



## M&I Materials India Private Limited – Terms & Conditions of Sale

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### 1. Definitions

- 1.1 "Order" means the Order of the Customer which has been acknowledged by the Supplier.
- 1.2 "Contract" means the contract for the sale and purchase of the Goods as set out in the Conditions and the Order.
- 1.3 "Conditions" means these standard terms and conditions of supply.
- 1.4 "Customer" means any person to whom the Supplier has given a quotation for the goods or one who buys or has agreed to buy Goods from the Supplier
- 1.5 "Goods" means goods to be provided by the Supplier to the Customer under the Contract

### 2. Basis of Purchase

- 2.1 The Order constitutes an offer by the Customer to purchase Goods (as specified in the Order) from M&I Materials India Private Limited ("the Supplier") and the Supplier's acknowledgement of that Order constitutes acceptance of the offer. The Order shall not be binding upon the Supplier until it has received the Order, making amendments where necessary and has formally acknowledged the Order by the submission of the Supplier's Sales Order Acknowledgment form.
- 2.2 These Conditions shall apply to the Contract to the exclusion of terms and conditions stipulated, incorporated or referred to by the Customer at any time.
- 2.3 Any quotation given by the Supplier is subject to these Conditions and shall remain valid for 30 days from the date of such quotation. The Supplier however reserves the right to withdraw or revise the quotation during that period.
- 2.4 Any provision of the Contract may be varied or any new provision added to the Contract only if agreed in writing and signed by a duly authorised officer of the Supplier and any instructions given by the Customer or undertakings given by the Supplier shall not have effect unless confirmed in writing and signed in a like manner.

### 3. Prices

- 3.1 Prices as stated in the Contract are subject to increase at any time until delivery to reflect any increase in the cost to the Supplier due to any:-
  - a) factors outside the control of the Supplier, including on account of any changes in the applicable law including any rules or regulations;
  - b) change in delivery dates, quantities or specifications requested by the Customer; or
  - c) delay caused on account of failure on the part of Customer to give adequate instructions and information to the Supplier.
  - d) alteration in any price list
- 3.2 Prices shown in any price list are subject to alteration without notice. In any case, the Supplier reserves the right to invoice at the price prevailing at the time of delivery, and will endeavour to communicate any price changes prior to raising an invoice.
- 3.3 Prices for deliveries in India unless otherwise quoted include delivery but not offloading.
- 3.4 Prices for deliveries outside India unless otherwise quoted are Ex – Works as defined by Incoterms 2010.
- 3.5 All prices are exclusive of sales tax, entry tax, any other similar form of tax, which will be charged to the Customer additionally, if applicable.

### 4. Delivery

- 4.1 Any dates quoted for delivery shall be approximate only and are not guaranteed. The Supplier shall not be liable for any delay in delivery howsoever caused. The parties agree that the time for delivery stated in the Contract, if any, shall not be of the essence.
- 4.2 Where the Goods are to be delivered in installments, each delivery shall constitute a separate contract. Any failure by the Supplier to make any delivery or part delivery of any installment or any claim made by the Customer in respect of any one or more installments shall not entitle the Customer to withhold payment in respect of any delivery already made or treat the contract as repudiated as a whole.
- 4.3 Delivery shall take place at the Supplier's premises, unless otherwise stated in the Contract.
- 4.4 If the Customer fails to take delivery of the Goods or to give delivery instructions within 14 days after notification from the Supplier of readiness to deliver, then (without prejudice to any other claim or remedy which the Supplier may have), the Supplier shall be entitled to do one or both of the following:-
  - a) treat the payment as having become due;
  - b) store the goods at any premises until actual delivery entirely at the Customer's expense and risk. If the Customer fails to pay the charges for such storage / warehousing, then the Supplier shall have the right to sell all or any of the Goods to defray the cost of sale and warehousing and charge the Customer any difference between the proceeds of such sale and the price of the Goods under the Contract.

### 5. Payment

- 5.1 Payment must be made in full by electronic bank transfer within 30 days from date of the Supplier's invoice for each delivery, subject to credit approval granted by the Supplier. If payment is not made in full by the due date, then the Supplier shall (without prejudice to any other rights) be entitled to do one or more of the following:-
  - a) terminate the Contract in which case the Customer shall have no claim whatsoever against the Supplier;
  - b) suspend further deliveries of Goods and work on Goods within the rest of the Contract;
  - c) charge interest at the rate of 2% per annum above the HSBC Bank base lending rate from time to time from the date when payment became due until the date of actual payment (both dates inclusive).
- 5.2 If the Supplier receives information which casts doubt on the creditworthiness of the Customer, then the Supplier shall have the right to demand immediate payment of all outstanding invoices and to demand payment on account for Orders which have been acknowledged by the Supplier but for which invoices have not yet been submitted. If payment in advance is not made in respect of such Orders the Supplier may, without any liability whatsoever, cancel such Orders.

