



पूर्वोत्तर सीमांत रेलवे

Northeast Frontier Railway

## **MATERIALS MANAGEMENT DEPARTMENT**

### **UNIFIED BIDDING DOCUMENTS**

#### **CONTAINING**

- (i) Special Conditions of Contract
- (ii) Instructions to Tenderers
- (iii) IRS Terms and conditions of Contract

**(A) SPECIAL CONDITIONS:**

**1.0 QUANTITY TO BE ORDERED :**

- 1.1** The Principal Chief Materials Manager, Northeast Frontier Railway acting on behalf of the President of India is not bound to accept the lowest or any tender, nor to assign any reason for not doing so and reserve to himself the right to accept any tender in respect of the whole or any portion of the items specified in the tender and contractor shall be required to supply at the rate quoted / accepted.
- 1.2** Railway reserves the right to cancel the tender in whole or order either for full or part quantity tendered without assigning any reason. The rates quoted by the Tenderers for full tendered quantity would be taken as valid for part quantity also.
- 1.3** Railway also reserve the right to order the tendered quantity or part thereof on a contract by operating quantity option clause at lower rates (if available) than the rates quoted in this tender.
- 1.4** Option Clause (For all tenders above Rs 75 Lakhs or wherever stipulated) :-The purchaser reserves the right to increase and / or decrease the order quantity by a quantity not exceeding 30% of the ordered quantity on the same price and terms and conditions during the currency of the contract by giving reasonable time / notice for executing such increase or decrease to the contractor.
- 1.5** In case of (+)30%, the purchaser reserves the right to vary the ordered quantity by (+)30% at any time, till final delivery date of contract, by giving reasonable notice even though quantity ordered initially has been supplied in full before the last date of delivery period & also during extended delivery period.
- 1.6** In case of (-) 30% Option Clause, a reasonable notice consequent to decrease in prices subsequent to the placement of contract will be served by giving reasonable opportunity to the contractor to unconditionally agree to accept such lower rates for the quantity unsupplied on the date of reduction / decrease of prices or (-) 30% quantity, whichever is less and no consent from the contractor towards exercise of the contractual Option Clause will be required.

**2.0 ELIGIBILITY CRITERIA:**

- 2.1** Ordering on Approved Sources: Railway procures some of the items from approved sources. The Approving agencies such as RDSO/PUs/CORE etc publish approved vendor list periodically say by RDSO every six month. Granting of Approval is a continuous ongoing activity therefore vendor list can undergo changes after opening of tender. The status of the firm shall be reckoned as on the date of tender opening and not thereafter. But in case of downgrading / removal / suspension / banning etc after opening of the Tender, such changes will be taken into account while deciding tenders. This however does not apply to placing small quantity order on new sources as their capacity & capability is to be ascertained before placement of developmental / educational / trial order.
- 2.2** Ordering on approved sources :Wherever there is restriction policy to procure the item from approved sources, the same will be followed as under :

- 2.2.1** As per policy of procurement bulk purchase i.e. minimum 80% of the net procurable quantity (NPQ) shall be ordered on approved firms of RDSO / Productions Units / CORE etc. Tenderers should attach scanned copies of such approval letters and approved QAP, along with their e-offers.

The tenderers should submit the following documents along with their offer:

- (i) Past performance of last 3 years.
- (ii) Documents in support of their capacity cum capability.
- (iii) Outstanding order load for
  - a) Tendered item
  - b) For other item

- 2.2.2** Where there are not more than three Indian Suppliers categorized as Approved Vendor for a particular item, developmental vendors can be considered for placement of bulk order without any quantity restrictions. However, while considering such vendors, factors including past performance, capacity, delivery requirements, quantity under procurement, nature of item, outstanding order load etc. shall be considered in a transparent manner, subject to rates being reasonable. Quantity allocation among eligible vendors shall be based on pre decided tender criteria. Such orders shall be treated as bulk orders.

A supplier or bidder shall be considered to be from India if (i) the entity is incorporated in India, or (ii) a majority of its shareholding or effective control of the entity is exercised from India, or (iii) more than 50% of the value of the item being supplied has been added in India.

- 2.2.3** Wherever there is only single approved vendor for an item, developmental order can be given upto 50% of NPQ on one or more vendors approved as developmental vendors.

- 2.2.4** Wherever there is no approved vendor for an item, developmental vendors can be considered for placement of bulk order without any quantity restrictions. However, while considering such vendors, factors including past performance, capacity, delivery requirements, quantity under procurement, nature of item, outstanding order load etc. shall be considered in a transparent manner, subject to rates being reasonable. Quantity allocation among eligible vendors shall be based on pre decided tender criteria. Such orders shall be treated as bulk orders.

**2.3** Ordering on new firms:

(a) If the tendering firm (s) is not approved by RDSO/PUs/CORE etc. as an approved or developmental vendor, then they must submit their credentials details i.e. Machinery and Plant, Testing Facilities, QAP, Technical Manpower etc.

(b) Offers from such new tenderers may be considered for trial orders/educational orders up to a maximum of 20 % quantity only after confirmation of their capacities / capabilities by RDSO / PUs / CORE etc. Such orders will be placed within or outside the net procurement quantity. Failure to furnish requisite credentials details i.e. Machinery and Plant, Testing Facilities, QAP, Technical Manpower, etc will make their offer liable to be ignored.

**2.4** Procurement from ( O E M's ) manufacturers or authorized agent / dealers :

OEMs can authorize and give Tender Specific Authorization to its Agent / dealers to quote on their behalf provided the vendor takes full responsibility for the quality of the material including warranty obligation and the inspection of product against Railway's order is carried out at the manufacturer's premises.

- 2.4.1** Where a manufacturer appoints an agent or a distributor on the basis of a written agreement with him for a specific territory or a specific set of items, he shall give an undertaking to the following effect.

- i) That he does not have sufficient marketing arrangements in respect of the specified territory or set of items to participate in Central Government / DGS&D purchases.
- ii) That he will accept the responsibility for the satisfactory execution of orders placed on the authorized agents / distributors.
- iii) That he will provide requisite inspection and testing facilities at his works in respect of orders placed on authorized agents / distributors.

- 2.4.2** The authorized agents / distributors would also give an undertaking in such cases as follows.
- (i) That he will be responsible for all the contractual obligations including quality aspects, replacement of parts / items and Warranty / Guarantee obligations.
  - (ii) That he will be responsible for after-sale-service.
- 2.4.3** An agent can not participate / represent on behalf of two different suppliers / manufacturers or quote on their behalf in a particular tender. This applies to offers for imported stores as well as for indigenous stores and irrespective of type of tender.
- 2.4.4** Either the agent on behalf of the principal/OEM or Principal/OEM itself can bid but both can not bid simultaneously for the same item in the same tender.
- 2.4.5** Firms participating on the tender shall take Purchase Order in their names only, if their offer is found suitable by the purchaser. They are not expected to quote such conditions as "if the offer is found suitable, the order should be placed on M/s. .... (their agents)" or similar meaning conditions.
- 2.5** Acceptance of Offers from unregistered and untried firms through advertised tenders:
- 2.5.1** Where the tendered item is not covered by restrictive procurement policy from approved Sources, at-least 80 percent of the procurable quantity will be covered invariably on the past proven suppliers. The tenderer must have supplied the same item to N.F. Rly or other zonal Railways and documentary evidence of the performance must be furnished along with their offer. (a) The tenderer with past performance of satisfactory execution of contracts for supply of the same item for a quantity of 20% or more of tender quantity against a single contract. The period to be reckoned to consider the above performance will be current financial year upto the tender opening date of the tender under consideration and preceding 3 financial years. (b) If such past performance level is lower then the offer may be considered as responsive to N.F. Railways requirement for placement of developmental order not exceeding to 20% of the net procurable quantity. (c) The tenderer who have no past performance as above may also be considered for such developmental order, but for consideration of such offers, tenderer must submit the details of M&P, testing facility, QAP and ISO 9000 / 14000 / 18000 certificates if available, technical manpower available with them or NSIC registration certificate for same item along with their offer.
- 2.5.2** There may also be some cases where the Administration may consider after due verification that the new supplier who has quoted competitive rate is having the required capacity- cum- capability and in those cases the Railway Administration may place bulk orders on these suppliers straightaway.
- 2.6** Consideration of unsolicited offers against manual Limited / Bulletin tender enquiries :
- 2.6.1** Unsolicited offers received against Limited Tender enquiries and offers from the firms against Bulletin tender enquiries for which they are not registered with the Railways for the tendered items, will normally be ignored. However, under exceptional circumstances, where it is felt necessary to consider such offers, on account of - inadequate competition, non-availability of suitable quotation from registered suppliers, urgent demands, capacity / capability of the firm offering to supply the relevant item being known and rates received are reasonable etc. The acceptance of such offer will be at the next higher level and in any case not below the rank of a Junior Administrative Officer.

**2.7 Time Preference Orders :**

- 2.7.1** In cases where it is decided to accept a higher price than the lowest tender in consideration / interest of earlier delivery, passing over the lowest acceptable offer, following conditions will apply:

"It should be noted that if a contract is placed on a higher tenderer as a result of this invitation of this tender, in preference to the lowest acceptable offer, in consideration of offer of earlier delivery, the contractor will be liable to pay to the Government the difference between the contract rate and that of the lowest acceptable tenderer on the basis of final price, FOR destination including all elements of freight, GST and other incidentals in case of failure to complete supplies in terms of such contract within the date of delivery specified in the tender and incorporated in the contract. This is in addition and without prejudice to other rights under the terms of Contract."

- 3.0 CARTEL FORMATION BY APPROVED VENDORS:** The tenderers are expected to quote rates which are most competitive and reasonable, commensurate with market trend in fair competition.

- 3.1** Wherever all or most of the approved firms quote equal rates and cartel formation is suspected, Railways reserve the right to place order on one or more firms with exclusion of the rest without assigning any reasons thereof.

- 3.2** Firms are expected to quote for a quantity not less than 50% of tendered quantity. Offers for quantity less than 50% of tendered quantity will be considered unresponsive and liable to be rejected in case cartel formation is suspected. Railways however reserve the right to order any quantity on one or more firms.

- 3.3** The firms who quote in cartel may note that their names are likely to be deleted from approved list.

- 3.4** The present policy of distribution of ordering quantities on approved Sources and new sources, based on the status of approval obtaining on the date of tender opening will be followed in normal circumstances. However, when tender is floated with purchase restriction from sources approved by nominated authorities and there exists a suspected cartel situation by approved sources or the rates available from Approved source/sources are adjudged unreasonably high, despite fair efforts as permissible, the purchaser reserves the right to place orders on firms outside the approved vendors list, without any restrictions.

- 3.5** In the event of the offers conforming to any aspect of the definition of cartel mentioned in "The Competition Act 2002 (12 of 2003)", in addition to the existing remedies, the purchaser also reserves the right to refer the matter to the Competition Commission of India (CCI), which is a statutory body constituted under "The Competition Act 2002 (12 of 2003)", for providing necessary relief to the Purchaser who represent Central Government organization serving the public. In addition, the purchaser also draws attention of the tenderers to Chapter VI of the "The Competition Act 2002 (12 of 2003)" which deals with Penalties. This will be in addition to other rights and remedies available to the Railway Administration under the Contract and Law

**4.0 Splitting of tendered quantity****4.1 Case of no prior decision to split the order**

- 4.1.1** Normally full order should be placed on L-1 firm. However, if after due processing, it is discovered that the quantity to be ordered is more than what L-1 alone is capable of supplying and there was no prior decision to split the quantities, then this aspect should be recorded in TC minutes/acceptance in direct acceptance cases. The quantity being finally

ordered will be distributed among the other bidders in a manner that will be fair, transparent and equitable. The manner of splitting will take specific note of the following parameters

- (i) Past Performance of bidders
- (ii) Capacity of bidders
- (iii) Delivery requirements in the tender
- (iv) Quantity under procurement
- (v) Vital/Safety nature of the items

- 4.1.2** In the absence of any differentiation on the above parameters, the manner of splitting will be based on the stipulation given in Para 4.2.2 below.

#### **4.2 Case of pre-decided split ordering**

- 4.2.1** Railway may decide in advance to have more than one source of supply on account of delivery requirement in tender, past performance and capability of bidders, quantity under procurement and vital/safety nature of items.

- 4.2.2** Following provisions (4.2.2(A) to 4.6) shall be applicable in all such cases of pre-decided split ordering.

(A) The purchaser reserves the right to distribute the procurable quantity on one or more than one of the eligible tenders. Zone of consideration of such eligible tenderers will be the right of the Purchaser. The zone of consideration will be a dynamic mix of inter-se position of firms, supply performance of the firms, quantity being procured, criticality of and lead time of supply of the item, number of established suppliers, their capacity etc.

(B) Whenever such splitting of the procurable quantity is made, the quantity distribution will depend (in an inverse manner) upon the differential of rates quoted by the tenderers (other aspects i.e. adequate capacity-cum-capability, satisfactory past performance of the tenderers, outstanding order load for the Railway making the procurement, quoted delivery schedule vis-a-vis the delivery schedule incorporated in the tender enquiry etc. being same/similar) in the manner detailed in the table below:

Price differential between L1 and L2	Quantity distribution ratio between L1 and L2
Upto 3%	60 : 40
More than 3% and upto 5%	65 : 35
More than 5%	At least 65% on the L1 tenderer. For the quantity to be ordered on the L-2 tenderer, TC/TAA shall decide.

In the phrase, "*differential rates quoted by the tenderers*", the quoted rate would mean.

- (i) When no price negotiation has been called for, the original rates as obtained at the time of tender opening. However, the rate of the highest eligible tenderer within the zone of consideration has to be per se reasonable.

- (ii) When price negotiation has been called for, the reference L1 rate for assessment of ratio will be the original rate of L1 firm (suitable for bulk quantity) – say firm "A" – as obtained at the time of tender opening.

B(I) If splitting of quantity is required to be done by ordering on tenderers higher than the L2 tenderer, then the quantity distribution proportion amongst the tenderers will be decided by transparent/logical/equity based extrapolation of the model as indicated in the above para.

**4.2.3** In case of pre-decided splitting, if the purchaser decides not to split the ordered quantity, the reason for the same should be recorded in TC minutes/acceptance in direct acceptance cases.

