

percentage of minimum local content requirement to categorize a supplier as 'Class-I local supplier'/ 'Class-II local supplier'. For the items, for which Nodal Ministry/ Department has not prescribed higher minimum local content notification under the Order, it shall be 50% and 20% for 'Class-I local supplier'/ 'Class-II local supplier' respectively.

6. **Margin of Purchase Preference:** The margin of purchase preference shall be 20%.
7. **Requirement for specification in advance:** The minimum local content, the margin of purchase preference and the procedure for preference to Make in India shall be specified in the notice inviting tenders or other form of procurement solicitation and shall not be varied during a particular procurement transaction.
8. **Government E-marketplace:** In respect of procurement through the Government E-marketplace (GeM) shall, as far as possible, specifically mark the items which meet the minimum local content while registering the item for display, and shall, wherever feasible, make provision for automated comparison with purchase preference and without purchase preference and for obtaining consent of the local supplier in those cases where purchase preference is to be exercised.
9. **Verification of local content:**
  - a. The 'Class-I local supplier'/ 'Class-II local supplier' at the time of tender, bidding or solicitation shall be required to indicate percentage of local content and provide self-certification that the item offered meets the local content requirement for 'Class-I local supplier'/ 'Class-II local supplier', as the case may be. They shall also give details of the location(s) at which the local value addition is made.
  - b. In cases of procurement for a value in excess of Rs. 10 crores, the 'Class-I local supplier'/ 'Class-II local supplier' shall be required to provide a certificate from the statutory auditor or cost auditor of the company (in the case of companies) or from a practicing cost accountant or practicing chartered accountant (in respect of suppliers other than companies) giving the percentage of local content.
  - c. Decisions on complaints relating to implementation of this Order shall be taken by the competent authority which is empowered to look into procurement-related complaints relating to the procuring entity.
  - d. Nodal Ministries may constitute committees with internal and external experts for independent verification of self-declarations and auditor's/ accountant's certificates on random basis and in the case of complaints.
  - e. Nodal Ministries and procuring entities may prescribe fees for such complaints.
  - f. False declarations will be in breach of the Code of Integrity under Rule 175(1)(i)(h) of the General Financial Rules for which a bidder or its successors can be debarred for up to two years as per Rule 151 (iii) of the General Financial Rules along with such other actions as may be permissible under law.

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- g. A supplier who has been debarred by any procuring entity for violation of this Order shall not be eligible for preference under this Order for procurement by any other procuring entity for the duration of the debarment. The debarment for such other procuring entities shall take effect prospectively from the date on which it comes to the notice of other procurement entities, in the manner prescribed under paragraph 9h below.
- h. The Department of Expenditure shall issue suitable instructions for the effective and smooth operation of this process, so that:
  - i. The fact and duration of debarment for violation of this Order by any procuring entity are promptly brought to the notice of the Member-Convenor of the Standing Committee and the Department of Expenditure through the concerned Ministry /Department or in some other manner;
  - ii. on a periodical basis such cases are consolidated and a centralized list or decentralized lists of such suppliers with the period of debarment is maintained and displayed on website(s);
  - iii. in respect of procuring entities other than the one which has carried out the debarment, the debarment takes effect prospectively from the date of uploading on the website(s) in the such a manner that ongoing procurements are not disrupted.

**10. Specifications in Tenders and other procurement solicitations:**

- a. Every procuring entity shall ensure that the eligibility conditions in respect of previous experience fixed in any tender or solicitation do not require proof of supply in other countries or proof of exports.
- b. Procuring entities shall endeavour to see that eligibility conditions, including on matters like turnover, production capability and financial strength do not result in unreasonable exclusion of 'Class-I local supplier'/ 'Class-II local supplier' who would otherwise be eligible, beyond what is essential for ensuring quality or creditworthiness of the supplier.
- c. Procuring entities shall, within 2 months of the issue of this Order review all existing eligibility norms and conditions with reference to sub-paragraphs 'a' and 'b' above.

**d. Reciprocity Clause**

- i. When a Nodal Ministry/Department identifies that Indian suppliers of an item are not allowed to participate and/ or compete in procurement by any foreign government, due to restrictive tender conditions which have direct or indirect effect of barring Indian companies such as registration in the procuring country, execution of projects of specific value in the procuring country etc., it shall provide such details to all its procuring entities including CMDs/CEOs of PSEs/PSUs, State Governments and other procurement agencies under their administrative control and GeM for appropriate reciprocal action.

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- ii. Entities of countries which have been identified by the nodal Ministry/Department as not allowing Indian companies to participate in their Government procurement for any item related to that nodal Ministry shall not be allowed to participate in Government procurement in India for all items related to that nodal Ministry/ Department, except for the list of items published by the Ministry/ Department permitting their participation.
  - iii. The stipulation in (ii) above shall be part of all tenders invited by the Central Government procuring entities stated in (i) above. All purchases on GeM shall also necessarily have the above provisions for items identified by nodal Ministry/ Department.
  - iv. State Governments should be encouraged to incorporate similar provisions in their respective tenders.
  - v. The term 'entity' of a country shall have the same meaning as under the FDI Policy of DPIIT as amended from time to time.
- e. Specifying foreign certifications/ unreasonable technical specifications/ brands/ models in the bid document is restrictive and discriminatory practice against local suppliers. If foreign certification is required to be stipulated because of non-availability of Indian Standards and/or for any other reason, the same shall be done only after written approval of Secretary of the Department concerned or any other Authority having been designated such power by the Secretary of the Department concerned.
- f. "All administrative Ministries/Departments whose procurement exceeds Rs. 1000 Crore per annum shall notify/ update their procurement projections every year, including those of the PSEs/PSUs, for the next 5 years on their respective website."

**10A. Action for non-compliance of the Provisions of the Order:** In case restrictive or discriminatory conditions against domestic suppliers are included in bid documents, an inquiry shall be conducted by the Administrative Department undertaking the procurement (including procurement by any entity under its administrative control) to fix responsibility for the same. Thereafter, appropriate action, administrative or otherwise, shall be taken against erring officials of procurement entities under relevant provisions. Intimation on all such actions shall be sent to the Standing Committee.

**11. Assessment of supply base by Nodal Ministries:** The Nodal Ministry shall keep in view the domestic manufacturing / supply base and assess the available capacity and the extent of local competition while identifying items and prescribing the higher minimum local content or the manner of its calculation, with a view to avoiding cost increase from the operation of this Order.

**12. Increase in minimum local content:** The Nodal Ministry may annually review the local content requirements with a view to increasing them, subject to availability of sufficient local competition with adequate quality.

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- 13. Manufacture under license/ technology collaboration agreements with phased indigenization:** While notifying the minimum local content, Nodal Ministries may make special provisions for exempting suppliers from meeting the stipulated local content if the product is being manufactured in India under a license from a foreign manufacturer who holds intellectual property rights and where there is a technology collaboration agreement / transfer of technology agreement for indigenous manufacture of a product developed abroad with clear phasing of increase in local content.
- 13A.** In procurement of all goods, services or works in respect of which there is substantial quantity of public procurement and for which the nodal ministry has not notified that there is sufficient local capacity and local competition, the concerned nodal ministry shall notify an upper threshold value of procurement beyond which foreign companies shall enter into a joint venture with an Indian company to participate in the tender. Procuring entities, while procuring such items beyond the notified threshold value, shall prescribe in their respective tenders that foreign companies may enter into a joint venture with an Indian company to participate in the tender. The procuring Ministries/Departments shall also make special provisions for exempting such joint ventures from meeting the stipulated minimum local content requirement, which shall be increased in a phased manner.
- 14. Powers to grant exemption and to reduce minimum local content:** The administrative Department undertaking the procurement (including procurement by any entity under its administrative control), with the approval of their Minister-in-charge, may by written order, for reasons to be recorded in writing,
- a. reduce the minimum local content below the prescribed level; or
  - b. reduce the margin of purchase preference below 20%; or
  - c. exempt any particular item or supplying entities from the operation of this Order or any part of the Order.

