

# JHALANI IMPEX

## TERMS & CONDITIONS OF SALE

### A. GENERAL

1. In these conditions the following words shall have the meanings shown:

- a. "The Company" means Jhalani Impex or one of its associated or subsidiary companies as the case may be.
- b. "The Buyer" means any person, firm, or company purchasing the Goods from the Company under a Contract.
- c. "Goods" means any products or items purchased by the Buyer from the Company and/or products, items or services supplied by the Company to the Buyer under a Contract.
- d. "The Contract" means the agreement between the Company and the Buyer for the purchase from the Company by the Buyer of Goods.
- e. "Contracts" include all agreements between the Company and the Buyer for the purchase of Goods from the Company by the Buyer.

2. These conditions shall be deemed to be incorporated in all Contracts of the Company to sell Goods and together with any special condition appearing on the face of the Company's invoice or in the Company's quotation shall be the sole conditions under which the sale of Goods takes place. In the case of any inconsistency with any order, letter or form of Contract sent by the Buyer to the Company or any other communication between the Buyer and the Company whatever may be their respective dates, the provisions of these conditions shall prevail unless expressly varied in writing and signed by a Director on behalf of the Company. Any concession made or latitude allowed by the Company to the Buyer, unless expressly varied in writing and signed by a Director on behalf of the Company, shall not affect the strict rights of the Company under the Contract. If, in any particular case, any of these conditions shall be held to be invalid or shall not apply to the Contract the other conditions shall continue in full force and effect.

3. Statement, description, information, warranty condition or recommendation contained in any Contract, catalogue, price list, advertisement or any communication or made verbally by any of the agents or employees of the Company shall not be construed to enlarge, vary or override in any way any of these conditions unless otherwise provided herein.

### B. WARRANTY AND LIMITATION OF LIABILITY FOR GOODS

1. All Goods are sold with the benefit and subject to the conditions of the warranty supplied with them, which is available for inspection on request. The warranty is limited to defects which the Buyer establishes to the Company's reasonable satisfaction within 12 months from the date of delivery of the Goods.

2. If the Buyer establishes to the Company's reasonable satisfaction within 12 months from the date of delivery of the Goods that there is a defect in the materials or workmanship of the Goods, then the Company may at its sole discretion:

- (i) repair or make good such defect or failure in such Goods free of charge to the Buyer; or
- (ii) replace such Goods with Goods which are in all respects in accordance with the Contract; or
- (iii) issue a credit note to the Buyer in respect of the whole or part of the Contract price or such Goods as appropriate having taken back such Goods.

Provided that the liability of the Company under this clause B shall in no event exceed the purchase price of such Goods and performance of any one of the above options shall constitute an entire discharge of the Company's liability under this warranty.

3. Nothing herein or in any warranty given by the Company shall impose any liability, including for the loss of life or tangible and intangible property, upon the Company in respect of any defect in the Goods arising out of the act(s), omission(s), commission(s), negligence or default of the Buyer, its employees, servants, and/ or agents including in particular but without prejudice to the generality of the foregoing, any failure by the Buyer to comply with any recommendations/instructions of the Company as to storage and handling or use or surviving of the Goods, use of the Goods with other goods which are unsuitable for the Buyer's purpose, or other misuse of the Goods or accident or wear and tear of the Goods.

4. All implied conditions and warranties are hereby excluded.

5. Test certificates furnished by the Company, if any, shall be accepted by the Buyer as final and conclusive evidence that the Goods covered by the certificate conform to the warranty, if any, given by the Company.

6. The Company makes no representation or warranty that the use of the Goods does not infringe the rights of any third party and the Company accepts no liability in this respect.

### C. CONSEQUENTIAL LOSS

1. The Company shall not be liable for any indirect, special or consequential losses (including, but not limited to loss of profit, revenue or other economic loss), costs, claims, liabilities or expenses of any nature whatsoever, whether arising out of any tortious act or omission or of any breach of Contract or statutory duty or duty of care or any misrepresentation or of any other causes whether or not known to the Company, and calculated by reference to profits, income, production or accruals or loss or accrual of such costs, loss or damage on a time basis or otherwise.

2. The aggregate liability of the Company (whether in contract, tort, negligence or breach of statutory duty or otherwise) to the Buyer for any direct loss or damage shall be limited to the price of the specific Goods purchased under Contract only.

### D. FORCE MAJEURE

The Company shall be entitled to delay or cancel delivery or to reduce the amount delivered if it is prevented from or hindered in or delayed in manufacturing, obtaining or delivering the Goods by normal route or means of delivery through any circumstances beyond its control including but not limited to an Act of God, fire, flood, lightning, strikes, lock-outs, accidents, war, revolution, acts of terrorism, riots, reduction in or unavailability of power at manufacturing plant, breakdown of plant or machinery or shortage or unavailability of fuel or raw materials from normal source of supply.

