

GENERAL TERMS AND CONDITIONS OF MELROB GROUP HOLDINGS LIMITED INDIA BRANCH OFFICE



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1 DEFINITIONS AND INTERPRETATION

1.1 In these Conditions:

“Acknowledgement of Order” means the Seller’s written acknowledgement of the Buyer’s Order.

“Buyer” means the person whose Order for the purchase of Goods is accepted by the Seller.

“Conditions” means the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in an Acknowledgement of Order.

“Contract” means the contract for the purchase and sale of the Goods.

“Goods” means the goods (including any installment of the goods or any parts for them) which the Seller is to supply in accordance with these Conditions.

“Order” means a purchase order issued by the Buyer detailing the Goods it wishes to purchase.

“Quotation” means a quotation issued by the Seller to the Buyer.

“Seller” means Melrob Group Holdings Limited India Branch office (registered in India under number F06282).

“Writing” includes facsimile transmission, electronic mail and comparable means of communication.

1.2 Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

2 BASIS OF THE SALE

- 2.1 Any Quotation (whether written or oral) is given on the basis that it is an invitation to treat only. On receipt of a Quotation from the Seller, the Buyer may issue an Order for the Goods. No Contract will come into place until the Seller has sent an Acknowledgement of Order.
- 2.2 Unless otherwise stated on the Quotation, any Quotation is valid only for a period of 30 days from its date of issue provided that the Seller has not previously withdrawn it by written or oral notice to the Buyer.
- 2.3 The Seller shall sell and the Buyer shall purchase the Goods in accordance with any Order of the Buyer which is accepted in an Acknowledgement of Order by the Seller subject in either case to these Conditions. These Conditions are complete and exhaustive and shall govern the Contract to the exclusion of any other terms and conditions subject to any specific terms agreed in an Acknowledgement of Order. These Conditions shall prevail over any inconsistent terms or conditions contained in or referred to in any Seller’s delivery note, or correspondence or elsewhere agreed by trade, custom or practice or course of dealing. The terms and conditions of the Buyer shall not apply.
- 2.4 No variation to these Conditions shall be binding unless agreed in Writing between the authorised representatives of the Buyer and the Seller.
- 2.5 The Seller’s employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Seller in Writing. In entering into the Contract the Buyer acknowledges that it does not rely on, and waives any claim for breach of, any such representations, which are not so confirmed. Nothing in these Conditions shall exclude or limit the Seller’s liability for fraudulent misrepresentation.
- 2.6 Any advice or recommendation given by the Seller or its employees or agents to the Buyer or its employees or agents as to the storage, application or use of the Goods which is not confirmed in Writing by the Seller is followed or acted upon entirely at the Buyer’s own risk, and accordingly the Seller shall not be liable for any such advice or recommendation which is not so confirmed.
- 2.7 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issues by the Seller shall be subject to correction without any liability on the part of the Seller.

3 ORDERS AND SPECIFICATION

- 3.1 No Order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until confirmed in Writing by the Seller’s authorised representative.
- 3.2 The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any Order (including any applicable specification) submitted by the Buyer, and for giving the Seller any necessary information relating to the Goods within a sufficient time to enable the Seller to perform the Contract in accordance with its terms.
- 3.3 The quantity, quality and description of any specification for the Goods shall be those set out in the Buyer’s Order (if accepted by the Seller).
- 3.4 If the Goods are to be manufactured or any process is to be applied by the Seller in accordance with a specification submitted by the Buyer, the Buyer shall indemnify the Seller against all loss, damages, costs and expenses awarded against or incurred by the Seller in connection with or paid or agreed to be paid by the Seller in respect of any third party claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from the Seller’s use of the Buyer’s specification.
- 3.5 The Seller reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable safety or other statutory requirements or, where the Goods are to be supplied to the Seller’s specification, which do not materially affect their quality or performance.
- 3.6 No Order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in Writing of the Seller and on terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profit), costs (including the costs of all labour and materials used), damages, charges and expenses incurred by the Seller as a result of cancellation.

4 PRICE OF THE GOODS

- 4.1 The price of the Goods shall be the Seller’s quoted price or, where no price has been quoted (or a quoted price is no longer valid), the price listed in the Seller’s published price list current at the date of acceptance of the Order.
- 4.2 The Seller reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of the goods to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.
- 4.3 The price is exclusive of any applicable value added tax, which the Buyer shall be additionally liable to pay to the Seller.
- 4.4 The Buyer shall make all payments due without any deduction whatsoever by way of setoff, counterclaim, withholding (including taxes), discount or otherwise.

