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SECTION 2.00 – GENERAL CONDITIONS OF CONTRACT

GENERAL CONDITIONS OF CONTRACT

2.1.0 Definition of Terms

In construing these General Conditions of Contract and the annexed Technical Specifications and Commercial Terms, the following words shall have the meanings herein assigned to them unless there is something in the subject or context inconsistent with such construction.

a. **Client/Purchaser/Company**

The 'Client/Purchaser/Company' shall mean The Pharmaceutical Corporation Kerala Ltd, Kuttanellur P.O, Thrissur-680014, Kerala or its authorized representatives.

b. **Tender**

The Tender shall mean the tender submitted by the Contractor for acceptance by the Purchaser.

c. **Contractor/Supplier**

The 'Contractor/Supplier' shall mean the person or company whose tender is accepted by the Purchaser and shall be deemed to include the Contractor's successors, heirs, executors, administrators, representatives and assignees approved by the Purchaser.

d. **Sub Contractor**

The 'Sub-contractor' shall mean the person or company named in the contract for any part of the work or any person to whom any part of the contract has been sub-let by the Contractor with the consent in writing of the Purchaser and shall include his heirs, executors, administrators, representatives and assignees approved by the Purchaser.

e. **Inspector**

The Inspector shall mean any person or persons nominated by the Purchaser to inspect works or stores under the contract.

f. **The Goods/Items**

The Goods/Items means all the equipments, machinery and/or other materials which the supplier is required to supply to the purchaser under the contract.

g. **Contract**

The Contract shall mean and include the Notice Inviting Tender, Conditions of Contract, Technical Specifications, Commercial terms, Technical data, Schedules, Drawings, Tender offer of the Contractor with covering letter if any, Letter of Acceptance of the Purchaser, Schedule of Quantities, Prices, the Final General Conditions, any Special conditions applying to the particular contract, specifications and drawings, subsequent Amendments mutually agreed upon, and the Agreement to be entered into under these Conditions of Contract.

h. Contract Price

‘The Contract Price’ means the price payable to the Supplier under the Contract for the full and proper performance of its contractual obligations.

i. Services

‘Services’ means services ancillary to the supply such as transportation and insurance, and other incidental services, such as installation, commissioning, provision of technical assistance, training and other such obligations of the Supplier covered under the Contract.

j. Specifications

The Specifications shall mean the specification annexed to or issued with these General Conditions \ technical specifications and Drawings attached thereto, if any.

k. Site

The site shall mean the actual place or places to which the machines/equipments are to be delivered or where work is to be done by the Contractor, together with the area surrounding the said place or places as the Contractor shall with consent of the Purchaser actually use in connection with the works, and shall include where applicable the lands and buildings upon or in which the works are to be executed.

l. Tests on Completion

Tests on Completion shall mean such tests which are to be made by the Contractor before the Works are taken over by the Purchaser as are provided in the Contract and such other tests as may be agreed upon between the Purchaser and the Contractor.

m. Commercial Use

Commercial use shall mean use of the work or works which the Contractor contemplates or of which it is to be commercially capable.

n. Dimensions

Dimensions shall mean the extent of a line, area, volume. All dimensions shall be given in the metric system i.e. for length measurement in kilometers, meters, or millimeters, for surface measurement in square meters, for volume measurement in cubic meters, etc.

o. Weight

Weight of a body shall mean the measure of the force of gravity on the body. It shall be given in metric units i.e. in tons (1 ton = 1000kg.), kilograms, grams and milligrams.

p. Time

Time shall be reckoned in months, days and hours, and the month shall mean calendar month.

q. Letter of Intent/Letter of Acceptance

Letter of Intent/Acceptance shall mean the Purchaser's letter to the Contractor conveying his acceptance of the tender subject to such reservations as may have been stated therein.

r. Writing

Writing shall include any manuscript, type-written or printed statement, under or over signature or seal, as the case may be.

s. Person

Words importing person shall include firms, companies, corporations, and associations or body of individuals, whether incorporated or not. Words importing the singular only shall also include the plural and vice-versa where the context requires.

