

# **NATIONAL ALUMINIUM COMPANY LIMITED**

## **5TH STREAM ALUMINA REFINERY EXPANSION PROJECT**

### **GENERAL PURCHASE CONDITIONS (INDIGENOUS) (FOR SUPPLY)**

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**NATIONAL ALUMINIUM COMPANY LIMITED** (hereinafter referred to as Owner) intends to procure machinery, equipment, materials and other items for their Alumina Refinery Expansion Project under the terms and conditions set out hereunder:

**1.0 DEFINITIONS:**

Following expressions used in these terms and conditions and/or in the Purchase Order shall have the meaning as detailed hereunder against each of them.

- ORDER** - Supply, delivery & completion of obligations in accordance with the requirements defined in NALCO's Purchase Order (including all attachments and exhibits thereto) together with any subsequent modifications thereof.
- SELLER** - A firm or a company or persons to whom the order is issued and includes its successors and assignees.
- OWNER** - **NATIONAL ALUMINIUM COMPANY LIMITED (NALCO)**, a Company incorporated in India having its Registered Office at NALCO Bhawan, P/1, Nayapalli, Bhubaneswar-751013, Odisha including its successors and assignees.
- GOODS/MATERIALS** - Goods and/or materials, shall mean any of the articles, materials, machinery, equipments supplies, drawings, data and other property and all services/work including but not limited to design, manufacture, delivery, installation, inspection, testing and commissioning specified or required to complete the Purchase Order.
- Contractual Delivery Date** - Contractual delivery date is the date by which goods shall be delivered F.O.R. dispatching point/destination in accordance with the terms of the Purchase Order. The contractual delivery date/period is inclusive of all the lead time for engineering, procurement of raw materials, manufacturing, inspection, testing, packing and any other activity whatsoever required to be accomplished for effecting the delivery at the agreed delivery point.
- Procurement Coordinators- /Manager** - Owner's authorized representative appointed as procurement coordinators/ Managers
- INSPECTORS** - Inspectors deputed by Owner or Procurement Coordinators/Managers.
- PROJECT** - NALCO's 5th Stream Alumina Refinery Expansion Project.

‘Plant’, ‘Equipment’, ‘Works’ shall mean and include plant stores and materials to be provided and work to be done by the Seller.

‘Commercial Operation’ shall mean the condition of operation in which the complete equipment covered under the Purchase Order is officially declared by the Owner to be available for continuous operation at different loads upto and including rated capacity.

**2.0 REFERENCE FOR DOCUMENTATION:**

Purchase Order number must appear on order confirmation correspondence, drawings, invoices, shipping notes, packing and/or any documents or paper connected with the order.

**3.0 ACCEPTANCE OF ORDER:**

This order is expressly conditioned on Seller’s acceptance of all the terms and conditions hereof and constitute the entire agreement between parties hereto. With the acceptance of the Order, Seller waives and considers as void all his general sales conditions. The Seller shall sign, stamp and date two copies of the Purchase Order and return within ten days after receipt of Order to owner as token of having accepted the order without reservation. Notwithstanding such non-return as stated above, the order shall be deemed to have been accepted with these conditions unless there is an express, communication in writing by the Seller to that effect with specific reasons and details.

**4.0 SALES CONDITIONS:**

Seller’s Standard Sales Conditions, if any, shall not be applicable to the offer and only the Purchaser’s General Purchase Conditions shall apply with the exception of deviations specifically agreed between the Seller and the Purchaser and/or brought out in the Purchase Order.

**5.0 COMPLETE AGREEMENT:**

The Terms & Conditions of the Purchase Order constitute the entire Agreement between the parties hereto. Changes will be binding only if the amendments are made in writing and signed by an authorized representative of the Owner and the Seller.

**6.0 MODIFICATIONS & AMENDMENT:**

Notwithstanding the above, Owner shall have the right to modify or amend this order subject to an adjustment in the price and/or delivery date in accordance with the applicable provision of the order, if any, or pursuant to mutual agreement.

The Seller shall carry out such amendments to the Order and shall be bound by the same terms and conditions incorporated in the original order.

Claims, if any, for adjustment in Price /delivery date shall be made within fifteen (15) days from the date when revisions/changes are ordered, failing which it will amount to an absolute waiver of any such claim. Such claims shall not prejudice the rights of Owner to claim a refund of any amount advanced or paid to the Seller.

## **7.0 DELAYS OR NON-DELIVERY:**

Time of delivery at every stage of activities is the essence of this Order till the completion date and no variation shall be permitted except with prior authorization in writing from the Owner.

Where no delivery period is expressly stated, it shall be constructed as Seven days from the date of placing the order. The Owner reserves the right to defer the period of delivery in writing.

Goods shall be delivered in accordance with the Order to such place(s) as is specified therein and at such time(s) as Owner or its authorized representative shall have notified to the Seller in response to the Seller's request for instructions.

