

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.

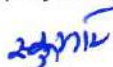
2.7 Laws governing the Contract:

- (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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tender has been issued shall alone have jurisdiction to decide any dispute arising out of or in respect of the Contract.

- (d) The marking of the Goods must comply with the requirements of the laws relating to merchandise marks for the time being in force in India.
- (e) The Contractor's status shall be that of an independent Contractor and Primary Employer of staff deployed during the Contract by him or his Sub- Contractors or other associates. The Contractor, his employees, agents and Sub-Contractors performing under this Contract are not employees or agents of Purchaser or Government or their agencies/ enterprises, simply by execution of this Contract including services delivered under this Contract.
- (f) **Obligations of the Contractor under Labour Codes and Rules:**
 - (i) The Contractor shall comply with the provisions of the Labour Codes, including: Code on Wages, 2019, Industrial Relations Code, 2020, Code on Social Security, 2020, Occupational Safety, Health and Working Conditions Code, 2020 and the rules made thereunder, as amended from time to time. The Contractor shall also indemnify the Purchaser against any claims arising under the aforementioned Labour Codes and the Rules made thereunder.
 - (ii) The Contractor shall obtain a valid licence under the aforesaid Labour codes and the Rules as modified from time-to-time before the commencement of the Contract and continue to have a valid licence until the completion of the Contract. Any failure to fulfil this requirement, the Purchaser shall treat it as a breach of Contract for default as per the Contract and avail any or all remedies thereunder.
 - (iii) In respect of all labour directly or indirectly employed in the Contract for the performance of the Contractor's part of the Contract, the Contractor shall comply with or cause to comply with the provisions of the aforesaid Labour codes and the Rules wherever applicable. The Contractor shall be solely responsible for submitting all the necessary returns under these Codes and the Rules.
 - (iv) The Contractor shall pay the wages as per the Code on Wages, 2019 (as amended) to their workers not below the rate of minimum wages, as notified by the State Government or Central Government, whichever is higher, through the bank transfer. Notwithstanding the Contract's provisions to the contrary, the Contractor shall cause to be paid the wages to labour directly or indirectly engaged on the Contract, including any engaged by his Sub-Contractors in connection with the said Contract as if he had immediately employed the labour. The Purchaser shall, without any commitments or being obliged to do, may at its discretion, monitor that such payments are being made.
 - (v) In every case in which, by virtue of the provisions of the aforesaid Labour codes and the Rules, the Purchaser is obliged to pay any amount of wages to a workman employed by the contractor or his Sub-Contractor in execution of



the contract or to incur any expenditure in providing welfare and health amenities required to be provided under the aforesaid Labour codes and the Rules or to incur any expenditure on account of the contingent liability of the Purchaser, in case of the contractor's failure to fulfil his statutory obligations under the aforesaid Labour codes and the Rules, the Purchaser shall recover from the contractor, the amount of wages so paid or the amount of expenditure so incurred and without prejudice to the rights of the Purchaser under the aforesaid Labour codes and the Rules, the Purchaser shall be at liberty to recover such amount or part thereof by deducting it from the security deposit and/ or from any sum due by the Purchaser to the contractor whether under the contract or otherwise. The Purchaser shall not be bound to contest any claim made against it under the aforesaid Labour codes and the Rules except on the contractor's written request and upon giving the Purchaser complete security for all costs, Purchaser might become liable in contesting such claim. The decision of the Purchaser regarding the amount actually recoverable from the contractor as stated above shall be final and binding on the contractor.

3. Award of the Contract

3.1 Examination of Drawing, Specifications and Patterns:

When tenders are called for in accordance with a drawing, specification or sealed pattern the Contractor's tenders to supply in accordance with such drawing, specifications or sealed pattern shall be deemed to be an admission on his part that he has fully acquainted himself with the details thereof and, in no circumstances, will any claim on his part which may arise on account of his insufficient examination of the said drawing, specification or sealed pattern be considered.