Terms and expressions not herein defined shall have the same meanings as are assigned to them in the Indian Sale of goods Act (No.III of 1930) failing that in the Indian Contract Act (Act IX of 1872) and failing that the General Clauses Act 1987.

2.2.0 Packing and Marking

2.2.1 The Supplier shall provide such packing of the Goods as is required to prevent their damage or deterioration during transit to their final destination as indicated in the Contract. The packing shall be sufficient to withstand, without limitation, rough handling during transit and exposure to severe climatic conditions during transit and open storage. Packing case size and weights shall take into consideration, where appropriate, the remoteness of the Goods' final destination and the absence of heavy handling facilities at all points in transit

2.2.2 The packing, marking and documents within and outside the packages shall comply strictly with such special requirements as shall be expressly provided for in the contract and in any subsequent instruction ordered by the Purchaser.

2.2.3 Each package shall be marked outside to indicate:

- Name of the Supplier
- Details of items in the packages
- Name of the Consignee
- Purchase Order Number
- Gross, net and tare weights of the item
- Destination address

2.3.0 Inspection of Site

The Contractor or his representative shall be deemed to have inspected and examined the site and surroundings before submitting his tender and shall obtain the necessary information as to risks, contingencies and other circumstances which may influence or affect his tender. Whether a tenderer visits the site or not, it will be assumed that a tenderer who submits his tender is fully aware of the site conditions and difficulties in erecting the work and no claims under this account will be entertained by the Purchaser at any future date.

2.4.0 Quantum of Work

2.4.1 A schedule of approximate quantities for various items accompanies this tender. It shall be definitely understood that the Client do not accept any responsibility for the correctness or completeness of this schedule in respect of items and quantities and this schedule is liable for alteration by deletions, deductions or additions at the discretion of the Client without affecting the terms of the contract.

2.4.2 The Client reserves the right to increase or decrease the quantum of work at site without assigning any reason.

2.4.3 Variations in the quantities put to tender will not be the basis of any claim or disputes. The rates agreed by the contractor shall hold good for any amount of variation in the quantities and no claims whatsoever will be entertained on this account. The contractor shall carry out all works as directed by the Client at the same agreed rates.

2.5.0 Contract

A formal agreement shall be entered into by the Contractor with the Purchaser for the proper fulfillment of the Contract within 15 days of receipt of the Letter of Acceptance in the prescribed format of the Company.

2.6.0 Application

These General Conditions shall apply to the extent that they are not superseded by provisions in other parts of the Contract.

2.7.0 Standards

The items and Services supplied under this Contract shall conform to the standards mentioned in the Technical Specifications and, when no applicable standard is mentioned, to the latest current edition or revision of the relevant Indian Standards and Codes.

2.8.0 Security Deposit

If the Contractor is called upon by the Purchaser to deposit 'Security' and the Contractor fails to provide the security within the period specified, such failure shall constitute a breach of the Contract and the Purchaser shall be entitled to make other arrangements for the repurchase of the stores contracted for at the risk and expense of the Contractor and/or to recover from the Contractor damages arising from such cancellation. No claim shall lie against the Purchaser either in respect of interest if any due on Security Deposits or depreciation in value.

2.9.0 Sub-Letting of Contract

The Contractor shall not sub-let any part of the contract.

2.10.0 Time Schedule and Drawings

The Contractor shall deliver to the Purchaser a detailed time schedule covering the various phases involved e.g. shop drawing, procurement, manufacture, assembly, inspection, test, delivery, etc. within 10 days of acceptance of the order by the Contractor.

The Contractor shall submit 4 copies of the foundation drawings/fabrication drawings for approval within 10 days from the award of Contract.