If upon receipt of the order at any time thereafter it is found that the goods or materials called for can not be completed within the time specified in the order, notice thereof must be given immediately and at the earliest possible time well in advance of the due date of delivery together with reasons for delay by fax/e-mail and confirmed by Registered mail to Owner together with the best completion date that can be offered. Such notice should not be construed as acceptance of the revised date by the Owner, unless specifically so communicated by the Owner in writing. Failure to deliver the goods or material before the date specified in the Order shall entitle the Owner at its option to terminate the order under provisions stated in Article 8 without prejudice to any other rights, Owner may have as a result thereof. The mere acceptance of revised schedule as above will not absolve the Seller from any of its liabilities for such delivery.

## **8.0 TERMINATION/CANCELLATION**

- (I) Owner may at any time, terminate any part of the work or all works remaining to be done in connection with this order with effect from such date as Owner may specify upon such terms and conditions as may be indicated at time of such termination.

Owner shall have the right to buy at its option and at an agreed price from the Seller, the cancelled goods and components and also to recover all materials supplied by the Owner to the Seller for use on the Order.

In the event of a termination of the order or part thereof, the Seller shall forthwith carry out instructions of the Owner in connection of sub-orders the Seller may have placed with other suppliers.

Owner and/or their authorized representatives shall have free access to the Seller's works and those of their suppliers to examine the materials and fabrication status reached at time of the order cancellation and to agree to a

reasonable price with the Seller and to take over the goods on as is where is basis or on completion.

If cancellation/termination of the Order, whether in full or in part is caused by reasons attributable to the Seller, Seller agrees to reimburse Owner, the extra cost incurred by Owner in procuring the cancelled goods from other resources. Security deposit, if any, shall be liable for forfeiture.

Without prejudice to the generality of the terms, breach of contract, the following will also include such breach and/or will entail termination of the order:

- (a) The Seller fails to comply with the terms of this Purchase Order.
- (b) The Seller fails to deliver the goods on time and/or replace the rejected goods promptly.
- (c) The Seller becomes bankrupt or goes into liquidation.
- (d) The Seller makes a general assignment for the benefits of creditors.
- (e) A receiver is appointed for any of the properties owned by the Seller.
- (f) Any reason directly attributable to Seller different from Sl. No. (a) to (e).

The Seller is aware that the said goods are required by the Owner for the ultimate purpose of material production and that non delivery may cause loss of production and consequently loss or profit to the Owner. In the event of the Owner exercising the option to claim damages for non-delivery other than by way of difference between the market price and the contract price, the Seller shall pay to the Owner, the fair compensation to be agreed upon between the Owner and the Seller.

- (II) Owner may, if considered necessary, cancel/terminate the order either in full or in part, without assigning any reasons whatsoever and take necessary action for Procurement repairing, rectification, etc. at the risk and cost of the Seller.

## **9.0 ASSIGNMENT AND SUBLETTING:**

Except for raw materials or any part of this Order for which the makers are named in this Order, the Seller shall not assign the Order or any part thereof, or any monies due hereunder, or subject this order or any part thereof, without the prior written consent of Owner or its authorized representative.

All sub-orders shall bear Owner's Order Number and shall contain the following words, "The equipments/materials being supplied against this Order is subject to inspection/expediting by NALCO and/or their assigned representatives including the insurance authority of NALCO.

The Seller agrees to furnish to Owner or its authorized representative, three unpriced copies of all sub-orders issued for raw materials and components within seven days of placement of such sub-orders.

**10.0 FORCE MAJEURE:**

Shall subject to its being a direct impact on the execution of this order, mean and be limited to the following:

- (a) Any war /hostilities.
- (b) Any riot or civil commotion
- (c) Any earthquake, flood, tempest, lightning or other natural physical disaster.
- (d) Any strike or lock-out (only those exceeding ten (10) continuous days in duration) affecting the performance of the Seller's obligation.
- (e) Major power-cuts for a consecutive minimum period of 30 days.
- (f) Any restriction imposed by the Government (Central or State) or other Statutory bodies which prevents/delays the execution of the order by the Seller.
- (g) Epidemics & pandemics whether known or unknown

The Seller shall advise Owner or its authorized representative by a registered letter duly certified by Local Chamber of Commerce or Statutory authorities, the beginning and end of the above causes of delay within seven (7) days of occurrence and cessation of such Force Majeure conditions. In the event of delay lasting over one month, if arising out of causes of Force Majeure, Owner reserves the right to cancel the order and provisions governing Termination/Cancellation stated under Article 8 shall apply.

For delays arising out of Force Majeure, the Seller shall not claim extension in completion date for a period exceeding the period of delay attributable to the causes of Force majeure, and neither Owner nor Seller shall be liable to pay extra costs provided it is mutually established that Force Majeure Conditions did actually exist.