### 6. Description and Performance

- 6.1 Drawings, descriptive matter, illustrations, weights, dimensions, and specifications issued by the Supplier with respect to Goods are intended to be accurate but are approximate only and do not amount to any condition or warranty in this respect. The Supplier shall not be liable for failure of the Goods to attain any performance figures quoted.
- 6.2 The Supplier reserves the right at its absolute discretion at any time to change any specifications issued by it.
- 6.3 If the Supplier has guaranteed any item within the specifications and the Goods delivered do not attain that guarantee in a material respect, the Supplier shall have the opportunity to rectify the failure after receipt of communication from the Customer in this regard. If the failure cannot be rectified, or the Supplier fails to rectify the failure, the Customer may then either reject or accept the Goods, provided that such option shall not be available to the Customer if reduction in price has been agreed.
- 6.4 Subject to Condition 11, the Supplier shall not be liable to the Customer for any loss (including consequential loss) damage, cost, and expenses suffered or incurred by the Customer directly or indirectly as a result of such failure to attain guaranteed performance figures.
- 6.5 Where the Customer has provided the Specification, the Customer shall assume responsibility for ascertaining that the Goods are in accordance with the Specification and are suitable for the Customer's purposes.

### 7. Inspection / Testing

- 7.1 The Supplier shall not be responsible for carrying out any inspection of the Goods or test the Goods unless specifically required to do so on terms agreed between the Supplier and the Customer. Such inspection and / or tests, if any, shall be done at the Customer's cost. The Supplier shall be entitled to include the testing charges in the invoice or recover it separately.

### 8. Guarantee



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- 8.1 The Supplier does not make, nor is there to be implied, any warranty relating to the Goods, their satisfactory quality or that they will be suitable for any particular purpose or for use under any specific condition. Any recommendation or suggestion relating to the use, storage, handling or properties of the products supplied by M&I Materials India Private Ltd or any member of its group, either in sales and technical literature or in response to a specific enquiry or otherwise, is given in good faith but it is for the customer to satisfy itself of the suitability of the product for its own particular purposes and to ensure that the product is used correctly and safely in accordance with the manufacturer's written instructions.
- 8.2 Subject to Condition 8.3 below, if, within a 12 month period from the date of delivery of the Goods, a defect (defined and understood as a material deviation from the Specification) in the Goods is found to exist and is reported to the Supplier in writing by the Customer, the Supplier will, at its sole option, repair or replace the defective goods free of charge provided they are returned appropriately, packed and carriage paid to the Supplier's premises.
- 8.3 The Supplier shall not be under any liability to repair or replace the Goods if:-
- damages are sustained in transit;
  - the defect is a result of wear & tear;
  - the defect is a result of wilful damage or negligence of the Customer;
  - if the Goods have been used for a purpose other than those for which they are designed;
  - if repairs of the Goods have been attempted by the Customer without the Supplier's approval;
  - if the total price of the Goods has not been paid in full by the due date;
  - if the defect is attributable to the specifications provided by the Customer; or
  - if the Customer has not promptly notified the Supplier of its discovery of the defect, and in any case within 7 days from the date of such discovery.
- 8.4 The Company has reasonable grounds to believe that it has ensured, as far as reasonably practicable, that its Goods are manufactured so that they will be safe when properly used by appropriately trained personnel. Nevertheless the Goods should only be used for the purpose they are designed and in accordance with any written instructions or advice from the Supplier.

### 9. Damage, Shortage or Loss in Transit

- 9.1 The Supplier shall not be liable for any claim for non-delivery, partial or full loss or damage to the Goods unless the Customer has notified the Supplier in writing (copied to the carrier):-
- within 7 days of receipt of the Goods for partial loss or damage; and
  - within 14 days of the date of delivery of the Goods for loss or non-delivery.
- 9.2 If the Supplier accepts the Customer's claim, the Supplier shall be entitled, at its sole discretion, to either repair or replace the Goods.

### 10. Intellectual Property Rights

- 10.1 In the event of any claim being made by the Customer that any Goods supplied under the contract infringe any patent, copyright, design, trademark or other industrial or intellectual property right of any third party, the Supplier shall indemnify the Customer against all damages and costs awarded against Customer in connection with any claim provided that:-
- the Supplier is given full control of any negotiation or proceedings;
  - the Customer shall give the Supplier all reasonable assistance for the purpose of such negotiations or proceedings;
  - the Customer shall not pay or accept any such claim without the prior written consent of the Supplier;
  - the Customer shall not do anything which would or might adversely affect any insurance cover which it may have in relation to such infringement and this indemnity shall not apply to the extent that the Customer recovers any sums under any such policy;
  - the Supplier shall be entitled to the benefit of all damages and costs awarded in favour of the Customer which are payable by any other party in respect of any such claim.
- 10.2 Without prejudice to any duty of the Customer at law, the Supplier shall be entitled to require the Customer to take steps to mitigate or reduce any loss which may arise from such infringement.
- 10.3 The Supplier shall not indemnify the Customer for any claim in respect of any design specification or instruction provided by the Customer or in respect of the Goods if they are used for any purpose or in a manner or in a foreign country not specified or disclosed to the Supplier by the Customer or for any claim resulting from the use of the Goods in association or combination with any other Goods not supplied by the Supplier.
- 10.4 In the event the Goods are to be manufactured or any process is to be applied to them by the Supplier in accordance with any design, specification or instructions from the Customer, the Customer shall indemnify the Company against all loss, damage, costs and expenses awarded against or incurred by the Supplier in connection with any settlement of any such claim for infringement of any patent, copyright, design, trademark, or other industrial or intellectual property rights of any other party which results from the Supplier's use of the Customer's design, specification or instructions.

