

Brahmaputra Cracker & Polymer Limited (BCPL)
[A Government of India Enterprise]
GENERAL PURCHASE CONDITIONS (GPC)
DOMESTIC OEM/PROPRIETARY [Rev1]

1. Consignee:

For BCPL, Lepetkata: Store In-charge, Central Warehouse ,Brahmaputra Cracker and Polymer Limited (BCPL) ,P. O. Lepetkata, Dibrugarh– 786006, Assam.

For BCPL, Lakwa : Store In-charge, Central Warehouse ,Brahmaputra Cracker and Polymer Limited (BCPL) BCPL C2+ Recovery Unit, Lakwa Rajgarh Rd, Lai Cheng Gaon, Dist: Charaideo, Lakwa, Assam 785688

Any expenditure and/or demurrage incurred in respect of a wrong delivery shall be recovered from supplier.

2. INTERPRETATIONS & PRIORITY OF CONTRACT DOCUMENTS

The documents forming the Contract [i.e. all obligations, commitments, promises agreed upon between parties for supply of Goods including execution of the Services (if any) as per Purchase Order (PO) and its subsequent amendment(s), if any] are to be read together and interpreted as mutually explanatory of one another. In case of direct inconsistency, then unless otherwise provided in the Contract, the priority of the Contract Documents shall be in accordance with following sequence:

- (i) Purchase Order
- (ii) Fax of Acceptance
- (iii) Specific Technical Specification/Job Specifications (pertaining to Scope of Supply)
- (iv) Drawings
- (v) Special Purchase Conditions (SPC) / Special Conditions of Contract (SCC)
- (vi) General Technical Specifications (if applicable)
- (vii) Instructions to Bidders (ITB)
- (viii) General Purchase Conditions (GPC)
- (ix) Any other document forming part of the Contract

Amendment issued after Purchase Order shall take precedence over respective clauses of Contract Document.

In case any provision of the Contract Document is found to be invalid, illegal or otherwise not enforceable by any court of law, such finding shall not affect the remaining provisions hereto and they shall remain binding on the parties hereto.

3. TAXES & DUTIES: Supplier shall be entirely responsible for all taxes, duties, licence fees etc. incurred until the delivery of the contracted goods to the Purchaser. However, GST on finished products shall be reimbursed by Purchaser. Further, within the contractual delivery period, the statutory variation in applicable GST (CGST & SGST/UTGST or IGST) shall be to BCPL's account.

TDS

- (i) TDS as applicable will be deducted by BCPL under section 194Q of the Income Tax Act, 1961 on Purchases exceeds Rs. 50 Lakhs or limit defined therein from time to time during the financial year.
- (ii) Since BCPL is liable to deduct Income Tax TDS under section 194Q, the provision of TCS as per section 206C (1H) of the Income Tax Act, 1961 shall not be applicable.
- (iii) Higher rate of TDS for non-filers of ITR

As per Section 206AB of Income Tax Act, 1961, in case of any vendor/customer who does not file their Income Tax Return for both of the two previous years preceding to current year and aggregate amount of TDS is more than or equal to Rs. 50,000/- in each of those previous two years (or limit defined by Govt. from time to time), then TDS will be deducted at the higher of following rates:

- (I) Twice the rate mentioned in relevant TDS section.
- (II) Twice the rate or rates in force
- (III) 5%

4. Price Reduction Schedule for delayed delivery: In case of delay in delivery of equipment/materials or delay in completion, total Contract Price / Purchase Order Value shall be reduced by ½% (half percent) of the total Contract Price / Purchase Order Value per complete week of delay or part thereof [which is genuine pre-estimate of the loss/damage agreed between the Supplier and Purchaser without any proof of the actual loss/or damage caused by such breach/delay] subject to a maximum of 5% (five percent) of the total Contract Price / Purchase Order Value. Decision of the Purchaser in the matter of applicability of price reduction shall be final and binding on the Supplier. The Purchase Order Value referred in this PRS clause is the FOT Dispatch point value including value of incidental Services (i.e. excluding GST and Freight/Inland Transportation).