The delivery date specified on the order takes into account the extent of Force Majeure conditions prevalent in Seller's Works (such as power restrictions, etc.) at the time of acceptance of order and no extension to delivery date shall be allowed on this account.

**11.0 INSPECTION AND EXPEDITING:**

All inspections and tests shall be made as required by the specifications attached to or made part of the order and/or amendments issued by Owner. All goods or materials shall be subject to inspection by Owner or Owner's authorized representatives. Such tests and/or inspections may be held in conjunction with the representatives of the Owner/Insurance Authority.

Inspector shall have the right to carry out the inspection and testing which will include the raw materials at manufacturer's shop/place at fabricator's shop and at time of actual dispatch before and after completion of packing.

Seller shall advise the Owner or its authorized representative in writing, as the circumstances warrant at least fifteen (15) days in advance of the date of the final tests and/or inspection.

Owner's representative shall be authorized inspection spokesman and all matters including the Owner's Insurance Authority requirements shall be handled with the Seller through such inspector. Such inspection, or failure to inspect shall in no way relieve the Seller of any responsibility or liability with respect to such materials nor prejudice the right of Owner/its authorized representative to reject unsuitable material after arrival at the destination.

All tests, mechanical and others and particularly those required by codes will be performed at Seller's expenses and in accordance with Inspector's instructions. The Seller will also bear the expenses concerning preparation and rendering of tests required by Boiler Inspectorate or such other statutory testing agencies or by Lloyds Register Industrial Services or any other agency as may be required. For non-IBR items, inspecting authority shall be Owner or its authorized representative.

Unless specifically stated to the contrary on the order, all expenses relevant to inspection and expediting, preparation of test report or certificate, etc. shall be borne by the Seller EXCEPT for the salaries, fees, travelling, lodging and boarding expenses of Owner's representatives.

The Seller shall:

- Inform Procurement Coordinators/Managers at least eight days in advance of the exact place, date and time of rendering the equipment of materials for required inspection.
- Provide free access to inspectors during normal working hours to vendors or his/its sub-vendor's works and place at their disposal all useful means of performing, marking, testing, inspection and final stamping.

The Seller shall submit to Owner within four weeks from the date of this Order a Bar-Chart showing start and finish dates for various activities forming part of the execution of this order and identifying the delivery dates to this activity schedule. Seller shall update this Bar-Chart every month showing the actual performance of the activities and how the delivery date has been affected thereby. Copies of the updated Bar charts will also be submitted to Owner or its authorized representative for review of the progress of the Order. Seller shall also furnish un-priced copies of suborders/sub contractors, phased Programme of item wise manufacturing, testing and delivery and any other information/documentation as may be called for by Procurement Coordinators/Managers.

When deemed advisable by Owner or its authorized representative, the Order and Seller's sub-orders shall be subject to personal expediting by Owner's representatives. Such expediting shall in no way relieve the Seller of the time or delivery obligations under the terms of the order. At all reasonable times and places, before, during and after manufacture, the Seller shall grant and provide access to Owner or its authorized

representative to all parts of the Seller's work and their Sub-supplier's works involved in the manufacture or processing of the goods or materials. All post order correspondence shall be addressed to the designated person of the Owner.

#### **12.0 OFFICIAL INSTITUTIONAL TESTING:**

In addition to testing and inspection by inspectors mentioned above, Lloyds Register Industrial Services or similar institutional agencies like Boiler – Inspectorate may be assigned for official testing of all coded equipment. The Seller shall ensure that all Procedures for preparation and Performance of test prescribed by such Institutions shall be completed scrupulously.

The Seller is required to send to such Institutions as may be designated by the Owner at least three sets of construction drawings for each equipment and calculations. All manufacturer's mill test certificates and analytical reports from material laboratories in respect of all raw material and components employed shall have to be presented to such institution's inspectors in the number of copies required. Seller shall be responsible for any delay in submission of necessary certificates. The Seller shall maintain close liaison with Procurement Coordinators and Institution's Inspectors to maintain Schedule and delay if any, in this process will not be taken into consideration as a cause of Force Majeure.

#### **13.0 WEIGHTS AND MEASUREMENTS:**

All weights and measurements recorded by Procurement Co-ordinators/managers on receipt of goods at the site will be treated as final and binding on the Seller.

Sellers shipping documents and invoices must contain the following data :

- (i) Unit net weight
- (ii) Unit gross weight (packing included)
- (iii) Dimensions of packing.

#### **14.0 OIL & LUBRICANTS:**

The first filling oils and lubricants, if any, required for every equipment shall be included in the price. The Seller shall also recommend the quality and quantity of oils and lubricants required for one year continuous operation.

#### **15.0 SPARE PARTS:**

The Seller must furnish item wise and priced list of spare parts required for two year's operation of the main equipment and prime movers also.

The Seller shall provide the necessary cross sectional drawing to identify the spare parts numbers and their location as well as interchangeability chart.