A copy of every such order shall be provided to the Standing Committee and concerned Nodal Ministry / Department. The Nodal Ministry / Department concerned will continue to have the power to vary its notification on Minimum Local Content.

- 15. Directions to Government companies:** In respect of Government companies and other procuring entities not governed by the General Financial Rules, the administrative Ministry or Department shall issue policy directions requiring compliance with this Order.
- 16. Standing Committee:** A standing committee is hereby constituted with the following membership:

Secretary, Department for Promotion of Industry and Internal Trade—Chairman  
Secretary, Commerce—Member  
Secretary, Ministry of Electronics and Information Technology—Member  
Joint Secretary (Public Procurement), Department of Expenditure—Member  
Joint Secretary (DPIIT)—Member-Convenor

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The Secretary of the Department concerned with a particular item shall be a member in respect of issues relating to such item. The Chairman of the Committee may co-opt technical experts as relevant to any issue or class of issues under its consideration.

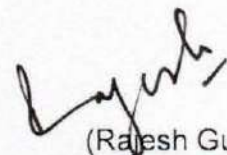
**17. Functions of the Standing Committee:** The Standing Committee shall meet as often as necessary, but not less than once in six months. The Committee

- a. shall oversee the implementation of this order and issues arising therefrom, and make recommendations to Nodal Ministries and procuring entities.
- b. shall annually assess and periodically monitor compliance with this Order
- c. shall identify Nodal Ministries and the allocation of items among them for issue of notifications on minimum local content
- d. may require furnishing of details or returns regarding compliance with this Order and related matters
- e. may, during the annual review or otherwise, assess issues, if any, where it is felt that the manner of implementation of the order results in any restrictive practices, cartelization or increase in public expenditure and suggest remedial measures
- f. may examine cases covered by paragraph 13 above relating to manufacture under license/ technology transfer agreements with a view to satisfying itself that adequate mechanisms exist for enforcement of such agreements and for attaining the underlying objective of progressive indigenization
- g. may consider any other issue relating to this Order which may arise.

**18. Removal of difficulties:** Ministries /Departments and the Boards of Directors of Government companies may issue such clarifications and instructions as may be necessary for the removal of any difficulties arising in the implementation of this Order.

**19. Ministries having existing policies:** Where any Ministry or Department has its own policy for preference to local content approved by the Cabinet after 1<sup>st</sup> January 2015, such policies will prevail over the provisions of this Order. All other existing orders on preference to local content shall be reviewed by the Nodal Ministries and revised as needed to conform to this Order, within two months of the issue of this Order.

**20. Transitional provision:** This Order shall not apply to any tender or procurement for which notice inviting tender or other form of procurement solicitation has been issued before the issue of this Order.



(Rajesh Gupta)  
Director

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भारत सरकार Government of India  
रेल मंत्रालय Ministry of Railways  
रेलवे बोर्ड (Railway Board)

No. 2020/RS(G)/779/2/Pt.1 (E3322671)

Dated: 20.08.2024

The General Managers, All Indian Railways/PUs, NF(C), CORE  
DG/RDSO/Lucknow, NAIR/Vadodara  
PCAO, PLW/Patiala, COFMOW  
CAO, WPO/Patna, RWP/ Bela

**Sub: Public Procurement (Preference to Make in India), Order 2017 - Revision**

- Ref: (i) Railway Board's letters No. 2015/RS(G)/779/5 dated 03.08.2017, 04.05.2020 and 01.06.2021  
(ii) Railway Board's letter No. 2020/RS(G)/779/2/Pt.1 dated 25.09.2020  
(iii) Railway Board's letters No. 2015/RS(G)/779/5 (Vol.III) dated 22.06.2020, 12.07.2020, 15.09.2020, 18.09.2020, 24.09.2020, 15.10.2020, 09.02.2021, 19.02.2021, 07.07.2021, 20.01.2023 and 06.06.2023  
(iv) Department for Promotion of Industry and Internal Trade (DPIIT)'s, Order No. P-45021/2/2017-PP(BE-II)-Part(4)Vol.II dated 19.07.2024

Ministry of Commerce and Industry, DPIIT, vide Order at ref (iv) has issued the revised 'Public Procurement (Preference to Make in India) Order, 2017' which is enclosed for guidance and implementation/compliance.

2. The decisions of the Ministry of Railways on certain matters as required by the policy and already issued vide Board's letters under reference, unless superseded, will continue to apply.

DA: As above

  
(Anurag Grover)  
Dy. Director Railway Stores (G)  
Railway Board  
Email- [ddrsg1@rb.railnet.gov.in](mailto:ddrsg1@rb.railnet.gov.in)  
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COFMOW, CORE, WPO/Patna and RWP/Bela  
Sr. Prof. (Material Management), NAIR, Vadodara, ED (Stores), RDSO,  
Chief Commissioner, Railway Safety, Lucknow  
Zonal Railway Training Institute, Sukadia Circle, Udaipur

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The Genl. Secy., AIRF, Room No. 248, & NFIR Room No. 256-C, Rail Bhavan  
The Secy. Gen., RPOF, Room No. 268., FROA, Room No. 256-D & AIRPOA,  
Room No. 256-D Rail Bhavan

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(RPF), DG(HR), DG(Safety)

EDPG/MR, JDPG/MOSR(S), Sectt. of MOSR(R)

All AMs, PEDs & Executive Directors of Railway Board

No. P-45021/2/2017-PP (BE-II)-Part(4)Vol.II  
Government of India  
Ministry of Commerce and Industry  
Department for Promotion of Industry and Internal Trade  
(Public Procurement Section)

Vaniya Bhawan, New Delhi  
Dated: 19 July, 2024

To

All Central Ministries/Departments/CPSUs/All concerned

**ORDER**

**Subject: Public Procurement (Preference to Make in India), Order 2017-Revision; regarding.**

Department for Promotion of Industry and Internal Trade, in partial modification [Paras 2, 3, 5, 10 & 13] of Order No.P-45021/2/2017-B.E.-II dated 15.6.2017 as amended by Order No.P-45021/2/2017-B.E.-II dated 28.05.2018, Order No.P-45021/2/2017-B.E.-II dated 29.05.2019, Order No.P-45021/2/2017-B.E.-II dated 04.06.2020 and Order No.P-45021/2/2017-B.E.-II dated 16.09.2020 hereby issues the revised 'Public Procurement (Preference to Make in India), Order 2017' dated 19.07.2024 effective with immediate effect.

**Whereas** it is the policy of the Government of India to encourage 'Make in India' and promote manufacturing and production of goods and services in India with a view to enhancing income and employment, and

**Whereas** procurement by the Government is substantial in amount and can contribute towards this policy objective, and

**Whereas** local content can be increased through partnerships, cooperation with local companies, establishing production units in India or Joint Ventures (JV) with Indian suppliers, increasing the participation of local employees in services and training them,

**Now therefore the following Order is issued:**

1. This Order is issued pursuant to Rule 153 (iii) of the General Financial Rules 2017.
2. **Definitions:** For the purposes of this Order:  
'Local content' means the amount of value added in India which shall, unless otherwise prescribed by the Nodal Ministry, be the total value of the item procured (excluding net domestic indirect taxes) minus the value of imported content in the item (including all customs duties) as a proportion of the total value, in percent.