2.11.0 Mistakes in Drawing

The Contractor shall be responsible for any discrepancies, errors or omissions in the drawings and other particulars supplied by him, whether such particulars and drawings have been approved by the Purchaser or not. The Contractor shall pay for any extra cost due to any alteration of the works necessitated by reason of any discrepancy, error or omission in the drawings and particulars supplied by the Contractor.

2.12.0 Warranty/Guaranty

The work and items shall be of the best quality and workmanship and shall comply with particulars of the contract and in all respect shall be to the entire satisfaction of the Inspector and the Purchaser.

Whether or not the items have been installed under his supervision, the Contractor shall give the warranty/guaranty in respect of the work to be supplied by him for a period of 12 (twelve) months after the complete materials have been provisionally accepted, the Contractor shall be responsible for any defects that may be discovered therein notwithstanding that such defects could have been discovered at the time of inspection or any defects therein are found to have developed under proper use, arising from faulty materials or workmanship or fails to fulfil the performance guarantee or other requirement of the contract and the Contractor shall remedy all such defects as aforesaid at his own cost. The Purchaser shall state in writing in what respect the goods are faulty and further if in the opinion of the Purchaser the defects are of such a nature that it is necessary to replace or renew any defective stores, such replacement or renewal shall be made by Contractor forthwith without any extra costs to the Purchaser provided notice informing the Contractor of the defects is given by the Purchaser within the period of 12 (twelve) months from the date of provisional acceptance. The decision of the Purchaser notwithstanding any prior approval or acceptance of the Inspector as to whether or not the stores delivered are defective or any defect has developed within the said period of twelve months or as to whether the nature of defects require renewal or replacement shall be final, conclusive and binding on the Contractor. For the items replaced, the contractor shall give guarantee for another six (6) months.

Should the Contractor fail to rectify such defects to the full satisfaction of the Purchaser within a reasonable time, the Purchaser may reject and replace at the cost of the Contractor the whole or any part of the work as the case may be which is

defective or fails to fulfil the requirements of the contract. Such replacement at the cost of the Contractor shall be carried out by the Purchaser within a reasonable time with items of the same particulars or when the items conforming to the stipulated particulars are, in the opinion of the Purchaser, not readily procurable, such opinion being final, then with the nearest substitutes. In the event of such rejection, the Purchaser shall be entitled to use the work in a reasonable manner for a time reasonably sufficient to enable him to obtain replacement as herein before provided. The Purchaser may engage any other contractor for carrying out such replacements.

2.13.0 DELETED

2.14.0 Liquidated Damages for Late Delivery

If the Contractor fails to fulfill his contractual obligations within the time fixed, he shall be liable at the discretion of the Purchaser to an unconditional and agreed liquidated damages of 1% (one per cent) of contract value or executed value whichever is higher per week or part thereof reckoned on the contract value based on the final bill. The Contractor's liability for delay shall not in any case exceed 10% (ten per cent) of the total contract value. Upon the liquidated damages attaining the maximum value, the Purchaser shall have the right to source the item from elsewhere at the risk and cost of the contractor.

2.15.0 Inspection and Rejection

The stores shall be offered by the Contractor for inspection at such places as may be specified by the Inspector, at the Contractor's own risk, expenses and costs and shall lie at such places of inspection at the risk of the Contractor and the stores will be subjected to inspection and test as may be considered necessary by the Inspector and his decision as regards rejection of goods shall be final and binding on the Contractor.

2.16.0 Deductions from Contract Price

All costs, damages or expenses which the Purchaser may have paid for which under the contract the Contractor is liable, may be deducted by the Purchaser from any money due or becoming due to the Contractor from the Purchaser under this contract or may be recovered by action of law or otherwise from the Contractor.