5 TERMS OF PAYMENT

- 5.1 Unless otherwise stated in an Acknowledgement of Order, the Seller shall be entitled to invoice the Buyer for the price of the Goods on or at any time after delivery of the Goods, unless the Goods are to be collected by the Buyer or the Buyer wrongfully fails to take delivery of the Goods, in which event the Seller shall be entitled to invoice the Buyer for the price at any time after the Seller has notified the Buyer that the Goods are ready for collection or (as the case may be) the Seller has tendered delivery of the Goods.
- 5.2 Unless otherwise stated in an Acknowledgement of Order, the Buyer shall pay the price of the Goods without any deduction within 30 days of the end of the month within which the Seller renders an invoice for the price of the Goods, notwithstanding that delivery may not have taken place. Receipts for payments will be issued only upon request.
- 5.3 The time of payment of the price shall be of the essence of the Contract, and the Buyer shall indemnify the Seller against all expenses and legal costs incurred by the Seller in recovering overdue sums.
- 5.4 If the Buyer fails to make any payment by the due date then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to:
 - (a) cancel the Contract or suspend any further deliveries under that or any other contract with the Buyer;
 - (b) appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer); and
 - (c) charge the Buyer interest (both before and after any judgment) on the amount unpaid, at the rate of 21% per cent per annum from the due date, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).
- 5.5 All sums payable by the Buyer under the Contract shall be paid in full in INR or such other currency as the Seller may specify.

6 DELIVERY

- 6.1 Delivery of the Goods shall be made by the Seller delivering the Goods to the Buyer’s premises or, if some other place for delivery is agreed by the Seller, by the Seller delivering the Goods to that place.
- 6.2 Any dates quoted for delivery of the Goods are approximate only and the Seller shall not be liable for any delay in delivery of the Goods howsoever caused and such delay shall not entitle the Buyer to repudiate or cancel the Contract. Time for delivery shall not be of the essence unless previously agreed by the Seller in Writing. The Goods may be delivered by the Seller in advance of the quoted delivery date upon giving reasonable notice to the Buyer.
- 6.3 If the Seller fails to deliver the Goods for any reason other than any cause beyond the Seller’s reasonable control on the Buyer’s fault, and the Seller is accordingly liable to the Buyer, the Seller’s liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar goods to replace those not delivered over the price of the Goods.
- 6.4 If the Buyer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer’s reasonable control or by reason of the Seller’s fault) then, without prejudice to any other right or remedy available to the Seller, the Seller may:
 - (a) store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or
 - (b) sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract.
- 6.5 The Seller may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate Contract. Any delay in delivery or defect in an instalment shall not entitle the Buyer to cancel any other instalment.

7 RISK AND PROPERTY

- 7.1 Risk of damage to or loss of the Goods shall pass to the Buyer:
 - (a) in the case of Goods to be delivered at the Seller’s premises, at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, the time when the Seller has tendered delivery of the Goods; or



- (b) in the case of Goods to be delivered at the Seller's premises, at the time when the Seller notifies the Buyer that the Goods are available for collection.
- 7.2 Notwithstanding delivery and the passing of risk in the Goods to the Buyer, or any other provision of these Conditions, the property in the Goods shall not pass to the Buyer until the Seller has received cleared funds in full of the contract price for the Goods and all other goods agreed to be sold by the Seller to the Buyer for which payment is then due under any other contract.
- 7.3 Until property in the Goods passes to the Buyer, it shall:
- (a) hold the Goods on a fiduciary basis as the Seller's bailee; and
- (b) keep the Goods free from any charge, lien or other encumbrance
- 7.4 Notwithstanding property in the Goods remaining with the Seller until payment as provided in Clause 7.2 the Buyer shall keep the Goods in a satisfactory condition and separate from all other goods, properly stored, protected, labelled or identified as the Seller's property, and fully insured against all usual risks (to the reasonable satisfaction of the Seller) with a reputable insurance company.
- 7.5 Until property in the Goods passes to the Buyer, the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller and, if the Buyer fails to do so immediately, the Seller may recover the Goods and the Buyer grants the Seller (and its employees and agents) an irrevocable licence at any time to enter on to any premises of the Buyer or any third party where the Goods are stored and repossess the Goods and if necessary to unpack or remove the Goods from anything to which they are packaged or attached.
- 7.6 The Seller shall have the right to maintain an action against the Buyer for the contract price notwithstanding that the property in the Goods has not passed from the Seller to the Buyer.