**4.3** For cases where the Rlys/PUs had entered into ToT/JV agreements, the following clause should be stipulated as tender conditions:

As the Rly has entered into ToT/JV agreement with..... No. of firms, they reserve the right to place orders on all such ToT/JV agreement partners. However, for ratio/proportion of quantity distribution among such agreement partners, conditions as detailed in Para 4.2.2 (B) shall apply with the exception that the aspect of „per-se reasonability“ will not be applicable.

**4.4** In the cases of inadequate capacity-cum-capability, dissatisfactory past performance, large quantity of outstanding orders (liquidation of which will take very long time) etc., the Purchaser shall have the right to distribute the procurable quantity amongst tenderers with due consideration to these constraints and in such a manner that would ensure timely supply of material in requisite quantity to meet the needs of operation, maintenance, safety etc. of the Railways, regardless of inter-se ranking of the tenderers and in a fair and transparent manner with due conformity to the Principles of Natural Justice and Equity.

## **5.0 SUPPLY OF MATERIALS:**

**5.1** Risk in the Stores :As per IRS conditions of contract Para 1501, the contractor shall perform the contract in all respects in accordance with the terms and conditions thereof. The stores and every constituent part thereof, whether in possession or control 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 schedule as interim consignee for the purpose of dispatch to the consignee. The contractor shall be responsible for all loss, destruction, damage or deterioration of or to the stores from any cause whatsoever while the stores 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, as the case may be, interim consignee. The contractor alone shall be responsible to make claim against Railway Administration or other Carrier in respect on non-delivery, short delivery, misdelivery, loss, destruction, damage or deterioration of the goods entrusted to such Carrier by the Contractor for transmission to the consignee or interim consignee as the case may be.

## **5.2** Terms of Delivery :

(a) Mode of dispatch should be preferably by road.

(b) Suppliers should clearly quote - FOR destination rates, destination wise.

## **5.3** Delivery Schedule :

(a) The delivery period quoted by the firm should be very specific and cogent instead of vague terms like 2 to 32 weeks or 2 to 10 months. Such offers will be considered with longest delivery period for the purpose of tender evaluation. Such offers are liable to be ignored in preference to offers with earlier deliveries.

( b )Railway prefers deliveries in installments. Therefore firm should quote bi-monthly rate of supplies they intend to deliver and completion date / month so that contract can be made severable.

(c) Extension in Delivery period will not be granted except once in deserving cases. In exception cases Extension of Delivery Period may be considered with Liquidated damages & Denial Clause as per IRS conditions of Contract, so as to enable firm to complete the supply, after which no more extension will be considered and Risk Purchase action will be taken as per rule.

(d) **Delay & Default by Supplier:** If the Contractor fails to deliver the stores or any installment thereof within the period fixed for such delivery in the contract or as extended or at any time repudiates the contract *before* the expiry of such period the Railway may without prejudice to other rights :-

(i) Will recover from the contractor, as agreed, Liquidated Damages and not by way of penalty, a sum equivalent to 0.5 per cent of the price of any stores (including elements of GST, freight, etc) which the contractor has failed to deliver within the period fixed for delivery in the contract or as extended per week or part of a week during which the delivery of such stores may be in arrears where delivery thereof is accepted after expiry of the aforesaid period.

(ii) Upper limit for recovery of liquated Damages in Supply Contracts will be 10 %(Ten Percent) of value of delayed supplies irrespective of delays, unless otherwise provided, specifically in the contract.

(e) There will be no system of waiver of Liquidated Damages & imposition of token Liquidated Damages instead of FULL LD for delayed supplies unless the contract condition stipulates the same.

(f) Tenderers should quote delivery schedule as follows :- TO COMMENCE IN DAYS FROM THE DATE OF PLACEMENT OF PURCHASE ORDER AND TO BE COMPLETED WITHIN \_\_\_\_\_ DAYS / MONTHS @ \_\_\_\_\_

5.4. **Default and Risk Purchase :** In case, the tenderer after placement of the purchase order, defaults to supply the material within the delivery date, the purchaser reserves the right to initiate action as under :

A. The Security Deposit (SD), if taken from vendors as per Para 10.0 of the “**Instructions for Tenderers**” of this Unified Tender Document, shall be forfeited & unsupplied quantity will be procured independently without risk and cost of the supplier of the default contract.

In the above case, adverse performance of the supplier will be recorded and intimated to the approving agencies i . e . RDSO/ PUs/CORE/ MSE registration agencies as given in Para 14.2 (a) (i) etc. which shall be taken into account in future tender.

B. In respect of orders, where no security deposit has been taken from firms, Risk Purchase action will be initiated against the supplier as per IRS conditions of Contract. The period of initiating Risk Purchase will be 9 months instead of 6 months from the date of last delivery date or extended delivery date as provided in clause No.702 (b) of IRS Conditions of Contract.

C. Notwithstanding anything contained herein the Railway Administration shall be at liberty to forfeit the Security Deposit or recover and adjust from the Security Deposit and other amounts of the Contractor that may be lying with the Railway, any loss suffered on account of the breach of contract arising on account of refusal or failure on the part of the Contractor to perform the contract.



**5.5 General Damages:** When an obligation resembling those created by contract has been incurred and has not been discharged, the Purchaser, affected by the failure to discharge it, is entitled to receive the compensation from the party in default, as if Supplier that had contracted to discharge it and had broken his contract.

Where actual or potential loss has been incurred due to the failure of the Supplier to put in supplies within the contracted delivery period and the Purchaser has no option but to cancel the contract and where the cancellation of the contract is resorted to by the Purchaser at the risk and cost of the firm or where risk purchase could not be resorted to, due to any reason, General Damages within the ceiling of amount calculated under the contract, will be levied.

The Purchaser shall be entitled to recover from the Contractor as compensation to the Railway, a sum to the extent of 10% of the value of defaulted quantity of the contract.

## **6.0 INSPECTION CLAUSE:**

**(a)** Final inspection & acceptance of material will be done by the consignee after its receipt.

**(b)** Pre dispatch inspection will be by RDSO/RITES/consignee at Railway's option as per Tender Enquiry. Tenderers to quote clearly their inspection clause.

**(c)** Material peculiar to Railway such as parts and fittings of rolling stock except raw material, which have been found rectified during inspection and which could not be rectified, to be defaced by the inspecting authority to avoid recycling of such rejected material and to avoid ultimate failures of assets. All such rejected materials peculiar to Railways will be mechanically defaced to prevent sale to Railways again.

**(d)** The following re-inspection charges will be paid by the supplier to the inspecting agency.

A (i). Failure to offer material for inspection

(a) Before the visit of inspecting engineer (IE): 50% of the inspection charges up to max. of Rs.11000.

(b) After visit of IE: twice the charge payable in 'a' above.

A (ii) Material has to be re-inspected due to rejection of material at firm's premises: 100% inspection charge + actual test charge.

A (iii) Material has to be re-inspected due to non-

dispatch: 100% inspection charge + actual test charge.

A(iv) Wherever testing is required to be done by the inspecting agency (e.g. RITES) outside the manufacturer's premises (as per IRS Condition of Contract 1303 & 1304) all testing will be done by inspecting agency (e.g. RITES) either in its own lab/labs approved by it or in NABL accredited lab.

**(e)** For authorized dealers/ Agents the inspection of material will be done at the manufacturers premises only.

**(f)** All articles ordered are subject to inspection, test and approval by an officer of this Railway irrespective of any other inspection indicated in the Purchase Order. Supplies not in accordance with the order will be rejected and the Principal Chief Materials Manager will be at liberty to cancel the order and re purchases at the risk and cost of the defaulting firm. Cost of test on supplies rejected will be recovered from Suppliers. The Test Report of the Railway will be final and binding on the Contractor

(g) The tenderers to specifically note that:-

(1) In cases where only a portion of the stores ordered is tendered for inspection at the end of the delivery period and also in cases where inspection is not completed in respect of the portion of the stores tendered for inspection during the delivery period, the purchaser reserves the right to cancel the balance quantity not tendered for inspection within the delivery period fixed in the contract at the Risk and expense of the Contractor without any further reference to him. If the stores tendered for inspection during or at the end of the delivery period are Not found acceptable after carrying out the inspection, the purchaser is entitled To cancel the contract in respect of the same at the risk and expense of the Contractor. If, however, the stores tendered for inspection are found acceptable, the purchaser may grant an extension of the delivery period subject to the following conditions:-

(a) The purchaser has the right to recover from the contractor under the provisions of clause 0702 (a) of I.R.S. conditions of Contract liquidated damages or the difference in rate if the same material is purchased at a cheaper rate (with the consent of the firm)- whichever is higher, on the stores which the contractor has failed to deliver within the period fixed for delivery.

(b) That no increase in price on account of any statutory increase in or Fresh imposition of Customs Duty, GST or on account of any other tax or duty leviable in respect of the stores specified in Contract which takes place after The date of the delivery Period stipulated in the contract shall be admissible On such of the said stores as are delivered after the date of the delivery stipulated in the contract..

(c) That notwithstanding any stipulation in the contract for increase in price on any other ground no such increase which takes place after the date of delivery stipulated in the Contract shall be admissible on such of the said stores are delivered after the expiry of the delivery period stipulated in the Contract.

(d) But nevertheless, the purchaser shall be entitled to the benefit of any decrease in price on account of reduction in or remission of Custom Duty, GST or on account of any other tax or duty or on any other ground as stipulated in the price variation clause which takes place after the expiry of the date of delivery stipulated in the contract.

(2) The contractor shall not dispatch / deliver the stores till such an extension in terms of Para 1 (a) to (d) above is granted by the Purchaser & accepted by the contractor. If the stores are dispatched by the contractor before an extension letter as aforesaid is issued by the purchaser and the same are accepted by the consignee, the acceptance of the stores shall be deemed to subject to conditions p a r a 1 (a) to (d) above.

(3) In case where the entire quantity has been tendered for inspection within the delivery period stipulated in the contract and the purchaser choose to grant an extension of the delivery period the same would be subject to the conditions (a) to (d) mentioned in Paragraph 1 above.

## **7.0 PRICE VARIATION CLAUSE:**

7.1 Tenderers should quote firm price unless the Tender is invited with a Price Variation Clause. However any tenderer quoting with Price Variation clause should clearly indicate in unambiguous terms, the basis and the formulae to be adopted for calculating impact of price variation in monetary terms for comparison for prices. Any ambiguous offer on this account will be ignored. Offers with vague phrases such as prices ruling at the time of supply will be treated as unresponsive.

- 7.2** However, there may be cases of procurement of stores which are raw-material (Steel / Non- Ferrous) intensive wherein the tenderers may quote with Price Variation clause. Such Price Variation Clause must be unambiguous and having clear price variation formulae. Ambiguous conditions like "Price Variation Clause applicable" will not be acceptable and such offers shall be treated as unresponsive.
- 7.3** Following Price Variation Clauses are generally recognized by the Railways.
- i) IEEMA PVC for the items covered by IEEMA formulae.
  - ii) Railway Board's PVC for items covered by such formulae.
- Note:-** Tenderers whose offers are with IEEMA PVC, Railway Board's PVC /DGS&D's PVC are to quote with the prices of input raw materials ruling on the base date as stipulated in the relevant PVC ( IEEMA/ Railway Board/ DGS&D). For example in case of IEEMA PVC, if the Tender opening date falls in May of a year, The applicable prices of input raw materials should be those prevailing on the 1<sup>st</sup> April Of that Year. If any Tenderer quotes with any other base date (for prices of input raw materials), then all such offers shall be updated to the common base date as stipulated in the PVC of IEEMA/ Rly Board/ DGS&D as the case may be. For example, in the case of IEEMA PVC for a tender opened in May of a year, if any tenderer quote with prices of input raw materials ruling on a base date other than 1<sup>st</sup> April of That particular year, quoted rates shall be updated to the base date of 1<sup>st</sup> April of That particular year (for input raw materials) for the purpose of evaluation Of offers and determination of inter-se ranking of the offers.
- 7.4** Where the tender is issued with pre-determined price variation clause / formulae based on established PVC Formula notified by nodal agency such as IEEMA etc, tenderers are expected to quote with PVC as prescribed in tender. Rates quoted without PVC or in deviation of prescribed formulae will be treated commercially unresponsive.
- 7.5** For those items which are not covered by any of the aforesaid PVC, other PVC specific for such stores may be considered and accepted if found to be in order. However, in all such cases, the contract prices upward / downward will be regulated with reference to the date of inspection of stores and will be applicable to the stores tendered for inspection after one month from the date of variation in the price of relevant input material by the specified agencies like SAIL, HZL, HCL etc. The date on which stores are offered for inspection will be treated as the date of supply for the purpose of Price Variation Clause. Furthermore, the base month for such input materials will be one month prior to that of tender opening. Admission of any claim in this regard will be subject to the suppliers furnishing all the supporting documents.
- 7.6** Tenderers who quote with price escalation on account of raw material in the tenders will please note that such escalation claims will be subject to verification by the Principal Financial Adviser of the Railway with reference to the records that may be called for from them. Successful tenderer will be required to produce complete records including position of ground stocks available at the time of submission of tender for verification / examination of their claims under price escalation before their claims are accepted. If the tenderer fails to establish his claim by producing satisfactory records before the PFA of this Railway their claim will be disallowed and / or proportionately reduced.

- 7.7** PVC claim in staggered delivery: In either case whether entire or severable contract, with staggered delivery schedule, the PVC claims if any, will be restricted for that particular quantity of supply required to be completed in that period, as indicated in the delivery schedule, irrespective of the fact, whether the supply has been made / completed subsequently within the overall delivery schedule of the contracts. Tenders envisaging price variations in respect of (a) War Risk Insurance, (b) Marine Insurance etc., will not be accepted under any circumstances.

**8.0 PRICE FALL CLAUSE (WHEREVER APPLICABLE VIZ IN RATE CONTRACTS AND IF STIPULATED IN THE TENDER):**

**8.1** For Fixed quantity contracts / Running Contracts :

- 8.1.1** Applicable for purchase of such stores as are usually dealt with by centralized procurement agencies and also in case of certain very high value tenders in a situation where other Railways also deal with tender cases for such materials, concurrently. This Fall Clause has to be judiciously included as an additional special tender condition in the Tender Schedule as a matter of abundant precaution and got accepted by tenderers before concluding contract.

