reference rate as published on its website 1 (one) business day prior to the date of payment.

### 2. APPLICABILITY

- 2.1. These T&Cs govern the sale and supply of goods and/or of services to the Company by such persons, companies, firms, proprietorships, or entities to which a purchase order is addressed (“**Vendor**”).
- 2.2. The terms contained in these T&Cs together with the written information contained in the code of conduct applicable to Vendors (*attached as Annexure A*) (the “**Code of Conduct**”) and any purchase order issued by the Company along with all its attachments and all specifications, drawings, instructions and other written materials referred to therein (“**Purchase Order**”), shall apply to every Purchase Order issued to the Vendor from time to time.
- 2.3. The terms contained herein along with the terms in the Code of Conduct and in any particular Purchase Order shall constitute the entire agreement between the Company and the Vendor with respect to the purchase of the products and/ or services described in the Purchase Order and would supersede all prior oral and written communications relating thereto.

### **3. ACCEPTANCE OF TERMS**

- 3.1. The Vendor's acknowledgement of a Purchase Order or commencement or performance of services under any Purchase Order shall constitute Vendor's acknowledgement and acceptance of (a) the terms and conditions under the Purchase Order, and (b) these T&Cs and all terms, conditions and obligations herein (along with the terms, conditions and obligations under the Code of Conduct.
- 3.2. All the provisions of the Code of Conduct, the T&Cs and the Purchase order shall be binding on the Vendor.
- 3.3. These T&Cs, the Code of Conduct and the relevant Purchase Order shall prevail over any terms contained in any other confirmations, invoice, acceptance, or other written correspondence unless any term is specifically excluded or modified in writing and acknowledged and accepted by the Company.
- 3.4. The provisions under these T&Cs, the Code of Conduct and the Purchase Order shall be construed harmoniously. In case of any conflict or inconsistency between any provisions or term contained in the Purchase Order and any provision or term contained under these T&Cs and/ or the Code of Conduct, the terms set out in the Purchase Order shall prevail. In case of any conflict or inconsistency between any provisions or term contained in these T&Cs and any provision or term contained under the Code of Conduct, the terms set out in these T&Cs shall prevail.
- 3.5. No provision of these T&Cs may be amended or waived, except in writing by the Company. Any waiver by the Company to require strict compliance with these conditions in any respect shall not be deemed a waiver in other respects.

### **4. QUALITY**

- 4.1. The Vendor shall guarantee that the goods are brand new, unused, and correspond in all respects with the quality, specifications and performance as per the manner prescribed under the Purchase Order.
- 4.2. The Vendor shall provide performance guarantee of the products and services in the manner as prescribed under the Purchase Order.
- 4.3. The Vendor shall provide warranty for the supplied products for such period and in such manner as prescribed under the Purchase Order.
- 4.4. The Vendor shall provide sample/ dry-runs of the products or undertake such additional test as may be specified in the Purchase Order, at no cost to the Company.

### **5. INVOICES AND PAYMENTS**

- 5.1. The Vendor shall send acknowledgement of the Purchase Order in its own format or in the manner as prescribed under the Purchase Order.
- 5.2. The price for the goods and/or services shall be as stated in the Purchase Order and shall be fixed. Where no price is stated, it shall be subject to agreement in writing by the Company pursuant to Clause 11.2.

- 5.3. Variation of price will be effective only with the prior written consent of the Company or as set out in a subsequent Purchase Order.
- 5.4. The Vendor shall raise the invoice in the manner and within the time prescribed under the Purchase Order.

**6. DELIVERY, DELAY AND PENALTY FOR DELAYED DELIVERY**

- 6.1. The Vendor shall make diligent efforts to deliver the products and/or services to the delivery point and on the delivery date as specified in the Purchase Order (“**Delivery Date**”) or such other delivery address or time as may be agreed to in writing by the Company. Vendor shall notify the Company in the event that timely performance under a Purchase Order is delayed or likely to be delayed with all available information regarding the reasons for such delay. Such notice shall not constitute a waiver by the Company of any of the Vendor’s obligations hereunder. If the Vendor fails to deliver the products and/or services on or before the Delivery Date, the Company reserves the right to terminate the Purchase Order in the manner as prescribed under the Purchase Order.
- 6.2. The Vendor must not provide delivery prior to the contractual delivery date without obtaining the prior written approval of the Company. If such approval is not obtained the Company may at its discretion refuse such delivery.
- 6.3. Without prejudice to the aforesaid, for delivery beyond the delivery date specified in the Purchase Order, the Company shall deduct such penalty at such rate as may be specified in the Purchase Order.
- 6.4. All products shall be delivered at the address set forth in the respective Purchase Order without charge to the Company for crating or storage. Other than the freight charges for ex work shipments or unless otherwise provided in the Purchase Order, all customs, duties, costs taxes, insurance premiums and other expenses relating to such transportation and delivery shall be at Vendor’s sole cost and expense.
- 6.5. Unless otherwise stated, Vendor shall be responsible for obtaining at its cost any licenses or consents necessary for delivery of the products to the delivery address, including any export/import licenses, customs documentation or permits.
- 6.6. Without prejudice to any other rights of the Company, goods not dispatched in time to reach the specified delivery point by the specified delivery date shall be delivered at the expense of the Vendor to such address and by such means as the Company may reasonably require. In case of any deviation in delivery from the time specified, the Company shall have the right to cancel the Purchase Order without any liability to its account.