8 WARRANTIES AND LIABILITY

- 8.1 Subject to the conditions set out below the Seller warrants that the Goods will correspond with the Seller's specification prevailing at the time of Order (available by written request) and will be free from defects on delivery.
- 8.2 The above warranty is given by the Seller subject to the following conditions:
- (a) the Seller shall be under no liability in respect of any defect in the Goods arising from any failure by the Buyer (or any third party acting on the Buyer's behalf) to follow the Seller's instructions (whether oral or in writing) or misuse of the Goods or the Goods have exceeded their sell-by date without the Seller's approval;
- (b) the Seller shall be under no liability if the Goods have been specifically manufactured or modified for the Buyer's requirements; and
- (c) the Seller shall be under no liability under the above warranty (or any other warranty, conditions or guarantee) if the total price for the Goods has not been paid by the due date for payment.
- 8.3 Subject as expressly provided in these Conditions, and except where the Goods are sold to a person dealing as a consumer, all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 8.4 Where the Goods are sold under a consumer transaction the statutory rights of the Buyer are not affected by these Conditions.
- 8.5 Any claim by the Buyer which is based on any defect in the quality or condition of the Goods or their failure to correspond with specification shall (whether or not delivery is refused by the Buyer) be notified to the Seller within (7) days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If delivery is not refused, and the Buyer does not notify the Seller accordingly, the Buyer shall not be entitled to reject the Goods and the Seller shall have no liability for such defect or failure, and the Buyer shall be bound to pay the price as if the Goods have been delivered in accordance with the Contract.
- 8.6 Where any valid claim in respect of any of the Goods which is based on any defect in the quality or condition of the Goods or their failure to meet specification is notified to the Seller in accordance with these Conditions, the Seller shall be entitled to replace the Goods (or the part in question) free of charge or, at the Seller's sole discretion, refund to the Buyer the price of the Goods (or a proportionate part of the price), but the Seller shall have no further liability to the Buyer.

9 LIMITATION OF LIABILITY

- 9.1 Nothing in the Contract or these Conditions shall exclude or limit the liability of the Seller for any death or any personal injury caused by the Seller's negligence.
- 9.2 Subject to clause 9.1, the Seller's total liability under the Contract shall be limited to the invoice value of the Goods.
- 9.3 The Seller will not be liable to the Buyer in contract, tort, negligence or otherwise for any economic loss of any kind (including but without limitation of loss of use, loss of profit, loss of anticipated profit, loss of data, loss of business, overhead recovery, machining costs, revenue, or anticipated savings), any damage to the Buyer's reputation or goodwill, any product recall or business interruption costs or any other special, indirect or consequential loss or damage (even if the Seller has been advised of such loss or damage) arising out of or in connection with the Contract.

- 9.4 The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Seller's obligations in relation to the Goods, if the delay or failure was due to any cause beyond the Seller's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Seller's reasonable control: act of God, explosion, flood, tempest, fire or accident, war or threat of war, acts of terrorism or threats of terrorism, sabotage, insurrection, civil disturbance or requisition, acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority, import or export regulations or embargoes, strikes, lockouts or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party), difficulties in obtaining raw materials, labour, fuel, parts of machinery, power failure or breakdown in machinery.
- 9.5 The provisions of this clause 9 shall survive the termination or expiry (for whatever reason) of the Contract.

10 INDEMNITY

- 10.1 Without prejudice to any rights implied by statute or common law, or under any provision of these Conditions, the Buyer shall indemnify the Seller and keep the Seller indemnified from and against any and all losses, liabilities, costs, claims, demands, expenses and fees (including legal and other professional fees), actions, proceedings and damages suffered or incurred by the Seller arising out of or in connection with any act or omissions of the Buyer, its employees, agents or sub-contractors.

11 DEFAULT OF BUYER

- 11.1 This Clause applies if:
- (a) the Buyer makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purpose of amalgamation or reconstruction); or
- (b) an encumbrancer takes possession, or a receiver is appointed, or any of the property or assets of the Buyer; or
- (c) the Buyer ceases, or threatens to cease, to carry on business; or
- (d) the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly; or
- (e) the Buyer commits a material breach of any of its obligations under the Contract.
- 11.2 If this clause applies then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary or invoke its rights pursuant to clause 7.

12 GENERAL

- 12.1 Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.
- 12.2 No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 12.3 The parties agree that they have not entered into the Contract in reliance upon any statement, representation, covenant, warranty, undertaking or understanding (whether negligently or innocently made) of any person (whether party to this Agreement or not) except as expressly set out in the Contract. Nothing in this clause 12.3, however, shall exclude any liability on the part of Buyer or Seller for fraudulent misrepresentation.
- 12.4 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.
- 12.5 The Contract shall be governed by the laws of India and the parties submit to the exclusive jurisdiction of the Mumbai courts.