## **16.0 GUARANTEE:**

All goods or materials shall be supplied strictly in accordance with the specifications, drawings, data sheets, other attachments and conditions stated on the order. No deviation from such specifications or alternations of these conditions shall be made without Owner's agreement in writing which must be obtained before any work against the order is commenced. All materials furnished by the Seller pursuant to this order (irrespective of whether engineering, design data or other information has been furnished reviewed or approved by Owner) are guaranteed to be of the best quality of their respective kinds (unless otherwise specifically authorized in writing by Owner) and shall be free from faulty design to the extent such design is not furnished by Owner workmanship and materials, and to be of sufficient size and capacity and of proper materials so as to fulfill in all respects all operating conditions, if any, specified in this order.

Checking of Seller's drawings by procurement Coordinators/Managers and their approval and permission to ship or dispatch the equipment and materials granted by Inspectors shall not relieve the Seller of any part of his/its responsibilities of proper fulfillment of the requirements.

If any trouble or defect originating with the design, materials, workmanship or operating characteristics of any materials arise at any time prior to twelve (12) months from the date of the first commercial operation of the Plant of which the materials supplied under this order form a part thereof, or thirty (30) months from the date of last dispatch/shipment, whichever period shall first expire and the Seller is notified thereof. Seller, at its own expense and as promptly as possible make such alterations, repairs and replacements as may be necessary to permit the materials to function in accordance with the specifications and fulfill the foregoing guarantees.

Owner may, at its option, remove such defective materials, at Seller's expense, in which event Seller shall, without cost to Owner and as promptly as possible, furnish and install proper materials. Repaired or replaced materials shall be similarly guaranteed for a period of not less than twelve (12) months starting from the date on which the replacement are put in service or thirty (30) months from the date of despatch/shipment. In the event that the materials supplied do not meet the specifications and/or are not in accordance with the drawings, data sheets or the terms of this order and rectification is required at Site, Owner shall notify the Seller giving full details of deficiencies. The Seller shall attend the site within seven (7) days of receipt of such notice to meet and agree with the representatives of Owner the action required to correct the deficiencies. Should the Seller fail to attend meeting at site within time prescribed above, Owner shall immediately rectify the works/materials and Seller shall reimburse Owner all costs and expenses incurred in connection with such trouble or defect.

The Seller shall furnish a bank guarantee (as per proforma hereunder) to support Seller's performance. This bank guarantee shall not be deemed a waiver of any right of the Owner or Procurement Coordinators/Managers to insist upon the strict performance thereof or of any of his or their right or remedies as to any such goods regardless of when goods are shipped, received or accepted nor shall any purported oral modification

or revision, the order by Procurement Coordinators/Managers act as waiver of the terms hereof.

**17.0 PATENT INDEMNITY:**

The Seller shall fully indemnify Owner, vendors and users of the materials furnished hereunder, against any action, claim or demand, costs and expenses, arising from or incurred by reasons of, any infringement or alleged infringement of any letters Patent, registered design, Trade Mark or name, Royalties copy right or any other protected rights in respect of any materials supplied or any arrangements, system or methods of using, fixing or working used by the Seller.

The prices quoted by the Seller shall include all charges for Royalties payable in respect of the use of any letters patent, registered design, Trade Mark or name, drawing or technical information which may be involved in the performance of this order or in the construction or use of any plant, material or apparatus supplied by the Seller.

In the event of any claim or demand being made or action brought against Owner in respect of an of the aforesaid matters, the Seller shall be notified thereof immediately and the Seller shall, at its own expense with (if necessary) the assistance of Owner (whose all expenses shall be reimbursed by the Seller) conduct all negotiation for the settlement of the same and/or any litigation which may arise therefrom.

**18.0 LIABILITY AGREEMENT:**

Seller shall defend and hold Owner harmless from all claims and liability for injuries to and/or death of any and all persons and for loss of and/or damage of property caused in whole or in part by the negligence or willful acts of the Seller, arising under or by reasons of materials furnished hereunder including without limitation, the installation, erection, repair rectification, adjustment or operation of the materials covered by this order.

In addition, Seller, shall, if he elects to utilize materials, tools, equipment or facilities made available to Seller by Owner for use by the Seller and not to be incorporated in the work, as additional consideration thereof, defend and save Owner harmless from all claims and liability for injuries to, and/or death of any and all persons, and or loss of and/or damage to property resulting from or by reasons of the Seller's utilization thereof, whether or not caused partially or totally by the negligence of Owner employees, contractors, sub-contractor's, agent or representative.

In any case where it is necessary for employees or representatives of Seller to go upon the premises of Owner, Seller agrees to assume full responsibility for the proper conduct of such employees/representatives while on the said premises and to comply with all applicable workmen's Compensation Laws, other applicable government regulations and ordinances and all plant rules and regulations particularly in regard to safety precautions and fire hazards. If this order requires Seller to furnish labour at site, Seller shall furnish Owner with a certificate, or other evidence satisfactory of Owner indicating that such labour is adequately covered by Workmen's compensation Insurance and Employer's Liability Insurance with limits acceptable to Owner.