**Explanatory notes for calculation of local content given above**

- a. Imported items sourced locally from resellers/distributors shall be excluded from calculation of local content.
- b. The license fees/royalties paid/ technical charges paid out of India shall be excluded from local content calculation.



- c. Procurement/Supply of repackaged/refurbished/rebranded imported products as understood commonly shall be treated as reselling of imported products and shall be excluded from calculation of local content. The definition of repackaged/refurbished/rebranded imported products is as follows;

'Refurbishing' means repair or reconditioning of an imported product does not amount to manufacture because no new goods come into existence.

'Repackaging' means repacking of imported goods from bulk pack to smaller packs would not ordinarily amount to manufacture of a new item.

'Rebranding' means relabeling or renaming or change in symbol or logo/makes or corporate image of a company/organization/ firm for an imported product would amount to rebranding.

- d. To ensure that imported items sourced locally from resellers/distributors are excluded from calculation of local content, procuring entities to obtain from bidders, the cost of such locally-sourced imported items (Inclusive of taxes) along with break-up on license/royalties paid/technical expertise cost etc. sourced from outside India. For items sold by bidder as reseller, OEM certificate for country of origin to be submitted.
- e. For contracts involving supply of multiple items, weighted average of all items to be taken while calculating the local content.

'Class-I local supplier' means a supplier or service provider, whose goods, services or works offered for procurement, meets the minimum local content as prescribed for 'Class-I local supplier' under this Order.

'Class-II local supplier' means a supplier or service provider, whose goods, services or works offered for procurement, meets the minimum local content as prescribed for 'Class-II local supplier' but less than that prescribed for 'Class-I local supplier' under this Order.

'Non - Local supplier' means a supplier or service provider, whose goods, services or works offered for procurement, has local content less than that prescribed for 'Class-II local supplier' under this Order.

'L1' means the lowest tender or lowest bid or the lowest quotation received in a tender, bidding process or other procurement solicitation as adjudged in the evaluation process as per the tender or other procurement solicitation.

'Margin of purchase preference' means the maximum extent to which the price quoted by a "Class-I local supplier" may be above the L1 for the purpose of purchase preference.

'Nodal Ministry' means the Ministry or Department identified pursuant to this order in respect of a particular item of goods or services or works.

'Procuring entity' means a Ministry or department or attached or subordinate office of, or autonomous body controlled by, the Government of India and includes Government companies as defined in the Companies Act.

'Works' means all works as per Rule 130 of GFR- 2017, and will also include 'turnkey works'.

**2A. Special treatment for items covered under PLI Scheme**

The manufacturers manufacturing an item under PLI scheme shall be treated as deemed Class II local supplier for that item unless they have minimum local content equal to or higher than that notified for Class-I local supplier for that item, provided the manufacturer has received incentive from the concerned PLI Ministry for the item. The above shall be applicable for the specific time period only, as notified by concerned PLI Ministry.

**3. Eligibility of 'Class-I local supplier'/ 'Class-II local supplier'/ 'Non-local suppliers' for different types of procurement**

(a) In procurement of all goods, services or works in respect of which the Nodal Ministry / Department has communicated that there is sufficient local capacity and local competition, only 'Class-I local supplier', as defined under the Order, shall be eligible to bid irrespective of purchase value.

(b) Only 'Class-I local supplier' and 'Class-II local supplier', as defined under the Order, shall be eligible to bid in procurement undertaken by procuring entities, except when Global tender enquiry has been issued. In global tender enquiries, 'Non-local suppliers' shall also be eligible to bid along with 'Class-I local suppliers' and 'Class-II local suppliers'. In procurement of all goods, services or works, not covered by sub-para 3(a) above, and with estimated value of purchases less than Rs. 200 Crore, in accordance with Rule 161(iv) of GFR, 2017, Global tender enquiry shall not be issued except with the approval of competent authority as designated by Department of Expenditure.

(c) For the purpose of this Order, works includes Engineering, Procurement and Construction (EPC) contracts and services include System Integrator (SI) contracts.

**3.1 Mandatory sourcing of items, with sufficient local capacity and competition, from Class-I local suppliers in SI/EPC/Turnkey Contracts/Service Tenders**

- a. The items, notified as having sufficient local capacity and competition, shall mandatory be sourced from Class-I local suppliers in SI/EPC/Turnkey Contracts/ Services tenders. This provision will be applicable only for those items which have been notified by the Nodal Ministry as Class I i.e. having sufficient local capacity and competition, with specific HSN codes."
- b. Notwithstanding above, if in any project, it is considered that it is not practically feasible to source such items from Class I local suppliers, it may take relaxation from such stipulation with the approval of Secretary of the administrative Ministry/ Department concerned or with the approval of the Competent Authority specified by the Administrative Ministry/Department, on case-specific basis.

**3A. Purchase Preference**

(a) Subject to the provisions of this Order and to any specific instructions issued by the Nodal Ministry or in pursuance of this Order, purchase preference shall be given to 'Class-I local supplier' in procurement undertaken by procuring entities in the manner specified here under.

(b) In the procurement of goods or works, which are covered by para 3(b)



above and which are divisible in nature, the 'Class-I local supplier' shall get purchase preference over 'Class-II local supplier' as well as 'Non-local supplier', as per following procedure:

- i. Among all qualified bids, the lowest bid will be termed as L1. If L1 is 'Class-I local supplier', the contract for full quantity will be awarded to L1.
  - ii. If L1 bid is not a 'Class-I local supplier', 50% of the order quantity shall be awarded to L1. Thereafter, the lowest bidder among the 'Class-I local supplier' will be invited to match the L1 price for the remaining 50% quantity subject to the Class-I local supplier's quoted price falling within the margin of purchase preference, and contract for that quantity shall be awarded to such 'Class-I local supplier' subject to matching the L1 price. In case such lowest eligible 'Class-I local supplier' fails to match the L1 price or accepts less than the offered quantity, the next higher 'Class-I local supplier' within the margin of purchase preference shall be invited to match the L1 price for remaining quantity and so on, and contract shall be awarded accordingly. In case some quantity is still left uncovered on Class-I local suppliers, then such balance quantity may also be ordered on the L1 bidder.
- (c) In the procurement of goods or works, which are covered by para 3(b) above and which are not divisible in nature, and in procurement of services where the bid is evaluated on price alone, the 'Class-I local supplier' shall get purchase preference over 'Class-II local supplier' as well as 'Non-local supplier', as per following procedure:
- i. Among all qualified bids, the lowest bid will be termed as L1. If L1 is Class-I local supplier', the contract will be awarded to L1.
  - ii. If L1 is not 'Class-I local supplier', the lowest bidder among the 'Class-I local supplier', will be invited to match the L1 price subject to Class-I local supplier's quoted price falling within the margin of purchase preference, and the contract shall be awarded to such 'Class-I local supplier' subject to matching the L1 price.
  - iii. In case such lowest eligible 'Class-I local supplier' fails to match the L1 price, the 'Class-I local supplier' with the next higher bid within the margin of purchase preference shall be invited to match the L1 price and so on and contract shall be awarded accordingly. In case none of the 'Class-I local supplier' within the margin of purchase preference matches the L1 price, the contract may be awarded to the L1 bidder.
- (d) "Class-II local supplier" will not get purchase preference in any procurement, undertaken by procuring entities.