**7. PACKING**

- 7.1. The Vendor shall pack and handle the products ordered by the Company so as to protect the products from loss or damage in accordance with good commercial practice and as per the specifications as prescribed (if any) under the Purchase Order.

- 7.2. Vendor shall be liable to, with all possible speed, repair or replace any goods lost or damaged in transit and shall promptly refund to the Company the amount of any loss or damage due to Vendor's failure to properly handle such products.
- 7.3. The Vendor shall accompany with each shipment or dispatch a packing list, which sets forth the number of the applicable Purchase Order, a description and the quantity of each of the products shipped and the date of shipment, or a list in the manner as prescribed under the Purchase Order.
- 7.4. The Vendor shall not charge the Company for any pallets, containers or packaging and the Company shall not be responsible for storage or return of such pallets, containers or packaging.

## **8. PROPERTY AND RISK**

- 8.1. The property and risk in the goods and products shall remain with the Vendor (who shall, unless otherwise specified in the Purchase Order, insure the same against all risks which can be reasonably contemplated) until they are delivered to the Company at the address specified in the Purchase Order whereupon it shall pass to the Company. It shall be the Vendor's responsibility to unload its vehicles and deliver the goods to the Company's premises subject to the Company's right of rejection, the property in the goods shall pass to the Company on acceptance.
- 8.2. In the case of services, the risk remains with the Vendor until completion thereof in accordance with the Purchase Order.

## **9. ACCEPTANCE OF PRODUCTS AND SERVICES; QUALITY CHECKS**

- 9.1. The Vendor acknowledges that deliveries and consignments of goods or services to the Company's works are accepted in an unexamined state and are not inspected by the Company's stores personnel. The Company may visually inspect samples of goods or services so delivered. The Company reserves the right to pursue the course(s) of action specified in Clause 9.6 below, if in the opinion of the Company's inspectors that examination or any subsequent examination or any quality testing of the goods (following incorporation of the goods into the final product or otherwise) renders such a course appropriate.
- 9.2. The Vendor shall strictly comply with the requirements set out in the Purchase Order and all goods and/or services supplied must be in accordance with the Purchase Order and with the full technical specifications, samples or drawings specified by the Company or provided to the Company by the Vendor and set out or incorporated into the Purchase Order. No substitutes for the materials or parts specified by the Company shall be issued without the Company's prior written consent.
- 9.3. If the Purchase Order specifies that certificates of conformance are required then the Vendor shall provide the same in duplicate free of charge at the time of delivery of the goods and/or completion of the services.
- 9.4. Unless other standards are explicitly detailed by the Company, goods or services supplied by the Vendor shall be of the best materials and workmanship and shall comply with all relevant standards and all appropriate packaging, safety and consumer protection legislation in India, the country of destination and the

jurisdiction of manufacture. In addition, where the Vendor is aware or has been communicated by the Company of the final destination of the goods, the Vendor hereby warrants that the goods comply with all appropriate packaging and safety standards applicable to such final destination. The Vendor hereby indemnifies the Company against any costs, expenses and/or liabilities incurred by the Company as a result of any breach of the aforesaid.

- 9.5. The Vendor shall be solely responsible for any discrepancies, errors or omissions in the drawings and other particulars supplied by it for the purposes of the Purchase Order whether or not the Company has approved such drawings or particulars and any approvals given by the Company will not relieve the Vendor of any liability hereunder.
- 9.6. Following the examination and quality testing (if any) of the goods, the Company reserves the right (without prejudice to its other rights) to reject all or any part goods and/or services which are in its opinion faulty, of inferior quality, or incorrectly supplied or do not conform with the Purchase Order and/or specifications specified by the Company or provided to the Company by the Vendor and in addition to the rights set out in these T&Cs. The Company shall have the right to have the rejected goods replaced at no cost and the Vendor shall indemnify the Company, to the fullest extent possible, for all expenses, costs and liabilities incurred by the Company as a result of the defective goods (including, for the avoidance of doubt, the cost of replacing any other items damaged as a result of the goods or any claims made against the Company by a third party as the result of the delay in receiving the final product).
- 9.7. The Company will be fully reimbursed by the Vendor in respect of sums paid under or pursuant to the Purchase Order for goods rejected or cancelled pursuant to Clause 8.6 and the Vendor shall be liable for all expense, including, without limitation, transportation and insurance charges for replacement or reworked goods including round trip transportation.
- 9.8. Where rejected goods are returned to the Vendor they will be forwarded at the Vendor's expense and risk and Vendors shall promptly reimburse the Company's inspection costs and carriage charges.
- 9.9. The Vendor shall notify the Company as soon as possible if it has reasonable cause to believe the goods and/or services do not comply with these terms and conditions.