2.17.0 Time of Completion and Force Majeure

Should progress of work be delayed by strikes, lockouts, fire, accidents, acts of god, or any cause whatsoever beyond the reasonable control of the Contractor, a reasonable extension of time of completion shall be granted. Should one or both parties be prevented from fulfilling their contractual obligations by a state of force majeure lasting continuously for a period of at least one month, the two parties shall consult each other regarding the further implementation of the contract with the provision that if no mutually satisfactory arrangement is arrived at within a period of one month from the expiry of the one month referred to above, the contract shall be deemed to have expired at the end of the said one month referred to above. The above-mentioned expiry of the contract will imply that both the parties have the obligation to reach agreement regarding the winding up and financial settlement of the contract.

2.18.0 Death, Bankruptcy, etc.

If the Contractor shall die or dissolve or go into bankruptcy, or being a corporation cause to be wound up except for reconstruction purposes or carry on its business under a receiver, the executors, successors or other representatives in law of the estate of the Contractor or any such receiver, liquidator, or any person in whom the contract may become vested, shall forthwith give notice thereof in writing to the Purchaser and shall remain liable for the successful performance of the contract, and nothing aforesaid shall be deemed to relieve the Contractor or his successors of his or their obligations under the contract under any circumstances. The Contract may however be terminated by the Purchaser at his discretion by notice in writing to the Contractor.

2.19.0 Failure and Termination

If the Contractor fails to deliver the stores or any installment thereof within the period fixed for such delivery or at any time repudiates the contract before the expiry of such period, the Purchaser may without prejudice to the right of the Purchaser to recover damages for breach of the Contract.

2.19.1 Purchase or authorize the purchase from elsewhere without notice to the Contractor, on the account and at the risk of the Contractor of the stores not so delivered or others of a similar description (where stores exactly complying with particulars are not in the opinion of the Purchaser, which shall be final, readily procurable) without canceling the contract in respect of the installments not yet due for delivery, or

2.19.2 Cancel the contract or a portion thereof and if so desired purchase or authorize the purchase of the stores not so delivered or other of a similar description (where stores exactly complying with particulars are not in the opinion of the Purchaser, which shall be final, readily procurable) at the risk and cost of the Contractor, if the Contractor had defaulted in the performance of the original contract, the Purchaser shall have the right to ignore his tender for risk purchase even though the lowest.

Where action is taken under sub-clause (i) or sub-clause (ii) above, the Contractor shall be liable for any loss which the Purchaser may sustain on that account provided the purchase or, if there is an agreement to purchase, such agreement is made, in case of failure to deliver the stores within the period fixed for such delivery within two months from the date of such failure and in case of repudiation of the contract before the expiry of the aforesaid period of delivery, within two months from the date of cancellation of the contract. The Contractor shall not be entitled to any gain on such purchase and the manner and method of such purchase shall be in the entire discretion of the Purchaser. It shall not be necessary for the Purchaser to serve a notice of such purchase on the Contractor.

2.20.0 Arbitration

2.20.1 All disputes or difference whatsoever arising between the parties out of or relating to the construction, meaning and operation or effect of this contract or the breach thereof shall be settled by the sole Arbitrator appointed by the Chief Executive Officer of the Purchaser and the award of such Arbitrator shall be final and conclusive and binding on all parties to the contract.

2.20.2 The Contractor shall not in any way delay or default or cause to delay or default the carrying out of the Works by reasons of the fact that any matter has been agreed to be referred to and/or referred to Arbitration.

2.20.3 The seat of Arbitration shall be Thrissur and only the appropriate court coming under the High Court of Kerala will have jurisdiction to entertain all matters of litigation to the exclusion of all other courts.

2.21.0 Amendments

No variation to the contract shall be valid unless made in writing and duly signed by both the parties. The Purchaser shall not, in the absence of written acceptance, be bound by any provision in the Contractor's quotation, offers, form of acknowledgement of the contract, invoices, packing lists and other documents which purport to impose any condition at variance with or supplemental to the Contract.