**3B. Applicability in tenders where contract is to be awarded to multiple bidders-** In tenders where contract is awarded to multiple bidders subject to matching of L1 rates or otherwise, the 'Class-I local supplier' shall get purchase preference over 'Class-II local supplier' as well as 'Non-local supplier', as per following procedure:

- a. In case there is sufficient local capacity and competition for the item to be procured, as notified by the nodal Ministry, only Class I local suppliers shall be eligible to bid. As such, the multiple suppliers, who would be awarded the contract, should be all and only 'Class I Local suppliers'.
- b. In other cases, 'Class II local suppliers' and 'Non local suppliers' may also participate in the bidding process along with 'Class I Local suppliers' as per provisions of this Order.
- c. If 'Class I Local suppliers' qualify for award of contract for at least

50% of the tendered quantity in any tender, the contract may be awarded to all the qualified bidders as per award criteria stipulated in the bid documents. However, in case 'Class I Local suppliers' do not qualify for award of contract for at least 50% of the tendered quantity, purchase preference should be given to the 'Class I local supplier' over 'Class II local suppliers'/ 'Non local suppliers' provided that their quoted rate falls within 20% margin of purchase preference of the highest quoted bidder considered for award of contract so as to ensure that the 'Class I Local suppliers' taken in totality are considered for award of contract for at least 50% of the tendered quantity.

- d. First purchase preference has to be given to the lowest quoting 'Class-I local supplier', whose quoted rates fall within 20% margin of purchase preference, subject to its meeting the prescribed criteria for award of contract as also the constraint of maximum quantity that can be sourced from any single supplier. If the lowest quoting 'Class-I local supplier', does not qualify for purchase preference because of aforesaid constraints or does not accept the offered quantity, an opportunity may be given to next higher 'Class-I local supplier', falling within 20% margin of purchase preference, and so on.
- e. To avoid any ambiguity during bid evaluation process, the procuring entities may stipulate its own tender specific criteria for award of contract amongst different bidders including the procedure for purchase preference to 'Class-I local supplier' within the broad policy guidelines stipulated in sub- paras above.

4. **Exemption of small purchases:** Notwithstanding anything contained in paragraph 3, procurement where the estimated value to be procured is less than Rs. 5 lakhs shall be exempt from this Order. However, it shall be ensured by procuring entities that procurement is not split for the purpose of avoiding the provisions of this Order.

**4A. Exemption in sourcing of spares and consumables of closed systems:**

Procurement of spare parts, consumables for closed systems and Maintenance/ Service contracts with Original Equipment Manufacturer/Original Equipment Supplier/Original Part Manufacturer shall be exempted from this Order.

5. **Minimum local content:** The 'local content' requirement to categorize a supplier as 'Class-I local supplier' is minimum 50%. For 'Class-II local supplier', the 'local content' requirement is minimum 20%. Nodal Ministry/ Department may prescribe only a higher percentage of minimum local content requirement to categorize a supplier as 'Class-I local supplier'/ 'Class- II local supplier'. For the items, for which Nodal Ministry/ Department has not prescribed higher minimum local content notification under the Order, it shall be 50% and 20% for 'Class-I local supplier'/ 'Class-II local supplier' respectively.
6. **Margin of Purchase Preference:** The margin of purchase preference shall be 20%.
7. **Requirement for specification in advance:** The minimum local content, the margin of purchase preference and the procedure for preference to Make in India shall be specified in the notice inviting tenders or other form of procurement solicitation and shall not be varied during a particular procurement transaction.
8. **Government E-marketplace:** In respect of procurement through the Government E-marketplace (GeM) shall, as far as possible, specifically mark the items which meet the minimum local content while registering the item for



display, and shall, wherever feasible, make provision for automated comparison with purchase preference and without purchase preference and for obtaining consent of the local supplier in those cases where purchase preference is to be exercised.

**9. Verification of local content:**

- a. The 'Class-I local supplier'/ 'Class-II local supplier' at the time of tender, bidding or solicitation shall be required to indicate percentage of local content and provide self-certification that the item offered meets the local content requirement for 'Class-I local supplier'/ 'Class-II local supplier', as the case may be. They shall also give details of the location(s) at which the local value addition is made.
- b. In cases of procurement for a value in excess of Rs. 10 crores, the 'Class-I local supplier'/ 'Class-II local supplier' shall be required to provide a certificate from the statutory auditor or cost auditor of the company (in the case of companies) or from a practicing cost accountant or practicing chartered accountant (in respect of suppliers other than companies) giving the percentage of local content.
- c. The bidder shall give self-certification for local content in the quoted item (goods/works/services) at the time of tendering. However, at the time of execution of the project, for all contracts above INR 10 Crore, the contractor/ supplier shall be required to give local content certification duly certified by cost/ chartered accountant in practice. For cases where it is not possible to provide certification by Cost/Chartered Accountant at the time of execution of project, the supplier shall be permitted to provide the certificate for local content from Cost/ Chartered Accountant after completion of the contract, within time limit acceptable to the procuring entity. In case the contractor/ supplier does not meet the stipulated local content requirement and the category of the supplier changes from Class-I to Class-II/ Non-local or from Class-II to Non-local, a penalty upto 10% of the contract value may be imposed. However, contract once awarded shall not be terminated on this account.
- d. Decisions on complaints relating to implementation of this Order shall be taken by the competent authority which is empowered to look into procurement-related complaints relating to the procuring entity.
- e. Nodal Ministries may constitute committees with internal and external experts for independent verification of self-declarations and auditor's/ accountant's certificates on random basis and in the case of complaints.
- f. Nodal Ministries and procuring entities may prescribe fees for such complaints.
- g. False declarations will be in breach of the Code of Integrity under Rule 175(1)(i)(h) of the General Financial Rules for which a bidder or its successors can be debarred for up to two years as per Rule 151 (iii) of the General Financial Rules along with such other actions as may be permissible under law.
- h. A supplier who has been debarred by any procuring entity for violation of this Order shall not be eligible for preference under this Order for procurement by any other procuring entity for the duration of the debarment. The debarment for such other procuring entities shall take effect prospectively from the date on which it comes to the notice of other procurement entities, in the manner prescribed under paragraph 9

i below.

- I. The Department of Expenditure shall issue suitable instructions for the effective and smooth operation of this process, so that:
  - i. The fact and duration of debarment for violation of this Order by any procuring entity are promptly brought to the notice of the Member-Convenor of the Standing Committee and the Department of Expenditure through the concerned Ministry /Department or in some other manner;
  - ii. On a periodical basis such cases are consolidated and a centralized list or decentralized lists of such suppliers with the period of debarment is maintained and displayed on website(s);
  - iii. In respect of procuring entities other than the one which has carried out the debarment, the debarment takes effect prospectively from the date of uploading on the website(s) in the such a manner that ongoing procurement are not disrupted.

