

Interpretation

In the interpretation of these General terms and conditions of Sale the headings are inserted only as a matter of convenience and do not define limit or affect the interpretation hereof.

Article 1 Definitions

In these General Terms and Condition the terms and phrases listed below have the following meaning:

Seller : ElectroMech Material Handling Systems (India) Private Limited a company presently having its registered office in Pune, Maharashtra, India which term shall include its successors and assigns;

Purchaser: ElectroMech's Other contractual party;

Agreement: any Agreement concluded by ElectroMech and the Purchaser, any amendment or supplement to such an Agreement and any legal or other acts related to preparing for and performing such an Agreement; If alternatively applicable, the Supply agreement shall mean the Purchase order and the Order Acceptance by ElectroMech to which these purchasing General Terms and conditions are attracted.

Products: all physical objects and/or equipment to be delivered and services to be rendered by ElectroMech pursuant to the agreement .

Article 2 General

- 2.1 These General Terms and Conditions shall be applicable to all agreements/order acceptances and shall govern all acts with respect to the Delivery of Products and/or the provision of services. These General Terms and Conditions shall form an integral part of the agreement between ElectroMech and the Purchaser.
- 2.2 Any deviations from these Terms and Conditions shall only be valid and binding if and so far as it has explicitly been confirmed by ElectroMech in writing.
- 2.3 These General Terms and Conditions are also applicable to modified, supplemental, further and subsequent agreements other than oral communication, irrespective of whether or not they have been explicitly declared applicable.
- 2.4 If one or more provisions of these General Terms and Conditions are annulled or become invalid, the remaining provisions of these General Terms and Conditions will continue to apply.
- 2.5 These General Terms and conditions supersede any implied/deemed conditions imposed by the Purchaser unless accepted by ElectroMech in writing.
- 2.6 The applicability of any other general terms and conditions of the Purchaser is hereby explicitly excluded, unless ElectroMech has agreed otherwise in writing.

Article 3 Offers and prices

- 3.1 All offers and quotations shall be without engagement, unless otherwise stated in the offer. All offers by ElectroMech, if acceptable to the Purchaser should be followed by a formal Order for acceptance by ElectroMech. Photographs, illustrations, weights, dimensions and any other particulars given represent generally the relevant Product/s but are not binding and are subject to minor alteration without notice.
- 3.2 The price quoted is subject to withdrawal by ElectroMech at any time prior to acceptance of the offer by the Purchaser and/or order acceptance by ElectroMech.
- 3.3 Prices quoted are valid for a particular period and thereafter subject to ElectroMech rise and fall provisions. The base date being the date of the quotation /offer /order acceptance date.
- 3.4 Offers or quotations will not apply to follow-up orders and/or subsequent agreements, unless otherwise stated in the offer.
- 3.5 Prices of the Products are exclusive of VAT, duties and other taxes, duties and levies, and all costs or charges related to packaging and/or in relation of loading, unloading, carriage and insurance of all of which amounts the Purchaser will pay in addition, unless otherwise stated in the offer.
- 3.6 In case of an increase in the prices of, raw materials or other materials necessary for the manufacture of the Products ordered by the Purchaser occurring prior to the agreed date of delivery, ElectroMech shall have the right to increase the price of the Products ordered accordingly unless otherwise stated in the offer,.
- 3.7 * Product Prices, inclusive for installation and commissioning are quoted on the assumptions that-
 - Requirements/specifications of the Purchaser given at the time of order do not change;
 - Required power is available at the site where the Product is to be installed
 - The area where the erection and installation work is to be carried out will be free of obstruction and accessible in normal working hours (which does not include weekends, public holidays or night time) during the period of such erection and installation;
 - Full co-operation is extended by the Purchaser, its officials, agents, contractors;
 - Should site conditions or circumstances cause ElectroMech to incur additional expenses, then these will be to the purchaser's account.
 - Runways, buildings, foundations, and any other structures required for erection and commissioning is ready at the time of installation.
 - Requirements, facilities undertaken to be provided by Purchaser are complied with in time;
 - Without prejudice, other inputs to be arranged by the customer for erection and commissioning of the Product are readily available at the time of installation.

