

Special Terms & Conditions (STC)

Parbati Koldam Transmission Company Limited

1. DEFINITIONS AND INTERPRETATION

1.1. DEFINITIONS

Capitalized terms used but not otherwise defined in the body of this Agreement shall have the meanings assigned to them in this Clause 1.1:

“Agreement” means this agreement including all schedules, amendments, modifications, or supplements hereto.

“Applicable Law” means any applicable statute, law, regulation, ordinance, judgment, order, decree, directive, guideline, rule, policy, requirement, or other governmental restriction or any similar form of decision, or determination by, or any interpretation or administration of any of the foregoing by, any statutory, governmental, local, municipal or regulatory authority whether in effect as of the date of this Agreement or thereafter and in each case as amended in India.

“Business Days” means any day other than a Saturday, a Sunday or any day other than a day on which banks in India or Maharashtra, India are authorized or required by law to be closed for business.

“Calendar Days” means any day in the Christian calendar year.

“Completion Date” means the guaranteed date of delivery of the ERS, as identified in Clause 5.1.

“Confidential Information” means any information including but is not limited to proprietary information concerning the business operations or project or the Parties; terms of this Agreement including schedules and exhibits hereto; all information, disclosed by the Parties or its affiliates or any of their representatives to the other Party (or its agents/ representatives/ personnel engaged in connection with the supplies), whether shared orally or in writing or through electronic form in connection with this Agreement including but not limited to designs, drawings, specifications, techniques, models, data, documentation, records, registers, source code, object code, diagrams, flow charts, research, development, processes, procedures, know-how, maintenance know-how, SOPs, documents developed or created by or for the Parties, strategies and development plans, customer, supplier or personnel names and other information related to customers, suppliers or personnel, pricing policies and financial information, other information of a similar nature, any trade secrets and intellectual property of the Parties.

“Defect” means any defect in any ERS delivered (whether in design, material, workmanship or otherwise) or any failure of ERS to meet any requirements or any other specifications contained in this Agreement or non-compliance with the conditions contained in Clause 12.1 of GTC.

“Effective Date” means the date on which this Agreement is signed by both Parties.

“ERS” means emergency restoration system to be utilized in case of a tower collapse for line restoration and supplied by the Seller pursuant to the Agreement, including being compliant with the requirements identified in this Agreement and shall include all documents/software in relation to such ERS, and all the materials, spares and consumables used for operation and maintenance activities of the ERS or parts thereof.

“ERS Warranty” means the warranty provided by the Seller to Purchaser under Clause 12 of GTC.

“Governmental Authority” means any federal, state, local or foreign government or political subdivision thereof, or any agency or instrumentality of such government or political subdivision, or any self-regulated organization or other non-governmental regulatory authority or quasi-governmental authority (to the extent that the rules, regulations or orders of such organization or authority have the force of law), or any arbitrator, court or tribunal of competent jurisdiction.

“Intellectual Property” means in respect of the ERS, all or any rights of the following types, which may exist or be created under the laws of any jurisdiction: (i) patents, patent applications, patent disclosures and inventions; (ii) trademarks, brand name, service marks, trade dress, trade names, logos, corporate names, internet domain names, eligible layout right, chip topography right and registrations and applications for the registration thereof together with all of the goodwill associated therewith; (iii) copyrights and copyrightable works (including computer programs) and registrations and applications thereof; (iv) trade secrets, know-how and other confidential information; (v) waivable or assignable rights of publicity, waivable or assignable moral rights; (vi) registered design

or other design right; and (vii) all other forms of intellectual property, such as data and databases, including all applications, renewals, extensions and revivals of, and all rights to apply for, any of the foregoing rights and confidential trade secrets related to research, development, design, manufacturing, running, maintenance or repair of ERS, such rights being either directly or by way of licenses, permissions, approvals or agreements in such Intellectual Property rights granted by third parties.