**10. Specifications in Tenders and other procurement solicitations:**

- a. Every procuring entity shall ensure that the eligibility conditions in respect of previous experience fixed in any tender or solicitation do not require proof of supply in other countries or proof of exports.
- b. Procuring entities shall endeavour to see that eligibility conditions, including on matters like turnover, production capability and financial strength do not result in unreasonable exclusion of 'Class-I local supplier'/ 'Class-II local supplier' who would otherwise be eligible, beyond what is essential for ensuring quality or creditworthiness of the supplier.
- c. Procuring entities shall, within 2 months of the issue of this Order review all existing eligibility norms and conditions with reference to sub-paragraphs 'a' and 'b' above.
- d. **Reciprocity Clause**
  - i. When a Nodal Ministry/Department identifies that Indian suppliers of an item are not allowed to participate and/ or compete in procurement by any foreign government, due to restrictive tender conditions which have direct or indirect effect of barring Indian companies such as registration in the procuring country, execution of projects of specific value in the procuring country etc., it shall provide such details to all its procuring entities including CMDs/CEOs of PSEs/PSUs, State Governments and other procurement agencies under their administrative control and GeM for appropriate reciprocal action.
  - ii. Entities of countries which have been identified by the nodal Ministry/Department as not allowing Indian companies to participate in their Government procurement for any item related to that nodal Ministry shall not be allowed to participate in Government procurement in India for all items related to that nodal Ministry/ Department, except for the list of items published by the Ministry/ Department permitting their participation.
  - iii. The stipulation in (ii) above shall be part of all tenders invited by the Central Government procuring entities stated in (i) above. All purchases on GeM shall also necessarily have the above provisions for items identified by nodal Ministry/ Department.
  - iv. State Governments should be encouraged to incorporate similar provisions in their respective tenders.
  - v. The term 'entity' of a country shall have the same meaning as under the FDI Policy of DPIIT as amended from time to time.
- e. Specifying foreign certifications/ unreasonable technical specifications/



brands/ models in the bid document is restrictive and discriminatory practice against local suppliers. If foreign certification is required to be stipulated because of non-availability of Indian Standards and/or for any other reason, the same shall be done only after written approval of Secretary of the Department concerned or any other Authority having been designated such power by the Secretary of the Department concerned.

- f. "All administrative Ministries/Departments whose procurement exceeds Rs. 1000 Crore per annum shall notify/update their procurement projections every year, including those of the PSEs/PSUs, for the next 5 years on their respective website."

**10A. Action for non-compliance of the Provisions of the Order:** In case restrictive or discriminatory conditions against domestic suppliers are included in bid documents, an inquiry shall be conducted by the Administrative Department undertaking the procurement (including procurement by any entity under its administrative control) to fix responsibility for the same. Thereafter, appropriate action, administrative or otherwise, shall be taken against erring officials of procurement entities under relevant provisions. Intimation on all such actions shall be sent to the Standing Committee.

11. **Assessment of supply base by Nodal Ministries:** The Nodal Ministry shall keep in view the domestic manufacturing / supply base and assess the available capacity and the extent of local competition while identifying items and prescribing the higher minimum local content or the manner of its calculation, with a view to avoiding cost increase from the operation of this Order.
12. **Increase in minimum local content:** The Nodal Ministry may annually review the local content requirements with a view to increasing them, subject to availability of sufficient local competition with adequate quality.
13. **Manufacture under license/ technology collaboration agreements with phased indigenization:** While notifying the minimum local content, Nodal Ministries may make special provisions for exempting suppliers from meeting the stipulated local content if the product is being manufactured in India under a license from a foreign manufacturer who holds intellectual property rights and where there is a technology collaboration agreement / transfer of technology agreement for indigenous manufacture of a product developed abroad with clear phasing of increase in local content.

13A. In procurement of all goods, services or works in respect of which there is substantial quantity of public procurement and for which the nodal ministry has not notified that there is sufficient local capacity and local competition, the concerned nodal ministry shall notify an upper threshold value of procurement beyond which foreign companies shall enter into a joint venture with an Indian company to participate in the tender. Procuring entities, while procuring such items beyond the notified threshold value, shall prescribe in their respective tenders that foreign companies may enter into a joint venture with an Indian company to participate in the tender. The procuring Ministries/Departments shall also make special provisions for exempting such joint ventures from meeting the stipulated minimum local content requirement, which shall be increased in a phased manner.

14. **Powers to grant exemption and to reduce minimum local content:** The administrative Department undertaking the procurement (including

procurement by any entity under its administrative control), with the approval of their Minister-in-charge, may by written order, for reasons to be recorded in writing,

- a. reduce the minimum local content below the prescribed level; or
- b. reduce the margin of purchase preference below 20%; or
- c. exempt any particular item or supplying entities from the operation of this Order or any part of the Order.

The Administrative Department, while seeking exemption under this para, shall certify that such an item(s) has not been notified by Nodal Ministry/ Department concerned under para 3 (a) of the Order.

A copy of every such order shall be provided to the Standing Committee and concerned Nodal Ministry / Department. The Nodal Ministry / Department concerned will continue to have the power to vary its notification on Minimum Local Content.

15. **Directions to Government companies:** In respect of Government companies and other procuring entities not governed by the General Financial Rules, the administrative Ministry or Department shall issue policy directions requiring compliance with this Order.
16. **Standing Committee:** A standing committee is hereby constituted with the following membership:  
Secretary, Department for Promotion of Industry and Internal Trade - Chairman  
Secretary, Commerce—Member  
Secretary, Ministry of Electronics and Information Technology—Member Joint  
Secretary (Public Procurement), Department of Expenditure—Member Joint  
Secretary (DPIIT)—Member-Convenor

The Secretary of the Department concerned with a particular item shall be a member in respect of issues relating to such item. The Chairman of the Committee may co-opt technical experts as relevant to any issue or class of issues under its consideration.

17. **Functions of the Standing Committee:** The Standing Committee shall meet as often as necessary, but not less than once in six months. The Committee
  - a. shall oversee the implementation of this order and issues arising therefrom, and make recommendations to Nodal Ministries and procuring entities.
  - b. shall annually assess and periodically monitor compliance with this Order
  - c. shall identify Nodal Ministries and the allocation of items among them for issue of notifications on minimum local content
  - d. may require furnishing of details or returns regarding compliance with this Order and related matters
  - e. may, during the annual review or otherwise, assess issues, if any, where it is felt that the manner of implementation of the order results in any restrictive practices, cartelization or increase in public expenditure and suggest remedial measures
  - f. may examine cases covered by paragraph 13 above relating to manufacture under license/ technology transfer agreements with a view to satisfying itself that adequate mechanisms exist for enforcement of such agreements and for attaining the underlying objective of progressive indigenization

g. may consider any other issue relating to this Order which may arise.

18. **Removal of difficulties:** Ministries /Departments and the Boards of Directors of Government companies may issue such clarifications and instructions as may be necessary for the removal of any difficulties arising in the implementation of this Order.
19. **Ministries having existing policies:** Where any Ministry or Department has its own policy for preference to local content approved by the Cabinet after 1<sup>st</sup> January 2015, such policies will prevail over the provisions of this Order. All other existing orders on preference to local content shall be reviewed by the Nodal Ministries and revised as needed to conform to this Order, within two months of the issue of this Order.
20. **Transitional provision:** This Order shall not apply to any tender or procurement for which notice inviting tender or other form of procurement solicitation has been issued before the issue of this Order.



(Himani Pande)

Additional Secretary to the Government of India

Tel: 011-23038888

E-mail: ashp.dpiit@gov.in



**Parent Company Guarantee***(Refer Note 4 of Clause 5.1.3)*

**THIS GUARANTEE** ("**Guarantee**") is made on the \_\_\_\_ day of \_\_\_\_\_, between \_\_\_\_\_, a Company organized and existing under the laws of \_\_\_\_\_

having its Registered Office at \_\_\_\_\_ (hereinafter referred to as the

"**Guarantor**") in favour of The President of India, represented by Ministry of Railways, Principal Chief Materials Manager, Integral Coach Factory, 2nd Floor, Administrative Building, Chennai: 600038).