The Seller shall also procure and keep in force at his own cost comprehensive Automobile Liability Insurance for adequate coverage in respect of all his vehicle visiting or plying in project premises. The Seller shall also be responsible for compliance of existing laws in respect of their workmen and employees.

## **19.0 PRICES:**

Unless otherwise specified in the order, the order price shall remain firm and will not be subject to any escalation of imposition, any description during the pendency of the order, notwithstanding the change in the cost of materials, labour and/or variations in taxes, duties and other levies on materials and components that may take place while the order is under execution, even if the execution of the order is delayed beyond the delivery period/completion date specified in the order for any reason whatsoever.

The price shall be:

- a) Inclusive of adequate packing and forwarding charges for delivery terms on F.O.T. despatch point and freight whenever F.O.T. destination delivery terms are agreed to but exclusive of transit insurance.
- b) Exclusive of applicable GST which is leviable by law on sales of finished goods to Owner. The nature and extent of such levies shall be shown separately.

Divisibility of Order

Unit prices and discounts, if any, shall be applicable for ordering without any stipulation of Minimum order value or on the basis of total order for items covered in the requisition.

## **20.0 TAXES, DUTIES, UNEMPLOYMENT BENEFITS, ETC.:**

GST applicable at the destination on the finished goods alone will be payable by the Owner at actuals against documentary evidence to be furnished by the Seller. All other taxes, duties, levies and impost will be to the Seller's account.

The Seller accepts full and exclusive liability for the payment of any and all applicable taxes (CGST, SGST, IGST, UTGST), levies and statutory payments payable under all or any of the prevailing Central/ State statutes.

The Seller shall comply with all the provisions of the GST Act/ Rules/ requirements like providing of tax invoices, payment of taxes to the authorities within the due dates, filing of returns within the due dates etc. to enable NALCO to take Input Tax Credit. The vendor shall also comply any modification in the prescribed rules by GST council/ appropriate authority from time to time during execution of the contract.

In case, NALCO is not able to take Input Tax Credit due to any noncompliance/ default/negligence of the seller, the same shall be recovered from the pending bills/dues (including security deposit, BG etc.).

Seller shall be responsible to indemnify NALCO for any loss, direct or implied, accrued to NALCO on account of supplier's failure to discharge his statutory liabilities like paying taxes on time, filing appropriate returns within the prescribed time etc

Seller shall adjust taxes, duties, cess or levies wherever required if the Owner furnishes exemption certificates even retrospectively.

Seller hereby accepts exclusively liability for and agrees to Indemnify Owner against liability for the payment of any and all contributions or taxes for unemployment insurance, old age pensions or annuities or other purposes prevalent under the present legislation or hereafter imposed by the Govt. of India/or by any unit or sub-division or authority thereof, which are in whole or in part measured by and/or based upon the wages, salaries or other remuneration paid to persons employed by Seller on work in connection with this order.

#### **21.0 CONTROL REGULATIONS:**

The supply, despatch and delivery of goods shall be arranged by the Seller in strict conformity with the statutory regulations including provisions of Industries (Development and Regulation) Act, 1951 and any amendment thereof as applicable from time to time. The Owner disowns any responsibility for any irregularity or contravention of any of the statutory regulations in manufacture or supply of his stores covered by this order.

#### **22.0 TERMS OF PAYMENT:**

The Owner will make payments, as they fall due, to the Seller directly for the goods and materials purchased or released under this order in accordance with the relevant terms of the order, on satisfaction that, the goods or materials furnished by the Seller and the invoices therefor, are in accordance with the payment terms and all other conditions of this Order. However, such payments will not be deemed to constitute acceptance of goods if the goods are later found to be defective.

Such delay in receiving invoices in the number of copies specified, (or errors and omissions) or failure or delay in providing the documents and/or certificates required in the order, or failure to comply with the provisions of owner Invoicing Instructions shall be considered just cause for withholding payment without loss of discount privilege, and any demurrage or wharfage resulting thereby shall be borne by Seller's invoices and documents shall be negotiated strictly in the manner specified in the order and all bank charges, if any, shall be to the Seller's account.

The time for payment of invoices or for accepting any discounts offered shall be only from the date of approval specified in the order or receipt of Seller's correct invoices whichever is later.

All costs, damages or expenses for which the Seller is liable under this order may be deducted from moneys, due or becoming due to the Seller or may be recovered by action at law or arbitration pursuant to Article 37.

Terms of payment shall be as follows, unless otherwise specified :

90% against despatch documents through Owner's bank. All bank charges will be to Seller's account.

10% balance within 30 days of receipt and acceptance of Equipment/Material at project site against a Performance Bank Guarantee as a security for the like amount from any Nationalized Bank valid till 30 months from the date of last receipt at site as per Owner's Standard Proforma on an appropriate value of Stamp Paper (in case of P.O. value upto Rs. Ten Lakhs) The Performance Bank Guarantee will be released after the expiry of the period of Performance Guarantee.