“Latent Defects” means Defects which a reasonable visual inspection by the Purchaser undertaken within a reasonable period prior to expiry of the relevant Warranty Period (which, for the avoidance of doubt shall not require the Purchaser to open up any equipment) would not have been apparent and which is, or is reasonably likely to have, a material adverse effect on the performance reliability, safety or cost of the functioning and utilization of the ERS.

“Losses” means all liabilities, demands, proceedings, losses, cost and expenses, damages, penalties, fines, claims, actions and suits, including reasonable attorney’s fees.

“Product Specifications” shall mean the technical specifications and other parameters with which the ERS must conform to or comply with and as more particularly set out in this Agreement.

“Prudent Utility Practices” means those practices, methods, Product Specifications and standards of safety and performance, as are generally accepted for use in the transmission sector, taking into account conditions in India and commonly used in the transmission sector in a manner consistent with Applicable Laws, health and safety of workers, environmental protection, economy and efficiency for facilities of the type and size similar to the specified ERS and that generally conform to the equipment manufacturer’s operation and maintenance guidelines.

“Site” means location of the relevant transmission project where the ERS that are being purchased hereunder are to be installed / utilized.

“Store(s)” mean location designated by the Purchases for delivery of ERS.

“Taxes” means any and all taxes (including withholding taxes, sales taxes and value added tax), fiscal contributions, levies, imposts, duties (including customs duties), tariffs, cess, deductions, withholdings, fees, liabilities and similar charges (and all interest, penalties and other liabilities imposed with respect thereto) imposed by or on behalf of any Governmental Authority.

“Term” shall have the meaning ascribed to it in Clause 17.1 of GTC

“Warranty Period” means **24** months from the date of supply of last ERS under this Agreement.

“Warranty Start Date” means last date of supply.

1.2. INTERPRETATION

The following principles shall be observed in the interpretation and construction of this Agreement:

- 1.2.1 References to the singular include the plural and vice versa, and references to one gender include the other gender;
- 1.2.2 References to the preamble, recitals, clauses, sections, and annexures are, unless the context indicates otherwise, references to the preamble, recitals, clauses, articles, and sections of, and annexures to, this Agreement;
- 1.2.3 All annexures referenced in this Agreement shall be incorporated into this Agreement by such reference and shall be deemed to be an integral part of this Agreement;
- 1.2.4 Where a word or phrase is defined herein, each of its other grammatical forms shall have a corresponding meaning;

- 1.2.5 Terms such as “hereof,” “herein,” “hereto,” “hereinafter,” “hereunder,” and other terms of like import are not limited in applicability to the specific provision within which such references are set forth but instead refer to this Agreement taken as a whole;
- 1.2.6 Unless otherwise stated or unless the context indicates otherwise, the terms “include” and “including” shall be interpreted to mean “including without limitation” and the word “or” does not imply exclusivity;
- 1.2.7 References to any Applicable Law shall be construed at the particular time as a reference to such Applicable Law as amended, supplemented or modified from time to time;
- 1.2.8 Reference to any document, contract, or agreement, including this Agreement, shall be construed at the particular time as a reference to such document, contract or agreement, and all appendices, annexes, schedules and annexures thereto, as amended, supplemented, or modified from time to time, and shall include a reference to any document, contract or agreement which amends, modifies or supplements it, or is entered into, made or given pursuant to or in accordance with its terms;
- 1.2.9 References to a person shall include its successors and permitted assigns;
- 1.2.10 The Parties have participated jointly in the negotiation and drafting of this Agreement. Any rule of construction or interpretation otherwise requiring this Agreement to be construed or interpreted against any Party by virtue of the authorship of this Agreement shall not apply to the construction and interpretation hereof; and
- 1.2.11 All headings or captions contained in this Agreement are for convenience of reference only, do not form a part of this Agreement and shall not affect in any way the meaning or interpretation of this Agreement.

2. SCOPE OF SUPPLY

2.1. Sale of ERS

The Seller will sell and deliver and the Purchaser will purchase and take delivery of the ERS, compliant with the Product Specifications and with the characteristics specified in the product data sheet as agreed by both Parties and as more particularly described in **Annexure-I** of this Agreement, subject to the terms and conditions of this Agreement.