- The dismantled equipment is unloaded by the client at the site within 10 m of the intended place where the erection activity has to be carried out to avoid delay for erection.
- The gantry girders for EOT cranes have been erected and duly aligned
- The rails are aligned and erected (in case where the rails are in clients' scope)
- Electricity (having suitable power rating) and water is made available to our erection crew free of charge without any interruptions at the location most suitable for carrying out the erection and commissioning activity. The location for supply of power will be conveyed to the client by our site supervisor.
- Necessary ladders/scaffoldings will have to be provided to our erection crew to enable them to climb up to the gantry girders.
- Clear, well demarcated, level and accessible area is made available to our erection crew to undertake the erection activity.

Article 4 Formation of agreement

- 4.1 The agreement comes into existence after ElectroMech has confirmed the acceptance of the Purchaser's order in writing. ElectroMech's acceptance of the order tantamount to Purchaser's confirmation of its solvency and its ability to pay the value of the goods supplied. Acceptance of the Subsequent supplementary agreements come into existence if ElectroMech confirms these supplementary agreements in writing.
- 4.2 The acceptance of the Purchaser's order by ElectroMech amounts to confirmation that the Purchaser agrees to these General Terms and Conditions being declared applicable and that the Purchaser waives applicability of his own purchasing conditions.
- 4.3 An order once accepted/confirmed in writing by ElectroMech shall not be cancelled or altered except upon terms and conditions satisfactory to it (which, in the case of cancellations, may without limitation include payment of a cancellation fee, which includes all expenses incurred by way of labour, materials, services, overhead expenses, fees, duties, taxes, loss of profit, penalties and consequential damages. This will be without prejudice to ElectroMech's right to adjust any advance paid by the Purchaser against the order.
- 4.4 No implied authority should be assumed in respect of the powers of ElectroMech's, officials, representatives, attorneys, authorized They have no power to deviate from these General Terms and Conditions, except on the strength of an express Power of Attorney/Letter of Authority/Resolution that shall be granted in writing for each individual agreement separately.

Article 5 Delivery terms and dates

- 5.1 ElectroMech is committed to deliver products in accordance with the agreed specifications and perform its obligations arising out of the agreement to the best of its efforts.
- 5.2 ElectroMech is entitled to make any minor adjustments to those component parts, which is considered necessary for the satisfactory performance of the equipment without affecting in any way the intended end use or the assured performance parameters.
- 5.3 All delivery terms or dates stated by ElectroMech are of an indicative nature and have been established according to the best of ElectroMech's knowledge. Under no circumstances may delivery terms/dates indicated by ElectroMech be regarded as a strict deadline. ElectroMech is not responsible for any delay in the term of delivery though every effort will be made to adhere to the delivery schedule agreed upon. Delay due to Purchaser's failure to comply with its undertakings in relation to the execution of the contract or acts which the Purchaser had to per force perform pursuant to the order resulting in delayed delivery shall not be the responsibility of ElectroMech and further no liability shall accrue on ElectroMech. All expenses on account of delayed delivery owing to the acts and/or omissions on the part of the Purchaser will be borne by the Purchaser.
- 5.4 The period quoted for delivery and completion shall stand extended if it involves action from the Purchaser for supply of any particulars, specifications, drawings, technical data, approvals or information or acts affecting the execution of the order/agreement.
- 5.5 With regard to items quoted which are not of ElectroMech manufacture, the delivery times quoted are based on the manufacturers promised delivery to ElectroMech, or upon our estimate of delivery time. Any delay in receipt of such items may result in delay in scheduled delivery of the Product and/or rendering of services.
- 5.6 Exceeding any term/date of delivery does not give the Purchaser the right of any form of compensation, or the right to dissolve or terminate the agreement, or the right to any other action including encashment of Bank Guarantees given if such delay or failure is caused by any act, matter or thing beyond ElectroMech's control.
- 5.7 If for any reason the Purchaser fails to take delivery of the Products when tendered by ElectroMech, in addition to and without prejudice to ElectroMech's other rights, the Purchaser shall reimburse ElectroMech on demand all costs and expenses incurred by it. ElectroMech shall be under no liability to store the Products to prevent their deterioration after 30 days following the date that the Purchaser has failed to take delivery of them.
Failure on the part of the Purchaser to take delivery of the Products when tendered (including delayed delivery) shall not in any way absolve the Purchaser from honouring his commitments in time.