Delivery shall be deemed to have been made:

- a) In case of FOT despatch point Purchase Order, on evidence that the goods have been loaded on the carrier. The date of LR/GR shall be considered as the date of delivery.
- b) In case of FOT site Purchase Order, date of receipt of Goods by Purchaser at the designated site(s) shall be considered as the date of delivery.

In a supply Contract, if a portion of supply completed in all respect within the contractual delivery period and which can be used for commercial operation, the PRS shall be applicable only on remaining supplies which are completed beyond the contractual delivery period, @½ % (half percent) of the delayed delivery value maximum upto 5% (five percent) of the total Purchase Order Value.

Decision of the Purchaser in the matter of usage for commercial operation shall be final and binding

In case of Annual Rate Contract (ARC), the PRS shall be applicable on the value of Release Order /Individual Order(s) and not on the value of ARC. The Purchase Order Value is subject to Price Reduction Schedule clause.

PRS is the reduction in the consideration / Purchase Contract Value on account of delays in delivery and in such case Supplier should submit invoice for reduced value as per PRS clause. If Supplier has raised the invoice for full value, then Supplier should issue Credit Note towards the applicable PRS amount with applicable taxes, failing which BCPL will release the payment after giving effect of the PRS clause with corresponding reduction of taxes charged on Supplier's invoice.

In case any financial implication arises on BCPL due to issuance of invoice without reduction in price or non-issuance of Credit Note, the same shall be to the account of Supplier. BCPL shall be entitled to deduct / setoff / recover such implication(s) together with penalties and interest, if any, against any amounts payable by BCPL to the Supplier under this Purchase Order or under any other contract.

The Purchase Order shall be continued to be in force till the delivery of Goods or written Notice from Purchaser to Supplier for cancellation/termination of Purchase Order.

5. Warranty/Guarantee:

Material/spares supplied shall be guaranteed for defect originating from design, materials, workmanship, operating characteristics etc. for 12 months from date of commercial operation or 24 months from the date of shipment, whichever is earlier.

In case of rejection of goods supplier shall replace/repair the same at no extra cost to BCPL and till such time the rejected goods shall be lying at site at the risk and cost of supplier.

Supplier shall, at his own expense and as promptly as possible, make such alterations, repairs and replacements as may necessary to permit the materials to function in accordance with the

specifications and to fulfil the foregoing guarantees.

In case material shall have to be taken to Supplier's works for rectification etc., after giving necessary undertaking or security, Supplier shall take the Goods at his costs or Purchaser may, if so required by the Supplier, dispatch the Goods by quickest mode on "Freight-to-pay" basis to the Supplier's works. After repairs Supplier shall deliver the Goods at Site on freight pre-paid basis. All risks in transit to and fro and all expenses on account of to and fro freight, insurance, customs clearance, transportation and handling, port charges and customs duty etc. shall be borne by the Supplier.

However, in no case, warranty of repaired/replaced part shall exceed 24 months from the date of commissioning of original equipment or 36 months from last supply, whichever is earlier. This period excludes repair/replacement/rectification period of defective goods.

6. Payment terms:

100% Payment will be released within 15 days of receipt and acceptance of material / installation (wherever installation is in scope of Supplier) at site/stores through e-banking. In case of payment through bank, all bank charges shall be borne by the vendor.

No interest charges for delay in payments, if any, shall be payable by Purchaser.

As per CBDT Notification No. 95/2015 dated 30.12.2015, mentioning of PAN no. is mandatory for transactions related to procurement of goods / services exceeding Rs. 2 Lacs (as amended from time to time) per transaction. In case Supplier do not have PAN no., they have to submit declaration in Form 60 along with invoice/ bill for each transaction.

Payment of Supplier shall be processed only after fulfilment of above requirement.

7. Packing & Marking & Transportation:

While dispatching ordered material/stores, it will be the responsibility of the supplier to properly pack the consignment so as to enable its delivery at destination free from loss, damage or pilferage. Each packing must contain a list of items and sub-item(s) in case UOM is Set, and quantity packed therein. Each packing/bundle must be prominently marked with Purchase Order no. and packing no. & consignee name & address.