**8.1.2** The Text of fall clause For Fixed quantity contracts / Running Contracts is as under:

"The price charged for the stores supplied under the Contract by the Contractor shall in no event exceed the lowest price at which the contractor sells the stores or offer to sell stores of identical description to any persons / organizations including the purchaser or any Department of Central Government or any Railway Office or any Railway undertaking, as the case may be during the period till performance of all supply orders placed, during the currency of the contract is completed. The lower price will be applicable to supplies made after the date of coming into force of such reduction or sale or offer to sell at a reduced rate."

"If at any time during the said period the contractor reduces the sale price, sells or offers to sell such stores to any persons, organizations including the purchaser or any Department of Central Government or any Railway Office or any Railway Undertaking as the case may be at a price lower than the price chargeable under the contract, they shall forthwith notify such reduction or sale or offer of sale to the purchaser and the price payable under the contract for the stores supplied after the date of coming into force of such reduction or sale or offer of sale, shall stand correspondingly reduced."

- 8.1.3** The Contractor shall furnish the following certificate to the concerned Account Officer along with each bill for payment of supplies made against the contract.

"I / We certify that there has been no reduction in sale price of the stores of description identical to the stores supplied to the Government under the contract herein and such stores have not been offered / sold by me/us to any person / organization including the purchaser or any Department of Central Government or any Railway Office or any Railway Undertaking as the case may be, up to the date of bill, at a price lower than the price charged to the Government under the contract. "

- 8.2** Price Fall Clause is generally applicable for Rate Contracts as per text in Para 8.1.2 above:

- 8.2.1** Besides, the above stipulation will however not apply to:

(a) Exports by the Contractor.

(b) Sale of goods as original equipment at price lower than the price charged for normal replacement

(c) Sale of goods such as Drugs which have expiry dates.

(d) Sale of goods at lower price on or after the date of completion of sale / placement of order of goods by the Authority concerned under the existing or previous rate contracts as also under any previous contract entered into with the Central or State Government Department including their undertaking (excluding joint sector companies and /or private parties) and bodies.

**8.2.2** The Contractor shall furnish the following certificate to the concerned FA & CAO along with each bill for payment of supplies made against the Rate contract.

"I / We certify that there has been no reduction in sale price of the stores of description identical to the stores supplied to the Government under the contract herein and such stores have not been offered / sold by me/us to any person / organization including the purchaser or any Department of Central Government or any Railway Office or any Railway Undertaking as the case may be, up to the date of bill / the date of completion of supplies against all supply orders placed during the currency of the contract at a price lower than the price charged to the Government under the contract for quantity of Stores Categories under sub clauses (a), (b),(c) and (d) of Sub Para 8.2.1.

**8.2.3 Note:** - The contractor will also inform the PFA concerned and Principal Chief Materials Manager as soon as supplies against all orders placed against the rate contract are completed.

## **9.0 BOOK EXAMINATION CLAUSE:**

**9.1** The tenderers are to agree for the Standard Book Examination Clause as stated below. In case the tenderer do not agree to this clause, it is made clear that under Section 209-A of Companies Act, the Government have got powers to examine the book of the company. The Book Examination Clause can be invoked wherever it is felt by the purchaser that the rates quoted by the firm is unreasonable with due regard to the previous purchase rates, price trends intrinsic worth of the items.

(i) The contractor shall whenever called upon and requiring to produce or cause to be produced for examination by the Government Officer duly authorized in that behalf, any cost or other account book of account voucher, receipt, letter, memorandum paper and writing or any other copy or extract from any other such documents and also furnish information relating to such transaction and produce before the duly authorized Government Officer returns verified in such manner as may be required relating in any way to the execution of this contract or relevant for verifying or ascertaining the cost of execution of this contract ( the decision of such Government Officer on the question of relevancy of any document, information or return being final and binding on the parties).

The obligation imposed by this clause is without prejudice to the obligation of the Contractor under any statute, rules or orders shall be binding on the contractor.

(ii) The Contractor shall, if the authorized Government Officer so requires (whether before or after the prices, have been finally fixed), afford facilities to the Government Officer concerned to visit the Contractors works for the purpose of examining the process of manufacturing and estimating or ascertaining the cost of production of the articles. If any portion of the work be entrusted or carried out by a sub-contractor or any of its subsidiary or allied firm or company, the authorized Government Officer shall have the power to examine all the relevant book of such sub-contractor or any subsidiary or allied firm or company and it shall be opened to his inspection as mentioned in clause (1).

(iii) If on such examination, it is established that the contracted price is in excess of the actual cost plus reasonable margin of profit, the purchaser shall have the right to reduce the price and determine the amount to a reasonable level.

(iv) Where a contract provided for book examination clause the Contractor or its agency bound to allow examination of its books within a period of 60 days from the date the notice is received by the Contractor, or his agencies Calling for the production of documents as under clause (i) above. In the event of Reduce Contractor's or his agencies failure to do so, the contract price would be d and determined according to the best judgment of the purchase which would be final and binding on the Contractor and his agencies.

**10.0 WARRANTY / GUARANTEE PERIOD :**Warranty / Guarantee clauses as per IRS Conditions of Contract are normally applicable. The contractor should guarantee that the said goods / stores / articles would continue to conform to the description and quality as aforesaid, for a period of 30 months after their delivery or 24 months from the date of placement in service whichever will be sooner, and this warranty shall survive notwithstanding the fact that the goods/stores/articles may have been inspected, accepted and payment thereof made by the purchaser.

**10.1** The warranty clause, wherever mentioned in the technical specification of the item under procurement, if at variance with the standard warranty clause prescribed in IRS conditions of contract, the warranty clause as per technical specification will prevail.

**10.2** For Machinery & Plant etc., the Tenderer should abide by the following Guarantee Clause:-

The Contractor guarantees that the Stores which he supplies will be built fully in accordance with Specifications and will operate properly. In all cases the Contractor guarantees that his design would strictly follow the drawings with modifications i f any that are notified in respect of each type. The Contractor further guarantees that the Stores will be free from defects in material and workmanship provided that the Contractor's liability in this respect shall be limited to the furnishing and installation or replacement parts free of any charge, of the repair of defective parts only to the extent that such replacements or repairs are attributable to or arise from faulty workmanship or material, or design in the manufacture of the stores. All replacement parts shall be shipped by the contractor C.I.F Indian Port, from which point the purchaser shall clear through customs and deliver at his expense to inland destination. If the contractor so desire the replace parts can be taken over by the Representatives in India for disposal as he deems fit, within a period of three months from the date of receipt of replacement parts. At the expiry of this period, no claim whatsoever shall lie on the Purchaser.

It shall be a condition of the guarantee hereunder that any defects complained of shall be brought to the Contractor's attention within a reasonable time of their being first discovered. The guarantee herein contained shall not apply to any material which shall have been repaired or altered by the Purchaser, or on his behalf in any way so as to affect its strength, performance or reliability, or to any defect to any part due to misuse, negligence or accident.

The guarantees herein shall expire in respect of each item of stores, on the expiration of 30 months from the date of its delivery in India or 24 months from the date of its placing in service whichever is earlier, except in respect of defects notified to the Contractor prior to expiration of such date. All replacements and repairs that the Purchaser shall call upon the Contractor to deliver or perform under the guarantee shall be delivered and performed by the Contractor promptly and satisfactorily.

Any approval or acceptance by the Purchaser of the stores or of the materials incorporated therein shall not in any way limit the Contractor's liability hereunder. The decision of the Purchaser in regard to Contractor's liability under the guarantee shall be final and conclusive.

**11.0 NEGOTIATIONS:** There should normally be no negotiations. Negotiations shall strictly be an exception rather than a rule and only where rates received are unjustifiably higher and also in situation of cartel formation with unreasonable rates.

**11.1** Negotiations shall be held only with the lowest acceptable tenderer (L1) who is technically cleared/approved for supply of bulk quantity and on whom the contract would have been placed but for the decision to negotiate. If called for negotiation, the tenderer will have to depute their authorized representative to attend the negotiations along with proper authority letter who can take on the spot decisions as may be required in the matter.

**11.2** They have to give the following declaration before the negotiation:-

**"DECLARATION**

I ..... do hereby declare that in the event of failure of the contemplated negotiations relating to Tender No..... opened on ..... my original offer shall remain open for acceptance on its original terms and condition upto .....

I also declare that I am aware that during this negotiation, I cannot increase originally quoted rates against any of the individual items and that in the event of my doing so, the same would not be considered at all i.e. reduction in rate during negotiation alone would be considered and for some items if I increase the rates, the same would not be considered and in lieu my originally quoted rates alone would be considered and my offer would be evaluated accordingly."

**11.3** Counter offering as a substitute to/in lieu of negotiation:

The procedure of counter offering as a substitute to/in lieu of negotiation (dispensing with it altogether) is totally prohibited. If price negotiation becomes warranted then the same should be held following extant rules and procedure. Furthermore, it should be ensured, particularly in high valued tenders that the tenderer is represented by their authorized representative who is competent and empowered to take meaningful and active part in the price negotiation. Negotiation will be held in an objective, meaningful and analytical manner.

**11.4** Counter offering after failure of price negotiation:

If the L1 tenderer refuses to accept the counter offer, the tender is to be discharged. In exceptional situations, particularly in the cases where there is only one or limited or dedicated vendors available, the TC may go in for a second round of negotiations, after the rejection of counter offer, provided some new/additional facts (which were not known to the TC earlier) come to light subsequently. This will be, however, subject to the condition that the L1 tenderer agrees to revalidate their offer when asked to do so by the purchaser or suo-moto. In the event of failure of 2<sup>nd</sup> round of negotiation, the tender is to be discharged.

**12.0 EVALUATION OF THE OFFERS:** The Inter-se position of all offers received will be decided item wise / consignee wise unless stated otherwise in the tender schedule.

(a) Rates quoted without any condition attached (viz. discounts having linkages to minimum order quantity, prompt payment, prompt Receipt Note etc.) will only be considered for tender evaluation purpose. Thus discounted rates - linked to minimum order quantities and prompt payment etc will be ignored for calculating inter-se position. NF Railway however reserves the right to use the discounted rate / rates if considered workable and appropriate for counter offer to the successful tenderers.

Though the rates without any conditions attached will only be considered for evaluation purposes, this does not preclude NF Railway from making counter offer of rates of any of the discounted offers.

(b) The tenderers should note that tender quantity is only approximate and subject to variation at the time of actual finalisation of the tender. Moreover, as per the terms and conditions of the tender, the purchaser also reserves the right to accept the offer for the full quantity or part thereof tendered.

(c) All inclusive cost comprises of Basic Rate, GST, Packing charges, Forwarding charges, Insurance (if any) and Freight charges up to destination and any other charges quoted by the Tenderer. This will be calculated by the e-procurement system and displayed in tabulation statement.

(d) All offers will be arranged in ascending order of the all inclusive cost as calculated by the System.

(e) After arranging the offers as above, technically unsuitable offers will be passed over. Offers not confirming to tender schedule, offers with deviation, offers from defaulters etc. may also be passed over.

(f) The order quantity may be split among more than one tenderer as per the splitting criteria specified in special tender conditions item 4 . The administration's decision in regard to quantities on the successful tenderer(s) would be final.

g) Time preference orders on higher tenderers with assurance of earlier delivery in preference to lowest acceptable offers with longer delivery can be placed by NF Railway in case of emergency / urgent requirement.

(h) Any conditions in the e-offers, involving financial angle, if stipulated elsewhere other than "financial rate page" will not be taken into account for tender evaluation purpose and decision making, as the e-procurement system can not calculate all inclusive cost in such cases.

(i) In case of any change in statutory tax regime after tender opening, all the offers shall be evaluated as per tax regime as applicable on the date of tender opening.

**13.0 MARKING OF MATERIAL SUPPLIED:** The contractor should indicate the Manufacturers Name / Month and Year of manufacturing / Purchase Order Number by process of Stamping / etching / embossing as appropriate or as specified in specification, in order to identify the suppliers in case of premature failure of the materials in actual use. The location of these identification should be such that they do not get obliterated on wear and tear and without affecting the functional utility and structural stability of the components / materials.

**14.0 PUBLIC PROCUREMENT POLICY FOR GOODS PRODUCED AND SERVICES RENDERED BY MICRO AND SMALL ENTERPRISES (MSEs) BY CENTRAL MINISTRIES / DEPARTMENTS / PUBLIC SECTOR UNDERTAKINGS (PSUs):**

**14.1** There will not be Purchase Preference of products and services of Central CPSE.

**14.2** In pursuance to Govt. of India's Public Procurement Policy for MSE (Micro and Small Enterprises), following conditions will be applicable:

(a) (i) Tender sets shall be provided free of cost to MSEs registered with the agencies as mentioned in the notification of Ministry of MSME (notification No.503 dated 23.03.2012 as printed in Gazette of India) for the item tendered. These are indicated below:



- (1) District Industries Centers.
  - (2) Khadi and Village Industries Commission.
  - (3) Khadi and Village Industries Board.
  - (4) Coir Board.
  - (5) National Small Industries Corporation.
  - (6) Directorate of Handicraft and Handloom.
  - (7) Any other body specified by Ministry of MSME
  - (8) MSE having Udyog Adh0ar Memorandum as specified by Ministry of MSME.
- (ii) *MSEs registered* with the above agencies for the item tendered will be exempted from payment of Earnest Money.

(iii) In tenders, participating MSEs quoting a price within price band of L1 + 15% shall be allowed to supply a portion of the requirement by bringing down their price to L1 price in a situation where L1 price is from someone other than a MSE and such MSEs can be together ordered upto 25% of the Net procurable quantity (NPQ). Out of this 25% of the NPQ, order for 4% shall be earmarked for Micro and Small Enterprises owned by Scheduled castes & Scheduled Tribes and 3% shall be earmarked for Micro and Small Enterprises owned by Women.

- (b) (I) MSEs who are interested in availing themselves of these benefits will enclose with their offer the proof of their being MSE registered with any of the agencies mentioned in the notification of Ministry of MSME (notification No.503 dated 23.03.2012 as printed in Gazette of India) as indicated in Para 14.2 (a) (i) above.