Article 6 Packaging, transport and delivery

- 6.1 ElectroMech undertakes to pack the Products appropriately and to secure them in such a way that under normal transport conditions they will reach their destination in good condition.
- 6.2 ElectroMech will be entitled to deliver in consignments (partial delivery) and to invoice such partial deliveries separately.

- 6.3 ElectroMech retains the right to refuse delivery to a destination, or in a mode of packaging or transport stipulated by the Purchaser if, in the judgment of ElectroMech, these fail to meet reasonable standards of reliability, safety, cleanliness, convenience, legality, without ElectroMech being obliged to pay any compensation.

Article 7 Transfer of Title and Risk

- 7.1 Notwithstanding actual delivery, the right of property of the Products delivered shall remain vested in ElectroMech until the Purchaser has paid all amounts in full that is due or will be due to ElectroMech and such payment has been credited to the bank account without reservation.
- 7.2 During the interim period the property is still vested in ElectroMech, the Purchaser shall hold the Products in trust for ElectroMech. The Purchaser shall keep the Products properly stored, protected, insured and identified as ElectroMech's property.
- 7.3 Purchaser shall not assign, pledge, or in any manner encumber his rights or benefits under this contract without ElectroMech's express permission in writing until title and interest fully vests in the Purchaser in relation to the goods supplied.
- 7.4 If the Purchaser fails to pay all amounts in full, ElectroMech shall have the right to repossess the Products, without any prior notice being required.
- 7.5 The risk of loss of or damage to the Products shall pass to the Purchaser on delivery. ElectroMech shall be entitled to treat this risk even in cases as having been passed upon the Purchaser failing to take delivery of the Products when delivery falls due.
- 7.6 ElectroMech will assume delivery of Products as per agreement with Purchaser unless discrepancies/non conformances are brought to the attention of ElectroMech within three days of delivery of Product at the Purchaser's designated site.
- 7.7 ElectroMech will not be liable for any damage to or deterioration of the goods. theft, pilferage etc. which may occur after delivery whether the same may occur due to unsuitable storage conditions or to abuse of the Product or for any other cause whatsoever.

Article 8 Payment

- 8.1 ElectroMech is entitled to request an advance on the order value from the Purchaser upon acceptance of the order/signing of the agreement or any time before delivery. Where agreed upon, ElectroMech agrees to secure the advance by furnishing an bank guarantee/corporate guarantee in favour of the Purchaser. However, Purchaser shall be entitled to encash the Bank Guarantee only in the event the payment is made as per order terms and for reasons which can be attributed solely to the fault of ElectroMech which shall be determined so by the Dispute Redressal forum referred in Article 18 and not in any other manner. Encashment of the Bank Guarantee/Corporate Guarantee/furnished by ElectroMech without payment of the amount by the Purchaser as stipulated or not in conformity with what has been stated above will be viewed seriously and will attract penal action in accordance with the law against the Purchaser and/or its officers.
- 8.2 Payment must occur within agreed days after the invoice date, without any discount or set-off.
- 8.3 The Purchaser is not entitled to suspend the fulfillment of its payment obligation in the event of a complaint or for other frivolous issues unless ElectroMech expressly agrees with the suspension.
- 8.4 If ElectroMech has reasonable doubts about the Purchaser's capacity to pay, ElectroMech is at all times entitled to demand that the Purchaser furnish sufficient security for its payment obligations. If the Purchaser fails to furnish such security ElectroMech will be entitled to suspend delivery, or to dissolve the agreement in whole or in part without any judicial intervention being required and without limitation to set off the advance paid if any, to claim compensation, damages etc. but without prejudice to other rights available under law.
- 8.5 If the Purchaser fails to pay any amount when due, he will be deemed to be automatically legally in default, without any notification or default being required. Without prejudice to any other right, ElectroMech will then be entitled to charge default interest at 1,5% monthly from the date that the Purchaser is in default, with a partial month being counted as a whole month. All costs, including judicial and extra-judicial, made in order to obtain payment by the Purchaser of the amount or amounts due to ElectroMech, shall be for account of the Purchaser.
- 8.6 In the event that payment is not satisfactorily made by the purchaser in accordance with the terms hereof, including the payment of interest (if any), and as a result of that default by the purchaser ElectroMech incurs any costs and expenses (including charges by a collection agency and/or legal costs on a solicitor/client basis) then the purchaser shall be liable to pay such costs and expenses as a liquidated sum. A certificate issued by ElectroMech in relation to such costs and expenses shall, except in the case of manifest error, be conclusive evidence of the cause, reasonableness and amount of the expenditure.
- 8.7 ElectroMech reserves the right not to execute, or no longer execute orders or agreements if previous deliveries have not been paid for by the Purchaser or the Purchaser has not fulfilled or is at risk of not fulfilling his obligations to ElectroMech. ElectroMech is not responsible for any damage or consequential loss to the Purchaser as a result of non-execution of orders or agreements in case of non-payment in time.