**WHEREAS:**

- A. The Authority floated a Tender bearing reference No. **08/26/1572** dated **<dd.mm.yyyy>** for inviting offers from interested applicants for "Manufacturing cum Maintenance of Next Generation Intercity Trains including upgradation of the Government Manufacturing Units & Depots (the "Project")".
- B. By way of a bid dated \_\_\_\_\_ (the "**Bid**"), the \_\_\_\_\_ (the "**Relevant Person**"), {either singly or as a consortium or in joint venture with \_\_\_\_\_, \_\_\_\_\_} has submitted the Bid.
- C. The Relevant Person is desirous of using the eligibility criteria, qualifications and / or experience of the {Guarantor and / or----- (the "**Associate**") of the Relevant Person}<sup>2</sup> for the purposes of due satisfaction of the qualification criteria and requirements under the Bid Document.
- D. Pursuant to the terms of the Bid, the Guarantor has agreed to provide a guarantee to the Authority in accordance with the terms hereof inter alia in order to secure the due performance of {Relevant Person / Associate of the Relevant Person}<sup>2</sup>, in the event that the Relevant Person is selected {either singly or as a consortium or in joint venture with \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_} <sup>3</sup> by the Authority for the due performance of the terms and conditions of the Agreement ("Agreement") in relation to the Project.
- E. The Guarantor is the legal and beneficial owner of \_\_\_\_\_% (\_\_\_\_percent) (the "**Shares**") of the total fully paid up share capital of the {Relevant Person / Associate of the Relevant Person}<sup>4</sup>

<sup>2</sup> To be suitably modified as per the specific factual information of the Bidder. In case of the Associate's qualifications being used by the Bidder, the parent company of the Associate shall submit this Guarantee.

<sup>3</sup> To be used appropriately as per the specific factual information of the Bidder.

4 To be suitably modified as per the specific factual information of the Bidder. In case of the Associate's qualifications being used by the Bidder, the parent company of the Associate shall submit this Guarantee

- F. At the request of the {Relevant Person / Associate of the Relevant Person} <sup>5</sup>, the Guarantor has agreed to provide this Guarantee in accordance with the terms hereof. Capitalized terms used herein but not defined hereunder shall have the meanings as ascribed to them under the RFP, unless repugnant to the subject, matter or context thereof.

**IT IS HEREBY AGREED AS FOLLOWS:**

- 1) In consideration of the Authority entering into the Agreement with the Relevant Person {either singly or as part of a consortium or in joint venture with \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_} <sup>6</sup>, the Guarantor hereby irrevocably and unconditionally guarantees to the Authority as a primary obligation and not as a surety due performance by the Relevant Person of all of its obligations and liabilities under and in accordance with the Agreement save that nothing herein shall be construed as imposing greater obligations or liabilities on the Guarantor than are imposed on the Relevant Person in the Agreement
- 2) The obligations of the Guarantor under this Guarantee shall remain in full force and effect and shall not be affected, discharged, diminished or otherwise affected by:-
  - a) any variation to or amendment of the Agreement (including without limitation extension of time for performance) or any concession or waiver by the Authority in respect of the Relevant Person's obligations {and/or the obligations of Associate of the Relevant Person} under the Agreement;
  - b) Any change in the charter documents, articles of association, memorandum of association or bye – laws or constitution of the Relevant Person or the Guarantor;
  - c) any provision of the Agreement being or becoming illegal, invalid, void, voidable or unenforceable;
  - d) the termination of the Agreement or of the engagement of the Relevant Person {and/or the Consortium/Joint Venture Members} under the Agreement for any reason;
  - e) any forbearance or waiver of any right of action or remedy the Authority may have against the Relevant Person {and/or the Consortium/Joint Venture Members} or negligence by the Authority in enforcing any such right of action or remedy;
  - f) any supplemental agreement and/or arrangement thereto agreed between the Authority and the Relevant Person or any security or other guarantee or indemnity to which the Relevant Person has agreed;

- g) any bond, undertaking, security or other guarantee held or obtained by the Authority for any of the obligations of the Relevant Person {and/or the Consortium/Joint Venture Members} under the Agreement or any release or waiver thereof; and
  - h) The dissolution, amalgamation, reconstruction or reorganization of the Relevant Person and / or the Guarantor.
- 3) This Guarantee shall extend to any variation of or amendment to the Agreement and to any agreement supplemental thereto agreed between the Authority and the Relevant Person and for the avoidance of doubt the Guarantor hereby authorises the Authority and the Relevant Person to make any such amendment, variation or supplemental agreement.
- 4) This Guarantee is a continuing guarantee and accordingly shall cover all of the obligations and liabilities of the Relevant Person under the Agreement and remain in full force and effect until all the said obligations and liabilities of the Relevant Person, upto a period of 24 (twenty four) months after the date of supply of last Train under this Agreement (the **"Guarantee Period"**), shall have been carried out, completed and discharged in accordance with the Agreement. This Guarantee is in addition to any other security which the Authority may at any time hold and may be enforced without first having recourse to any such security or taking any steps or proceedings against the Relevant Person.
- 5) Until expiry of the Guarantee Period, the Guarantor shall not on any ground whatsoever make any claim or threaten to make any claim whether by proceedings or otherwise against the Relevant Person {and/or the Consortium/Joint Venture Members} for the recovery of any sum paid by the Guarantor pursuant to this Guarantee. Any such claim shall be subordinate to any claims (contingent or otherwise) which the Authority may have against the Relevant Person {and/or the Consortium/Joint Venture Members} arising out of or in connection with the Agreement until such time as such claims shall be satisfied by the Relevant Person {and/or the Consortium/Joint Venture Members} or the Guarantor as the case may be. To that intent the Guarantor shall not claim or have the benefit of any security which the Authority holds or may hold for any monies or liabilities due or incurred by the Relevant Person {and/or the Consortium/Joint Venture Members} to the Authority and, in case the Guarantor receives any sum from the Relevant Person {and/or the Consortium/Joint Venture Members} in respect of any payment by the Guarantor hereunder, the Guarantor shall hold such sum in trust for the Authority for so long as any sum is payable (contingently or otherwise) under this Guarantee.
- 6) The Authority shall be entitled to assign the benefit of this Guarantee at any time without the consent of the Guarantor or the Relevant Person {and/or the Consortium/Joint Venture Members} being required.

## **7) Notice**

Any notice, demand, declaration, or other communication to be given by the Authority or the Guarantor to the other shall be in writing, in English language and delivered in person or by air mail or by courier services or by facsimile or by e-mail to the person given below or to such other person as they may from time to time designate by notice to other:



<b>For Guarantor</b>	
Attention of <i>(Insert Name)</i>	
Designation	
Mailing Address	
Email address	
Telephone/ Fax Nos	

<b>For Authority</b>	
Attention of <i>(Insert Name)</i>	
Designation	
Mailing Address	
Email address	
Telephone/ Fax Nos	

- 8) The Authority and the Guarantor may change their respective nominated addresses for service of documents to another address in India but only by prior written notice to each other. All demands and notices must be in writing.

#### 9) Governing Law and Jurisdiction

This Guarantee shall be exclusively governed by and construed in accordance with the laws for the time being in force in India without giving effect to the principles of conflict of laws therein. The Guarantor agrees to submit to the jurisdiction of the courts of India.