2.2. Non-Exclusivity

This Agreement shall not preclude or limit Purchaser’s right to purchase products similar to the ERS from other sources.

3. ERS REQUIREMENTS

Each ERS sold and purchased pursuant to this Agreement shall satisfy the following requirements:

- 3.1. It shall meet or exceed all technical specifications and standards of quality identified in this Agreement;
- 3.2. It shall be (a) new, unused and undamaged (when title and the risk of loss pass to the Purchaser pursuant to Clause 6.2 of GTC), of high quality and free from any Defect; (b) fit for the purpose intended (including for use under the climatic and normal operating conditions described in the Product Specifications); and (c) in compliance with the Applicable Laws and industry standards;
- 3.3. It shall be free and clear of any and all rights of retention, claims, liens, security interests, attachments, charges, encumbrances and rights of other persons when title passes to and vests in the Purchaser in accordance with Clause 6.2 of GTC.

4. TESTING

The Seller shall perform testing of the ERS being manufactured for the Purchaser in accordance with the requirements and description specified in IEEE 1070-2006 (Guide for the Design and Testing of Transmission Modular Restoration Structure Components).

5. DELIVERY

- 5.1. The Seller shall ensure that the ERS shall be manufactured in a manner so as to meet the overall FOR delivery schedule of all the materials comprising the ERS on or before **06 months from Detailed Engineering Approval Date** which shall be referred to as "**Completion Date**". Detailed Engineering Approval Date shall mean the date on which the Purchaser approves the detailed engineering of the ERS which shall be submitted by the Seller.
- 5.2. It is clearly understood and agreed that time is the essence of this Agreement and shall be strictly adhered to by the Seller. The program of key phases in various areas of work like design, procurement, manufacture, inspection, testing at works and dispatch of ERS from the Effective Date shall be such that it meets the requirement of the delivery schedule.
- 5.3. Within 15 (fifteen) days from the date of this Agreement, the Seller shall furnish a detailed manufacturing program/report indicating detailed schedule covering engineering, procurement of raw material, manufacturing, shop inspection, testing, dispatch, and complete logistics in relation to the delivery of the ERS. The manufacturing program/report shall be updated and submitted by the Seller to the Purchaser every month, for the Purchaser's review.
- 5.4. The Purchaser at his option may also like to hold progress reviews meetings. Access to the premises where the ERS is being manufactured shall be organized and shall be granted to the Purchaser or his authorized representative(s) at all reasonable times for the purpose of ascertaining the progress and quality.
- 5.5. **Liquidated Damages for Delay**
 - 5.5.1 Time, quantity and delivery to the delivery location designated by the Purchaser are of the essence under this Agreement. If for any reason (other than a Force Majeure event affecting the Seller, subject to the Seller's compliance with the terms and conditions of Clause 20 of GTC, the ERS are not delivered by the relevant Completion Date, the Seller shall promptly notify the Purchaser of the same in writing (a "**Delayed Delivery Notice**").
 - 5.5.2 If for any reason (other than a Force Majeure event affecting the Seller, subject to the Seller's compliance with the terms and conditions of Clause 20 of GTC, a shipment of ERS is delivered later than the Completion Date therefor (a "**Late Delivery**"), then for each week (or part thereof) after such Completion Date that such shipment of ERS is delivered, the Seller shall pay to the Purchaser liquidated damages ("**Delay Damages**") at the rate of [0.5% per week] of the total value of undelivered portion for each week of delay or part thereof (prorated), subject to a maximum of Five percent (5%) of the value of undelivered portion.
 - 5.5.3 Delay Damages shall be paid by Seller within fifteen (15) days after the date of the invoice raised by the Purchaser, which invoices may be issued by Purchaser at any time and from time to time. The Parties agree that the Delay Damages described in this Clause 5 are fair and reasonable in light of the anticipated harm that would ensue from a delay in delivery of the ERS, the difficulties in proving the loss and ascertaining the amount of loss to the aggrieved party, the limitation on liability herein and the inconvenience or non-feasibility of otherwise obtaining an adequate remedy. The Parties further acknowledge and agree that such liquidated damages are a genuine pre-estimate of loss and are not a penalty. Seller irrevocably undertakes that it will not, whether by legal proceedings or otherwise, contend that the Delay Damages are not reasonable nor will it put the Purchaser to the proof thereof, nor further contend that its agreement to such sum and undertaking as aforesaid were arrived at by force, duress, coercion, mistake or misrepresentation on the part of the Purchaser. If the payment of Delay Damages is held to be unenforceable for any reason, the Seller shall be liable to pay the Purchaser's actual losses and costs caused or to the extent contributed to by such failure for which the Seller is responsible, which shall be discussed and mutually agreed between the Parties.