### 11. Supplier's Liability

- 11.1 Save as set out in these Conditions the Supplier shall not be liable to the Customer for any loss or damage arising directly or indirectly of any act or omission by the Supplier.
- 11.2 The Supplier shall be liable for death or personal injury arising due to its negligence in performing its obligations under these Conditions.
- 11.3 The Supplier shall be liable for any direct physical damage caused to the tangible property of the Customer due to the negligence of the Supplier in performing its obligations under these Conditions.
- 11.4 Notwithstanding anything contained in the Contract, the total liability of the Supplier under the Contract shall not the value of the contract. This sum represents the Supplier's total liability in respect of any single or a series of claims arising from the same cause (except for death or personal injury).

### 12. Third Party Claims

- 12.1 The Customer shall indemnify the Supplier for all claims for loss (including consequential loss), damages, costs, and expenses incurred by the Supplier in connection with any claim paid or agreed to be paid by the Supplier to any third party who has purchased the goods from the Customer or who has or may be affected by the use of the Goods.

### 13. Insolvency or Default

- 13.1 If the Customer:-
- commits any material breach of the Contract at any time;
  - is unable to pay its debts or has no reasonable prospect of being able to do so;
  - makes or has made an application to the court for an interim order in respect of [•] or a proposal is made for a voluntary arrangement in respect of it or if a petition is presented or bankruptcy order is made against it;
  - goes into liquidation or has a receiver appointed in respect of its assets;
  - reaches any agreement with its creditors;
- the Supplier may without notice and without further liability to the Customer suspend or terminate the Contract and stop any Goods in transit and, without any prejudice to any remedy which the Supplier may lawfully enforce, treat any invoices for Goods delivered to the Customer as having become immediately due and payable.

### 14. Title to Goods and Risk

- 14.1 Until all payments due from the Customer to the Supplier have been received, the Supplier shall retain legal and beneficial title to the Goods.
- 14.2 Risk in the goods shall pass to the Customer upon delivery but until such time as the Customer secures title to the goods, the Customer shall:-
- store the Goods separately from any other goods, clearly marked and identified as being the property of the Supplier;



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- b) be entitled to sell the goods in the normal course of business.
- 14.3 If any of the events referred to in Condition 13 occurs and if any payment(s) are due to be received by the Supplier from the Customer, the Supplier or appointed agents shall be entitled to enter onto any land or premises occupied or owned by the Customer or any other premises where they are reasonably thought to be stored to repossess the Supplier's Goods and to dispose of the same.
- 14.4 The Supplier expressly reserves the right to sue for the price of the Goods.
- 14.5 If payments received from the Customer are not stated to refer to a particular invoice, the Supplier may appropriate such payments to any outstanding invoice.
- 15. General**
- 15.1 In the event that any of these Conditions or part of any Condition is declared invalid or unenforceable by a court of competent jurisdiction, all of the other Conditions or parts of conditions shall remain in full force and shall not be affected for the remainder of any term of the Contract.
- 15.2 Failure by the Supplier to enforce any of these Conditions shall neither prejudice nor restrict its rights nor shall any waiver of its rights operate as a waiver of any subsequent or continuing breach by the Customer.
- 15.3 All notices which are required to be given shall be in writing and shall be sent to the address of the Supplier as set out in the Order.
- 15.4 The Supplier reserves the right to defer the date of delivery or to cancel the Contract in part or in full if the Seller is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Supplier including, without limitation, acts of God, fire, explosion, flood, epidemic, war or national emergency, governmental actions, acts of terrorism, protests, riot, civil commotion, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, provided that, if the event in question continues for a continuous period in excess of 90 days, the Customer shall be entitled to give notice in writing to the Supplier to terminate the Contract.
- 15.5 This Contract and the documents referred to herein contain the entire agreement between the Supplier and the Customer with respect to its subject matter.
- 15.6 This Contract shall be governed and constructed in accordance with Indian Law, and in respect of any dispute the parties shall submit to the jurisdiction of the courts in New Delhi, India.