(II) The MSEs must also indicate the terminal validity of their registration.

Failing (I) & (II) above, such officers will not be liable for consideration of benefits detailed in MSE notification of Government of India dated 23.03.2012.

- 14.3** Trading Enterprises and authorized agent/dealers of OEM will not be extended any MSE benefits. Such Enterprises/firms are required to deposit EMD mandatorily else their offer will be considered as unresponsive and will be summarily rejected.

- 15.0 Public Procurement (Preference to Make in India):** The Public Procurement (Preference to Make in India) Order, 2017 dated 15.06.17 issued by Ministry of Commerce and Industry, Department of Industrial Policy and Promotion, Government of India shall be applicable.

- 15.1** (a) Local content:

The minimum local content shall ordinarily be 50% or as specified in the tender.

“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 custom duties) as a proportion of the total value, in percent.

(b) Local Supplier: “Local Supplier” means a supplier or service provider whose product or service offered for procurement meets the minimum local content as prescribed under this order by the competent Ministries/Departments in pursuance of this order

(c) Margin of Purchase Preference:

The margin of Purchase preference shall be 20%. "Margin of purchase preference" means the maximum extent to which the price quoted by a local supplier may be above the L1 for the purpose of purchase preference.

(d) Fee for complaints:

Fee for filing a complaint under the order shall be Rs.10,000/- per case. The complaint shall be filed in the office of the PCMM/NFR. The fee shall be deposited with the office of the PFA/NFR.

**15.2** Verification of local content:

a. The local supplier at the time of tender, bidding or solicitation shall be required to provide self-certification that the item offered meets the minimum local content and shall give details of the location(s) at which the local value addition is made.

b. In case of procurement for a value in excess of Rs.10 crores, the 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. 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.

d. 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.

e. Debarment of bidders:

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 of CPPP so that ongoing procurements are not disrupted.

**15.3** Requirement of Purchase Preference:

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 local suppliers in all procurements undertaken by procuring entities in the manner specified hereunder:

a. In procurement of goods in respect of which the Nodal Ministry has communicated that there is sufficient local capacity and local competition, and where the estimated value of procurement is Rs.50 lakhs or less, only local suppliers shall be eligible. If the estimated value of procurement of such goods is more than Rs.50 lakhs, the provisions of subparagraph b or c as the case may be, shall apply.

b. In the procurements of goods which are not covered by paragraph "a" above and which are divisible in nature, the following procedure shall be followed.

i. Among all qualified bids, the lowest bid will be termed as L1 if L1 is from local supplier, the contract for full quantity will be awarded to L1.

ii. If L1 bid is not from a local supplier, 50% of the order quantity shall be awarded to L1. Thereafter, the lowest bidder among the local suppliers, will be invited to match the L1 price for the remaining 50% quantity subject to the local supplier's quoted price falling within the margin of purchase preference, and contract for that quantity shall be awarded to such local supplier subject to matching the L1 price. In case such lowest eligible local supplier fails to match the L1 price or accepts less than the offered quantity, the next higher 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 local suppliers, then such balance quantity may also be ordered on the L1 bidder.

c. In procurement of goods not covered by sub-paragraph "a" above and which are not divisible, and in procurement of services where the bid is evaluated on price alone, the following procedure shall be followed:

i. Among all qualified bids, the lowest bid will be termed as L1. If L1 is from a local supplier, the contract will be awarded to L1.

ii. If L1 is not from a local supplier, the lowest bidder among the local suppliers, will be invited to match the L1 price subject to local supplier's quoted price falling within the margin of purchase preference, and the contract shall be awarded to such local supplier subject to matching the L1 price.

iii. In case such lowest eligible local supplier fails to match the L1 price, the 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 local suppliers within the margin of purchase preference matches the L1 price, then the contract may be awarded to the L1 bidder.

#### **15.4 Exemption of small purchases:**

Notwithstanding anything contained in paragraph 15.3, procurements where the estimated value to be procured is less than Rs.5 lakhs shall be exempted 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.

**16.0** In case anything stipulated in the tender schedule are at variance with the special conditions mentioned herein, the additional special conditions mentioned in particular tender schedule will prevail. If technical specification prescribes any condition involving financial repercussion, which is in conflict with instructions to tenderers, IRS conditions, special condition and additional special conditions of contract, then same will be ignored for tender evaluation purpose unless made an additional special condition of tender.

#### **17.0 Guidelines for Electronic Reverse Auction for Stores Contracts:**

17.1.0 (a) Purchase through Reverse Auction shall be the preferred method for procurement for Stores tenders valued more than Rs.5.0 Cr. in each case.

(b) The process of procurement through Reverse Auction shall be followed only in case of tenders where there are at least three approved vendors where bulk procurement is to be done from vendors approved by RDSO /CORE /PUs etc. or at least three proven/likely competitive sources, Prima facie competent for execution of bulk ordering.

(c) Financial Bids in single currency/parameter only shall be allowed.

**17.2.0** Procedure for award of contracts through Reverse Auction:

Each tender should clearly specify essential technical and commercial parameters in a transparent manner. No deviation to such essential Technical & Commercial conditions shall be permitted to the vendors in the electronic bid form.

**17.2.1** Technical Bid and Initial Price Offer:

- (a) The bid evaluation criteria shall be item wise, consignee wise or overall tender value wise.
- (b) Bidder shall be simultaneously required to electronically submit a Technical & Commercial Bid and Initial Price Offer.
- (c) Offers found eligible for bulk order shall be categorised as qualified for Bulk Order for the purpose of RA and offers found eligible for Developmental order shall be categorised as Qualified for Development Order for the purpose of RA.
- (d) Offers not complying with essential technical & commercial requirements of the tender shall be declared as Ineligible for award of contract.
- (e) Technical & Commercial evaluation of bids shall be done by the purchaser as per extant guidelines, delegation and the estimated value of tender.
- (f) Initial Price Offer of only those bidders categorized as Qualified for Developmental Order or Qualified for Bulk Order, shall be opened and tabulated by system separately, category wise. Extant instructions for electronic tabulation shall apply for tabulation of initial Price Offers.

**17.2.2** Financial Bid:

Financial Bid shall comprise of Final Price Offer obtained through Reverse Auction. Following conditions and procedure shall be followed in selection of bidders for conduct of Reverse Auction:

- (a) Selection of vendors for Reverse Auction for Bulk Ordering in Stores tenders:

Number of tenderers qualified for Award of contract/Bulk Order	Number of Tenderers to be selected for Reverse Auction	Remarks
<3	NIL *	The bid disallowed from participating in Reverse Auction shall be the highest bidder(s) in the tabulation of Initial Price Offer. In case the highest bidders quote the same rate, the Initial Price Offer received last, as per time log of IREPS, shall be removed first, on the principle of last in first out, by IREPS system itself.
3 to 6	3	
More than 6	50% of Vendors Qualified for Bulk Order/award of contract (rounded off to next higher integer).	

**Note:**

- i. \* If the number of tenders qualified for Bulk Order/Award of Contract is less than 3, RA shall not be done and tender may be decided on the basis of Initial Price Offer(s).

ii. Selection of vendors for Reverse Auction for developmental ordering: All bids found Qualified for Developmental order shall participate in Reverse Auction for developmental order.

iii. MSE Criteria: All MSEs (Micro & Small Enterprises) found Qualified for Bulk Order/Award of Contract but could not be selected for Reverse Auction as per criteria stipulated in Para 17.2.2 a. Above, but are within the range of 15% of lowest Initial Price Bid shall be permitted to participate in the Reverse Auction, irrespective of their inter-se ranking on the basis of Initial Price Bid. Such MSEs shall be over and above the number of vendors selected for Reverse Auction, as per Para 17.2.2 (a) lowest initial price bid shall mean lowest initial price bid of vendor qualified for bulk order.

iv. Make in India criteria: All bidders eligible for benefits under Public Procurement (Preference to Make in India) Order-2017, found Qualified for Bulk Order/Award of Contract and are within the specified range of price preference of lowest Initial Price Bid shall be permitted to participate in the Reverse Auction, irrespective of their inter-se ranking on the basis of Initial Price Bid. Such bidders shall be over and above the number of vendors selected for Reverse Auction, as per Para 17.2.2 a.

b. During Reverse Auction process, bidders shall not be allowed to bid a rate higher than the lowest Initial Price Offer.

17.2.3 Reverse Auction among bids categorized as Qualified for Developmental Order and Qualified for Bulk Order shall be conducted concurrently on IREPS. Bidders shall only be able to see the auction screens relevant to them for each category. Purchaser shall be permitted to see all the auction screens for both categories on line.

17.2.4 The quantity to be covered on developmental orders shall be limited to 20% of the net procurable quantity. Developmental orders shall be placed as per extant guidelines in this matter.

17.2.5 After obtaining the final bids of the Reverse Auction, tenders shall be finalized as per existing policy (including price preference to MSEs and Make in India Order, 2017, [wherever applicable] and procedures based on the eligibility and quantity distribution criteria, as pre-defined in the tender document. All the relevant policies of Government of India at the relevant time shall be applicable.

17.2.6 The level of Tender Committee to consider the Final Price Offers shall be determined on the basis of lowest Initial Price Offer of bid Qualified for Bulk Order as opened prior to Reverse Auction. In case the level of Tender Committee which evaluated technical & commercial bids as per Para 17.2.1 (e) was higher than the level of TC competent to consider lowest Initial Price Offer of bid Qualified for award of Bulk Order, the higher level TC shall continue to finalize such tender cases.

**17.3.0** The above guidelines will apply prospectively, i.e. for tenders published subsequent to roll out of Reverse Auction module, incorporating above policy, by CRIS.

17.4.0 Other Instructions:

1. Two Packet Single Stage system of tendering is to be followed for e-R.A. for tenders valuing above Rs. 5.0 Crore.

2. MSME criteria of considering offers from MSEs quoting within L-1 + 15% for 25% of NPQ is to be followed for all Goods and Services tenders.

3. Make in India Preference order is to be followed for all Goods, Services tenders wherever applicable as per guidelines.
4. Withdraw of L-1 Offer: In case of withdrawal of offer of L-1 bidder, the tender need not necessarily be discharged in case of tenders for procurement of Goods and Services (other than consultancy) subject to fulfilling the extant instructions in this matter.

#### **17.5 Procedure for Conduct and Reporting of R.A-**

1. The tendering authority shall solicit bids through an invitation to the electronic Reverse Auction to be published or communicated in accordance with the provisions similar to e-procurement.
2. The Purchaser shall fix the following, on case to case basis, depending upon the nature of item and complexity of case on hand. These shall be indicated in the tender for e-RA itself.
  - a. Initial e-RA period: This shall be the initial time interval for e-RA. e-RA shall be open for this duration.
  - b. Auto extension period: In case any offer is received in the time period equal to auto extension period before close of initial e-RA period, the e-RA shall be extended for time equal to auto extension period from the time of last bid. There shall be no upper limit on number of auto extensions. When no offer is received in the last auto extension period, e-RA shall close.
  - c. Minimum decrement in percentage of value of the last successful bid.
3. Date and time for start of e-RA shall be communicated to qualified tenderers by the purchaser after evaluation of the Technical Bids.
4. After submission of initial Price Bid, tenderers will not be allowed to revise the taxes and other levies.
5. During auction period, identities of the participating tenderers will be kept hidden.
6. Minimum admissible bid value will be last bid value minus minimum decrement as specified by the purchaser before starting of reverse auction. Starting point for reverse auction shall be the lowest initial Price Bid of the tenderer eligible for award of contract.
7. After close of the RA, tabulation of last (minimum) bids received from all the tenderers will be generated and made visible to Railways and participating tenderers.
8. Railway users can also view the bidding history in chronological order.
9. Bidders will not be allowed to withdraw their last offer.
10. L-1 will be defined as the lowest bid obtained after the closure of R.A. session.

**18. Special Terms and Conditions for Import :**

**18.1** The firms shall indicate various components of pricing viz. basic rate, insurance, freight, duties etc. separately.

**18.2** Insurance and Shipping of materials shall be decided by the purchaser keeping the recent guidelines of Government of India of this matter.

**18.3** For imports from USA, the following clause shall apply "All charges to FAS vessels including wharfage charges similar to terminal handling charges shall be on Seller's account."

**18.4** In the contracts, placed on F.O.B. basis, the port liner terminal charges will be on seller's account.

**18.5** Manufacturers are advised that the Railway would prefer to deal with them directly and offers from an agent of the manufacturer may be ignored without assigning any reason thereof, therefore, they are advised to quote directly except in most exceptional and inescapable circumstances. If the foreign firms want to involve any Indian agent, they should furnish the following particulars while quoting against this tender, failing which the offer may be summarily ignored :-

- a) The precise relationship between the foreign manufacturer/Principals and their Indian agents/associates.
- b) The mutual interest which the manufacturer/Principals and the Indian agent/associates have in the business of each other.
- c) Any payment, which the agent/Associate receives in India or abroad from the manufacturer/Principal whether as commission for the contract or as general retainer fee.
- d) Indian agent's Income Tax Permanent Account No.
- e) Past Performance of the agent.

**19.0 EMD/Bid Security Deposit for Import Offers :** Offers received without EMD/Bid Security Deposit shall be summarily rejected without any reference to the firm.

**20.0 Remittance to foreign supplier :** The Tenderers should note that the remittance to their foreign supplier will be permitted only in the national currency of such foreign suppliers.

**21. Force Majeure clause:**

21.1. Force Majeure means an event beyond the control of the supplier and not involving the supplier's fault or negligence and which is not foreseeable. Such events may include, but are not restricted to acts of the purchaser either in its sovereign or contractual capacity, wars or revolutions, hostility, acts of public enemy, civil commotion, sabotage, fires, floods, explosions, epidemics, quarantine restrictions, strikes, lockouts and freight embargoes. However, it should not be used by a party to effectively to escape liability for bad performance.

21.2. If there is delay in performance or other failures by the supplier to perform its obligation under its contract due to event of a Force Majeure, the supplier shall not be held responsible for such delays/failures.