Article 9 Government Approvals

- 9.1 The purchaser shall at its cost obtain all government consents, approvals and licences required to be obtained by the purchaser for the formation and execution of this agreement or its performance and the purchaser warrants to us that such approvals consents and licences shall be in existence and in force at the required times.

Article 10 Plans and Designs

- 10.1 Purchaser shall not use any plans, design, instructions, specifications, charts or other information provided by ElectroMech other than for the specific purpose for which they were given. Purchaser understands that all intellectual property rights vest in ElectroMech.
- 10.2 The Purchaser acknowledges that all dimensions and detail in plans and designs prepared by ElectroMech have been checked and found to be satisfactory for the intended purpose and the GA drawings are deemed to be approved.
- 10.3 Any modifications to GA Drawings subsequently requested and confirmed by ElectroMech resulting in modifications in equipments, components etc. shall be at the cost of the Purchaser.

Article 11 Suitability - Warranties

- 11.1 Purchaser must utilise and solely rely on its own expertise, know-how and judgement in relation to the Products and Purchaser's Use thereof and Purchaser's application of any information obtained from ElectroMech for the purposes intended by Purchaser. Consultation provided by ElectroMech shall not give rise to any additional obligations on the part of ElectroMech. Details and information provided with regard to the suitability and Use of the Goods shall not be binding and ElectroMech does not assume any liability whatsoever based on such consultations or Product Purchase. Purchaser shall indemnify and hold ElectroMech harmless from and against any and all damage, losses, costs, expenses, claims, demands and liabilities arising out of or in connection with the Products, Purchaser's Use thereof and/or Purchaser's use or application of any information disclosed or provided by or on behalf of ElectroMech.
- 11.2 ElectroMech warrants that in the event of any defect in any item occurring or being discovered on delivery to the original purchaser or such extended date as agreed upon by way of performance guarantee as a result of faulty design, material or workmanship attributable to it, then ElectroMech shall repair or supply a replacement part at ElectroMech's option, free of charge, provided however that this warranty only applies if:
- All Payments have been made in time;
 - Neither the item nor the equipment of which that item forms part has been misused, abused or overloaded or used for other than its intended purpose or used by an unauthorized or unqualified person or repaired by an unauthorized or unqualified person;
 - The purchaser has not been and is not in breach of these General terms and Conditions or is not otherwise in default;

The Product has been properly maintained;

- Unless otherwise agreed by ElectroMech, defective parts capable of delivery are returned to ElectroMech works carriage paid;
- Should ElectroMech agree to any rectification work on site owing to ElectroMech's fault, this will be performed free of charge but only during normal working hours;
- The purchaser to provide suitable site & working conditions including power supply etc.
- The defect is not in design or specification specially stipulated or required by the purchaser;
- Only genuine spare parts are used as recommended/ approved by ElectroMech;
- The purchaser(s) gives ElectroMech notice of the defect as soon as they become aware of it with due compliance to the periods mentioned hereinafter and ElectroMech is solely responsible for such defect; and
- Items not manufactured by ElectroMech shall only have the benefit of such warranty as the manufacturer of that item has offered to ElectroMech.
- No warranty is available on wearing parts