Necessary Contact cum Performance Bank Guarantee separately @ **10.00%** of P.O. value **along with applicable GST** as a security to be submitted within 30 days of TOI/Brief Order, in case P.O. value is more than Rupees Ten Lakhs. The Contract cum Performance Bank Guarantee will be released after the expiry of the period of Performance Guarantee.

Financial settlement of Seller's invoices is liable to be withheld/balance 10% payment shall not be released, unless the vendor furnishes prints/reproducibles of approved drawings as specified in vendor data requirement, data, full documentation, manual as called for in Purchase Order and a list of all the dispatches of material made against the Purchase Order.

A certificate to the effect that nothing is due to the Seller from Purchaser (No dues certificate/No claim Certificate) shall form part of the documents to be submitted while claiming last payment/final payment/or in case of full payment.

### **23.0 PRICE REDUCTION SCHEDULE FOR DELAYED DELIVERY:**

The time and date of delivery of stores/materials/equipment as stipulated in the order shall be deemed to be the essence of the contract.

**If any delay is anticipated by the Seller in the delivery of the material(s) beyond the stipulated date(s) of Delivery, the Seller shall forthwith inform NALCO in writing of such anticipated delay and of the steps being taken by the Seller to remove or reduce the anticipated delay, and shall promptly keep NALCO informed of all subsequent developments.**

Unless and otherwise specified, in case of delays in completion of the order, the Owner will have the following rights:

- (i) Should the Seller fail to complete the order on or before the completion date specified in order or any extension granted thereto in writing by Owner shall have the right to recover from the Seller 1/2% (half percent) of the order price of goods or materials not supplied and/or unfinished, per week or part week of delay thereof, subject to a maximum 5% (five percent) of the total order price, **along with applicable GST**. Such reduction of prices shall not relieve the Seller of his delivery obligations under the order, or any other rights of the Owner.
- (ii) Cancel the order in part or full without any liability/cancellation charges and purchase such cancelled quantities from elsewhere on account and at the risk of

the Seller, without prejudice to its rights under (i) above in respect to goods delivered.

**24.0 REJECTION, REMOVAL OF REJECTED GOODS & REPLACEMENT**

In case the testing and inspection at any stage by Inspectors reveal that the equipment, materials and workmanship do not comply with specification and requirements, the same shall be removed by the Seller at his/its own expense and risk within the time allowed by the Owner. The Owner shall be at liberty to dispose of such rejected goods in such manner as he may think appropriate. In the event the Seller fails to remove the rejected goods within the period as aforesaid all expenses incurred by the Owner for such disposal shall be to the account of the Seller. The freight paid by the Owner, if any, on the inward journey of the rejected materials shall be reimbursed by the Seller to the Owner before the rejected materials are removed by the Seller.

**25.0 STATUTORY REQUIREMENTS**

Seller warrants that all goods and materials covered by this Order have been produced, supplied, sold, dispatched, delivered and furnished in strict compliance with all applicable laws, regulations, labour agreements, working conditions and technical codes and requirements as applicable from time to time. Seller shall execute and deliver such documents as may be required to affect or to evidence such compliance. All laws and regulations required to be incorporated in agreement of this character are hereby deemed to be incorporated by this reference. The Seller shall furnish the industrial license number or pertinent details to show whether he has a valid license to manufacture the subject machinery, equipment and materials ordered on them under Industries (Development & Regulations) Act or any other applicable statute or whether he is an authorized representative of a licenced manufacturer and has a valid license. Owner disowns any responsibility for any irregularity or contravention of any of the statutory regulations in the manufacture or supply of goods covered by this order.

The Seller shall ensure compliance with the above by all his sub-vendors/suppliers and shall indemnify Owner or its authorized representative against any actions, damages, costs and expenses of any failure to comply of aforesaid.

**26.0 TRANSIT RISK INSURANCE:**

Covers for finished goods from Seller's works upto the time of delivery at the storage yard/warehouse of Owner shall be furnished by the Owner. The Seller shall furnish immediately on booking each consignment all information required to arrange transit risk insurance. This shall in no way relieve the Seller of his responsibility to provide proper packing and protection as stated elsewhere in this order. The Seller shall also furnish the despatch particulars to underwriters and Owner immediately.

**27.0 PACKING, CRATING, MARKING, FORWARDING, CARTAGE/SHIPMENT:**

The cost of all special Packing, boxing, marking, crating or cartage is included in the price specified on the face of this order unless otherwise specifically agreed to in this order.

All packing, boxing, crating, marking, forwarding and cartage/shipment shall conform to the specifications or requirements detailed in the respective attachment to the Order. The Seller shall be held liable for damage or breakage of the goods due to defective or insufficient packing or protection. The Seller shall not charge anything extra for such packing or any dues or levies on packing or protection.