#### 10) Dispute Resolution

The Courts at Chennai shall have exclusive jurisdiction over all disputes arising under, pursuant to and / or in connection with any dispute arising out of or in relation to this Guarantee.

- 11) This Guarantee may be executed in one or more counterparts, all of which shall be read and construed as one document and any fax copy or scanned copy or print of a scanned copy of a signed Guarantee shall be deemed to be an original signature.
- 12) No modification, alteration or amendment of this Guarantee or any of its terms or provisions shall be valid or legally binding unless the Authority consents to the same in writing.
- 13) No failure to take any action with respect to a breach of this Guarantee or a default by any other party shall constitute a waiver of the Authority's right to enforce any provision of this Guarantee or to take action with respect to such breach or default or any subsequent breach or default.
- 14) Waiver of any breach or failure to comply with any provisions of this Guarantee shall not be construed as, or constitute, a continuing waiver of such provision, or a waiver of any other breach of or failure to comply with any other provision of this Guarantee, unless any such waiver has been consented to by the concerned party in writing.

**IN WITNESS WHEREOF** the Guarantor has duly executed this Guarantee as at the date first above written.

For and on behalf of Guarantor,

\_\_\_\_\_  
(Signature)

THE COMMON SEAL OF ..... Was affixed hereto in the presence of:	Witness 2
Witness 1	
Signature	Signature
Name:	Name:
Designation:	Designation:
Address:	Address:
Date:	Date:

Notes: (For preparation of but not for inclusion in the engrossment of this guarantee):

1. If a Parent Company is not the immediate parent company, the chain of ownership must be recited, identifying each company in the chain and shareholding or other interests in the Relevant Person / Associate of the Relevant Person.
2. Guarantee should be supported by certified true copies of the resolutions of the Board of Directors / governing body /partners/members as per requirements of applicable laws of the Guarantor duly authorizing its authorized signatory to execute the guarantee.

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Sumit

## **1. General:**

### **1.1 Tenets of Interpretation:**

Unless where the context requires otherwise, throughout the Contract:

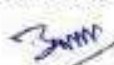
- (a) The heading of these conditions shall not affect the interpretation or construction thereof.
- (b) Words in the singular include the plural and vice-versa.
- (c) Words importing the masculine gender shall be taken to include other genders.
- (d) Words importing person shall include any company or association or body of individuals, whether incorporated or not.
- (e) Any reference to any legislation, Government Policies or Orders shall be deemed to include all amendments to such instruments.
- (f) Terms and expression not herein defined shall have the meanings assigned to them in the Indian Sale of Goods Act, 1930 (as amended), or the Indian Contract Act, 1872 (as amended) or the General Clauses Act, 1897 (as amended) as the case may be.
- (g) Severability: If any provision or condition of this Contract is prohibited or rendered invalid or unenforceable, such prohibition, invalidity or unenforceability shall not affect the validity or enforceability of any other provisions and conditions of this Contract.

### **1.2 Definitions:**

Unless the context requires otherwise, the following definitions shall apply in the Contract: (The main preferred term is within the inverted comma. Alternative equivalent terms used in certain contexts, if any, are listed in the brackets. Text within brackets is not considered for sort-order of terms)

- (a) "Acceptance of Tender" means the letter of memorandum communicating to the Contractor the acceptance of his tender and includes an advance acceptance or letter of acceptance (LOA) of his tender.
- (b) "Agent" is a person employed to act for another or represent another (called the "Principal") in dealings with a third person. In the context of public procurement, an Agent is a representative participating in the Tender Process or Execution of a Contract for and on behalf of his Principal.
- (c) "Authorized e-procurement portal" is the web-based portal, being used by the Parties for exchanging online documents during the course of the formation of Contract and thereafter till its completion.
- (d) "Consignee" means:
  - (i) Where the Goods are required by the Contract to be dispatched by rail, road, air or steamer, the person specified in the Contract to whom they are to be delivered at the destination;
  - (ii) Where the Goods are required by the Contract to be delivered to a person







as an interim Consignee for the purpose of dispatch to another person, such other persons; or

(iii) In any other case, the person to whom the Goods are required by the Contract to be delivered in the manner therein specified.

- (e) "Contract" ('Purchase Order' or 'Supply Order' or 'Rate Contract' or 'Running Contract' or 'Letter of Acceptance') means a formal legal agreement in writing for supply of Goods, the subject matter of Procurement, entered into between the Purchaser and the Contractor on mutually acceptable terms and conditions and which are in compliance with all the relevant provisions of the laws of India; "Contract" includes the invitation to tender, instructions to tenderers, tender, acceptance of tender, Standard Conditions of Contract, Special Conditions of Contract, particulars and the other conditions specified in the acceptance of tender. Contract includes a repeat order which has been accepted or acted upon by the Contractor.
- (f) "Contractor" ('Supplier' or 'Firm' or 'Vendor' or 'Manufacturer' or 'Successful Bidder') means the person with whom the Contract is entered into for supply and shall be deemed to include the Contractor's successors (approved by the Purchaser), agents, Sub-Contractor, representatives, heirs, executors and administrators as the case may be unless excluded by the terms of the Contract.
- (g) "Dispute" includes all or any of the commercial disputes arising out of this Contract, as defined in The Commercial Courts Act, 2015.
- (h) "Drawing" means the drawing or drawings stipulated in or annexed to the Specifications or the Tender Document or Contract.
- (i) "Goods" ('Stores' or Item(s) or 'Material(s)' in certain context) includes all articles, material, commodity, livestock, medicines, furniture, fixtures, raw material, consumables, spare parts, instruments, machinery, equipment, industrial plant, vehicles, aircrafts, ships, railway rolling stock, assemblies, sub-assemblies, accessories, Modules or a set of Modules, Knocked Down Unit (KDU), a group of machines comprising an integrated production process or such other categories of Goods or intangible products like technology transfer, licenses, Computer Software (with licence), Information Technology Systems, patents or other intellectual properties (but excludes books, publications, periodicals, etc., for a library), procured or otherwise acquired by a Purchaser. The term "Goods" also includes works and services which are incidental or consequential to the supply of such Goods, such as transportation, insurance, installation, commissioning, training, and maintenance.
- (j) "Government" means the Central Government or a State Government, as the case may be.
- (k) "Inspecting Officer" means the person or organisation specified in the Contract for the purpose of inspection of Goods under the Contract and includes his authorised representative.