- 21.2.1 If a Force Majeure situation arises, the supplier shall promptly notify the purchaser in writing of such conditions and the cause thereof within twenty one days of occurrence of such event with reasonable evidence thereof. Unless otherwise directed by the purchaser in writing, the supplier shall continue to perform its obligations under the contract as far as reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the Force Majeure event.
- 21.2.2 If the performance in whole or in part or any obligation under this contract is prevented or delayed by any reason of Force Majeure for a period exceeding sixty days, either party may at its option terminate the contract without any financial repercussion on either side.
- 21.2.3 There may be a Force Majeure situation affecting the purchase organization only. In such a situation the purchase organization is to take up with the supplier on similar lines as above for further necessary action.

## **22.00. SETTLEMENT OF DISPUTES (ARBITRATION)-**

**22.01. Conciliation of disputes:** All disputes and differences of any kind whatsoever arising out of or in connection with the contract, whether during the currency of the contract or after its completion and whether before or after the determination of the contract, shall be referred by any of the parties to the concerned "Chief Materials Manager (CMM) " or "Divisional Railway Manager" or "Executive Director" through "Notice of Dispute". CMM or Divisional Railway Manager or Executive Director shall, within 30 days after receipt of "Notice of Dispute", notify the name of sole conciliator to the parties.

The Conciliator shall assist the parties to reach an amicable settlement in an independent and impartial manner within the terms of contract.

If the parties reach agreement on settlement of the dispute, they shall draw up a written settlement agreement duly signed by parties and conciliator. When the parties sign the settlement agreement, it shall be final and binding on the parties.

The parties shall not initiate, during the conciliation proceedings, any arbitral or judicial proceedings in respect of dispute that is the subject matter of the conciliation proceedings.

The conciliation proceedings shall be terminated:

1. By the signing of the settlement agreement, on the date of agreement; or
2. By written declaration of the conciliator, after consultation with the parties, to the effect that further efforts at conciliation are no longer justified, on the date of declaration; or
3. By a written declaration of any party to the conciliator to the effect that the conciliation proceedings are terminated, on the date of declaration;

**22.02 Matters Finally Determined by the Railway:** All disputes and differences of any kind whatsoever arising out of or in connection with the contract, whether during the currency of the contract or after its completion and whether before or after the determination of the contract, shall be referred by the contractor to



the General Manager (for the purpose of para 22.00 the term General Manager shall imply Additional General Managers of Zonal Railways, General Managers for Production Units, Director General (Railway Stores), Member of the Railway Board, Head of the Organisation in case of contracts entered into by other organizations under the Ministry of Railways) and the General manager shall, within 120 days after receipt of the representation, make and notify decisions on all matters referred to by the Contractor in writing. Provided that matters for which provision has been made in any Clause of the Special or General Conditions of the Contract shall be deemed as 'excepted matters' (matters not arbitrable) and decisions of the Railway authority thereon shall be final and binding on the Contractor; provided further that 'excepted matters' shall stand specifically excluded from the purview of the Arbitration Clause.

Provided further that where Railways has raised the dispute, para 22.02 shall not apply.

### **22.03: Demand for Arbitration:**

**22.03(i):** In the event of any dispute or difference between the parties hereto as to the construction or operation of this contract, or the respective rights and liabilities of the parties on any matter in question, dispute or difference on any account, or if the Railway fails to make a decision within 120 days (as referred in 22.02), then and in any such case, but except in any of the "excepted matters" referred to in Clause 22.02 of these Conditions, parties to the contract, after 120 days but within 180 days of their presenting their final claim on disputed matters shall demand in writing that the dispute or difference be referred to arbitration. Provided that where the claim is raised by Railways para 22.03(i) shall not apply.

**22.03(ii)(a):** The demand for arbitration shall specify the matters which are in question, or subject of the dispute or difference as also the amount of claim item-wise. Only such dispute or difference, in respect of which the demand has been made, together with counter claims or set off, shall be referred to arbitration and other matters shall not be included in the reference.

**22.03(ii)(b):** The parties may waive off the applicability of Sub-Section 12(5) of Arbitration and Conciliation Act 1996 (as amended), if they agree for such waiver in writing, after dispute having arisen between them.

**22.03(iii)(a):** The Arbitration proceedings shall be assumed to have commenced from the day, a written and valid demand for arbitration is received by the Railway.

**22.03(iii)(b):** The claimant shall submit his claims stating the facts supporting the claims along with all the relevant documents and the relief or remedy sought against each claim within a period of 30 days from the date of appointment of the Arbitral Tribunal.

**22.03(iii)(c):** Respondent shall submit its defense statement and counter claim(s), if any, within a period of 60 days of receipt of copy of claims from Tribunal, unless otherwise extension has been granted by Arbitral Tribunal.

**22.03(iii)(d):Place of Arbitration:** The place of arbitration would be within the geographical limits of the Division of the Railway where the cause of action arose or the Headquarters of the concerned Railway or any other place with the written consent of both the parties.

**22.03 (iv):** No new claim shall be added during proceedings by either party. However, a party may amend or supplement the original claim or defense thereof during the course of arbitration proceedings subject to acceptance by Tribunal having due regard to the delay in making it.

**22.04: Obligation During Pendency of Arbitration:** Supplies under the contract shall, unless otherwise directed by the Purchase Officer, continue during the arbitration proceedings, and no payment due or payable by the Railway shall be withheld on account of such proceedings, provided, however, it shall be open for Arbitral Tribunal to consider and decide whether or not supplies should continue during arbitration proceedings.

**22.05: Appointment of Arbitrator:**

**22.05(a): Appointment of Arbitrator where applicability of section 12(5) of Arbitration and Conciliation Act has been waived off:**

(i): In cases where the total value of all claims in question added together does not exceed **Rs.1,00,00,000/- (Rupees One Crore only)**, the Arbitral Tribunal shall consist of a Sole Arbitrator who shall be a Gazetted Officer of Railway not below Junior Administrative Grade, nominated by the General Manager. The sole arbitrator shall be appointed within 60 days from the day when a written and valid demand for arbitration is received by General Manager.

(ii): In cases where the total value of all claims in question added together exceeds **Rs.1,00,00,000/- (Rupees One Crore only)**, the Arbitral Tribunal shall consist of a panel of three Gazetted Railway Officers not below Junior Administrative Grade or 2 Railway Gazetted Officers not below Junior Administrative Grade and a retired Railway Officer, retired not below the rank of Senior Administrative Grade Officer, as the arbitrators. For this purpose, the Railway will send a panel of at least four (4) names of Gazetted Railway Officers of one or more departments of the Railway which may also include the name(s) of retired Railway Officer(s) empanelled to work as Railway Arbitrator to the Contractor within 60 days from the day when a written and valid demand for arbitration is received by the General Manager.

Contractor will be asked to suggest to General Manager at least 2 names out of the panel for appointment as Contractor's nominee within 30 days from the date of dispatch of the request by Railway. The General Manager shall appoint at least one out of them as the Contractor's nominee and will, also simultaneously appoint the balance number of arbitrators either from the panel or from outside the panel, duly indicating the 'presiding arbitrator' from amongst the 3 arbitrators so appointed. General Manager shall complete this exercise of appointing the Arbitral Tribunal within 30 days from the receipt of the names of Contractor's nominees. While nominating the arbitrators, it will be necessary to ensure that one of them is from the Accounts Department. An officer of Selection Grade of the Accounts Department may be considered of equal status to the officers in Senior Administrative Grade of other departments of the Railway for the purpose of appointment of arbitrator.

iii: The serving railway officer working in arbitral tribunal in the ongoing arbitration cases as per clause 22.05(a)(i) and clause 22.05(a)(ii) above, can continue as arbitrator in the tribunal even after his retirement.

**22.05(b): Appointment of Arbitrator where applicability of Section 12 (5) of Arbitration and Conciliation Act has not been waived off:**

(i) In cases where the total value of all claims in question added together **does not exceed Rs. 50,00,000/- (Rupees Fifty Lakh only)**, the Arbitral Tribunal shall consist of a Retired Railway Officer, retired not below the rank of Senior Administrative Grade Officer, as the arbitrator.

For this purpose, the Railway will send a panel of at least four (4) names of retired Railway Officer(s) empanelled to work as Railway Arbitrator duly indicating their retirement dates to the Contractor within 60 days from the day when a written and valid demand for arbitration is received by the General Manager.

(ii) Contractor will be asked to suggest to General Manager at least 2 names out of the panel for appointment as arbitrator within 30 days from the date of dispatch of the request by Railway. The General Manager shall appoint at least one out of them as the arbitrator.

(iii) In cases where the total value of all claims in question added **together exceeds Rs.50,00,000/- (Rupees Fifty Lakh only)**, the Arbitral Tribunal shall consist of three (3) retired Railway Officers, retired not below the rank of Senior Administrative Grade Officer. For this purpose, the Railway will send a panel of at least four (4) names of retired Railway Officer(s) empanelled to work as Railway Arbitrators duly indicating their retirement date to the Contractor within 60 days from the day when a written and valid demand for arbitration is received by the General Manager.

Contractor will be asked to suggest to General Manager at least 2 names out of the panel for appointment as Contractor's nominee within 30 days from the date of dispatch of the request by Railway. The General Manager shall appoint at least one out of them as the Contractor's nominee and will, also simultaneously appoint the balance number of arbitrators either from the panel or from outside the panel, duly indicating the 'Presiding Arbitrator' from amongst the 3 arbitrators so appointed. General Manager shall complete this exercise of appointing the Arbitral Tribunal within 30 days from the receipt of the names of Contractor's nominees. While nominating the arbitrators, it will be necessary to ensure that one of them has served in the Accounts Department.

**22.05(c)(i): If the contractor does not suggest his nominees for the arbitral tribunal within the prescribed time frame, the General manager shall proceed for appointment of arbitral tribunal within 30 days of the expiry of such time provided to contractor.**

**22.05(c)(ii)** If one or more of the arbitrators appointed as above refuses to act as arbitrator, withdraws from his office as arbitrator, or vacates his/their office/offices or is/are unable or unwilling to perform his functions as arbitrator for any reason whatsoever or dies or in the opinion of the General Manager fails to act without undue delay, the General Manager shall appoint new arbitrator/arbitrators to act in his/their place in the same manner in which the earlier arbitrator/arbitrators had been appointed. Such re-constituted Tribunal may, at its discretion, proceed with the reference from the stage at which it was left by the previous arbitrator (s).

**22.05(c)(ii)(a) Fast Track procedure:** Parties to the arbitration agreement, may, at any stage either before or at the time of appointment of the arbitral tribunal, agree in writing to have their dispute resolved by fast track procedure specified in Section 29B of the Arbitration & Conciliation Act, 1996, as amended.

**22.05(c)(ii) (b)** Before proceeding into the merits of any dispute, the Arbitral Tribunal shall first decide and pass its orders over any plea submitted/objections raised by any party, if any, regarding appointment of Arbitral Tribunal, validity of arbitration agreement, jurisdiction and scope of the Tribunal to deal with the dispute (s) submitted to arbitration, applicability of time 'limitation' to any dispute, any violation of agreed procedure regarding conduct of the arbitral proceedings or plea for interim measures of protection and record its orders in day to day proceedings. A copy of the proceedings duly signed by all the members of tribunal should be provided to both the parties.

**22.05(c)(iii):****(i) Qualification of Arbitrator (s):**

- (a)** Serving Gazetted Railway Officers of not below JA Grade level.
- (b)** Retired Railway Officers not below SA Grade level, one year after his date of retirement.
- (c)** Age of arbitrator at the time of appointment shall be below 70 years.

**(ii)** An arbitrator may be appointed notwithstanding the total number of arbitration cases in which he has been appointed in the past.

**(iii)** While appointing arbitrator(s) under Sub-Clause 22.05(a)(i), 22.05(a)(ii), 22.05(b)(i) & 22.05(b)(ii) above, due care shall be taken that he/they is/are not the one/those who had an opportunity to deal with the matters to which the contract relates or who in the course of his/their duties as Railway servant(s) expressed views on all or any of the matters under dispute or differences. A certification to this effect as per **Annexure-11** shall be taken from Arbitrators. The proceedings of the Arbitral tribunal or the award made by such Tribunal will, however, not be invalid merely for the reason that one or more arbitrator had, in the course of his service, opportunity to deal with the matters to which the contract relates or who in the course of his/their duties expressed views on all or any of the matters under dispute.

**22.05(d)(i):** The arbitral award shall state item wise, the sum and reasons upon which it is based. The analysis and reasons shall be detailed enough so that the award could be inferred there from.

**22.05(d)(ii):** A party may apply for corrections of any computational errors, any typographical or clerical errors or any other error of similar nature occurring in the award of a Tribunal and interpretation of a specific point of award to Tribunal within 60 days of receipt of the award.

**22.05(d)(iii):** A party may apply to Tribunal within 60 days of receipt of award to make an additional award as to claims presented in the arbitral proceedings but omitted from the arbitral award.

**22.06:** In case of the Tribunal, comprising of three members, any ruling on award shall be made by a majority of members of Tribunal. In the absence of such a majority, the views of the Presiding Arbitrator shall prevail.

**22.07:** Where the arbitral award is for the payment of money, no interest shall be payable on whole or any part of the money for any period till the date on which the award is made.

**22.08(a):** The cost of arbitration shall be borne by the respective parties. The cost shall inter-alia include fee of the arbitrator(s), as per the rates fixed by Railway Board from time to time and the fee shall be borne equally by both the parties. Further, the fee payable to the arbitrator(s) would be governed by the instructions issued on the subject by Railway Board from time to time irrespective of the fact whether the arbitrator(s) is/are appointed by the Railway Administration or by the court of law unless specifically directed by Hon'ble Court otherwise on the matter.

**22.08(b):** Sole arbitrator shall be entitled for 25% extra fee over the fee prescribed by Railway Board from time to time.

**22.09:** The Micro, Small and Medium Enterprises Development (MSMED) Act, 2006 provides parties to a dispute (where one of the parties is a Micro or Small Enterprise) to make a reference to Micro and Small Enterprises Facilitation Council, if the dispute is in regard to any amount due under Section 17 of the MSMED Act, 2006. In case a Micro or Small Enterprise, being a party to dispute, makes a reference under the provisions in MSMED Act 2006, the provisions of the MSMED Act 2006, shall prevail over conciliation and arbitration agreement as contained in the contract.