In case Purchase Order is on FOT destination point basis, transport of the Goods upto the destination point shall be specified in the Purchase Order shall be arranged and paid by the Supplier and the cost thereof shall be included in the Purchase Order Value.

As per the Section 3 of the "Carriage by Road Act 2007", no person can engage in the business of a common carrier unless granted a certificate of registration to do so and any transportation of goods through unregistered common carrier is illegal. Accordingly, Goods should be transported through registered common carriers only.

The Supplier shall be held liable for all damages or breakages to the goods due to the defective or insufficient packing as well as for corrosion due to insufficient protection. Packaged equipment or material showing damage, defects or shortages resulting from improper packaging material or packing procedures or having concealed damage or shortages, at the time of unpacking shall be to the Supplier's account.

E-way bill: The consignment should be handed over to transporter with E-way bill, wherever required as per law/act. In case such e-way bill is required to be issued by BCPL, the concerned designated order issuing authority may be contacted in this regard. It will be the responsibility

of the supplier to ensure the compliance of the provisions relating to E-Way bill before dispatch of the consignment and any financial implication arising due to non-compliance in this regard will be to the account of the supplier.

8. Transit Insurance & Dispatch documents:

Transit Risk Insurance shall be arranged by BCPL unless mentioned specifically elsewhere in the Purchase Order. Immediately after shipment, the Supplier shall inform through e-mail / fax the Purchaser's insurance agent and Purchaser giving the details of shipment regarding LR number and date, invoice no. & date with value, number of packages/cases, gross/net weight, value of goods and Purchase Order number along with Insurance policy no., for arranging insurance of the consignment against transit risk from the despatch point to the Site/warehouse of the consignee.

Purchaser's Insurance Agent & Insurance policy no.:

[The name and address of Insurance Agent and Insurance policy no. shall be mentioned in Tender Document/Purchase Order]

The dispatch documents shall consists of Invoice, Challan, Packing List, GR/LR, inspection/Test Certificate and any other document(s) as mentioned in the Purchase Order. Copies of dispatch documents should reach BCPL well in advance failing which any demurrage/wharfage etc. incurred on account of late/ non-receipt of dispatch document/wrong dispatches of consignment will be recovered from supplier. In case of documents through Bank, it may be noted that the documents will be retired only if the dispatches are made as per the terms of the purchase order.

Invoice must bear the purchase order no. with date and should also indicate the dispatch particulars.

9. Repeat Order: Purchaser reserves the right within six months of order to place repeat order up to 50% of ordered quantity without any change in unit price or other terms and conditions.

10. Force Majeure: Force Majeure shall mean and be limited to the following:

- (i) Act of terrorism;
- (ii) Riot, war, invasion, act of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection of military or usurped power;
- (iii) Ionizing, radiation or contamination, radio activity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, radioactive toxic explosive or other hazardous properties of any explosive assembly or nuclear component;
- (iv) Pandemic, Epidemics, earthquakes, flood, natural fire / wildfire, hurricanes, typhoons or other physical natural disaster, but excluding weather conditions regardless of severity; and
- (v) Freight embargoes, strikes at national or state-wide level or industrial disputes (more than 7 consecutive days) at a national or state-wide level where supplier's Works is located.

For the avoidance of doubt, inclement weather, third party breach, delay in supply of materials [other than conditions mentioned above at sl. no. (i) to (v)] or commercial hardship shall not constitute a Force Majeure event.

The Supplier shall advise Purchaser/Consultant by a registered letter/courier duly certified by the local Chamber of Commerce or statutory authorities, the beginning and end of the above causes of delay within ten (10) days of the occurrence and cessation of such Force Majeure Conditions.

The extension of time for a period upto the period of delay attributable to the causes of Force Majeure shall be the sole remedy of the Supplier for any delay under this clause and the Supplier shall not be

entitled in addition to or in lieu of such extension to claim any damages or compensation on any account whatsoever whether under the law governing contracts or any other law in force, and the Supplier hereby waives and disclaims any and all contrary rights.

In case force majeure conditions persists for period exceeding 02 (Two) Months, the Purchaser reserves the right to cancel the Purchase order or part of it.