## **10. ACCESS, INSPECTION AND MONITORING**

- 10.1. The Company shall have the right to access the manufacturing facility of the Vendor or such other facility where work pursuant to a Purchase Order is being carried out ("**Facility**") and conduct inspections or hire and authorize a third party inspecting agency to undertake the inspection at its own cost and expense, of the records and logs and the performance of obligations hereunder by the Vendor so long as such inspection does not interfere with or disrupt the performance by the Vendor of its obligations under these T&Cs and the Purchase Order. The Vendor shall facilitate and extend full support to such monitoring and inspection requirements of the Company.

- 10.2. The Company shall have the right at any time during the term of the Purchase Order and for such duration as it deems appropriate to deploy such number of personnel of the Company as it may deem necessary to the Facility to monitor the performance of obligations hereunder.
- 10.3. Based on the information provided by the personnel of the Company and/or any third party inspecting agency engaged by the Company pursuant to Clause 10.1 above or otherwise, the Company may indicate remedial actions or preventive measures to the Vendor, the compliance of which shall be ensured by the Vendor promptly upon receipt of instructions from the Company.
- 10.4. Notwithstanding anything to the contrary contained herein, any personnel of the Company or any third party inspecting agency engaged by the Company pursuant to Clause 10.1 above, present or visiting the Facility shall only be authorized to monitor the performance of obligations and conditions at the Facility and indicate to the Company if any provisions of the Purchase Order, the Code of Conduct or the T&Cs are not being satisfactorily complied with and shall not be authorized to grant any consent, waiver or other instruction to the Vendor and the deployment of any such personnel or agency to the Facility shall not operate to reduce, deviate or dilute the obligations of the Vendor under these T&Cs, the Code of Conduct and the Purchase Order in any manner.

## **11. PAYMENT TERMS**

- 11.1. Payments shall be conditional upon the goods and services being supplied in all respects in accordance with the Purchase Order and upon supply to the Company of a proper invoice from the Vendor in the form referred to in Clause 11.2.
- 11.2. Before the Company shall be obliged to make any payment which shall otherwise be due to the Vendor under the Purchase Order, the Company must have received from the Vendor an invoice which must correctly specify the Purchase Order number, Purchase Order date, the goods or services supplied, the date of supply, and the sum due and properly addressed and referenced (and constituting a tax invoice in the case of the Vendor registered for GST (goods and services tax) purposes).
- 11.3. Unless otherwise agreed, payment shall be made within 30 calendar days of the end of the month following the month in which the Company received a proper invoice as described in Clause 11.2 above or the Purchase Order was completed in accordance with all its terms, whichever shall be the later. No interest charges, penalties or losses of discount on overdue accounts shall be accepted unless previously agreed to in writing by the Company.
- 11.4. The Company shall be at liberty to set off from amounts due to the Company any or all amounts due from the Vendor to the Company and to withhold payment from the Vendor in the event of any claim or dispute in respect of the Purchase Order and/ or these T&Cs (including the Code of Conduct) or any other contract between the Vendor and the Company.

## **12. REPRESENTATION AND WARRANTY**

- 12.1. The Vendor hereby represents and warrants that:

- 12.1.1. it has all necessary power and authority to carry on its business as presently conducted and to enter into and perform its obligations under the Purchase Order, the Code of Conduct and these T&Cs.
- 12.1.2. save and except for any non-compliance communicated to and acknowledged by the Company, it is in compliance with all requirements of the Code of Conduct.
- 12.1.3. its respective employees and sub-contractors, if applicable, shall be qualified and licensed as necessary to carry on its business and perform the portion of the supply of products or services that they are or will be performing in accordance with all applicable laws.
- 12.1.4. it holds all permits required under the relevant law applicable for the execution of Purchase Order. The Vendor shall provide copy of such permits to the Company, upon request.
- 12.1.5. it has knowledge of all the legal requirements and business practices that must be followed in performing the obligations and the obligations will be in conformity with such requirements and practices and in compliance with all the applicable laws, there is no pending or, to its knowledge, threatened action, suit, proceeding, inquiry, or investigation against it, at law or in equity or before or by any governmental authority having jurisdiction over the Vendor, of which it has received notice, or which it has knowledge, which would adversely affect its ability to perform its obligation under the Purchase Order.
- 12.1.6. all goods and items of equipment (including where applicable, the workmanship thereof) which are the subject of any Purchase Order (a) to be of the quality, quantity, size, description, design and dimensions specified (b) to be free from all defects, including latent defects (c) to correspond with any samples provided by the Vendor which have been approved by the Company and (d) to be capable of any standard, performance, or criteria specified in the relevant Purchase Order.
- 12.1.7. all work products supplied by the Vendor to the Company pursuant to a Purchase Order shall be at such price which is lower than the price charged to other customers of the Vendor for similar or identical work products.
- 12.1.8. there are no, nor shall there be any, claims or liabilities for royalties, liens or any other encumbrances on the products supplied to the Company.
- 12.2. The foregoing warranties are in addition to all other warranties, whether express or implied and will survive delivery, inspection, acceptance or payment by the Company.