**22.10:** Subject to the provisions of the aforesaid Arbitration and Conciliation Act 1996 and the rules there under and relevant para of IRS Conditions of Contract and any statutory modifications thereof shall apply to the appointment of arbitrators and arbitration proceedings under this Clause.

**(B) INSTRUCTIONS FOR GUIDANCE OF CONTRACTORS**

- 1.0** On behalf of the President of India, the Principal Chief Materials Manager/Northeast Frontier Railway, Maligaon, Guwahati-781011 (hereinafter referred to as the Purchaser), invites electronic tenders for the supply as set forth in the Notice Inviting Tender and "Item details" page attached with each electronic tender "Financial Rate page screen".
- 1.1** The tenderers are requested to carefully go through these Instructions and special Conditions included in this Unified Bidding Documents. By submitting the quotation, they undertake to abide by the IRS Conditions of Contract, special conditions mentioned in Unified Bidding documents and additional conditions specified in the Tender Documents. The tenderers digital signature on the E-Tender form will be considered as their confirmation That they have read and accepted all the conditions laid down in the Unified Bidding Documents as well as tender schedule, comprising of techno-commercial offer form (including additional special conditions attached to E-Tender) and Financial offer form, unless specific deviation is quoted in the techno-commercial offer form.
- 1.2** Electronic Offers received before due Date And time (IST) of tender opening In the Electronics Tender Box available in website [www.ireps.gov.in](http://www.ireps.gov.in) will only be considered. Any offers received through manual / fax / e-mail e t c will not be considered and will be treated as invalid offers.
- 1.3** The contract, if placed, shall be governed by (i) IRS Conditions of Contract (ii)Instructions to tenderers (iii) Special conditions(iv)Additional Special Conditions applicable to a Particular tender as given under the respective links in the Indian Railway e- procurement portal [www.ireps.gov.in](http://www.ireps.gov.in). In case of any contradiction between IRS Conditions of Contract and Instructions to tenderers/Special conditions/Additional Special Conditions applicable to a Particular tender the later will prevail over IRS Conditions of Contract. Further, in case of any contradiction between IRS Conditions of Contract/ Instructions to tenderers/Special conditions and Additional Special Conditions applicable to a Particular tender, the later will prevail over all other conditions.
- 1.4** E-Tender document essentially consists of following: –
- i. IRS conditions of contract as uploaded in [www.ireps.gov.in](http://www.ireps.gov.in) portal under Railway Board document link
  - ii. Instructions to e-Tenderers
  - iii . Special Conditions of Contract
  - iv. Additional Special Conditions of Contract applicable to the particular tender
  - v. Techno-commercial Offer Form Including Attached Documents, if any.
  - vi. Financial Offer Form / rate page.
- 1.4.1** The documents (i) to (iii) are part of this Unified Bidding Document and documents (iv) to (vi) are part of concerned tender available on IREPS website [www.ireps.gov.in](http://www.ireps.gov.in).
- 1.5.1** Pre-requisites for vendors desirous of participating in e – tenders of Indian Railways
- Vendors intending to participate in the e-tenders available in the e-procurement web site [www.ireps.gov.in](http://www.ireps.gov.in) will have to obtain a Class III B type digital signature with Company name. The list of certifying authorities issuing the Digital Signature is available in the website [www.cca.gov.in](http://www.cca.gov.in) under the link "Licensed CAs".
- 1.5.2** With the Digital Signature Certificate they will have to register themselves on-line using the link "New Vendors" available in the home page of the website duly filling the complete information as required in the web page and attaching their digital signature duly using "Sign & Submit" button. Upon registration, the website will provide a registration number, which the vendors may note for future correspondence.

- 1.5.3** Vendors are advised that CRIS/ NEW DELHI, the Web Master, will require minimum of 3 (three) clear working days to provide with user-id and password which will be sent to their e-mail address provided by them during the registration process. In case of any difference in the information provided by the vendor and that available in the digital signature used during registration, the request will be rejected and an e-mail will be sent duly assigning the reason for rejection.
- 1.5.4** The digital signature certificate (DSC) are issued with limited currency / validity date. The vendors are required to re-register themselves with the [www.ireps.gov.in](http://www.ireps.gov.in) web site whenever their DSC is renewed.

## **2.0PROCEDURE FOR PAYMENT OF EMD:**

**The Procedure for Submission of Earnest Money is given below.**

- 2.1** If a Tenderer falls under exempted category, they can select “exempted” under the “Mode of Payment”. They will have to upload the scanned copy of requisite documentary evidence in support of their claim under “Attach documents” in the Bid process (Techno Commercial Bid details). For MSEs the exemption from EMD is item specific. Therefore firms should attach with their e-offer scanned copy of relevant pages of current and valid proof of their being MSE registered indicating validity of registration, the Classification list showing tenderer’s registration with any of the agencies given in Para 14.2 (a) (i) of “Special Conditions” for the tendered item.
- 2.2** If not exempted, they will have to remit the EMD through  
(i) Payment Gateway Facility
- 2.3** Payment Gateway facility: Vendors should remit the Earnest money online using their own valid credit card/Debit card (in lieu of cash) vendor can use payment gateway option as is available on the website for E-tendering by using the \$ action button on tender such result page and fill and submit required data about amount, Bank, credit/debit card details in the menu driven screens which are as per approved guidelines of RBI.

## **3.0 INSTRUCTIONS FOR FILLING OF TENDER SCHEDULE:**

- 3.1** The tenderers can submit on line ELECTRONIC OFFERS by visiting Indian Railways Electronic Procurement Portal at the address [www.ireps.gov.in](http://www.ireps.gov.in) and submit online offers after logging into the website by giving their User-id / Password and valid Digital Signature Certificate.
- 3.2** The tenderers after logging into the system can use Quick Search (or) Advance Search option to search for the required tender. They will have to select the “Submit payment Details” button if not exempted and enter their instrument details and sign and submit the same using their Digital signature Certificate.

- 3.3** The tenderers will have to then select the “Enter to Bid “ button to submit their bid details. They can select the following TAB PAGES one by one , fill the same and „sign and submit” using Digital Signature Certificate.

Sr.No.	Tab Page	Sr. No.	Tab Page
1.	Eligibility Criteria	6.	Technical Specification
2.	Terms & Conditions	7.	Performance Statement
3.	Commercial Deviation	8.	Attach Documents
4.	Technical Deviation	9.	Financial Offer
5.	Checklist		

- 3.4** The commercial offers must be filled and submitted in the prescribed standard " Financial Offer " screen available in the website and should be attached using valid Digital signature (Class III b with Company Name) obtained from an approved Certifying Agency. On completion of Bid process (Financial Offer) the system generates a “unique Bid-id” which the vendors can print for future reference.
- 3.5**
- All the mandatory fields of the Techno-commercial Offer Form and Financial Offer Form (i.e. Rate page) including basic rate, GST, freight and any other charges have to be filled up by the vendor.
  - The rate shall be as indicated in the unit mentioned in the tender schedule which cannot be changed or altered by the vendor.
  - All inclusive rates on FOR destination basis shall be automatically calculated by the system and shown to the vendor before submission of offer. This all inclusive rate will alone be considered for evaluation of tender i.e. inter-se ranking.
  - Vendors are advised not to enter any rate element (including discount) in the remarks column available in the Financial Rate Page. Please note that any rate / discount mentioned in remark column or mentioned elsewhere in any attached document will not be taken for calculation of all inclusive rate and inter-se ranking / evaluation purpose.
- 3.6** The system will prompt the vendors to attach their D S C whenever they click any of the “Sign & Submit” button available in the “ Tab page” and it is mandatory for the vendors to use their Digital Signature Certificate to attach their digital signature.
- 3.7** Preparation of Performance Statement Off line and Uploading On-line : The vendors can also prepare their performance statement off-line in the prescribed format given in the performance tab and attach the same under performance tab using their DSC.

**3.8 CHECK LIST OF DOCUMENTS TO BE ATTACHED WITH E-TENDER :** The Vendors are advised to fill "Compliance to special tender condition / Checklist" with each offer by specifically stating "yes" or "No" against each special condition / Checklist and in case of a "No" must fill reason for not agreeing with that special condition / Checklist in the remark entry box as provided therein.

1. Proof of Tender Cost and EMD scanned copy or Scanned copy of proof of their being MSE registered with any of the agencies given in Para 14.2 (a) (i) of "Special Conditions" indicating validity of registration, together with classification list duly highlighting the tendered items.
2. Scanned copy of approval letter from RDSO/ CORE/ PUs etc i.e. the Approving Agency's indicating current validity along with approval of their QAP etc, wherever restricted procurement from approved sources. OR  
Scanned copy of approval from CME/CEE/CSTE of Railway if any for tendered item.  
OR  
Scanned Copy of their Registration Certificate with NF Railway with Registration Number, monetary value limit, currency thereof and trade groups for which registered.
3. Following document to be attached by approved vendors for claiming order - as specified in eligibility criteria of special conditions.
  - (i) Past performance of last 3 years by enclosing copies of purchase orders / Inspection Certificate / Receipt Notes etc.
  - (ii) Documents in support of their capacity cum capability.
  - (iii) Outstanding order load of N.F. Rly. and other Rlys. / Pus for :
    - (a) Tendered items
    - (b) Other items
4. Performance statement against Railway Orders for supply of same or similar items as per performance tab of the Tender Schedule along with copies of such POs. Correct status / supply position of pending orders and inspection certificate / Receipt Note for completed PO.
5. Details of Machinery and Plant, other Equipments, Testing facilities, Quality Management /Control Systems and details of Technical manpower available as per Annexure-1.
6. Scanned Copy of Permanent Account Number (PAN) from Income Tax Department.
7. If authorized agent of OEM, Tender specific authorization letter from OEM / principal with required undertaking as per eligibility criteria from OEM as well as dealer.



8. Scanned copy of NEFT mandate for payment purpose.
9. Clause wise compliance to specification / Tender Conditions wherever required.
10. Deviation Statement from technical specification & commercial terms and conditions if any.
11. Scanned copy of GSTIN Registration.

**NOTE:** Additional documents if submitted over and above what has been asked for in the tender schedule, will not be taken into account for tender evaluation purpose and decision making.

#### **4.0 ORIGINAL OFFER AND REVISION THERE OF:**

- 4.1 The vendors can submit a revised commercial offer anytime before the stipulated opening date and time and in such case the last revised offer submitted at a later time and date shall be considered as The offer superseding all the previously submitted offers for that item / items of the tender.
- 4.2 The Vendors in their own interest are advised to visit the [www.ireps.gov.in](http://www.ireps.gov.in) web site regularly and check for the corrigendum if any and submit revised offer wherever warranted.

#### **5.0 OPENING OF E-TENDER BOX AND VIEWING OF TABULATION STATEMENT:**

- 5.1 Electronic Tender boxes is managed by CRIS in the secured Server duly Time locked (as per IST) and available 24 hrs x 7 days a week. Tenderers are advised to ensure that their electronic -offer is submitted well within stipulated date and time. Electronic offers if attempted after the pre-stipulated date and time will not be received and vendor will be notified that 'You cannot submit offer as you are late'. No Manual / Late / Delayed offers are permitted or received against an Electronic Tender. E-tenders can be opened only after stipulated opening date and time with secured digital permissions of minimum two authorised Railway officials using their secured Digital permissions and passwords and also their own digital private keys as obtained from Govt. of India approved Certifying Agency. Electronic offers are first decrypted and verified for establishing the Legal identity of digital Signer of each electronic offer / offers. Once decryption, verification and acknowledgement of digitally signed offers is complete vendors can directly view And access details from the website links such as "View Tabulation". On line tabulation statement of all electronic commercial offers can also be downloaded by participating vendors for their records.
- 5.2 The vendors are not required to attend the tender opening. All participant vendors who have submitted valid electronic offers can view their Financial and Techno-commercial Tabulation Statements from any remote location using internet access by visiting the website [www.ireps.gov.in](http://www.ireps.gov.in) and also view their own offer details as well as the Tender Tabulation statement which is generated based on all inclusive rate per unit of all the commercial offers as electronically received.
- 5.3 In case of any technical problems arising during the electronic tender opening process or if the tender opening date is declared as holiday by Government of India, the tenders due for the day will be opened on the next working day.

#### **6.0 QUOTATION OF RATES:** Rates quoted in Financial Rate Page of e-tender shall only be considered.

- (a) The tenderers should quote strictly in accordance with the columns/fields provided in financial rate page of e-tender viz. separately basic price, unconditional discounts, packing charges, GST and Freight charges up to destination applicable per each unit.

Price quoted should invariably be for delivery to the consignee / FOR Station of dispatch and inclusive of all charges. Any other charges should be quoted in absolute value as specified in column / field of "Other Charges" of financial rate page e.g. insurance charges, forwarding charges. The basic rate should be quoted in units as per e-tender schedule which does not permit any other units.

**6.1** Quotation in Foreign Currency :The present e-tender system does not allow quotation of rates in foreign currency and when implemented will be notified.

**7.0** **STATEMENT OF DEVIATIONS:** The tenderer should quote deviation to item description in the deviation page

1. Technical deviations from tendered specification should be clearly stated in deviation statement.
2. The deviations if any from IRS conditions of contracts & special conditions of tender should also be clearly stated in the deviation statement of e-tender / offer.
3. The offers with technical deviations and IRS/Special Tender Conditions are liable to be ignored / rejected.
4. Whether technical deviations are improvement over tendered specification or otherwise should be indicated.

## **8.0 EARNEST MONEY DEPOSIT(EMD):**

**8.1** There shall be no exemption for submission of EMD for any tender or by any tenderer except following:

- a) Tender cases of value upto Rs. 5 (Five) lakhs.
- b) Micro and Small Enterprises (MSEs) registered for the tendered item in terms of Railway Board's letter No. 2010/RS(G)/363/1 dated 05. 07. 2012
- c) Other Railway's and Government Departments in terms of Railway Board's letter No. 2004/RS(G)/779/11. Date 24.07.2007
- d) Indian Ordinance Factories in terms of Railway Board's letter No.92/RSS(G)/363/1 dated 08.04.1993
- e) PSUs owned by Ministry of Railways PSUs for the group of items that are manufactured by item in terms of Railway Board's letter No. 2003/RS/(G)/779/5 dated 10.09.2004

**8.2** Offer submitted without EMD shall be summarily rejected.

**8.3** EMD amount shall be 2% of the estimated value of the tender rounded off to nearest higher Rs. 10 (ten) for tender cases with estimated value above Rs.5 lakh and up to Rs.20 Cr. subject to maximum Rs.20 lakh.