3.2 Mistakes in Drawing:

The Contractor shall be responsible for and shall pay for any alterations for the works due to any discrepancies, errors or omissions in the drawings or other particulars supplied by him whether such drawings or particulars have been approved by the Purchaser or not provided that such discrepancies, errors or omissions be not due to inaccurate information or particulars furnished to the Contractor on behalf of the Purchaser. If any dimension figure upon a drawing or plan differs from those obtained by scaling the drawing or plan, the dimensions as figured upon the drawing or plan shall be taken as correct.

3.3 Quotation of rates by Contractors:

- (a) The price quoted by the Contractor shall not be higher than the controlled price fixed by law for the Goods, if any. Where there is no controlled price, it shall not exceed the prices or contravene the norms for fixation of prices laid down by Government, if any. Where the Government has not fixed any such prices or norms, the price quoted shall not exceed the price appearing in any agreement relating to price regulation by any industry in consultation with the Government, if any. In any case, the price quoted shall not be higher than the Maximum Retail Price (MRP) of the item.

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(b) If the price quoted is higher than the controlled price in the sub-clause (a) above, the Contractor shall specifically mention this fact in his tender giving reasons for quoting higher price(s). If he fails to do so or makes any mis- statement, it shall be lawful for the Purchaser:

(i) to revise the price at any stage so as to bring it in conformity with the Sub-clause (a) above or

(ii) to terminate the Contract and apply provisions as per Clause 13.

3.4 Security Deposit:

(a) The Contractor must maintain the Security Deposit of the required amount in a specified format during the currency of the Contract. In the event of any amendment affecting the Contract value and/ or delivery period is issued to the Contract, the Contractor shall furnish suitably amended value and/ or validity of the Security Deposit in terms of the amended Contract within fourteen days of the issue of the amendment.

(b) If the Contractor during the currency of the Contract fails to maintain the requisite Security Deposit, it shall be lawful for the Purchaser at his discretion:

(i) to request the Contractor to submit the requisite amount within fourteen days; or

(ii) to recover the requisite amount from the pending bills of the Contractor against this Contract or any other Contract and adjust such recovered amount towards Security Deposit of this Contract; or

(iii) to treat it as a breach of Contract, terminate the Contract and avail any or all Contractual remedies available to the Purchaser thereof.

Note: For clarification of any doubt, the provision of sub-clause (ii) above applies only in case where additional amount is required to be deposited to maintain the requisite Security Deposit, as per the terms of Contract, and not for requirement of Security Deposit for entering into a new contract. Failure of the Successful Bidder to submit Security Deposit for entering into a contract, having been called upon to do so, shall be dealt as per tender conditions.

(c) The Purchaser shall be entitled and it shall be lawful on his part to forfeit the said Security Deposit in whole or in part in the event of any default, failure or neglect on the part of the Contractor in the fulfilment or performance in all respect of the Contract under reference or any other Contract with the Purchaser or any part thereof to the satisfaction of the Purchaser and the Purchaser shall also be entitled to deduct from the said deposits any loss or damage which the Purchaser may suffer or be put by reason of or due to any act or other default, recoverable by the Purchaser from the Contractor in respect of the Contract under reference or any other Contract and in either of the events aforesaid to call upon the Contractor to maintain the said security deposit at its original limit by making further deposits, provided further that the Purchaser shall be entitled to recover any such claim from any sum then due or which at any time thereafter may

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become due to the Contractor under this or any other Contracts with the Purchaser.

- (d) Subject to above, the Purchaser shall release the Security Deposit, without any interest, to the Contractor upon the completion of all Contractual obligations relating to supply of Goods.
- (e) Notwithstanding the above, the Purchaser shall be entitled to call for Warranty Security Deposit (in any form of financial instruments as permitted for Security Deposit) from the Contractor for due performance of warranty obligations under the Contract. In such an event, where Purchaser calls for Warranty Security Deposit, it shall be lawful for the Purchaser not to release/ refund the Security Deposit till the obligation of submitting Warranty Security Deposit in acceptable form is completed by the Contractor, or to encash the financial instrument for Security Deposit and adjust the amount so received towards Warranty Security Deposit. All conditions relating to Security Deposit including non-liability of payment of interest and conditions for forfeiture shall also apply for Warranty Security Deposit. Security Deposit shall be released/ refunded on receipt of acceptable Warranty Security Deposit.
- (f) No claim shall lie against the Purchaser in respect of interest on cash deposits or Government Securities or depreciation thereof. No interest shall be payable upon the Security Deposit or Warranty Security Deposit or amounts payable to the Contractor under the Contract.