Supplier shall categorically specify the extent of Force Majeure Conditions prevalent in their works at the time of submitting their bid and whether the same have been taken into consideration or not in their quotations. In the event of any force majeure cause, the Supplier or the Purchaser shall not be liable for delays in performing their obligations under this order and the delivery dates will be extended to the Supplier without being subject to price reduction for delayed deliveries, as stated elsewhere.

Payment in case of termination due to Force Majeure

In case of termination of Order/contract due to Force Majeure, the Supplier will get payment of goods supplied and/ or services performed as at the date of the commencement of the relevant event of Force Majeure.

The Supplier has no entitlement and Purchaser has no liability for:

- (i) Any costs, losses, expenses, damages or the payment of any part of the Order/ Contract Price during an event of Force Majeure; and
- (ii) Any delay costs in any way incurred by the Supplier due to an event of Force Majeure

11. DISPUTE RESOLUTION MECHANISM

1. PRE-LITIGATION GRIEVANCE/DISPUTE REDRESSAL MECHANISM:

- i) Any issue should be first referred to EIC (for LOA/contracts)/Dealing C&P Executive (for Purchase Orders).
- (ii) In case issue is not resolved by above, Vendor/Supplier/Contractor/Consultant may submit their issue to “Samadhan Committee”. The same will be addressed by Samadhan Committee within 15days from the date of issue raised.
- (iii) In case, Vendor/Supplier/ Contractor/Consultant is not satisfied with the decision of the Samadhan Committee, there is a provision of escalation of issue to higher authority in BCPL. This option is available two times only, one is at Chief General Manager (O&M) and the other one is Chief Operating Officer.
- (iv) However, in case no mutual settlement is arrived at after exercising all pre-litigation grievance/dispute redressal mechanism as above, the matter shall be settled by arbitration in accordance with the provision of arbitration of the Indian Arbitration & Conciliation Act, 1996 and any statutory modification or re-enactment thereof and the Rules made there under and for the time being in force as stated below:

2. ARBITRATION

All issue(s)/dispute(s) excluding the matters that have been specified as excepted matters and listed at clause no. 2.6 and which cannot be resolved through pre-litigation grievance/dispute redressal mechanism, such issue(s)/dispute(s) shall be referred to arbitration for adjudication by Sole Arbitrator.

The party invoking the Arbitration shall have the option to either opt for Ad-hoc Arbitration as provided at Clause 2.1 below or Institutionalized Arbitration as provided at Clause 2.2 below, the remaining clauses from 2.3 to 2.7 shall apply to both Ad-hoc and Institutional Arbitration:-

2.1 On invocation of the Arbitration clause by either party, BCPL shall suggest a panel of three independent and distinguished persons (Retd. Supreme Court & High Court Judges only) to the other party from the Panel of Arbitrators maintained by 'Delhi International Arbitration Centre (DIAC) to select any one among them to act as the Sole Arbitrator. In the event of failure of the other party to select the Sole Arbitrator within 30 days from the receipt of the communication from BCPL suggesting the panel of arbitrators, the right of selection of the sole arbitrator by the other party shall stand forfeited and BCPL shall appoint the Sole Arbitrator from the suggested panel of three Arbitrators for adjudication of dispute(s).

The decision of BCPL on the appointment of the sole arbitrator shall be final and binding on the other party. The fees payable to Sole Arbitrator shall be governed by the fee Schedule of 'Delhi International Arbitration Centre'.

OR

2.2 If a dispute arises out of or in connection with this contract, the party invoking the Arbitration shall submit that dispute to any one of the Arbitral Institutions i.e ICADR/ICA/DIAC/SFCA and that dispute shall be adjudicated in accordance with their respective Arbitration Rules. The matter shall be adjudicated by a Sole Arbitrator who shall necessarily be a Retd. Supreme Court/High Court Judge to be appointed/nominated by the respective institution. The cost/expenses pertaining to the said Arbitration shall also be governed in accordance with the Rules of the respective Arbitral Institution. The decision of the party invoking the Arbitration for reference of dispute to a specific Arbitral institution for adjudication of that dispute shall be final and binding on both the parties and shall not be subject to any change thereafter. The institution once selected at the time of invocation of dispute shall remain unchanged.