**8.4** EMD amount shall be 1% of the estimated value of the tender rounded off to nearest higher Rs. 10 (ten) for tender cases with estimated value above Rs.20 Cr. and up to Rs.100 Cr subject to maximum Rs.50 lakh.

**8.5** EMD amount shall be 0.5% of the estimated value of the tender rounded off to nearest higher Rs. 10 (ten) for tender cases with estimated value above Rs.100 Cr. subject to maximum Rs.1 Cr.

8.6 **Validity of EMD:** EMD should remain valid for a period of 45 days beyond the final bid validity period, which should also be extended whenever bid validity is extended. No interest will be allowed on EMD.

## 9.0 **Return of EMD:**

i) The EMD of unsuccessful bidders will be returned to them within 30 days after expiry of final bid validity.

ii) EMD will be refunded to the successful tenderers on receipt of Security money or retained in the case of the successful Tenderer for adjustment towards the Security Deposit, as required to be deposited by the successful Tenderer for due fulfillment of the contract.

9.1 **Forfeiture of EMD :** When a suppliers undertake to keep the offers valid for a certain period but either withdraw the offer or revise the same within validity, the purchaser gets a right to forfeit the EMD.

9.2 The offers not accompanied by requisite EMD will be ignored summarily, unless falling in exempted category. The firm claiming exemption from EMD should clearly indicate valid reasons for such claim duly attaching scanned copies of relevant documents with their e-offers. The tenderers request for adjustment of EMD relating to their earlier tenders will not be considered. They will have to deposit E M D afresh.

## 10.0 **SECURITY DEPOSIT(SD):**

10.1 There shall be no exemption from submission of Security Deposit (SD) for any tender or by any tenderer except following:

- a) The Store contract cases of value upto Rs. 1 (one) lakh.
- b) Other Railways and Government Departments in terms of Railway Board's letter No. 2004/RS(G)779/ 11 dated 24.07.2007.
- c) Indian Ordinance factories in terms of Railway Board's letter No.92/RSS(G)363/1 dated 08.04.1993.
- d) PSUs owned by Ministry of Railways and PSUs for the group of items that are manufactured by them in terms of Railway Board's letter No.2003/RS(G) 779/5 dated 10.09.2004.

10.2 Security Deposit (SD) amount shall be 10% of the contract value, subjected to maximum of Rs.5 Cr., rounded off to nearest higher Rs 10 (ten). There shall, however, be no ceiling for SD in Global Tenders for procurement of Stores.

- 10.3 Security Deposit (SD) shall remain valid for a period of 60 days, beyond the date of completion of all contractual obligations.
- 10.4 The successful tenderer shall have to deposit SD within 14 days of issue of Letter of Acceptance issued online. No Extension of time for submission of SD shall be granted.
- 10.5 In the event of successful tender (s) failing to deposit /submit SD in acceptable from within the prescribed period as aforesaid, the EMD submitted by such successful tenderer(s) shall be automatically adjusted towards SD in view of the fact that in most of the cases, EMD amount would be adequate to meet the SD amount, In case where available EMD amount is less than required SD amount successful tenderer does not deposit the balance SD amount within stipulated time, then EMD shall be forfeited and case be dealt with as that of withdrawal of offer by the tenderer as per extant instructions. This will resolve the problem faced by purchaser to great extent due to intentional delay in submission of SD by success full tenderer(s).
- 10.6 In case, the MSEs exempted from submission of EMD fail to submit SD in stipulated time, damages shall be levied, for failure to act as per offer with regard to condition relating to SD, equal to EMD amount, as would have been applicable if the offer was from a non-MSE vendor. These damages shall be treated as recoveries outstanding against the vendor incorporated in the tender documents.
- 10.7 Risk Purchase clause shall not be applicable wherever SD clause is applicable. Wherever SD is not taken Risk Purchase will be made as per extent guidelines.
- 10.8 **Validity of SD:** Security Deposit should remain valid for a minimum period of 60 days beyond the date of completion of all contractual obligations of supplier. The validity of SD should be extended, wherever delivery period of the contract is extended. No interest will be allowed on SD.
- 10.9 Return of Security Deposit: The SD of the successful supplier will be returned to them within 60 days after completion of all contractual obligations.
- 10.10 **Forfeiture of SD :** The tenderers may specifically note Para 0502, 0503 & 0504 of IRS conditions of contract in regard to forfeiture of SD.

**10.10.1** In the event of any breach on the part of the Contractor of the terms of the contract, or of the Contractor causing loss to the Railway Administration through fraud, negligence, or any other action (direct or contributory) of failing to pay on demand to the Railway Administration any moneys which he shall be liable to pay under or by virtue of these conditions or by-law, the President shall be at liberty either to confiscate the Security Deposit or to appropriate to the payment of such moneys, either the whole of Security Deposit or so much thereof as may be necessary to satisfy its claims and the Contractor shall pay forth with to the Railway Administration, such sum or sums, of money as may be required to replace the amount so appropriated by the Railway Administration. If the Security Deposit shall be insufficient to pay the whole of such moneys due by the Contractor it shall be lawful for the Railway Administration to recover any such balance by deducting the same from any moneys then due or to become due by the Railway Administration to the Contractor under or by virtue of the contract or otherwise by instituting legal proceedings against the Contractor.

**10.10.2** No interest shall be payable on security deposit. The purchaser shall be entitled to deduct from the said deposit any loss or damage which the purchaser may be put to by reason of any act or default committed by the contractor and to call upon the Contractor to maintain the deposit as its original limit by making further deposits. In the event of the contractor failing to make and to maintain a security deposit in the manner aforesaid, the purchaser shall be entitled to cancel the acceptance of Tender.

**10.10.3** The Security deposit will be refunded to the contractor on due fulfillment and satisfactory completion of the contract within a reasonable time and on submission of a Clearance Certificate by the Contractor to the effect that the Contractor has received all dues arising out of this contract and that he has no claim whatsoever on the President, against the contract.

#### **11.0 ACCEPTABLE FORM OF SECURITY DEPOSIT (SD):**

**11.1** The SD in supply contracts should be in any one of these forms viz., Deposit receipt, Pay Orders, Demand Drafts, Guarantee Bonds issued by nationalized or Scheduled Commercial Banks, Bonds of Indian Railway Finance Corporation and KRCL Bonds.

**11.2** The payment of Security Deposit in the form of Pay Order / Demand Draft should be made in favour of PFA/NF Railway, Maligaon 781011.

**11.3** In addition to above mentioned forms of payment, Security deposit may be paid in the form of Government Securities and a deposit in the Post Office Saving Banks also.

**12.0 PERFORMANCE GUARANTEE:** As and when required, for Machinery and Plant items and for items requiring specified performance, the tenderer will be asked to give a Performance Guarantee (in the form of a Bank Guarantee as per Annexure-4 of this document) to cover the performance of the item to be supplied. No separate consent will be asked from the tenderers for the same.

**13.0 BANKGUARANTEE :** In case, Bank Guarantee is submitted by suppliers /contractors, the same should be in the proper prescribed format for Bank Guarantee (BGs) as per Annexure-4. The Bank Guarantees (BGs) to be submitted by suppliers/contractors should be sent directly to the Principal Chief Materials Manager/NF Railway by the issuing bank under registered post (AD). In exceptional cases, where BGs are received through the contractors / suppliers etc, the issuing branch of the Bank would be requested to immediately send by Registered Post (AD) as unstamped duplicate copy of the Bank

Guarantee directly to the Railways with a covering letter to compare with the original BGs, so as to confirm that it is in order. The BGs received either directly from issuing Bank or through Contractor / Supplier will be verified verbatim with the original as uploaded & available on ireps website, to establish its genuineness / authenticity. As an additional measure of abundant precaution, all BGs would also be independently verified by the purchaser.

#### **14.0 STATUTORY LEVIES/COMPLIANCE WITH GST ACT 2017:**

##### **14.1**

- (a) (i) All the bidders / tenders should ensure that their offers are GST compliant and their quoted tax structure/rates are as per GST Law.
- (ii) In no case any claim for increase in GST rate due to increase in sales turn over during the currency of the contract will be admissible.
- (iii) If Tenderers misclassify the goods under relevant GST Rules, Railway will not pay increased GST due to misclassification.
- (iv) Tenderer should quote GST rate separately. All inclusive rate should not be quoted.

##### **14.2**

- (a) Tenderer should furnish his GSTIN with copy of registration with his offer. In case the bidder/tenderer is exempted or under compensation scheme, they should declare so while submitting their offer.
- (b) The state wise GSTIN for NF Railway is as below:

<b>1. Bihar</b>	<b>10AAAGM0289C1ZY</b>	<b>2. Mizoram</b>	<b>15AAAGM0289C1ZO</b>
<b>3. Sikkim</b>	<b>11AAAGM0289C1ZW</b>	<b>4. Tripura</b>	<b>16AAAGM0289C1ZM</b>
<b>5. Arunachal Pradesh</b>	<b>12AAAGM0289C1ZU</b>	<b>6. Meghalaya</b>	<b>17AAAGM0289C1ZK</b>
<b>7. Nagaland</b>	<b>13AAAGM0289C1ZS</b>	<b>8. Assam</b>	<b>18AAAGM0289C1ZI</b>
<b>9. Manipur</b>	<b>14AAAGM0289C1ZQ</b>	<b>10. West Bengal</b>	<b>19AAAGM0289C1ZG</b>

- (c) Tenderer should submit the declaration as follows:

“We hereby declare that additional set offs/input tax credit to the tune of Rs.\_\_\_\_\_ has accrued and accordingly the same is being passed on to the purchaser/Rlys and to that effect the payable amount may be adjusted”.

- (d) The tenderer while quoting for tenders should give the following declaration:-

“We hereby declare that in quoting the above price, we have taken into account the full effect of the Input Tax Credits available under the GST Scheme introduced with effect from 1<sup>st</sup> July, 2017”.

The following clause should be included in all the quotations by the Suppliers:-

“We hereby declare that in quoting the above price we have taken into account the entire credit on inputs availed under the GST scheme introduced with effect from 1<sup>st</sup> July, 2017. We further agree to pass on such additional Input Tax Credits and set-offs as may become available in future in respect of all the inputs used for the manufacture of the final product on the date of these supply under the GST Scheme by way of reduction in price and advise the Purchaser accordingly. (Annexure-6).

- (e) We hereby undertake that in case if it is detected by Railways/Government that any input tax credit which has been accrued but not passed on to Railways, then Railways/purchaser will have full authority to recover the same from the contract or any other pending Railways/Government contract and no dispute to this effect will be raised by us".
- (f) Where the firm quote all inclusive price without mentioning any GST, present or future and have also not quoted Statutory Variation Clause, in such cases, the firms shall bear the future variations.
- 14.3** Tenderer should agree and confirm that he will pay GST collected from Railway within due date and upload the payment details in GSTIN to enable railway (purchaser) to obtain input tax credit.
- 14.4** Tenderers will examine the various provisions of The Central Goods and Service Tax Act, 2017(CGST)/Integrated Goods and Services Tax Act,2017 (IGST)/Union Territory Goods and Services Tax Act ,2017 (UGST)/respective State Goods and Services Tax Act(SGST) also, as notified by Central/State Govt. & as amended from time to time and applicable taxes before bidding. Tenderers will ensure that full benefit of Input Tax Credit (ITC) likely to be availed by them is duly considered while quoting rates.
- 14.5** The successful tenderer who is liable to be registered under CGST/IGST/SGST/UTGST Act shall ensure that they are registered and submit GSTIN along with other details as required under CGST/IGST/UTGST/SGST Act to Railway along with their offer as well as during submission of bills as per prescribed Proforma.
- 14.6** In case the successful tenderer is not liable to be registered under CGST/IGST/SGST/UTGST Act, the railway shall deduct the applicable GST from his/their bills under reverse charge mechanism (RCM) and deposit the same to the concerned tax authority. The bidder must declare to that effect while submitting the offer.
- 14.7** BILL PAYMENTS:
- (i) All suppliers are required to pass on any Input Tax Credit which accrues due to change in statutory tax regime. Suppliers are required to indicate such extra Input tax Credit in their bills which has been accrued to them under GST and also furnish a certificate of passing on such extra input tax credit to Railway as per attached Annexure
- (ii) The suppliers are also required to fill in the details required under GST regime in tax invoice as per format attached in Annexure. This will be in addition to the standard form which is submitted by suppliers.
- 14.8** The offers shall be evaluated based on the GST rate as quoted by each bidder and same will be used for determining the inter se ranking. While submitting offer, it shall be the responsibility of the bidder to ensure that they quote correct GST rate and HSN number.
- 14.9** Purchaser shall not be responsible for any misclassification of HSN number or incorrect GST rate if quoted by the bidder.
- 14.10** Wherever the successful bidder invoices the goods at GST rate or HSN number which is different from that incorporated in the purchase order; payment shall be made as per GST rate which is lower of the GST rate incorporated in the purchase order or billed.

**14.11** Vendor is informed that she/he would be required to adjust her/his basic price to the extent required by higher tax billed as per invoice to match the all inclusive price as mentioned in the purchase order.

**14.12** Any amendment to GST rate or HSN number in the contract shall be as per the contractual conditions and statutory amendments in the quoted GST rate and HSN number, under SVC.

**15.0 PAYMENT TERMS:**

**15.1** Payment for the stores or each consignment Thereof will be made to the Contractor on submission of bill accompanied by the prescribed documents mentioned in the contract.

**15.2** Tenderers should note that normal payment terms of Railways is 100% payment after Receipt and acceptance of the material at consignee's end, irrespective of stipulation of pre-inspection by any agency.

**15.3** For proven and approved suppliers with a good track record supply, 95% advance payment on proof of Receipt of the consignment i.e. Receipted Challan signed by a Gazetted Officer and Inspection Certificate Issued by the nominated inspection Agency as specified in the contract and balance 5% after receipt and acceptance of stores may be considered, in exceptional cases only. No Advance Payment will be permitted against proof of dispatch.