4. Responsibility of the Contractor for Executing the Contract:

4.1 Risk in the Goods:

- (a) The Contractor shall perform the Contract in all respects in accordance with the terms and conditions thereof. The Goods and every constituent part thereof, whether in the possession or control of the Contractor, his agents or servants or a carrier, or in the joint possession of the Contractor, his agents or servants and the Purchaser, his agents or servants, shall remain in every respect at the risk of the Contractor, until their actual delivery to the Consignee at the stipulated place or destination or, where so provided in the acceptance of tender, until their delivery to a person specified in the Contract as interim Consignee for the purpose of dispatch to the Consignee.
- (b) The Contractor shall be responsible for all loss, destruction, damage or deterioration of or to the Goods from any cause whatsoever while the Goods after approval by the Inspecting Officer are awaiting dispatch or delivery or are in the course of transit from the Contractor to the Consignee or interim Consignee, as the case may be.
- (c) The Contractor shall alone be entitled and responsible to make claims against a Railway Administration or other carrier in respect of non-delivery, short delivery, mis-delivery, loss, destruction, damage or deterioration of the Goods entrusted to such carrier by the Contractor for transmission to the Consignee or the interim Consignee as the case may be.

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4.2 Consignee's Right of Rejection:

- (a) Notwithstanding any approval which the Inspecting Officer may have given in respect of the Goods or any materials or other particulars or the work or workmanship involved in the performance of the Contract (whether with or without any test carried out by the Contractor or the Inspecting Officer or under the direction of the Inspecting Officer) and notwithstanding delivery of the Goods where so provided to the interim Consignee, it shall be lawful for the Consignee, on behalf of the Purchaser, to reject the Goods or any part, portion or consignment thereof within a reasonable time after actual delivery thereof to him at the place or destination specified in the Contract if such Goods or part, portion or consignment thereof is not in all respects in conformity with the terms and conditions of the Contract whether on account of any loss, deterioration or damage before dispatch or delivery or during transit or otherwise howsoever.
- (b) Provided that where, under the terms of the Contract the Goods are required to be delivered to an interim Consignee for the purpose of dispatch to the Consignee, the Goods shall be at the Purchaser's risk after their delivery to the interim Consignee, but nevertheless it shall be lawful for the Consignee on behalf of the Purchaser to reject the Goods or any part, portion of consignment thereof upon their actual delivery to him at the destination if they are not in all respects in conformity with the terms and conditions of Contract except where they have been damaged or have deteriorated in the course of transit or otherwise after their delivery to the interim Consignee.

Note: Consignee shall issue a rejection advice within 90 days from the date of actual receipt of the Goods, which may or may not have been pre-inspected at Contractor's premises, and all related documents from the Contractor, which are required to be verified by the Consignee upon receipt, as per the Contract, prior to the acceptance of the materials. The 90-day timeframe specified above is solely for the initial acceptance of the materials by the Consignee and without prejudice to the right of the Purchaser or Consignee, on Purchaser's behalf, to reject the material as per Warranty/ Guarantee Clause (Clause 10) within the period specified therein.

- (c) The provisions contained in Clause 11 relating to the removal of Goods rejected by the Inspecting Officer shall mutatis mutandis apply to Goods rejected by the Consignee as herein provided.
- (d) Where under a Contract, the price payable is fixed on F.O.R. station of dispatch or Ex-Works basis, the Contractor shall, if the Goods are rejected at destination by the Consignee, be liable, in addition to his other liabilities, to reimburse to the Purchaser the freight paid by the Purchaser.

4.3 Sub-letting and Assignment:

- (a) The Contractor shall not, save with the previous consent in writing of the Purchaser, sub-let, transfer or assign the Contract or any part thereof or interest therein or benefit or advantage thereof in any manner whatsoever.