Warranty does not include for following parts -

- 1) Wire Rope
 - 2) Rope Guides
 - 3) Knobs
 - 4) Push Buttons
 - 5) Lables/Stickers
 - 6) Fuses
 - 7) Brake Pads/Brake Discs/Brake Liners
 - 8) Indicator lamps/light bulbs
 - 9) Glass, Plastic components.
- 11.3 Photographs illustrations, weights, dimensions and any other particulars given represent generally the relevant goods but are not binding and are subject to alterations without notice to the maker.
- 11.4 The suitability of the purchaser's runways, buildings, foundations, and any other structures is the responsibility of the purchaser & problems arising in operation of the Crane due to any of these is not covered under warranty.
- 11.5 It shall be the responsibility of the Purchaser to adhere completely to the situations enlisted under Article 11.2 above to be able to enjoy warranties as provided by ElectroMech.

Article 12 Inspection, claims, notification

- 12.1 The Purchaser is required to inspect the Products (or to have them inspected by a third party), immediately upon receipt.
- 12.2 Any claims concerning the quality, composition or quantity of the Products delivered

shall be submitted by the Purchaser to ElectroMech in writing, within -3 days from the date of receipt of the Products. ElectroMech shall not accept claims made afterwards and the Products shall be deemed to have been delivered complete and in a satisfactory condition.

- 12.3 The notice of default must specify the defect in as much detail as possible. The Purchaser will fully cooperate in ElectroMech's investigation of the complaint, among other things by enabling ElectroMech or its nominees to investigate the Products on location.
- 12.4 Notwithstanding a complaint, the Purchaser will remain obliged to take delivery and the Purchaser undertakes to provide adequate and proper facilities for the storage of the Products, clearly demarcating the Products supplied from his other Products. The Purchaser will continue to bear the risks and liability related to the Products, including deterioration, pilferage, theft etc. of the Products. However without prejudice to what has been stated in the foregoing, in case of any damage of the Products, for any reason, while in the custody/possession of the Purchaser, Purchaser undertakes to extend all necessary help /assistance to ElectroMech to file insurance claims with the Insurance company in a manner that ElectroMech's interests are safeguarded.
- 12.5 ElectroMech shall replace the Products if they do not conform to the specification(s) set forth in the agreement.
- 12.6 Products shall not be returned to ElectroMech without prior written consent of ElectroMech. Return delivery if agreed upon by ElectroMech must be effected carriage paid, undamaged and in the original package.
- 12.7 Issuing a complaint does not suspend the Purchaser's obligation to pay, regardless of any justification of a complaint or to invoke and encash Bank guarantees.
- 12.8 Except for adherence to warranties provided ElectroMech is never liable for any direct or indirect damage caused to, with or by the Products, howsoever such damage is designated and whatsoever the circumstances causing it.

Article 13 Liability

- 13.1 The direct contractual or non-contractual liability of ElectroMech for damages resulting from or in connection with possible shortcomings in the execution of the agreement shall be limited to the warranties provided under Article 11 above. Under no circumstances ElectroMech shall be liable for any damage sustained by the Purchaser, including consequential damage, material/immateral damage, trading loss or loss of profits, environmental damage, etc.

Article 14 Product use hazards and Indemnification

- 14.1 Purchaser acknowledges that it is familiar with, and shall take all steps necessary to inform, warn and familiarize its employees, agents, customers and contractors who may handle the Product of all hazards pertaining to and proper procedures for safe use of the Product.
- 14.2 Purchaser shall indemnify, defend and hold ElectroMech harmless from and against any claim, liability, loss, cost, damage or expense (including legal fees) suffered or incurred by ElectroMech, including but not limited to injury or death of Purchasers employees, directly or indirectly arising from Buyers failure to so inform, warn and familiarize employees, agents, customers and contractors.