2.22.0 Law Governing the Contract

This Contract shall be governed by the laws of India for the time being in force. The marking of all stores supplied must comply with the requirements of Indian Acts relating to Merchandise marks and all the rules under such acts.

2.23.0 Exercising the Rights and Powers of the Purchaser

All the rights and discretions and powers of the Purchaser under the contract shall be exercisable by and all notices on behalf of the Purchaser shall be given by the Chief Executive Officer or any person or persons authorized to enter into contracts on behalf of the Purchaser and any reference to the opinion of the Purchaser in the terms and conditions contained in the contract shall mean and be construed as reference to the opinion of any of the persons mentioned in the clause.

2.24.0 Notices

2.24.1 Any notice to be given to the Contractor under the terms of the contract shall be served by sending the same by post, fax or telegram to or leaving the same at the Contractor's principal place of business (or in the event of the Contractor being a company to or at its registered office) or at the site.

2.24.2 Any notice to be given to the Purchaser under the terms of the contract shall be served by sending the same by post to or leaving the same at the Purchaser's last known address.

2.25.0 Secrecy

The Contractor shall not at any time during the pendency of the contract or thereafter disclose any information furnished to them by the Purchaser or any drawings, designs, reports and other documents and information prepared by the Contractor for this contract, without the prior written approval of the Purchaser except in so far as such disclosure is necessary for the performance of the Contractor's work and service hereunder.

2.26.0 Ownership of Drawings and Specifications

All drawings, specifications, materials and designs furnished by the Purchaser or his representatives shall be treated strictly as confidential property of the Purchaser. All such drawings, specifications, manuals and other materials shall be returned to the Purchaser upon the completion of the work under this contract. No copies, duplications or Photostats shall be retained by the Contractor without the consent of the Purchaser.

2.27.0 Jurisdiction

Any legal dispute arising out of or in any way connected with this contract shall be deemed to have arisen at site and shall be settled in court of competent jurisdiction located in Thrissur.

2.28.0 Performance Tests and Provisional Acceptance

2.28.1 On the completion of a satisfactory start-up operation, the Purchaser will proceed with the performance tests. The duration of the performance test shall be 3 days.

2.28.2 On the completion of a satisfactory start-up operation, the Purchaser will proceed with the Guarantee Run. The duration of the run shall be one (1) month.

2.28.3 On successful completion of the performance test and Guarantee run, the Purchaser will issue the Provisional acceptance certificate to the Contractor. If the system fails to qualify the performance test, the duration will be extended for one month from the date of failure of the system and if the Contractor is unable to prove the performance within this period, the Client shall have the right to procure similar equipment from another source at the risk and cost of the Contractor.

2.28.4 The final acceptance certificate will be issued on successful completion of the Warranty/Guarantee period.

2.29.0 Accident or Injury to Workmen

2.29.1 The Contractor shall be solely liable for any accident or injury that may happen to any of his personnel engaged in connection with the erection work according to the Contract. The Purchaser shall not be liable for, or in respect of, any damage or compensation payable at law in respect of, or in consequence of, any accident or injury to any personnel in the employment of the Contractor and the Contractor shall indemnify and keep indemnified the Purchaser against all such claims, damages, compensations and proceedings.

2.29.2 The Contractor is the employer of all the worker's engaged for this work and should therefore take all required registrations, insurance cover, etc. and pay premium correctly to labour welfare funds constituted by the Union Government and Government of Kerala from time to time.

2.30.0 Compliance with Statutory and Other Regulations

The Contractor shall, in all matters arising in the performance of the Contract, conform at his own expense with the provisions of all Central or State statutes, ordinances or laws and the rules, regulations, or bye-laws of any local or other duly constituted authority and shall keep the Purchaser indemnified against all penalties

and liabilities of every kind for breach of any such statute, ordinance, law, rule regulations or bye-law.

The Contractor shall give all notices and pay all fees and taxes required to be given or paid under any Central or State statutes, ordinances or other laws or any regulations or bye-laws of any local or other duly constituted authority in relation to the erection work.