#### **E. BUYER'S RESPONSIBILITY**

1. The selection of a product suitable for the Buyer's purposes depends on a range of factors. These factors include but are not limited to on-site conditions and other circumstances of the proposed application of the product known only to the Buyer. The Buyer is solely responsible for satisfying itself that the data supplied by it to the Company, on which any information or recommendation(s) made by the Company is based, is correct and that any assumptions made by the Company to supplement such data are suitable for the Buyer's purposes. The Company accepts no responsibility of any nature whatsoever for information or advice it supplies or where any data supplied by the Buyer is incorrect or where any assumption, which the Company has made, is unsuitable for the Buyer's purposes. The Buyer is encouraged to raise with the Company any questions it may have.
2. The Buyer shall be liable for and shall indemnify the Company against any and all expenses, loss, liability suffered by a third party or in a third party proceeding arising as a result of or in connection with any act, omission, negligence, and/or breach of the terms of this Contract or otherwise through the default of the Buyer.

#### **F. ORDERS**

1. The prices payable for Goods shall unless otherwise stated by the Company in writing in the Contract and agreed on its behalf be the trade price list of the Company current at the date of dispatch of the Goods and in the case of an order for delivery by instalments the price payable for each instalment shall be the list price of the Company current at the date of the dispatch of such instalment of the Goods unless the price is otherwise expressly stated in the Contract to be firm for a fixed period.
2. Unless otherwise expressly stated to be firm for a fixed period the Company's prices are subject to variation to take account of variations in wages, materials, or other costs/imposts since the date of the order of the Goods. The Company accordingly reserves the right to adjust the invoice price by the amount of any increase or decrease in such costs after the price is quoted and the invoice so adjusted shall be payable as if it were the original Contract price of the Goods.
3. All prices in respect of the Goods are exclusive of sales taxes and other local levies, by whatever nomenclature, and these will be charged extra at the appropriate rates prevailing as on the date of invoice.
4. Any payment made as an advance or security deposit will be accepted by the Company only without liability to pay any interest thereon. In case the Buyer's cancels the Contract or any part thereof or does not abide by any Contract terms, the amounts lying with the Company as an advance or security deposit are liable to be set off against the losses that may be suffered by the Company as a result thereof.

#### **G. ADDITIONAL COSTS.**

The Buyer agrees to pay any loss or extra costs incurred by the Company through failure or delay in taking delivery of the Goods or through any act or default on the part of the Buyer, its employees, servants, and/ or agents.

#### **H. PASSING OF TITLE AND RISK**

1. From the date of delivery to the Buyer the Goods shall be at the risk of the Buyer who shall be solely responsible for their custody and maintenance but unless otherwise expressly agreed to in writing the Goods shall remain the property of the Company until all payments under the Contract have been made in full and unconditionally and credited to the Company's account. Whilst the ownership of the Company continues the Buyer shall keep the Goods separate and identifiable from all other goods in its possession.
2. In the event of any resale by the Buyer of the Goods the beneficial entitlement of the Company shall attach to the proceeds of sale or other disposition thereof so that such proceeds or any claim therefore shall be assigned to the Company.
3. In the event of failure to pay the price in accordance with the Contract the Company shall have power to re-sell the Goods. Such power shall be additional to (and not in substitution for) any other power of sale arising by operation or law or implications or otherwise.
4. Pending payment of the full purchase price of the Goods the Buyer shall at all times keep the Goods comprehensively insured against loss or damage by accident, fire, theft and other risks usually covered by insurance in the type of business for which the Goods are for the time being used in an amount at least equal to the balance of the price for the same from time to time remaining outstanding. The policy shall bear an endorsement recording the Company's interest and shall be produced to the Company on request.

#### **I. DELIVERY**

1. The period for delivery shall be the period within which the Goods are intended to be dispatched from the Company's premises as per the Contract and shall be calculated from the date of receipt of the Company of the Buyer's order or from receipt of all necessary information to enable the Company to manufacture or procure the Goods whichever shall be the later and the Buyer shall take delivery of the Goods in that period. If no period is given then delivery will be such time after receipt of instructions as the Company thinks reasonable.
2. All times or dates given for delivery of the Goods are given in good faith but without any responsibility on the part of the Company. Time of delivery shall not be of the essence of any Contract nor shall the Company be under any liability for any delay beyond the Company's control.
3. Where the Goods are handed over to a carrier for carriage to Buyer any such carrier shall be deemed to be an agent of the Company and not of the Buyer for the purposes of Sale of Goods Act, 1930 and any amendments thereof.
4. In the event of a valid claim for non-delivery or non-compliance with the Contract the Company undertakes, at its option, either to reprocess or replace the Goods at its expense but shall not be under any further or other liability to any Buyer, third party or person in connection with such non-delivery, loss, damage or noncompliance.
6. If for any reason the Buyer is unable to accept delivery of Goods at the time when the Goods are due and ready for delivery the Company may, at its sole discretion, without prejudice to its other rights store the Goods at the risk of the Buyer and take all reasonable steps to safeguard and insure them at the cost of the Buyer provided that the Buyer shall be immediately informed thereof.
7. The Company shall have the right to make delivery of the Goods by instalment of such quantities and at such intervals as it may decide, and any express provision as to instalments in the Contract shall be in addition to and not in derogation of this right.
8. All requests for proof of delivery must be made within a period of 21 calendar days following the date of the invoice.
9. Where the Goods are for delivery by instalments any defect in any such instalment shall not be a ground for cancellation of the remainder of the instalments and the Buyer shall be bound to accept delivery thereof.