2.3 The cost of arbitration proceedings shall be shared equally by the parties.

2.4 The Arbitration proceedings shall be in English language and the seat, venue and place of Arbitration shall be New Delhi, India only.

2.5 Subject to the above, the provisions of Arbitration & Conciliation Act 1996 and any amendment thereof shall be applicable. All matter relating to this Contract and arising out of invocation of Arbitration clause are subject to the exclusive jurisdiction of the Court(s) situated at New Delhi.

2.6 List of Excepted matters:

- a) Dispute(s)/issue(s) involving claims below Rs.25 lakhs and above Rs.25 crores.
- b) Dispute(s)/issue(s) relating to indulgence of Contractor/Vendor/Bidder in corrupt/fraudulent/ collusive/coercive practices and/or the same is under investigation by CBI or Vigilance or any other investigating agency or Government.
- c) Dispute(s)/issue(s) wherein the decision of Engineer-In-Charge/owner/BCPL has been made final and binding in terms of the Contract.

2.7. Disputes involving claims below Rs 25 Lakhs and above Rs. 25 crores:- Parties mutually agree that dispute(s)/issue(s) involving claims below Rs 25 Lakhs and above Rs 25 crores shall not be subject matter of Arbitration and are subject to the exclusive jurisdiction of the Court(s) situated at Dibrugarh.

3. GOVERNING LAW AND JURISDICTION:

The Contract shall be governed by and construed in accordance with the laws in force in India. The Parties hereby submit to the exclusive jurisdiction of the Competent Courts of Dibrugarh having territorial & pecuniary jurisdiction for adjudication of disputes,

injunctive reliefs, actions and proceedings, if any, arising out of this Contract other than those covered under the arbitration clause as stated herein above.

4. DISPUTES BETWEEN CPSE'S/GOVERNMENT DEPARTMENT'S/ ORGANIZATIONS

Subject to pre litigation grievance/dispute redressal mechanism as provided above, in the event of any dispute or difference relating to the interpretation and application of the provisions of commercial contract(s) between Central Public Sector Enterprises (CPSEs/ Port Trusts inter se and also between CPSEs and Government Departments /Organizations (excluding disputes concerning Railways, Income Tax, Customs & Excise Departments), such dispute or difference shall be taken up by either party for resolution through AMRCD as mentioned in OPE OM No. 4(1)/2013-DPE(GM)/FTS-1835 dated 22-05-2018.

Any party aggrieved with the decision of the Committee at the First level (tier) may prefer an appeal before the Cabinet Secretary at the Second level (tier) within 15 days from the date of receipt of decision of the Committee at First level, through it's administrative Ministry/Department, whose decision will be final and binding on all concerned.

The above provisions mentioned shall supersede provisions relating to Conciliation, Arbitration, Governing Law & Jurisdiction and Disputes between CPSE's/ Government Department's/ Organizations mentioned elsewhere in tender document.

11.1 CONTINUANCE OF THE CONTRACT:

Notwithstanding the fact that settlement of dispute(s) (if any) may be pending, the parties hereto shall continue to be governed by and perform the work in accordance with the provisions under this Contract and no payment due or payable to the Supplier shall be withheld on account of such proceedings.

11.2 NON-APPLICABILITY OF ARBITRATION CLAUSE IN CASE OF BANNING OF VENDORS/ SUPPLIERS / BIDDERS INDULGED IN FRAUDULENT/ COERCIVE PRACTICES

Notwithstanding anything contained contrary in GCC or elsewhere in the Purchase Order, in case it is found that the Bidder/ Supplier indulged in fraudulent/ coercive practices at the time of bidding, during execution of the Contract and/or on other grounds as mentioned in BCPL's "Procedure for action in case Corrupt/ Fraudulent/ Collusive/Coercive Practices", the Bidder/Supplier shall be banned (in terms of aforesaid procedure) from the date of issuance of such order by BCPL to such Bidder/Supplier.

The Bidder /Supplier understands and agrees that in such cases where Bidder /Supplier has been banned (in terms of aforesaid procedure) from the date of issuance of such order by BCPL, such decision of BCPL shall be final and binding on the Bidder /Supplier and the 'Arbitration Clause' mentioned in the GCC or elsewhere in the Purchase Order shall not be applicable for any consequential issue /dispute arising in the matter.

12. Fall Clause:

The price charged for the items supplied under the contract by the seller shall in no event exceed the lowest price at which the seller or his Agent/Principal/Dealer, as the case may be, sells the goods or offer to sell goods of identical description to any persons/organizations around the world during the currency of the contract.

If at any time during the said contract period, seller or his Agent/Principal/Dealer, as the case may be, reduces the sale price, sells or offers to sell such goods to any persons/organizations at a price lower than the price chargeable under the contract, he shall forthwith notify such reduction or sale or offer of sale to the BCPL and the price payable under

the contract for the goods supplied after the date of coming into force of such reduction or sale or offer of sale stand correspondingly reduced. However, the above stipulation will not apply to:

- a) Exports by the Seller
- b) Sale of goods as original equipment at prices lower than the prices charged for normal replacement
- c) Sale of goods such as drugs which have expiry dates

The Seller shall furnish the following certificate to the concerned paying authority along with each bill for payment for supplies made against this order.

“I/We certify that there has been no reduction in sale price of the goods of description identical to the goods supplied to the BCPL under the contract herein and such goods have not been offered/sold by me/us to any person/organization around the world upto the date of bill/ during the currency of the contract whichever is later, at a price lower than the price charged to the BCPL under the order”.

Such a certificate shall be obtained except for quantity of items/goods/materials categories under sub clause (a), (b) & (c) above, of which details shall be furnished by the Seller.

13. INDEMNITY: Seller shall protect and fully indemnify BCPL from any claim from infringement of patents, copyright, trademark and the like. In case of any claim in this regard, Seller shall be solely responsible for any consequences/damages.

14. LIMITATION OF LIABILITY: Notwithstanding anything contrary contained herein, the aggregate total liability of Supplier, excluding his liability towards infringement of patent, trade mark or industrial design rights under the Purchase Order or otherwise shall be limited to 100% of value of Purchase order, except that this clause shall not limit the liability of the Supplier for following:

- (i) In the event of breach of any Applicable Law;
- (ii) In the event of fraud, Willful Misconduct or illegal or unlawful acts, or gross negligence of the Supplier or any person acting on behalf of the Supplier; or
- (iii) In the event of acts or omissions of the Supplier which are contrary to the most elementary rules of diligence which a conscientious Supplier would have followed in similar circumstances; or
- (iv) In the event of any claim or loss or damage arising out of infringement of Intellectual Property; or
- (v) For any damage to any third party, including death or injury of any third party caused by the Supplier or any person or firm acting on behalf of the Supplier in executing the Purchase Order.

However, neither party shall be liable to the other party for any indirect and consequential damages, loss of profits or loss of production.

15. CONFIDENTIALITY: The Supplier and their personnel shall not, either during the term or within two (2) years after the expiration of this Contract, disclose any proprietary or confidential information related to work / Project, this Contract, or Purchaser’s business or operations without the prior consent of the Purchaser.

16. ACTION IN CASE OF CORRUPT/ FRAUDULENT/ COLLUSIVE/ COERCIVE PRACTICES & POOR PERFORMANCE VENDOR PERFORMANCE EVALUATION

16.1 PROCEDURE FOR ACTION IN CASE OF CORRUPT/ FRAUDULENT/ COLLUSIVE/ COERCIVE PRACTICES

The Bidder(s)/Suppliers(s) are required to abide by the following documents available on BCPL’s website (<https://bcplonline.co.in/Tender/Index>)

16.2 PROCEDURE FOR EVALUATION OF PERFORMANCE OF VENDORS/SUPPLIERS/CONTRACTORS/CONSULTANTS

The detailed procedure for evaluation of supplier containing provisions putting a bidder /supplier on suspension and/or holiday list (as the case may be) is available at (<https://bcplonline.co.in/Tender/Index>).