**28.0 NON-CONFORMANCE:**

Owner reserve the right to claim damages for use of defective or sub-standard goods supplies by the Seller irrespective of the fact whether goods were inspected by Owner or its authorized representative or not and without prejudice to rights of Owner for any other action.

**29.0 NON ASSIGNMENT:**

The Seller shall act as an independent agency and not as an agent or employee of Owner and the Seller shall not assign or sub-contract this order any part thereof or any money to become due hereunder, without the prior written consent of owner/authorized representative.

Any such permitted assignment or sub-contracting shall not relieve the Seller of any of his obligation against this order. The Seller shall be bound to execute the contract notwithstanding any change in Seller's constitution. In the event of any change in the constitution of the Seller, the contract will be liable to be terminated by the Owner.

**30.0 NON-WAIVER:**

Failure of the Owner or its authorized representatives to insist upon strict performance of any of the terms and conditions incorporated in the Order, failure or delayed to exercise of any rights detailed here failure to properly notify the Seller in the event of breach of any obligations contained herein, shall not constitute a waiver of any other obligation contained herein. Any waiver to be effective must be in writing.

**31.0 RECOVERY OF SUMS DUE:**

Whenever any claim against the Seller for payment of sum of money arises out of or under the contract the Owner shall be entitled to recover sums from any sum then due or which at any time thereafter may become due from the Seller under this or any other contract with the Owner and should this sum be not sufficient to cover the recoverable amount, the Seller shall pay to the Owner on demand the balance remaining due.

If any details shown on the drawings are omitted form the specifications or vice-versa, the Seller shall notwithstanding such omissions, supply in accordance with such details and shall be deemed to have included the cost for such work in the price.

The Seller shall treat as confidential all information (whether written or otherwise supplies by Owner hereunder and shall use his best endeavors to ensure that such information is not divulged to any third party except where necessary for the purpose of performance of this order by the Seller, of course, with the consent of Owner. In such cases, Seller shall ensure that third parties in question undertake a similar obligation of

confidence. This obligation does not apply to information, which at the time of disclosure is the public domain or is in the Seller's lawful possession without restriction on disclosure.

The Seller shall be required to sign a secrecy agreement for certain proprietary items of equipment which will be specified by Owner later.

**32.0 PART ORDER, REPEAT ORDER:**

Seller hereby agrees to accept part order at Owner's option without any limitation whatsoever and also agrees to accept repeat order(s) during a period of twelve months from the date of original Purchase Order on same unit prices, terms & conditions as that of the original purchase order.

**33.0 TECHNICAL INFORMATION:**

Drawing, specifications and details shall be the property of the Owner and shall be returned by the Seller on demand. The Seller shall not make use of drawings and specification for any purpose at any time save and except for the purpose of the Owner.

The Seller shall not disclose the technical information furnished to or gained by the Seller under or by virtue of or as a result of the implementation of the Purchase Order to any person, firm or body or corporate authority and shall make all endeavors to ensure that the technical information is kept CONFIDENTIAL. The technical information imparted and supplied to the Seller by Owner shall at all times remain the absolute property of the Owner.

**34.0 HEADINGS:**

The headings of the conditions hereof shall not effect construction thereof.

**35.0 MATERIALS FURNISHED BY OWNER:**

If specifically agreed to in the Order, Owner shall furnish to the Seller such materials/equipment (hereinafter called Owner's materials) as agreed for incorporation into the manufacture, fabrication, testing or processing of the goods or materials subject to availability.

Owner's materials shall be consigned on "freight paid basis" to the nearest Railway point to Seller's works to which railway will accept the consignment depending upon the nature of the consignment (whether wagon load/small). Seller shall arrange to promptly collect such materials from the Railways and transport to his works at Seller own cost. Any duty, ~~octroi~~ or local taxes levied by the local bodies at the Seller's end will be to the account of the Seller.

Seller shall arrange to properly store and provide adequate security and protection to Owner's materials. Seller shall be solely responsible for the safe keeping of such materials and shall indemnify Owner against any loss or damage due to misuse or misappropriation whatsoever of Owner's materials while in the possession of the Seller



or his sub-suppliers. The property in such goods shall always remain with the Owner and the title in such goods will not pass to the Seller's.

The Seller shall arrange to provide at his own cost and experience the necessary insurance cover against all risks for owner's materials.

Seller shall, if required by Owner, furnish a Bank Guarantee/Insurance Bond equal to the total value of free issue materials and such guarantees shall remain valid till the material accounting towards satisfactory utilization and the return surplus free issue materials are completed.

The Seller shall maintain systematic records of receipt and issue of Owner's materials and shall be accountable at all times to Owner regarding the utilization thereof.