2.31.0 Labour Rules

2.31.1 Provisions of Contract Labour Act

In respect of all labour, directly or indirectly, employed by the Contractor for the erection work, the Contractor shall comply with the provisions of the Contract Labour (Regulation and Abolition) Act, 1970, or any amendment thereof, and all legislations and rules of the State and/or Central Government or other local authority, framed from time to time governing the protection of health, sanitary arrangements, wages, welfare and safety for labour employed on the erection work. The rules and other statutory obligations with regard to fair wages, welfare and safety measures, maintenance of registers, etc. will be deemed to be part of the Contract.

2.31.2 Provisions of Minimum Wages and Payment of Wages Act

The Contractor shall comply with the provisions of the Minimum Wages Act, 1948, and the Payment of Wages Act, 1936, and any amendment thereof in respect of all employees employed by him for the purpose of carrying out the erection work. The Contractor shall supply to the Purchaser any labour required to work wholly or partly under the direct order and control of the Purchaser, whether in connection with any work being executed by the Contractor or otherwise for the purpose of the Purchaser and such labour shall for the purpose of this clause still be deemed to be persons employed by the Contractor.

If any money shall, as a result of any claim or application made under the said Acts, be directed to be paid by the Purchaser, such money shall be deemed to be money payable to the Purchaser by the Contractor, and, on failure by the Contractor to repay the Purchaser, any money paid by the Purchaser as aforesaid, within seven days after the same, shall have been demanded from the Contractor, the Purchaser shall be entitled to recover the same from any money due or accruing to the Contractor under this or any other contract with the Purchaser.

In the event of the retrenchment of workers by the Contractor or sub-contractors employed by the Contractor during or after the completion of the work, the retrenchment compensation and other benefits will be paid by the Contractor to the workers as per the Industrial Disputes Act.

2.32.0 Provisions of Workmen's Compensation Act

The Contractor shall at all times indemnify and keep indemnified the Purchaser against all claims for compensation under the provisions of the Workmen's Compensation Act, 1923 (VIII of 1923), or any other law for the time being in force

by, or in respect of, any workman employed by the Contractor in carrying out of the Contract and against all costs and expenses or penalties incurred by the Purchaser in connection therewith. In every case in which, by virtue of the provisions of Section 12, sub-section (1) of the Workmen's Compensation Act, 1923 the Purchaser is obliged to pay compensation to a workman employed by the Contractor in executing the contract, the Purchaser shall recover from the Contractor the amount of the compensation so said and, without prejudice to the rights of the Purchaser under Section 12, sub-section (2) of the said Act, the Purchaser shall be at liberty to recover such amount or any part thereof deducting it from the security deposit or from any sum due by the Purchaser to the Contractor, whether under this contract or otherwise. The Purchaser shall not be bound to contest any claim made against him under Section 12, sub-section (1) of the said Act, except on the written request of the Contractor and upon his giving to the Purchaser full security for all costs for which the Purchaser might become liable in consequence of contesting such claim.

2.33.0 Damage to Persons or Property

The Contractor shall indemnify and keep indemnified the purchaser against all losses and claims for injuries or damages to any property whatsoever which may arise out of, or in consequence of, the work at site carried out by the Contractor and against all claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto.

2.34.0 Work in or around an Operating Plant

When the work is being carried out in or around an operating plant, where the plant must run uninterrupted, the Contractor shall only work at specified places and times as mutually arranged between the Contractor and the Purchaser. The Contractor shall take sufficient care in moving his constructional / erection plant and equipment from one place to another in an operating plant so that they may not cause any damage to the property of the Purchaser, like roads, overhead and underground cables, pipes and/or any other service or equipment or building, and, in the event of the Contractor's failure to do so, the cost of such damages, including eventual loss of working hours as estimated by the Purchaser, shall be borne by the Contractor.