5.5.4 The Purchaser has the right to set off any Delay Damages or penalties against payments which are due to Seller or any future payments which shall become due to Seller.

5.6. Delivery Protocol

5.6.1 The cost of suitable and proper packing fit for the intended purpose is included in the contract value.

5.6.2 The Seller will provide the Purchaser with the necessary delivery information and other data as may be reasonably required by the Purchaser. Such information will be submitted in Excel or PDF file format and by email.

5.6.3 Upon unwrapping each ERS at the Stores, Purchaser shall undertake a visual inspection of each shipment of ERS to assess if (i) there is any apparent shortage, damage, Defect or other discrepancy between the ERS delivered and the shipment's bill of lading, the dispatch clearance certificate or product description and data sheets; and (ii) there is any discrepancy with the quantity of each product type required to be included in such delivery ("**Discrepancy**").

5.6.4 If the Purchaser determines from any inspection that there is any Discrepancy, it shall submit a written notification of the same to the Seller (accompanied, except in the case of a shortage, by photographs or other suitable evidence clearly showing such Discrepancy) (a "**Discrepancy Notice**") no later than fifteen (15) Business Days after date of such inspection. As of the date of any Discrepancy Notice, the ERS listed therein as having a Discrepancy shall be deemed "**Rejected ERS**".

5.6.5 Upon receiving a Discrepancy Notice, the Seller shall immediately arrange for the shipment of the number of ERS required (a) in the case of a shortfall, to make up for such shortfall; and (b) in all other cases, to replace the Rejected ERS. Within three (3) Business Days after receiving such Discrepancy Notice, Seller shall notify Purchaser in writing of the delivery date of such make up or replacement ERS, which shall be no later than the one month from the date of such notification (the "**Guaranteed Replacement Delivery Date**").

5.6.6 Each delivery of a ERS that is required to make up for a shortfall or replace a Rejected ERS, shall be considered a late delivery, if the Seller is unable to deliver such ERS on or prior to the Completion Date, and shall be subject to Delay Damages in manner identified in Clause 5.5 and which shall accrue from the original guaranteed Completion Date of the ERS (in the case of a shortfall) or the Rejected ERS, as applicable, until the actual delivery of such make up or replacement ERS.

5.6.7 The Purchaser shall make all Rejected ERS available for pick up by the Seller at the Site. The Seller shall pick up and transport each Rejected ERS at its sole cost and expense within 30 days of the Purchaser making such Rejected ERS available for pick up. The Seller shall be responsible for payment of all taxes, costs and expenses in connection with the pick-up, taking away, transportation, export or disposal of the Rejected ERS. If the Seller does not pick up such Rejected ERS within such 30 day period, then Purchaser may, at its election, return such Rejected ERS to the Seller and invoice the Seller for any costs, expenses and taxes associated therewith (which shall be paid by the Seller with fifteen (15) Business Days of the date of the invoice) or dispose of such Rejected ERS and remit any net proceeds to the Seller.