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- (b) Sub-Contracting does not amount to Sub-letting or Assignment or Transfer.
- (c) If the Contractor sub-lets or assigns or transfers the Contract or any part thereof without such permission, the Purchaser shall be entitled, and it shall be lawful on his part, to treat it as a breach of Contract and avail any or all remedies there under. The decision of the Purchaser in this regard shall be final and binding on the Contractor.

4.4 Changes in Constitution of the Contractor:

Where the Contractor is a partnership firm, the following restrictions shall apply to changes in the constitution during the execution of the Contract:

- (a) A new partner shall not be introduced in the firm except with the prior consent in writing of the Purchaser, which shall be granted only upon execution of a written undertaking by the new partner to perform the Contract and accept all liabilities incurred by the firm under the Contract before the date of such undertaking.
- (b) On the death or retirement of any partner of the Contractor firm before the complete performance of the Contract, the Purchaser may, at his option, terminate the Contract and in such case the Contractor shall have no claim whatsoever for any compensation against the Purchaser.
- (c) If the Contract is not determined as provided in Sub-clause (b) above notwithstanding the retirement of a partner from the firm he shall continue to be liable under the Contract for acts of the firm until a copy of the public notice given by him under Section 32 of the Partnership Act, 1932 has been sent by him to the Purchaser by registered post acknowledgement due.
- (d) The decision of the Purchaser as to any matter or thing concerning or arising out of this sub-clause or on any question whether the Contractor or any partner of the Contractor firm has committed a breach of any of the conditions in this sub-clause contained shall be final and binding on the Contractor.

4.5 Assistance to the Contractor:

- (a) The Contractor shall be solely responsible to procure any material or obtain any import or other licence or permit required for the fulfilment of the Contract and the grant by the Purchaser or any other authority of a quota certificate or permit required under any law for distribution or acquisition of iron and steel or any other commodity or any other form of assistance in the procurement of the material aforesaid or any attempt to render assistance in the matter aforesaid, shall not be construed as a representation on the part of the Purchaser that the material covered by such licence or permit or quota certificate is available or constitute any promise, undertaking or assurance on the part of the Purchaser regarding the procurement of the same or effect any variation in the rights and liabilities of the parties under the Contract.
- (b) However, if by reason of any such assistance as aforesaid, the Contractor obtains any materials at less than their market price or the cost of production of the

Goods is lowered, the price of the Goods payable under the Contract shall be reduced proportionately and the extent of such reduction shall be determined by the Purchaser whose decision shall be final and binding on the Contractor.

- (c) Every effort made by the Purchaser to supply, or give assistance in the procurement of materials, whether from the Government stock or by Purchaser under a permit or release order issued by or on behalf of or under authority from Government or by any officer empowered in that behalf by law or under other arrangements made by the Purchaser shall be deemed to be subject to the condition that it will be performed with due regard to the other demands and only if it is found practicable to do so within the stipulated time and the decision of the Purchaser whether it was practicable to supply or give assistance as aforesaid or not shall be final and binding on the Contractor.

4.6 Charges for Work Necessary for Completion of the Contract:

The Contractor shall pay all charges for handling, stamping, painting, marking, protecting or preserving patent rights, drawings, templates, models and gauges and for all such measures as the Purchaser or the Inspecting Officer may deem necessary for the proper completion of the Contract, though special provision therefore may not be made in the specification or drawings.

4.7 Use of Raw Materials secured with Government Assistance:

(a) Accountability of Government-Assisted Raw Materials:

- (i) Where any raw material is procured for the execution of a Contract with the assistance of the Government rendered in the form of permit, or licence or quota certificate/ essentiality certificate or release order issued by or on behalf of or under the authority of the Government or by an officer empowered in that behalf, or
- (ii) Where the raw material is issued to the Contractor from Government stock, or
- (iii) Where advance payments are made to the Contractor to enable him to purchase the raw material, or
- (iv) Where raw material is arranged by the Government,
the Contractor—
 - (i) Shall hold such material as trustee for the Government,
 - (ii) Shall use such material economically and solely for the purpose of the Contract.
 - (iii) Shall not dispose of the same without the previous permission in writing of the Purchaser, and
 - (iv) Shall render due account of such material and return to the Government at such place as the Purchaser may direct all surplus or unserviceable material that may be left after the completion of the Contract or its termination for any reason whatsoever.