**13. GUARANTEE**

- 13.1. In addition to the rights of the Company under any warranty or guarantee given by the Vendor in respect of the goods and/or services (under the Purchase Order or otherwise), if within 18 months after delivery or 12 months of putting them into service, whichever period is later, there shall appear in the goods (which expression shall, where the context permits, include all materials supplied and work done by or

on behalf of the Vendor in the performance of the Purchase Order) any defect which under proper use shall arise from faulty design or from faulty materials or workmanship or any other deficiency in service and/ or products provided, the Vendor shall with all possible speed and at his expense make good such defect either by repair or (at the Company's option) by the supply of replacement goods and shall reimburse the Company any associated indirect or consequential losses which may arise out of or in connection with (a) the repair or replacement of the goods under this Clause, (b) use of the end product by the Company and/ or its customer and/ or any third party, (c) any other use or testing, and (d) any claims or proceedings arising therefrom. It being agreed that in case of any latent defect in the goods or spare parts supplied by the Vendor, the warranty as aforesaid shall begin 10 days after the latent defect becomes apparent.

- 13.2. The Vendor further agrees and acknowledges that the equipment, spares or machinery supplied by the Vendor to the Company may form a critical part of the machinery that is supplied by the Company to its customers. Accordingly, in case of any defects arising in respect of such parts, the liability that would be attributable to the Vendor pursuant to any losses arising to the Company, directly or indirectly, pursuant to the aforesaid may be significantly exceed the value of goods/ services under the Purchase Order and the Vendor shall be responsible to make good such losses to the Company in the manner as aforesaid.
- 13.3. The foregoing provisions shall also apply for the period ending 12 months after the date of such repair or replacement to any goods so repaired or replaced.

#### **14. SPARES AND OBSOLESCENCE OF GOODS**

- 14.1. The Vendor warrants and undertakes that:
  - 14.1.1. it will manufacture and supply spare parts for the repair or part replacement of goods and/or work throughout the period of design life of the goods and/or works or for a period of 10 years from the date of last supply whichever shall be longer in accordance with the Company's requirements and at equitable prices. Upon request from the Company and/ or its customers in respect of such spares, the Vendor shall make available and supply such spares to the Company and/ or its customer within 24 hours from the receipt of such request by the Vendor.
  - 14.1.2. upon receipt of any service request from the Company or the Company's customer in respect of any goods or spare parts supplied by the Vendor, the Vendor shall respond to such service calls within [24/48] hours;
  - 14.1.3. if the Vendor proposes to cease to be a manufacturer or supplier of any goods and/or works or spare parts or modify the goods and/or services provided under a Purchase Order it will give the Company written notice of the same at the earliest opportunity and in any event not less than 3 months' prior written notice in the case of modifications and 24 months' prior written notice in the case of withdrawal before ceasing manufacture or supply; and
  - 14.1.4. in the circumstances described in Clause 14.1.3 the Vendor will make available to the Company such quantities of spare parts as the Company

shall reasonably require of the future renewal, replacement or repair of goods and/or work already supplied by the Vendor to the Company.

## **15. COMPANY'S TOOLING**

- 15.1. All jigs, tools, fixtures, dies, moulds, materials, and other items supplied to the Vendor by or at the expense of the Company shall remain the Company's property ("**Company's Tooling**"). The Vendor shall on request return the Company's Tooling to the Company and hereby grants to the Company's an irrevocable license for the Company or its authorised representatives to enter upon the premises where the Company's Tooling is kept at any time to take possession of it.
- 15.2. The Company's Tooling will be deemed to have been received by the Vendor in perfect condition unless the Company receives written notification specifying any defects or damage within 5 calendar days from delivery to the Vendor or the first production run whichever occurs sooner.
- 15.3. The Vendor shall ensure that each item of the Company's Tooling is clearly marked and stored as being the legal property of the Company in accordance with any specific storage instructions that the Company may issue to the Vendor and that the Company's Tooling shall not be used for any third party.
- 15.4. Any scrap material generated from free issue material or the Company's Tooling shall be accounted for by the Vendor and shall remain the property of the Company which may direct its return or credit against the cost of executing the Purchase Order.
- 15.5. The Vendor shall maintain a tooling register showing details of the Company's Tooling and shall maintain such tooling at its own expense in accordance with best engineering practices and in accordance with any specific processes specified by the Company from time to time.
- 15.6. The Vendor shall be liable for any loss or damage to the Company's Tooling and shall ensure that the Company's Tooling is maintained in good working order (at the Vendor's own expense) and the Vendor shall maintain insurance for the full replacement value of the Company's Tooling against all usual risks including without limitation fire and theft.
- 15.7. If any loss or damage is caused to the Company's Tooling the Vendor will promptly and satisfactorily repair or replace the Company's Tooling at Vendor's own expense.
- 15.8. The Vendor undertakes that it shall not in any circumstances exercise any lien that it may acquire in respect of the Company's Tooling.
- 15.9. In addition to this clause, if agreed in writing by the parties, the Company's Tooling will be subject to a separate maintenance agreement between the Company and the Vendor.

## **16. INTELLECTUAL PROPERTY RIGHTS**

- 16.1. The Vendor acknowledges and consents that the Company is the sole owner of any intellectual or industrial property rights over any and all designs, drawings, plans,

technical specifications, parameters, or criteria supplied by it to the Vendor, including in relation to any product being the subject matter of any Purchase Order.

- 16.2. For the sake of clarity, the Vendor also acknowledges and consents that any and all intellectual and industrial property rights in products which are manufactured and/or supplied as per the designs or drawings furnished by Company, vest solely with the Company.
- 16.3. Any intellectual or industrial property rights with respect to the intellectual property to the extent developed jointly by the Vendor and the Company shall be solely owned by the Company. The Vendor hereby irrevocably assigns to the Company the Vendor's entire right, title and interest in and to all such intellectual property without any further action by either the Company or the Vendor.
- 16.4. In respect of the foregoing, the Vendor also acknowledges and consents to not claim in any manner any ownership whatsoever over any product or apply for any registration of any intellectual property rights in relation thereto, including, but not limited to any patents, trademarks, copyrights, or any similar rights.
- 16.5. The Vendor agrees and acknowledges that the supply of products or provision of any services by the Vendor will not constitute or involve in any way any infringement of the intellectual property right or proprietary interest of any third party. The Vendor shall indemnify and defend the Company and its customers harmless from any and all claims or damages arising out of infringement of any patent, trademark, copyright or any other intellectual property right or misappropriation of any trade secret.

## **17. NON-DISCLOSURE**

- 17.1. All specifications, plans, drawing, patterns, blue prints, descriptions, designs, jigs, tools and fixtures (including without limitation Company's Tooling) all know-how, technical information, advice, any information relating to the Company and/or its suppliers in whatever format and however stored (electronically or otherwise) ("**Confidential Information**") and all intellectual property rights therein supplied by the Company to the Vendor or its employees, agents, representatives or personnel in connection with the Purchase Order shall remain the property of the Company and all of the foregoing and any information derived therefrom or otherwise communicated to the Vendor in connection with the Purchase Order shall be treated by the Vendor as confidential and shall not without the consent in writing of the Company be published or disclosed to any third party or made use of by the Vendor except to the extent necessary to implement the Purchase Order. The Vendor shall ensure that where any such information is disclosed to its employees, agents, or personnel for the purpose of implementing the Purchase Order, such employees, agents or personnel be subject to such confidentiality obligations which are no less stringent than those covered herein. Where required by the Company, the Vendor shall ensure that all employees and personnel on the premises or site of the Company sign a confidentiality agreement in such form as prescribed by the Company.
- 17.2. It is understood that a breach by the Vendor of any of the terms of this clause may cause irreparable harm to the Company which could not be adequately compensated for by damages and that, in addition to a claim for damages, the

Company shall be entitled as a matter of right to seek injunctive relief as a cumulative and additional remedy.

- 17.3. The confidentiality obligations hereunder shall continue to apply indefinitely after the fulfilment of the Purchase Order and also in the event that a Purchase Order is concluded, cancelled or terminated.
- 17.4. The Vendor must, upon the request of the Company return the Confidential Information immediately or, if requested by the Company or if not capable of being returned, destroy or erase all documents and materials containing (in whatever form) any Confidential Information immediately and provide the Company with a certificate in writing that none of the Confidential Information has been retained in any form and destroy or erase all memoranda, notes and other permanent records (in whatever form) that are based in whole or in part on the Confidential Information and that have been prepared by it or on its behalf and provide to the Company a certificate in writing that such destruction has taken place.

## **18. INDEMNIFICATION**

- 18.1. The Vendor shall indemnify, defend, and hold harmless the Company, its affiliates and their respective officers, directors, employees, successors and assigns ("**Indemnified Parties**") from, against and in respect of all losses, claims including third party claims, proceedings, damages, liabilities, settlements, costs and expenses (including attorney's fees and taxes) (collectively the "**Losses**") in relation to any acts, deeds or things done or omitted to be done by the **Vendor** or on the failure of the Vendor or its invitees, agents, employees, personnel or representatives as the case may be, to comply with or ensure compliance with any provisions (including any obligation, representation and warranty) under (a) these T&Cs, (b) the Purchase Order, and the (c) Code of Conduct.
- 18.2. Further, the Vendor agrees and undertakes that it shall indemnify, and keep indemnified, defend, and otherwise hold harmless the Indemnified Parties from all Losses caused due to injury to or death of any person and/or loss or damage caused or suffered to property owned by or belonging to the Indemnified Parties or third parties as a result of any acts, deeds or things done or omitted to be done by the Vendor or on account of failure of any representative of the Vendor or its invitees, agents, employees, personnel, as the case may be, to comply with any provisions of these T&Cs, the Purchase Order, and the Code of Conduct including breach of any representations and warranties contained in these T&Cs, the Purchase Order, and the Code of Conduct.
- 18.3. If any Taxes (whether in the form of withholding or otherwise) are required to be paid by the Vendor under applicable law on indemnity payments made under these T&Cs, the Vendor shall, at the same time as the sum which is the subject of the deduction or withholding is payable, make a payment of such additional amount to the Indemnified Parties, as shall be required to ensure that the net amount received by the Indemnified Parties will equal the full amount that would have been received by it, had no such deduction or withholding been required to be made.

- 18.4. Each indemnity obligation of the Vendor under these T&Cs is a continuing obligation, separate and independent from the Vendor's other obligations and survives termination or expiry of the Purchase Order.
- 18.5. Notwithstanding anything contained in these T&Cs to the contrary, in no event shall the Company, its officers, directors or employees be liable for any form of incidental or consequential damages, including loss of data, loss of revenue or loss of profits, whether such claims arise in breach of contract or warranty, tort, negligence, product liability, contribution, strict liability or other legal theory. The Company's maximum aggregate liability for any and all damages or claims by the Vendor shall be limited to the aggregate amount actually paid by the Company to the Vendor during the six (6) month period immediately prior to the date the cause of action arose.

## **19. INSURANCE**

- 19.1. The Vendor hereby agrees to procure and maintain, at all times during the continuance of the Purchase Order, at its own cost, such product liability insurance as may be specified by the Company.
- 19.2. The Vendor shall provide the Company a copy of such insurance policy and copies of receipts of premiums paid in respect thereof, within 14 calendar days of written request by the Company to do so.

## **20. SUB-CONTRACTING AND ASSIGNMENT**

- 20.1. No Purchase Order whether in whole or in part shall be sub-contracted, charged, transferred or assigned without the Company's prior written approval and all requests for such approval shall specify the goods or services to be covered and the identity of the sub-contractor.
- 20.2. Where the Company agrees to the placing of a sub-contract, the rights of inspection and rejection contained herein must be reserved therein on the Company's behalf and a copy of all such sub-contracts must be forwarded to the Company on demand.
- 20.3. Any approval of sub-contracting shall not relieve or vary the obligations or liabilities of the Vendor under these T&Cs, the Purchase Order and the Code of Conduct.
- 20.4. Without prejudice to the aforesaid, the Vendor shall ensure that such sub-contractor appointed by it for carrying out its obligations under a Purchase Order or a portion thereof (pursuant receipt of approval of the Company in this regard) shall comply with the terms and conditions, obligations, criteria and other standards or requirements set out under these T&Cs, the Purchase Order and the Code of Conduct.
- 20.5. The Company shall be entitled to freely assign or transfer all or any of its obligations to the Vendor under these T&Cs and the Purchase Order.

## **21. FORCE MAJEURE**

- 21.1. If any party is as a result of an event beyond its reasonable control unable to perform all or any part of its obligations under the Purchase Order (and such event shall include being unable to, in relation to the Company, receive, accept or use

products or services) (“**Force Majeure**”), then the party suffering such disability shall be excused from such performance for as long as and to the extent that such inability continues, provided it complies with this clause.

- 21.2. The following shall not constitute as Force Majeure in respect of the Vendor:
- 21.2.1. failure of mechanical equipment, computer hardware and / or telecommunications equipment,
  - 21.2.2. failure of software, power outages,
  - 21.2.3. changes in economic conditions or economic hardships,
  - 21.2.4. weather conditions which might reasonably have been foreseen by the party claiming Force Majeure and which were not unusually adverse,
  - 21.2.5. failure to procure any license, permit or permission,
  - 21.2.6. costs and / or delivery and/ or shortage of raw materials, water, fuel, and/ or manpower, and
  - 21.2.7. strikes and other labour disputes relating to the Vendor (or its affiliates or their representatives).
- 21.3. If Vendor is, or considers that it is likely to be, affected by any Force Majeure, it shall promptly, but in no event later than 7 calendar days, notify the Company in writing, or in the manner as prescribed under the Purchase Order, of the nature and extent of the relevant circumstances and the expected duration of its inability to perform its obligations under the Purchase Order. Under such circumstances, the Vendor, however, shall still be under the obligation to take all necessary measures to hasten the delivery of the goods and/ or services.
- 21.4. Notwithstanding anything to contrary contained herein, where the Vendor is so prevented to perform any of its obligations under the Purchase Order, Code of Conduct and these T&Cs, the Company shall be entitled to make such variations to the Purchase Order as are in its opinion reasonable or terminate the Purchase Order.