5.6.8 For the avoidance of doubt, the making or failure to make an inspection of the ERS pursuant to this Clause 5.6 shall in no way relieve the Seller from its obligation to conform to all the requirements of this Agreement and shall in no way impair the Purchaser's right to reject or revoke acceptance of ERS that do not conform to the Product Specifications or other requirements contained in this Agreement, or to avail itself of any other remedies to which the Purchaser may be entitled under law or under contract.

6. ORDER VALUE

6.1. In consideration for the Seller performing the supplies hereunder, the Purchaser hereby covenants to pay to the Seller a sum of INR XXXXXXXXXXXX (Rupees Only) on F.O.R basis, which shall be referred hereinafter as the "**Order Value**" and is inclusive of Freight & Transit Insurance up to the designated locations "Store". The detailed breakup of the Order Value is mentioned in Annexure-XX hereunder.

- 6.2. The Order Value is including of all applicable taxes and duties and any other cess or statutory levies prevailing at the time of invoice. Owner may deduct statutory taxes at source ("TDS") and provide TDS certificate as proof.
- 6.3. The unit prices will remain firm & binding for the quantity variation of +/- 15% of the ordered quantity during the term of this Agreement.
- 6.4. The unit prices shall be inclusive of all the routine, acceptance & type tests charges.

7. PAYMENT TERMS & PROCEDURES

7.1. Payment Terms

- 7.1.1. Ninety Percent (90%) of Basic Order Value shall be released within 30 working days upon receipt of material at Owners store and submission of invoice and supporting documents.
- 7.1.2. Balance Ten Percent (10%) of basic Order value and applicable Good and Service Tax ("GST"), shall be paid upon joint physical verification of material at Owners designated Stores and submission of documents mentioned in Clause 7.2.3.

7.2. Payment Procedure

The Procedures to be followed in making application for, certifying and making payments shall as follows:

7.2.1. Payment Schedule/Price Break-up for Payments

The Seller shall prepare and submit to the Purchaser for approval, a break-up of the Order Value in the currency of the order. The Order Value break-up shall be interlinked with the agreed detailed schedule for the supplies. Any payment under this Agreement, shall be made only after the Seller's price break-up is approved by the Purchaser. The aggregate sum of the Seller's price break-up shall be equal to the total Order Value.

7.2.2. Currency of Payment

The Order Value shall be paid in currency of the Order i.e. Indian Rupee (INR).

7.2.3. Due Dates for Payment

Purchaser will make progressive payments as and when the payment is due as per the payment terms contained hereunder.

List of Supporting Documents to be submitted with the final invoice.

- (i) Signed commercial and Tax invoice for material shipped
- (ii) Original Packing list
- (iii) Receipted L.R
- (iv) Guarantee/ Warranty certificate
- (v) Insurance Policy
- (vi) Test Certificates
- (vii) Material Dispatch Instruction issued by Purchaser's authorized representative / third party appointed by Purchaser.
- (viii) Material Inspection report

7.2.4. Setoff; Contingent or Disputed Claims

All amounts due from Purchaser to Seller are net of any indebtedness of Seller to Purchaser. In addition to any right of set-off, deduction or recoupment provided or allowed by Applicable Law, Purchaser may, without notice to Seller, set off against, and deduct and recoup from, any amounts due or to become due from Purchaser to Seller, any amounts due or to become due from Seller to Purchaser, including for damages



resulting from breaches by Seller of its obligations under this Agreement or any other agreement between such parties. If an obligation of Seller is disputed, contingent or unliquidated, payment by Purchaser of all or any portion of the amount due may be deferred until such dispute contingency is resolved or the obligation is liquidated. In the event of Seller's bankruptcy, if all of the contracts (including this Agreement) between Purchaser and Seller have not been promptly assumed by Seller (under Applicable Law), Purchaser may withhold payment to Seller for ERS previously delivered (via administrative hold or otherwise) until the risk of potential rejection and other losses is eliminated.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be signed by their duly authorized and empowered officers or Representatives as of the date first above written.

[**SELLER NAME**]

By:

Name:

Title:

Parbati Koldam Transmission Company Limited

By:

Name:

Title: