

NUMALIGARH REFINERY LIMITED
General Purchase Conditions (Imports)

Definition:

NRL means Numaligarh Refinery Limited.

"Vendor" means a Person or Firm or Company, to whom the order is addressed, for supply of goods and/or services.

Bankers: Unless otherwise specified, NRL's banker at Guwahati, Assam (India), shall be: State Bank of India, GMC Branch Bhangagarh, Guwahati, Pin: 781005 Bank Code:007. NRL's banker Numaligarh, Assam (India) shall be : State Bank of India, NRL Complex, P.O. NR Project, Pin: 785699, Dist. Golaghat, Assam. Bank Code: 5377.

NRL's banker for currencies of other countries: State Bank of India, Commercial Branch, Swagota Square, 3rd Floor, ABC, Near Rajib Bhawan, Guwahati, Assam, India, Pin : 781005

1. Price Basis:

Prices shall be quoted on FOB (FAS in case of USA) Port/Airport of Despatch,

The quoted prices must be inclusive of sea/air-worthy packing and forwarding charges, inland freight, loading, insurance and all taxes, duties, levies, bank charges, stamp duties etc. upto FOB Port/Airport of despatch.

Ocean/Air freight upto India, transit insurance, all taxes, duties, levies, bank charges, stamp duties etc. payable in India shall be borne by NRL.

2. Firm Price:

The price quoted shall remain firm and fixed till complete execution of the order.

3. Payment Term:

Unless otherwise agreed, the payment term shall be - 100% through irrevocable Letter of Credit against despatch documents through bank.

3.1 Letter of Credit shall be established **only after** receipt of the **acknowledged** copy of the Purchase Order.

3.2 Purchase Order Acknowledgement:

The vendor shall acknowledge the receipt of the purchase order within 10 days of mailing the same. The vendor shall sign, stamp the acknowledgement copy of the purchase order and return the same to NRL.

4. Performance Bank Guarantee (PBG) :

Vendor will have to provide Performance Bank Guarantee for 10% of the basic value of purchase order unless otherwise specified. This bank guarantee shall be valid (shall remain in force) for guarantee period (as mentioned in the guarantee clause), with an invocation period of six months thereafter. In the case of Indigenous vendors, the Performance Bank Guarantee shall be given on a non-judicial stamp paper of appropriate value (currently Rs 100). PBG format is as per Annexure I.

In case, PBG is not provided by the Vendor, 10% of the basic value shall be retained in lieu of PBG, till the expiry of guarantee and claim period.

In the case of imports, the Supplier shall furnish the Performance Bank Guarantee (as per Annexure I) through the following:

- a) Branches of Indian scheduled banks operating in their Country.
- b) Foreign bank operating in their Country which is counter guaranteed by branches of Indian scheduled banks operating in their Country/India.
- c) Indian branch s foreign banks.
- d) Foreign bank operating in their Country counter guaranteed by their Indian branch.

However, in respect of c) and d) above, the Indian branch of foreign banks should be recognized as scheduled bank by Reserve Bank of India.

5. Delivery Period & Delayed Delivery:

The delivery period quoted/agreed shall be strictly followed. Failing supplies in time, NRL reserves the right to cancel the order and take alternative procurement action solely at the risk and cost of the vendor.

In case of delay in execution of the order, NRL may at its option, recover from the vendor a price reduction of 0.5% of the value of delayed goods per week of delay or part thereof subject to a maximum of 5% of the total order value of goods.

6. Force Majeure:

Definition: The term "Force Majeure" means any event or circumstance or combination of events or circumstances that affects the performance by the vendor of its obligations pursuant to the terms of this Agreement (including by preventing, hindering or delaying such performance), but only if and to the extent that such events and circumstances are not within the vendor's reasonable control and were not reasonably foreseeable and the effects of which the vendor could not have prevented or overcome by acting as a Reasonable and Prudent person or, by the exercise of reasonable skill and care. Force Majeure events and circumstances shall in any event include the following events and circumstances to the extent they or their consequences satisfy the requirements set forth above in this Clause:

- (i) the effect of any element or other act of God, including any storm, flood, drought, lightning, earthquake, tidal wave, tsunami, cyclone other natural disaster;
- (ii) fire, accident, loss or breakage of facilities or equipment, structural collapse or explosion;
- (iii) epidemic, plague or quarantine;
- (iv) air crash, shipwreck, or train wreck;
- (v) acts of war (whether declared or undeclared), sabotage, terrorism or act of public enemy (including the acts of any independent unit or individual engaged in activities in furtherance of a programme of irregular warfare), acts of belligerence of foreign enemies (whether declared or undeclared), blockades, embargoes, civil disturbance, revolution, rebellion or insurrection, exercise of military or usurped power, or any attempt at usurpation of power;
- (vi) radioactive contamination or ionizing radiation;

Notice and Reporting: The Vendor shall as soon as reasonably practicable after the date of commence of the event of Force Majeure, but in any event no later than seven (7) days after such commencement date, notify NRL in writing of such event of Force Majeure.

Mitigation Responsibility: The Vendor shall use all reasonable endeavours, acting as Reasonable and Prudent Person, to circumvent or overcome any event or circumstance of Force Majeure as expeditiously as possible, and relief under this Clause shall cease to be available to the Vendor claiming Force Majeure if it fails to use such reasonable endeavours during or following any such event of Force Majeure.

Consequences of Force Majeure. Provided that the Vendor has complied and continues to comply with the obligations of this Clause, the obligations of the Parties under this Agreement to the extent performance thereof is prevented or impeded by the event of Force Majeure shall be suspended and the Parties shall not be liable for the non-performance thereof for the duration of the period of Force Majeure.

Force Majeure Events Exceeding 60 Days : If an event or series of events (alone or in combination) of Force Majeure occur, and continue for a period in excess of 60 consecutive days then NRL shall have the right to terminate this agreement, whereupon the Parties shall meet to mitigate the Impediments caused by the Force Majeure event.

7. Weights & Measurements:

All weights and measurements recorded by NRL on receipt of materials shall be treated as final and binding.

8. Packing, Marking, Shipping & Documentation:

All consignments must be securely and appropriately packed and should conform to Standard Material Transport Regulations. The vendor will be held liable for any damages to the goods due to insufficient or defective packing as well as for corrosion due to insufficient protection.

Each package shall be clearly marked with indelible paint with the Purchase Order No., From (Name & Add.), To (Name & Add.), Port of Destination, Item Net & Gross Weight, Case No. (Sl. No. of Total Cases) & Dimensions, and shall contain copies of despatch documents and packing list.

Details given in the "Packing, Marking, Shipping and Documentation Specification for Imported Materials" - enclosed with a Purchase Order shall be strictly followed.

9. Inspection & Testing:

The goods are to be inspected throughout the phases of production from raw material to finished product by vendor's own Works Inspector. Shipping documents in respect of each consignment should be accompanied by a certificate issued by Works Inspector indicating the tests conducted with results thereof as required under the relevant specifications as indicated in the Purchase Order.

In addition, NRL or NRL's authorised representative/agency shall have rights to thoroughly inspect and test the goods at every stage of progress till such time as the inspector may deem fit and to reject any or all goods which do not conform to the specification of the Purchase Order and the inspector's decision on every question of intent and meaning of specification shall be final and conclusive. The certificates issued by the said inspector to this effect shall form part of shipping documents and clearly indicate the tests conducted with the results thereof as required under the relevant specifications.

10 GUARANTEE / WARRANTY:

10.1. Materials shall be guaranteed against manufacturing defects, materials, workmanship and design for a period of 12 months from the date of commissioning or **24 months** from the last date of dispatch whichever is earlier. Warranty for replacement of material/accessories should be provided free of charges at our premises. The above guarantee/warranty will be without prejudice to the certificate of inspection or material receipt note issued by us in respect of the materials.

10.2. All the materials including components and sub contracted items should be guaranteed by the vendor within the warranty period mentioned above. In the event of any defect in the material, the vendor will replace / repair the material at NRL's concerned location at vendor's risk and cost on due notice.

10.3. In case, vendor does not replace / repair the material on due notice, rejected material will be sent to the vendor on "Freight to pay" basis for free replacement. Material after rectification of defects shall be dispatched by the vendor on "Freight Paid" basis. Alternatively, NRL reserves the right to have the material repaired / replaced at the locations concerned, at the vendor's risk, cost and responsibility.

10.4. The Vendor shall provide similar warrantee on the parts, components, fittings, accessories etc. so repaired and / or replaced.

10.5. The replacement goods/services shall follow the same Quality Assurance Plan.

11. Bill of Lading (BL)/Airway Bill (AWB):

BL/AWB shall be 'clean' made in favour of Numaligarh Refinery Limited or order of the bank (and not order of shipper) and the notify column should indicate Numaligarh Refinery Limited, Numaligarh, Assam, India.

Immediately after shipment, two non-negotiable copies of BL/AWB shall be air-mailed to 'The Shipping Co-ordination Officer, Ministry of Shipping & Transport, New Delhi - 110001.'

12. Statutory Requirements

The following paragraph must be incorporated in the BOL/AWB and Invoices:

"The imports are covered under Indian Export-Import Policy, 2015-2020. The items do not fall under the RESTRICTED ITEMS of the Policy and hence no import licence is required. The items being imported also do not fall under the 'NEGATIVE LIST OF IMPORTS' of the policy."

13. Port/Airport Consignee:

M/s Balmer Lawrie & Co. Ltd.,
A/c Numaligarh Refinery Limited,
21, Netaji Subhas Road, Calcutta – 700001. (Fax No. 091-033-22134698, 22225282)

NOTE: Vendor shall send two copies of shipping documents immediately after shipment by air-mail courier to the port consignee also apart from those sent to NRL.

14. Ultimate Consignee:

M/s Numaligarh Refinery Limited,
Numaligarh,
Pin: 785699
Dist. Golaghat (Assam), India
Or address as specified in Purchase Order,

15. Shipping Documents:

- a) Negotiable BL or AWB, as the case may be, evidencing shipment.
- b) Invoice for Shipment.
- c) Country of Origin Certificate from the Local Chamber of Commerce.
- d) Packing List.
- e) Certificate of Quality including Inspection Reports & Works Test Certificates.
- f) Shipping Release from Inspector or Quality Surveillance Agency nominated by NRL for the purpose of Inspection (if applicable).
- g) Certificate from the vendor certifying that in case of delay in delivery, price reduction for same have been applied in the invoices submitted for payment.

The vendor shall be responsible for making available to NRL the documents which are essential for arranging Customs Clearance in India. The vendor shall arrange through his banker to have the documents air-mailed to NRL's banker without any delay.

If NRL incurs extra expenditure by way of penalty payable to the Port Trust Authorities in India or any other such expenditure due to delay in receipt of shipping documents, the vendor shall be responsible for making good such extra expenditure incurred by NRL.

16. Distribution of Documents

Invoices and other original despatch documents in case of direct payment by NRL or, advance copies of despatch documents in case of thro' Bank payments, shall be sent to the commercial & warehouse deptt. of NRL.

17. Submission of Drawings/Documents:

In all drawings/documents sent for NRL's approval before delivery, the nominal value must be declared in the invoices along with the following certification:

- i) The drawings/documents have no commercial value.
- ii) Value declared is for customs purposes only.
- iii) Drawings are sent for checking and shall be returned back.

In all drawings/documents sent subsequently, either of the following actions are to be taken:

- i) All final drawings/documents to be sent along with consignments and incorporated in the packing list/invoices along with a declaration that the value of the documents is included in the value of the equipment.
- ii) All final drawings/documents to be sent separately after the delivery of equipment with nominal value declared in the invoices along with the following certification:
 - a) Drawings/documents have no commercial value.
 - b) Value declared is for customs purposes only.

18. Repeat Order:

Repeat Order shall be acceptable to the vendor within **6 months** from the date of the Basic Order at the same prices, terms & conditions as that in the Basic Order.

19. Part Order:

Part Order shall be acceptable to the vendor. However, the quantity mentioned in the enquiry documents for each item shall be ordered on one vendor. All applicable lumpsum charges, if any, shall be pro-rata on value basis.

20. Changes in Terms & Conditions:

NRL reserves the right to make changes at any time in quantities of items ordered or in specification and drawings. If such changes cause an increase or decrease in the amount due or in the delivery period, an equitable adjustment shall be made. Any claim for adjustment under this provision must be assessed within 10 days from the date when the changes are ordered by NRL.

21. Conflict among other Terms and Conditions:

In case of conflict between these General Terms & Conditions and any other special or typed conditions agreed to for a particular order, the latter shall prevail to the extent applicable.

22. Non Assignment:

The Purchase Order shall not be assigned by the vendor to any other party without prior written permission from NRL.

23. Arbitration:

SETTLEMENT OF DISPUTES

FOR THE SETTLEMENT OF DISPUTES WITH THE PRIVATE PARTIES:

All disputes of difference whatsoever which shall at any time arise between the parties hereto touching or concerning the works or supply or the execution or maintenance thereof of this contract/supply or the rights touching or concerning the works or the execution effect thereof or to the rights or liabilities or the construction meaning , operation or effect thereof or to the rights or liabilities of the parties or arising out of or in relation thereto whether during or after completion of the Contract/supply or whether before or after determination, foreclosure or breach of the contract/supply (other than those in respect of which the decision of any person is by the contract/supply expressed to be final and binding) shall be endeavored to be amicably settled by the parties in the following manner:

- a) At the first instance by the Engineer-In-Charge/ Purchase Officer

- b) At the second instance by the Chief Executive of NRL (Presently Managing Director) or authorized representatives of Chief Executive of NRL.
- c) Parties may opt for conciliation under Arbitration and Conciliation Act 1996 as amended by the Arbitration and Conciliation (Amendment) Act, 2015 or any statutory modification or re-enactment thereof.
- d) In case party is not satisfied with the above, the matter will be referred to Arbitration.
- e) The option of amicably settling the dispute will be open at any time during and post arbitration or court litigation or Tribunal or in any other jurisdictional forum and/or before or after award, order, judgement etc. passed by arbitrator(s), court(s), tribunal(s) or any other jurisdictional forum(s).

Arbitration Clause:

- (a) Any dispute or difference of any nature whatsoever, any claim, cross-claim, counter-claim or set off of NRL (hereinafter Company) against the Contractor/Vendors or of the Contractor/Vendors against company or regarding any right, liability, act, omission on account of any of the parties hereto arising out of or in relation to this agreement shall be resolved through Arbitration under Arbitration and Conciliation Act 1996 as amended by the Arbitration and Conciliation (Amendment) Act, 2015 or any statutory modification or re-enactment thereof.
- (b) Reference to Arbitration shall be made by writing a letter to the Managing Director of the Company, with copy to the Contractor/Vendor or Company, as the case may be.
- (c) Managing Director, on receipt of the letter referring the dispute to Arbitration, shall, within 30 days from the receipt of the said letter, appoint a sole Arbitrator, who is not disqualified to act as such Arbitrator under the Arbitration and Conciliation Act 1996, as amended by the Arbitration and Conciliation (Amendment) Act, 2015 or any statutory modification or re-enactment thereof to adjudicate the dispute(s) between the parties.
- (d) In the event the parties desire that the Arbitration will be by a Tribunal consisting of three Arbitrators, then each party will nominate one person to act as Arbitrator and the two Arbitrators so nominated will select third and Presiding Arbitrator to adjudicate the dispute. The arbitrators so nominated / selected shall not be disqualified to act as such Arbitrators under the Arbitration and Conciliation Act 1996, as amended by the Arbitration and Conciliation (Amendment) Act, 2015 or any statutory modification or re-enactment thereof.
- (e) Subject to the provisions of the Arbitration and Conciliation Act, 1996, as amended by the Arbitration and Conciliation (Amendment) Act, 2015 or any statutory modification or re-enactment thereof, the award of the Arbitrator or the Arbitrators, as the case may be, shall be final, conclusive and binding on both parties to the Agreement.
- (f) The party(ies) against whom the Arbitration proceedings have been initiated, that is to say, the Respondents in the proceedings, shall be entitled to prefer a Cross-Claim,

Counter-Claim or set off before the Arbitrator(s) in respect of any matter or issue arising out of or in relation to the Agreement without seeking a formal reference to arbitration for such Counter-Claim, Cross Claim or set off and the Arbitrator(s) shall be entitled to consider and deal with the same as if the matters arising there from has/have been referred to him/them originally and deemed to form part of the reference made to Arbitration.

- (g) Place of arbitration shall be in Numaligarh only unless otherwise fixed by the parties.
- (h) The parties hereby agree that, unless the Arbitration and Conciliation Act, 1996, as amended by the Arbitration and Conciliation (Amendment) Act, 2015 or any statutory modification or re-enactment thereof prohibits, the courts in the city of Golaghat alone shall have jurisdiction to entertain any application or other proceedings in respect of anything arising under this agreement and any award or awards made by the Sole Arbitrator / Arbitral tribunal shall be filed in the concerned courts in the city of Golaghat only.