## **22. TERMINATION**

- 22.1. The Company may unilaterally cancel and terminate the Purchase Order at any time by notice in writing to the Supplier and shall thereupon be liable only to pay for goods delivered prior to the date of the notice. In no case shall the Company be liable, subject to other terms and conditions contained under these T&Cs, the Code of Conduct and the Purchase Order, to pay more than the proportion of the purchase price, as set out in the Purchase Order, attributable to the goods actually delivered and accepted by the Company.
- 22.2. In the event of the Vendor failing to comply with any of the provisions of the Purchase Order, these T&Cs and the Code of Conduct, after such notice, as the Company may deem reasonable, requiring the Vendor to make good such failure or breach, or if the Supplier is unable to make good any such failure or breach, or if the provisions of Clause 6.1, Clause 6.6, Clause 21.4 and Clause 22.3 apply, the Company

shall be entitled to terminate forthwith the Purchase Order in whole or in part and to return to the Vendor at the Vendor's risk and expense any of the goods and/or services already delivered which cannot be effectively and commercially used by reason of the Vendor's failure to perform the contract and to recover any monies paid by the Company in respect of such goods and/or services, secure replacement goods or services and/or to recover from the Vendor a sum equivalent to the loss, damage and all expenses caused thereby or any additional expenditure incurred by the Company in connection with such failure without prejudice to any other rights which shall have accrued or shall accrue to the Company under the Purchase Order and these T&Cs. Upon such termination, Vendor will, to the extent and at the times specified by the Company, stop all work under the relevant Purchase Order, place no further orders for materials to complete such work, assign to the Company all of Vendor's rights, title and interest under terminated subcontracts and orders, settle all claims thereunder (after obtaining the Company's written prior approval), protect all property in which the Company has or may acquire an interest, and transfer title and make delivery to the Company of all articles, materials, work in process and other things held or acquired by the Vendor in connection with the terminated portion of the Purchase Order. The Vendor will proceed promptly to comply with the Company's instructions respecting each of the foregoing without awaiting settlement or payment of any termination claim it may have against Company. It is clarified that the Company shall be liable only to such amounts corresponding to the price set out in the Purchase Order in respect of the products delivered and accepted, or services rendered, in accordance with the Purchase Order (and in compliance with these T&Cs and the Code of Conduct) to the extent not previously paid for.

- 22.3. If the Supplier becomes insolvent, or makes an arrangement with its creditors, or has a receiver, administrator or manager appointed or commences to be wound up whether by order of the Court or resolution (other than for the purposes of bona fide amalgamation or bona fide reorganization) the Company shall be entitled to the remedies set out in Clause 22.2 above.

## **23. NOTICES**

- 23.1. Any notice or other communication to be made in relation to the Purchase Order, these T&Cs and the Code of Conduct shall be made in writing and in the English language. Unless provided otherwise under the Purchase Order, such communication to the Company shall be delivered by hand or sent by prepaid registered mail or by electronic mail to the following addresses (or such other address communicated to the Vendor 15 calendar days prior to such notice):

Address: Mr. Harish H M, VP-Supply Chain, 17/4, THALLI ROAD, Devaganapalli, Krishnagiri, Tamil Nadu, 635114

E-mail: harish.hm@bfw.co.in

- 23.2. In case of any communication to the Vendor, the same shall be made to such address as set out in the Purchase Order (or such other address as communicated to the Company 15 calendar days prior to such notice). Communication to the Vendor shall be delivered by hand or sent by prepaid registered mail or by electronic mail.
- 23.3. All notices pursuant hereto shall be deemed to be given upon receipt.

## **24. GOVERNING LAW AND DISPUTE RESOLUTION**

- 24.1. In the event of any dispute, controversy or difference which may arise between the Company and the Vendor, out of, or in connection with the interpretation or application of the Purchase Order, and these T&Cs (including the Code of Conduct) or any breach hereof, the parties will attempt to resolve and settle the matter by mutual consultation in good faith by the parties within a period of 30 (thirty) calendar days from the date of the first intimation of such dispute by one party to the other; failing agreement thereof, all disputes, controversies, differences or claims arising out of or relating to the Purchase Order, including the existence, validity, interpretation, performance, breach or termination thereof or any dispute regarding non-contractual obligations arising out of or relating to it shall be referred upon the application of either Party to a sole arbitrator (to be mutually agreed between the parties) and finally settled in accordance with the Arbitration and Conciliation Act, 1996 for the time being in force, and/or any statutory modification or re-enactment thereof ("**Arbitration Act**"), which shall be deemed to be incorporated by reference to this Clause. In the event the Parties are unable to agree on a sole arbitrator within 15 (fifteen) days following the 30 (thirty) days' period specified in this Clause 24, the sole arbitrator will be appointed in accordance with the Arbitration Act. The seat and venue of the arbitration shall be Bengaluru, Karnataka.
- 24.2. The proceedings will be conducted in the English language.
- 24.3. The interpretation and performance of these T&Cs (along with the Code of Conduct) and the Purchase Order shall be governed by the laws of India. Notwithstanding the aforesaid, the Company may in its absolute discretion pursue any dispute or difference arising in respect of the contract in any other jurisdiction it may consider appropriate.
- 24.4. Subject to the conditions contained above, the courts at Bengaluru, India shall have exclusive jurisdiction in relation to all matters arising out of or in connection with the matters contemplated under the Purchase Order and these T&Cs (including the Code of Conduct).
- 24.5. In an event that the dispute resolution forum is arbitration, the arbitration award rendered by the arbitrator(s) will be final and binding on all parties.