10. The Company shall deliver the Goods to the location set out in the order form/ Contract or as the parties may agree in writing at any time after the Company notifies the Buyer that the Goods are ready.

Delivery of the Goods shall be completed on the Good's arrival at the relevant location.

#### **J. CARRIAGE AND INSURANCE**

1. The cost of carriage/transportation and insurance of the Goods to the Buyer's premises within India shall be in accordance with the charges laid out in the Company's current price list unless specifically agreed to in the Contract.

2. In all other cases, the price of the Goods shall be exclusive of carriage/transportation and insurance to the Buyer's premises.

#### **K. RETURNS**

1. Goods supplied pursuant to the Contract cannot be returned without the Company's prior written authorization. Duly authorized returns:

a) Shall be sent to the Company's premises at the Buyer's expense;

b) May be subject to a handling charge expressed as a percentage of the value of the Goods subject to a minimum amount as may be deemed fit by the Company, and

c) Must be in the same condition as originally supplied by the Buyer.

#### **L. TERMS OF PAYMENT**

1. Payment must be made against delivery or in accordance with the Contract on the due date mentioned on the face of the invoice strictly net. Unless otherwise set out in the Contract, face of the invoice or specifically agreed between the parties, the due date of payment shall be 60 days from the date of the invoice.

2. If the Goods are delivered in instalments, the Company shall be entitled to invoice each instalment as and when delivery of the Goods has been made and payment shall be due on the above terms in respect of each such instalment whereof delivery has been made notwithstanding non-delivery of other instalments or other default on the part of the Company.

3. If upon the terms applicable to any order the price shall be payable by instalments or if the Buyer has agreed to take specified quantities of Goods at specified times, a default by the Buyer of the payment of any due instalment or the failure to give delivery instructions in respect of any quantity of Goods outstanding shall cause the whole of the balance of the price to become due forthwith without any notice.

4. The price of the Goods shall be due in full to the Company in accordance with the terms of the Contract and the Buyer shall not be entitled to exercise any set off- lien or any other similar right or claim.

5. The time of payment shall be of essence of the Contract.

#### **M. DEFAULT OR INSOLVENCY OF BUYER**

If the Buyer shall be in breach of any of its obligations under the Contract or if any distress or execution shall be levied on the Buyer's property or assets or if the Buyer shall make or offer to make any voluntary arrangement or composition or compromise with his creditors or become bankrupt or if any bankruptcy petition administrator is appointed or makes voluntary arrangement with its creditors or commences to be wound up, the Company, at its discretion, and without prejudice to any other right or claim may by notice in writing determine wholly or in part any and every Contract between the Company and the Buyer or may (without prejudice to the Company's right subsequently to determine the Contract for the same cause should it so decide) by notice in writing suspend further deliveries of Goods until any defaults by the Buyer be remedied. The Goods delivered to the Buyer shall remain the property of the Company until all payments under the Contract have been made in full and unconditionally and credited to the Company's account.

#### **N. INTELLECTUAL PROPERTY**

1 Any intellectual property created by the Company in the course of the performance of the Contract or otherwise in the design, manufacture or supply of or otherwise in relation to the Goods or the provision of the services shall remain the property of the Company. Nothing in these conditions shall be deemed to have given the Buyer a licence or any other right to use any of the intellectual property of the Company.

2 All logos, trade name or trademarks owned or used by the Company in the course of its business are the property of the Company. The Company reserves all intellectual property rights in relation to the use of such logos, trade name or trademarks. The Buyer may not use, or permit the use of, such logos, trade name or trademarks or any similar marks without the prior written permission of the Company.

#### **O. ARBITRATION**

Any dispute or difference arising between the parties in respect of or arising out of this Contract shall be settled by a Sole Arbitrator to be appointed by Chief Financial Officer (CFO) of the Company. The Arbitration shall be conducted as per the provisions of the Arbitration and Conciliation Act, 1996. The venue of arbitration shall be New Delhi. The Courts at New Delhi shall have the exclusive jurisdiction to deal and decide any/all the matters arising under this Contract.

#### **Q. GOVERNING LAW:**

This Contract is entered at Delhi and shall be subject to the laws of India