Unused surplus materials or scrap from material supplied by the Owner to the Seller shall be returned by the Seller to the Owner or if the Owner so directs the Seller may dispose of the same by sale or otherwise on such terms and conditions as the Owner may stipulate and the Seller shall pay to the Owner the sale proceeds of the material so disposed off by the sale deducting therefrom expenses incurred by the Seller on such sale, the quantum of such deduction to be mutually agreed upon in advance between the Owner and the Seller.

For such of Owner's materials which the Seller can not return within a reasonable time (not exceeding 2 months from the date of last despatch of equipments ordered) nor account for as legitimately utilized, the Seller shall be liable to pay to the Owner the expenses incurred by Owner in procuring, expediting, inspection, testing, packing, shipping handling, incurring payment of duties and taxes and financing of purchases as notified by Owner regardless of the issue price to Seller, if any, agreed to on the Order.

### **36.0 ORDER OF PRECEDENCE:**

In case of any difference between these conditions of order and special conditions, if any, referred to or incorporated in a particular order, the latter shall prevail.

### **37.0 ARBITRATION:**

All the disputes and differences arising under the contract whether during or after completion of the contract or whether before or after determination, foreclosure or breach of the contract (other than those in respect of which the decision of any person is by the contract expressed to be final and binding) shall after written notice by either party to the contract to the other of them and to appointing authority hereinafter mentioned be referred for adjudication to a sole arbitrator to be appointed as hereinafter provided.

For the purpose of appointing the sole Arbitrator referred to above, CMD NALCO who shall be appointing authority will send within thirty days of receipt of the notice, to the Seller a panel of three names of persons.

The Seller shall on receipt of the names as referred select any one of the person names to be appointed as a sole Arbitrator and communicate his name to the Appointing

Authority within thirty days of receipt of the names. The Appointing Authority shall thereupon appoint the said person as the Sole Arbitrator. If the Seller fails to communicate such selection as provided above within the period specified, the Appointing Authority shall make the selection and appoint the selected person as the sole Arbitrator.

If Arbitrator so appointed is unable to/unwilling to act or resigns his appointment or vacates his office due to any reason whatsoever, arbitrator shall be appointed as aforesaid. The work under the contract shall not be stopped during the arbitration proceedings.

The Arbitrator shall normally be deemed to have entered on the reference on the date he issues notices to both the parties fixing the date of the first hearing.

The Arbitrator may, from time to time, with the consent of the parties, enlarge the time for making and publishing the award.

The Arbitrator shall give a separate award in respect of each dispute or difference and shall give a reasoned and speaking award/awards.

The venue of arbitration shall be at Bhubaneswar. However, if the situation so warrants, at marginally & when required be held at the place where the site of work is situated.

The fees, if any, of the Arbitrator shall, if required to be paid before the award is made and published, be paid half and half by each of the parties. The costs of the reference and of the award including the fees, if any, of the Arbitrator shall be in the discretion of the arbitrator who may direct to and by whom and in what manner, such costs or any part thereof shall be paid and may fix or settle the amount of costs to be so paid.

The award of the Arbitrator shall be final and binding on both the parties.

Subject as aforesaid the provisions of the Arbitrator and Conciliation Act 1996 or any statutory modification or re-enactment thereof and the rules made thereunder and for the time being in force shall apply to the Arbitrator proceedings under this clause.

For Public Sector Enterprises guidelines as per circular of BPE No. 15.09.86 – BPE (fin) dtd. 30.03.89 as amended from time to time will be applicable for resolving any dispute.

### **38.0 GOVERNING LAW AND JURISDICTION:**

All actions at law or suits arising out of or in connection with this order or the subject matter thereof and whether as to construction or otherwise shall be instituted in a court of competent jurisdiction in the State of Orissa.

### **39.0 TRANSFER OF PROPERTY:**

In the absence of any provision to the contrary, transfer of property in the goods shall be deemed to have taken place as follows:

- (i) F.O.R. or F.O.T. Despatch Point

On handling over the goods to the authorized carrier against a receipt and such receipt having been received by Owner.

- (ii) F.O.R. destination station : On taking delivery from the Railway at the Destination Station.

- (iii) Equipment sent freight paid : On arrival under lifting hook at the to the 5TH STREAM ALUMINA job site.

REFINERY EXPANSION  
PROJECT SITE

On temporary acceptance by Owner at job site.

Transfer of property in the Goods shall be without prejudice to any guarantee or liability of the Seller as to the quality suitability or performance of the Goods.

### **40.0 PUBLICITY AND ADVERTISING:**

Seller shall not without the written permission of Owner or any Company affiliated with Owner or to the destination or the description of the goods or services supplied to the Owner in any publication, publicity or advertising media.

### **41.0 VENDOR DATA REQUIREMENTS:**

The submission by the Seller to Owner of drawings and data documentation is an integral part of the Order. The number of copies (reproducibles and Prints) and time limits for submitting these documents by the Seller are specified on the Order. These requirements must be respected failing which the order will not be deemed to have been duly executed for all purpose.