## **25. MISCELLANEOUS**

- 25.1. *Requests from customer.* The Vendor agrees and undertakes that in case of any communication or request made by any of the Company's customers (where such customer is known by the Vendor to be the customer of the Company) in connection with or in relation to any product or service rendered by the Vendor to the Company, the Vendor shall not entertain any service request or otherwise enter into any transaction with such customer (in relation to such product or service) without the prior written consent of the Company. Further, the Vendor undertakes to promptly notify the Company in case of any such communication or request received by it from the customer.
- 25.2. *Non-Solicitation.* The Vendor agrees and undertakes that, unless otherwise provided for under these T&Cs, it shall not deal directly or indirectly with the Company's

customers for supplying any goods and/ or services including the spare parts of any equipment sold by the Company, during the term of this Agreement and for 10(Ten) years after its expiry / termination (for any reason whatsoever). The Vendor further undertakes that it shall not divert, or attempt to divert, directly or indirectly, any business, business opportunity relating to the Products or the Company's customers to any competitor, by direct inducement or otherwise, or do or perform, directly or indirectly, any other act injurious or prejudicial to the goodwill associated with the Company.

- 25.3. *Equitable relief.* The Vendor acknowledges that monetary damages may not be a sufficient remedy for any breach of the Vendor's obligations under these T&Cs, the Purchase Order, or the Code of Conduct and that the Company shall be entitled to equitable relief, including injunction, right for recovery, suit for specific performance, or such other relief as a court of competent jurisdiction may deem necessary or appropriate as a remedy for such breach. These remedies are cumulative and are in addition to any other rights and remedies the Vendor may have at law, in equity, or under these T&Cs, including a right for damages.
- 25.4. *Waiver.* No waiver of any default or failure on the part of the other party in performance of any of its obligations under the Purchase Order and these T&Cs (including the Code of Conduct) shall be effective unless in writing, nor shall it be construed as a waiver of any other or subsequent default.
- 25.5. *Binding effect.* These T&Cs shall be binding upon and inure to the benefit of the Parties and their respective heirs, executors, administrators, successors and permitted assigns.
- 25.6. *Amendment.* The terms and conditions of the Purchase Order or these T&Cs (including the Code of Conduct) shall be amended or altered only if such amendment or alteration is in writing and signed by the authorised representative of the Company and of the Vendor.
- 25.7. *Survival.* All provisions of the Purchase Order, these T&Cs (including the Code of Conduct) that are expressly or by implication to come into or continue in force and effect after the expiration or termination of the Purchase Order shall remain in effect and be enforceable following such expiration or termination. Without prejudice to the generality of the aforesaid, the following provisions shall survive expiry/termination of the Purchase Order: Clause 14 (*Spare and Obsolescence of Goods*), Clause 15 (*Company's Tooling*), Clause 16 (*Intellectual Property Rights*), Clause 17 (*Non-Disclosure*), Clause 18 (*Indemnification*), Clause 23 (*Notices*), Clause 24 (*Governing Law and Dispute Resolution*), and Clause 25 (*Miscellaneous*).
- 25.8. *Severability.* If in any jurisdiction, any provision or application of these T&Cs or the Purchase Order is restricted, prohibited, or unenforceable, such provision shall as to such jurisdiction, be ineffective only to the extent of such restriction, prohibition or unenforceability without invalidating the remaining provisions hereof. The Company and the Vendor shall discuss in good faith to replace the affected provision by a provision which is legal and enforceable and which achieves the same effect of the affected provisions to the extent permitted by applicable laws.
- 25.9. *No partnership.* Nothing in these T&Cs or the Purchase Order is intended to or shall operate to create a partnership or joint venture of any kind between the Vendor and

the Company or to authorise the Vendor to act as agent for the Company and neither party shall have any authority to act in the name or on behalf of or otherwise to bind the other in any way.

- 25.10. *Language.* These T&Cs (including the Code of Conduct) and the Purchase Order is written in the English language only. Any translations into any other languages shall be for convenience of the parties and shall in no way affect the interpretation of these T&Cs (including the Code of Conduct) or the Purchase Order.

**ANNEXURE A**  
**CODE OF CONDUCT**  
*[annexed separately]*