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- (l) "Inspection" means activities such as measuring, examining, testing, analysing, gauging one or more characteristics of the Goods and comparing the same with the specified requirement to determine conformity.
- (m) "Intellectual Property Rights" (IPR) refers to the owner's rights against unauthorised possession/ exploitation by others of its tangible or intangible intellectual property. It includes rights to Patents, Copyrights, Trademarks, Industrial Designs, and Geographical Indications (GI).
- (n) "Material" means anything used in the manufacture or fabrication of the Goods.
- (o) "Particulars" include-
- (i) Specifications;
  - (ii) Drawings;
  - (iii) Pattern bearing the seal and signature of the Inspecting Officer (hereinafter called the sealed pattern) which shall also include a certified copy thereof sealed by the Purchaser for the guidance of the Inspecting Officer;
  - (iv) Sample sealed by the Purchaser for guidance of the Inspecting Officer (hereinafter called the certified sample) which shall include a certified copy thereof sealed by the Purchaser for the guidance of the Inspecting Officer;
  - (v) Trade pattern, that is to say, a pattern, Goods conforming to which are obtainable in the open market and which denotes a standard of the Indian Standard Institute or other standardising authority or a general standard of the industry;
  - (vi) 'Proprietary mark' or 'brand' means the mark or brand of a product which is owned by an industrial firm;
  - (vii) Any other details governing the construction, manufacture or supply of Goods as may be prescribed by the Contract.
- (p) "Parties": The parties to the Contract are the Contractor and the Purchaser, as defined in Clauses 1.2(f) and 1.2(r) herein respectively.
- (q) "Purchase Officer" means the officer signing the acceptance of tender and includes any officer who has authority to execute the relevant Contract on behalf of the Purchaser.
- (r) "Purchaser" means the President of India in the case of Goods ordered for the Indian Government Railways and includes his successors and assignees.
- (s) "Scheduled Commercial Bank" means a bank listed in the Second Schedule of the Reserve Bank of India Act, 1934.
- (t) "Security Deposit" ('Performance Security' or 'Performance Bond' or 'Performance Bank Guarantee' or other specified financial instruments) means a monetary guarantee to be furnished by the successful Bidder or Contractor in the form prescribed for the due performance of the Contract.

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- (u) "Signed" means ink signed or digitally signed with a valid Digital Signature Certificate as per IT Act 2000 (as amended). It also includes stamped, except in the case of an acceptance of tender or amendment thereof.
- (v) "Site" means the place or location specified in the Contract at which any work (such as installation, commissioning etc.) is required to be executed by the Contractor under the Contract or any other place approved by the Purchaser for the purpose.
- (w) "Sub-Contractor" means any person from whom the Contractor may source any material or fittings or incidental works or services (including deployment of contractual labour, if any) for the performance of the Contract. The term "Sub-Contract" shall indicate obligations of such a Sub-Contractor towards the Contractor.
- (x) "Test" means such test as is prescribed by the particulars governing the construction, manufacture or supply of Goods as may be prescribed by the Contract or considered necessary by the Inspecting Officer- whether performed or made by the Inspecting Officer or any agency acting under the direction of the Inspecting Officer. In case prove out of design before supply, including oscillation tests if required, is within the scope of supply of Contract, such activities are also included in "Test".
- (y) "Unit" and "Quantity" means the unit and quantity specified in the Contract.
- (z) "Warranty Security Deposit" means a monetary guarantee to be furnished by the contractor, if mandated in the contract, to ensure his performance of warranty obligations as per the Contract. The warranty security deposit can be prescribed to be in any acceptable form as for Security Deposit. This guarantee can be invoked by the Purchaser if the Contractor fails to fulfil contractual obligations during the warranty period.
- (aa) "Writing" or "Written" includes matter either in whole or in part, in manuscript, type-written, lithographed, cyclostyled, photographed or printed under or over signature or seal or digitally signed document in electronic form, as the case may be.
- (bb) "Year" shall mean calendar year (unless reference to financial year is clear from the context). "Week" shall mean a period of 7 days, "Month", a period of 30 days.

## 2. Contract:

### 2.1 Contract Documents and their Precedence:

The following conditions and documents in indicated order of precedence (higher to lower) shall be considered an integral part of the Contract, irrespective of whether these are not appended/ referred to in it. Any generic reference to 'Contract' shall imply reference to all these documents as well:

- (a) Valid and authorized Amendments issued to the Contract;

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- (b) Contract Document (Purchase Order) and the Letter of Acceptance (LOA);
- (c) Tender Documents;
- (d) Special Tender conditions;
- (e) Technical Specifications as given in tender documents;
- (f) Drawings;
- (g) IRS Conditions of Contract;
- (h) General Tender Conditions/ Instructions to tenderers; and
- (i) Contractor's bid.

## **2.2 Scope of Supply:**

- (a) This Contract is for the supply of the Goods of the description, specifications and drawings and in the quantities outlined in the Contract on the date or dates specified therein.
- (b) Unless otherwise specified, the Goods shall be entirely brand new and of the best quality and workmanship to the satisfaction of the Inspecting Officer. The Goods shall further be in all respects acceptable to the Inspecting Officer.
- (c) If so stipulated, the Contractor shall be required to perform specified incidental Works/ Services (e.g., Installation, Commissioning, Operator's Training etc. in case of Supply of Capital Goods/ Machinery & Plant) as an integral part of the Goods in the Contract.

## **2.3 Modifications/ Amendments to Contract:**

- (a) Purchaser may amend the Contract, on written request (including request made through authorized e-procurement portal) from the Contractor or otherwise, by making alterations and modifications within the scope of the Contract, by a written order.
- (b) Any request for variation or amendment of the Contract shall not be binding on the Purchaser unless and until the same is duly endorsed on the Contract incorporated in a formal instrument or in exchange of letters and signed by the Purchaser.
- (c) The communication by Purchaser may be through authorized e-procurement portal, if the said portal provides for the functionalities to make desired communication between the Parties.

## **2.4 Authority of person signing on behalf of the Contractor:**

- (a) A person signing the tender or any other document in respect of the Contract on behalf of the Contractor, without disclosing his authority to do so, shall be deemed to warrant that he has authority to bind the Contractor.
- (b) If it is discovered at any time that the person, so signing has no authority to do so, the Purchaser may, without prejudice to any other right or remedy, terminate the Contract and hold such person and/ or the Contractor liable to the Purchaser for all costs and damages arising from such remedies, including

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*[Handwritten signature]*



termination of the Contract.

- (c) The provisions of Clause 13 and Clause 20 shall also apply while evaluating the liability of the person at default.

**2.5 Address of the Contractor for sending communications on behalf of the Purchaser:**

- (a) For all purposes of the Contract, including any dispute resolution thereunder, the address and e-mail of the Contractor mentioned in the tender shall be the address and e-mail to which all communications addressed to the Contractor shall be sent, unless the Contractor has notified change by a separate letter containing no other communication and sent by registered post acknowledgement due to the Purchaser or through mode of communication permitted for modification/ amendment of the Contract.
- (b) The Contractor shall be solely responsible for the consequence of an omission to notify a change of address in the manner aforesaid.
- (c) Any communication or notice on behalf of the Purchaser in relation to the Contract may be issued to the Contractor by the Purchase Officer and all such communications and notices may be served on the Contractor either by registered post with acknowledgement due or by speed post or under certificate of posting or by ordinary post or by hand delivery or through online mode at the option of such officer.
- (d) The communication by Purchaser through online mode may be made either through email or authorized e-procurement portal of the Purchaser, if the said portal provides for the functionalities to make desired communication between the Parties.

**2.6 Delivery of Goods: Place of Delivery of Goods**

The delivery of the Goods shall be deemed to take place on delivery of the Goods, in accordance with the terms and conditions of the Contract, to:

- (a) The Consignee at his premises; or
- (b) Where so provided, the interim Consignee at his premises; or
- (c) A person named in the Contract for transmission to the Consignee; or
- (d) The consignee at the destination station in case of contract stipulating for delivery of goods at destination station.

**2.7 Laws governing the Contract:**

- (a) This Contract, its meaning and interpretation, and the relation between the Parties shall be governed by the Laws of India for the time being in force.
- (b) Irrespective of the place of delivery, or the place of performance or the place of payments under the Contract, the Contract shall be deemed to have been made at the place from which the acceptance of tender has been issued.
- (c) Jurisdiction of courts —The Courts of the place from where the acceptance of

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