Article 15 Force majeure

- 15.1 Force majeure includes in addition to what is understood in this respect in the law and case law, acts of god, external circumstances or causes, foreseen or unforeseen, over which ElectroMech has no control and which prevents ElectroMech from executing the agreement, such as an act of god, labour disturbances, industrial disputes, civil or foreign war, riots, terrorist acts, total or partial destruction of production or other facilities, manufacturing incidents, disruptions in transportation, difficulties in the supply chain, customs measures of whatever nature, or any other unforeseen event which might totally or partially prevent or delay ElectroMech to execute his part of the agreement.
- 15.2 ElectroMech has the right to take recourse to force majeure if the circumstance which prevents (further) performance arises after ElectroMech should have performed its obligation.
- 15.3 The obligations of ElectroMech will be suspended without liability during force majeure.
- 15.4 If upon the arising of the force majeure, ElectroMech has already performed its obligations in part, or can only perform its obligations in part, it is entitled to invoice separately for the part which has already been and/or can be performed and the Purchaser is obligated to pay such invoice as if it were a separate agreement.

Article 16 Suspension and Termination

- 16.1 ElectroMech is entitled to terminate the agreement wholly or in part and forfeit the advance, without any further notice of default or court intervention being required, or at its discretion to suspend further executions of the agreement if:
 - The Purchaser fails in the performance of any obligation arising from the agreement within the term that has been set;
 - The Purchaser is declared in state of insolvency;
 - The Purchaser applies for a provisional or definitive suspension of payment;
 - The legal entity of the Purchaser is dissolved or the company of the Purchaser is wound up;
 - The Purchaser is at default on account of wrongful encashment of Bank Guarantee/s or for any other reason;

This is without prejudice to ElectroMech's other rights such as set off of advance paid against the order by the Purchaser, revocation of the Advance Bank Guarantee and/or, Corporate Guarantee and/or Performance Guarantee and intimation to the Bank for cancellation of the Guarantee/s extended on behalf of ElectroMech and without ElectroMech being obliged to pay any compensation/damages etc. Purchaser unconditionally agrees to ElectroMech's right of revocation/cancellation of guarantees provided.

Article 17 Notice

- 17.1 Any Notice or demand required to be given or made by ElectroMech or the Purchaser shall be duly given or served if sent to the address on record and by any one of the following means(a) by hand - such communication shall be deemed to have been received on the day of delivery provided receipt of delivery is obtained. (b) by facsimile - such communication shall be deemed to have been received, under normal service conditions, twenty-four (24) hours following the time of fax and on confirmation by the other party or (c) by registered mail (or its equivalent) - such communication shall be deemed to have been received on the day it was actually delivered and acknowledgment obtained of the receiving party.

Parties may change the address by giving prior written notice.

Article 18 Dispute Redressal

- 18.1 Purchaser and ElectroMech unconditionally agree and undertake that in case of any dispute arising out of the agreement which cannot be resolved and stalemate continues for a period of more than 30 days, the dispute shall be referred to a dispute redressal forum which shall be constituted within 10 days from the expiry of 30 days for specifically looking into and resolving the dispute. The forum to be presided by one officer from each side who shall be a senior officer equivalent or above the rank of a Vice President. The Authorised Representatives will deal with all matters of the dispute and make efforts to arrive at an acceptable solution. Failure to arrive at an acceptable solution within 30 days of the referral of the dispute will entitle each of the parties to take recourse to law. The proceedings of the dispute redressal forum shall be held at the registered office of the ElectroMech. This dispute redressal forum as described above does not in any way attract the reconciliation process described in the Arbitration and Reconciliation Act, 1996. The Purchaser agrees that during the interim period as also before the dispute is conclusively resolved in accordance with the provisions of the law, it shall not invoke any of the Guarantees given by ElectroMech. This is an essential term of the contract.

Article 19 Applicable law, competent court

- 19.1 The relationship between ElectroMech and the Purchaser is governed by laws of India.
- 19.2 All disputes regarding or arising from the agreement or from these General Terms and Conditions shall be exclusively submitted to and finally settled by the competent Court in Pune, Maharashtra, with exclusion of every other jurisdiction.