FOR THE SETTLEMENT OF DISPUTES WITH PSEs / Government (except a dispute or difference concerning the Railways, Income Tax, Customs and Excise Duties):

As per Government guidelines / circulars, etc prevailing at the time of reference of the disputes²⁴.

Spare Parts

Before going out of production of the spare parts, the vendor shall give adequate advance notice to NRL so that NRL may order requirements, if it so desired.

Further, the vendor shall guarantee that in the event of going out of production of spare parts, the blue prints, drawings of spare parts and specification of materials shall be furnished at no extra cost to NRL in order to enable NRL fabricate or procure the spare parts from other sources.

The provision of the above clause shall remain effective and binding upon the vendor till the plant/machinery/equipment/instrument supplied under the order is in use by NRL.

25. Offer Validity:

The vendor's offer shall be valid for acceptance for a period of **4 months** from the final due date of the enquiry.

26. Service applicable with procurement:

Service portion like Erection/ Installation/ supervision/ Testing/ Trial Run/ Commissioning/ Training/ after sales service etc. wherever applicable with the procurement, shall be quoted separately by overseas vendor. If the service portion is to be done by any Indian counterpart, it shall be quoted only in Indian Rs. A separate service PO shall be placed on the Indian Counterpart for the service portion.

27. Indian Agent:

An Indian Agent cannot represent two foreign suppliers or quote on their behalf in a particular tender.

Agency Commission if applicable should be mentioned separately and will be paid only after registration with DGS&D, New Delhi. The commission payable to the Indian agents of foreign suppliers should be made only in Indian Currency.

28. Marine Insurance:

As soon as any shipment is made, the Foreign Supplier shall send advance information by way of **E-mail** to Numaligarh Refinery Ltd, (with detailed address as given in Purchase Order) giving particulars of the shipments, vessels name, port of shipment, bill of lading number and date, total FOB and freight value.

29. Sales Conditions:

With vendor's acceptance of provision of the Purchase Order he waives and considers as cancelled any of his general sales conditions.

30. Limitation of Liability:

The aggregate liability of the vendor to the owner (whether based on contract or tort including negligence and strict or absolute liability) arising out of or under this contract shall not exceed purchase price of this contract provided that no such limit shall apply in respect of:

- i. Any liability pursuant to vendors indemnity obligations under the contract; or
- ii. Any loss resulting from fraud, intention or willful misconduct or illegal or unlawful acts or omissions of vendor, its affiliates or any sub-vendor of any supplier or any of its or their respective officers, directors, employees, servants of agents; or
- iv. Any liability to rectify, repair, restore or replace any materials and / or works or deficiencies therein in terms of the Contract;
- v. Any liability under clause 15.0 of General Purchase Conditions (indigenous) of NRL and clause 5.0 of General Purchase Conditions (imports) of NRL.

AND provided always that such limitation shall exclude any amounts recovered under any policy (ies) of insurance taken out and/or maintained by the vendor pursuant to the provisions of the Contract on behalf of owner.

However, neither party shall be liable to the other party for any indirect and consequential losses on account of production, revenue or profit.

31. Compliance of Regulations:

Vendor warrants that all goods Materials covered by this order have been produced, sold, dispatched, delivered and furnished in strict compliance with all applicable laws, regulations, labour agreement, working condition and technical codes and statutory requirements as applicable from time to time. The vendor shall ensure compliance with the above and shall indemnify owner against any actions, damages, costs and expenses of any failure to comply as aforesaid.

32. Integrity Pact:

Vendors are requested to sign & return our pre-signed IP document, if applicable. This document is essential & binding. Vendor's failure to return the IP document duly signed along with Bid Document may result in the bid not being considered for further evaluation.

33. Anti-Competitive Agreements/ Abuse of Dominant Position:

The Competition Act, 2002 as amended by the Competition Amendment) Act 2007 (the Act), prohibits anti-competitive practices and aims at fostering competition and at protecting Indian markets against anti- competitive practices by enterprises. The Act prohibits anti-competitive agreements, abuse of dominant position by enterprises, and regulates combinations (consisting of acquisition, acquiring of control and M&A) wherever such agreements, abuse or combination causes, or is likely to cause, appreciable adverse effect on competition in markets in India.

NRL reserves the right to approach the Competition Commission established under the Act of parliament and file information relating to anti-competitive agreements and abuse of dominant position. If such a situation arises, then Vendors are bound by the decision of the Competitive Commission and also subject to penalty and other provisions of the Competition Act.