**15.4** For dispatch of material by road, it is the delivery challan of the supplier duly certified by the consignee Gazetted Officer towards receipt of material at consignee's end will constitute the proof of dispatch for the purpose of payment. For rail dispatch, clear and unqualified RR / PWB will be considered as the proof of dispatch.

**15.5** For purchase orders valuing up to Rs. 5 lakhs, no advance payment will be made and only 100% payment will be made against receipt and acceptance of the material by consignee i.e., against Receipt Note.

**15.6** In deserving cases, 98% and 2% payment can also be considered within the Framework of extant rules and procedures, specially for running contracts.

**15.7** For Machinery & Plant items: 80% payment will be allowed after receipt of The machine in good and acceptable condition at consignee's end against Inspection certificate and the supplier's challan certified by The Consignee Gazetted Officer. Balance 20% payment will be made on successful installation, commissioning And testing of the machine and also furnishing of a Bank Guarantee towards warranty obligations of the contractor for 10 % of the value of the machinery or plant.

**15.8** All tenderers are advised to indicate their Banker's name and account number in their offers. This information is Needed For the Purpose of cheque for payment against the contract, Being issued With Indication Of bank account No. etc. to safeguard against misappropriation of cheque. Such information can be submitted in the web page attached with the Payment Gateway link to the e-tender.

**15.9 Instructions for tenders on LC mode of Payments.**

Scheme of letter of Credit for Domestic Supplies (including all service and maintenance contracts) tenders, having estimated value of Rs.10 lakhs and above.

**a.** All Tenders invited by Zonal Railways and Production Units, having estimated value of Rs.10 lakhs and above, shall have an option for the supplier/contractor to take payment from Railways through a letter of credit (LC) arrangement.



- b. The LC will be a sight LC.
- c. The bidder, at the time of bidding itself, shall exercise an option, in favour of taking payment due against the said tender, through LC arrangement. The option so exercised, shall be an integral part of the bidder's offer.
- d. Option once exercised shall be final and no change shall be permitted, thereafter, during execution of contract.
- e. The incidental cost @ 0.15% of LC value, towards issue of LC and operation thereof shall be borne by the supplier/contractor and shall be recovered from their bills.
- f. State Bank of India through its branches shall be the Banker for Railways for opening domestic letters of credit for ensuing year. The arrangement would cover all such contracts finalized against tender issued during the said period and shall extend till final execution of these contracts.
- g. The schedule of payment liability arising in the contract shall be established by the Railways based on the prescribed delivery schedule/stages of supply.
- h. The acceptable, agreed upon document for payments to be released under the LC so opened, shall be a Document of Authorization.
- i. The supplier/contractor shall submit their bills for completed supply to the bill processing authority mentioned in supply/contract agreement to issue Document of Authorization to enable supplier/contractor to claim the authorized amount from their Banker.
- j. Accounts Officer responsible for passing the claim will issue the Document of Authorization.
- k. The supplier/contractor shall take print out of the Document of Authorization available on IREPS portal and present his claim to his banker (advising bank) for necessary payments as per LC terms and condition. The claim shall comprise LC Document of Authorization, Bill of Exchange and Invoice.
- l. The bank shall also recover any amount as may be advised by railway against the contractor/supplier.
- m. The Contractor/Vendor shall indemnify and save harmless the Railway from and against all losses, claims and demands of every nature and description brought or recovered against the Railways by reason of any act or omission of the Contractor/Vendor, his agents or employees, in relation to the Letter of Credit (LC). All sums payable/borne by Railways on this account shall be considered as reasonable compensation and paid by Contractor/Vendor.

**NOTE: The condition regarding LC clause will be operational after integration of State Bank of India portal with IREPS/IPAS.**

**16.0 PROCEDURE FOR BILL SUBMISSION BY VENDORS:**

- (a) Stock Items : i) Where contract provides for 90%, 95% and 98% advance payment the supplier should submit the Bill directly to PFA Office together with Inspection certificate, certified receipted / delivery challan with supporting documents such as Price index for PVC Bills, fall clause declaration etc.
- ii) In the case of contracts with 100% payment clause for supplies of Stores in White orders as well as Green orders issued for stock in the Stores Depots, bills in the Railway Form (form No. S.2817) accompanied by the Receipt Note duly certified by the consignee are to be submitted to the Financial Adviser and Chief Accounts Officer/NF Railway, Maligaon 781011 direct for payment and the Supplier's bills will not be passed for payment unless they are accompanied by the Receipt Note duly certified by the Consignee as stated above.
- (b) Non-Stock items (direct delivery) : For Yellow orders (issued for direct delivery to the Indentors), bill should be submitted by the Supplier in the Railway form (form No. ....) in duplicate to the Consignee Officer mentioned in the order, who will forward the same to Accounts Department with certification for satisfactory completion of PO or otherwise.

**17.0 PROCEDURE FOR PAYMENT OF SUPPLIERS BILLS:****17.1 Payment through NEFT:** NF Railway has introduced payments through NEFT system for quick money transfer to the tenderers account.

- i) Tenderer to give consent in a mandate form as given below for receipt of payment through EFT.
- ii) Tenderer to provide the details of Bank A/C in line with RBI guidelines for the same. These details will include Bank Name, branch Name & address, Account type, Bank A/c Number and Bank & Branch Code / IFSC Code as appearing on MICR cheque issued by bank.
- iii) Tenderer to attach certificate from their bank certifying the correctness of all above mentioned information (As mentioned in para (ii) above)
- iv) In case of non-payment through NEFT or where NEFT facility is not available, payment will be released through cheque
- v) Suppliers having their office in cities, where NEFT is not available may open an account in any of the nationalized banks / other accredited banks who have core banking facility in **Guwahati** and furnish the details to PFA/Maligaon.
- vi) Firms to attach scanned copy of their mandate form along with their offers if not already executed and send original to PFA/NFR. Purchase orders will not be issued without this mandate forms.

**17.2** Format for NEFT mandate Form :

1.	<b>Supplier Name : (as per Account)</b>	
2.	<b>Supplier Address:</b>	
3.	<b>Supplier's email ID</b>	
4.	<b>Bank's Name</b>	
5.	<b>Bank's Branch Name</b>	
6.	<b>Branch Address :</b>	
7.	<b>Type of Account (SB/CA/CC etc.)</b>	
8.	<b>Supplier Account No (as appearing on the Cheque book in full)</b>	
9.	<b>IFSCCODE (11 Digits) For NEFT</b>	

**18.0 PAN NUMBER:** Tenderers to indicate the I/Tax PAN details and enclose a Photocopy of the same.

**19.0 DRAWINGS AND SPECIFICATIONS:**

**19.1** Drawings and Specifications if any as indicated in the Tender Schedule can be had on payment from RDSO/ Lucknow, DLW/Varanasi, ICF/Chennai, CLW/Chittaranjan, CME, CEE and CSTE /S.Rly etc. who has issued the drawing. This has to be arranged by the Tenderer, before, quoting against the tender.

**19.2** Counter offer, if any, should be indicated with full details i.e. the Drawing No. &/or specifications No. etc., and scanned copies of such Drawings / specifications should be attached with e-tender, failing which the offer may not be considered. The counter offers are liable to be rejected if there are other offers to specifications tendered for or even otherwise.

**19.3** Test certificates of the manufacturers should be furnished along with the supply for such stores for which tests are prescribed in specifications.

**20.0 SAMPLE CLAUSE (WHERE SAMPLES ARE CALLED FOR INDETERMINATE PARAMETERS OF SPECIFICATION):**

**20.1** The tenderer should ensure that adequate numbers of sealed samples of same quality as required in the tender schedule, where called for, are received in the office of PCMM/MLG before the Tender opening date and time, failing which offers will be rejected summarily.

**20.2** Each sample should have a card affixed to it giving particulars of

- Firms name and address
- Tender Number
- Date & Time of Opening of Tender
- Item No. of schedule against which tender sample submitted, and
- Any other description, if necessary written on it

**20.3** Samples should not be sent unless specifically called for in the tender schedule.

**21.0 VALIDITY OF OFFERS:** Tenderers are requested to keep validity of their offer open for a minimum period as specified in tender schedule (180 days/120 days/90 days/60 days) and offers with validity of shorter duration will be considered unresponsive.

**22.0. For Imported Items :**

- (a) The unit price should indicate clearly
- (i) Current duties such as Customs, Countervailing duty etc. The particular item(s) of the Indian Customs Tariff and other publications on the basis of which the duties have been computed should be clearly mentioned in the offer.
- (ii) CIF value i.e. the amount on which duties are payable.
- (iii) The total of items (i) & (ii) will indicate the price, excluding Sales Tax, if any.
- (b) The rate of exchange adopted for working out the prices of imported stores, components or raw materials based on International Monetary Fund ruling at the time of tendering shall be indicated at the bottom of the schedule to Tender.
- (c) Tenderers are responsible for correctness of rates at which the Customs Duty Counter veiling Duty, SAD etc, are included in their quotations and that no increase in price shall be allowed on the ground that these duties originally included in their quotations were wrongly calculated at rates lower than those prevailing at the time of tendering, adjustments due to statutory variations in the case of variation in the rate of Customs duties and similar other charges, the actual amount of such duties or charges as on the date of importing supply of the materials, to be reimbursed shall have to be supported by documentary evidence of payment of these duties or other charges.

**23.0 Quota/Essentiality Certificate: A Quota / Essentiality certificate for restricted Categories of steel required for fabrication**, if specified in the Tender and included in the Contract, will be issued to the Contractor at his written request for such quantity as may be necessary for fabrication allowing a reasonable wastage in fabrication. The quantity of restricted categories of steel for which a Quota Essentiality Certificate is required specifying the percentage of manufacturing wastage required shall be indicated in the Tender. Quota / Essentiality Certificate will be issued only to genuine manufacturers on replacement basis.

**24. Clarifications :-**

**24.1** Any clarifications required in regard to this Tender may be obtained from the office of Principal Chief Materials Manager/N.F. Railway, Maligaon, Guwahati-781011, Assam.

**24.2** Where stipulated, the firms may see the sample/drawing at the office of the Principal Chief Materials Manager/ N.F.Railway,Maligaon,Guwahati-781011, Assam, on working days upto 15.00 Hrs.

**(C) VARIOUS ANNEXURES TO SPECIAL CONDITIONS:**

Sr.N	Annexure.No	Details
1	Annexure-1	PROFORMA FOR EQUIPMENT AND QUALITY CONTROL
2	Annexure-2	PROFORMA FOR AUTHORITY FROM MANUFACATURERS
3	Annexure-3	PROFORMA FOR PERFORMANCE STATEMENT
4	Annexure-4	PROFORMA OF BANK GUARANTEE FOR CONTRACT PERFORMANCE GUARANTEE BOND
5	Annexure-5	PROFORMA OF BANK GUARANTEE FOR SECURITY DEPOSIT
6	Annexure-6	PROFORMA FOR TENDER CONDITION – GST RULES
7	Annexure-7	PROFORMA FOR – INPUT TAX CREDIT DECLARATION UNDER GST REGIME
8	Annexure-8	PROFORMA FOR DETAILS REQUIRED UNDER GST REGIME: TAX INVOICE
9	Annexure-9	PROFORMA FOR LETTER FROM EXECUTIVE BRANCH TO ACCOUNTS OFFICE FOR OPENING OF LC
10	Annexure-10	PROFORMA FOR BANK GUARANTEE FOR RELEASE OF RAILS FOR FABRICATION CONTRACT

**ANNEXURE - 1**  
**PROFORMA FOR EQUIPMENT AND QUALITY CONTROL**

Tender No.....Date of  
opening.....Time.....Hours Name of  
the Firm.....

Note : All details required only for the items tendered

1. Name & full address of the firm.
2. Telephone & FAX No. of Office / Factory / Works.
3. Telegraphic and E.mail address.
4. Location of the manufacturing factory.
5. Details of Industrial License, wherever required as per statutory regulations.
6. Details of plant & machinery erected and functioning in each Deptt.(Monographs & description pamphlets be supplied, if available).
7. Details of the process of manufacture in the factory in brief.
8. Details & stocks of raw material held
9. Production capacity of item(s) quoted for, with the existing plant & machinery.
  - 9.1 Normal
  - 9.2 Maximum
10. Details of arrangement for quality control of products such as laboratory testing equipment etc.
11. Details of staff
  - 11.1 Details of technical supervisory staff-in-charge of production & quality control.
  - 11.2 Skilled labour employed.
  - 11.3 Unskilled labour employed.
  - 11.4 Maximum No. of workers (skilled & unskilled) employed on any day during the 18 months preceding the date of application.
12. Whether stores are tested to any standard specification, if so, copies of original test certificates should be submitted in triplicate.
13. .Are you a Small Scale Unit, registered with the National Small Industries Corporation Ltd., New Delhi. If so, furnish full particulars of registration, currency period etc.

Signature & Seal of  
the Manufacturer / Tenderers

**ANNEXURE - 2**  
**PROFORMA FOR AUTHORITY FROM MANUFACTURERS**

No.....

Dated .....

To,  
 THE PRESIDENT OF INDIA,  
 Acting through the Principal Chief Materials Manager,  
 Northeast Frontier Railway, Maligaon,  
 Guwahati – 781011  
 INDIA

Dear Sir,

Subject: PCMM/NF.Rly./MLG.'s Tender No..... Opened On .....

We.....an established and reputed  
 manufacturer of.....having factories at..... do hereby  
 authorize M/s.....  
 .....(Name and address of Agents), to represent us, to bid, negotiate and conclude  
 the contract on our behalf with you against Tender No.....

No Company/Firm or individual other than M/s.....are authorized to  
 represent us in regard to this business against this specific tender.

Yours faithfully,

( NAME )

For& on behalf of M/s.....  
 (Name of Manufacturers)

Note: This letter of authority should be on the Letter Head of the manufacturing concern and should be  
 signed by a person competent and having the power of attorney to bind the manufacturer.

**INSTRUCTIONS FOR TENDERERS**

**ANNEXURE - 3**

Details of supplies/capacity of the tendered item against Railways/PUs orders by the tenderer is to be furnished as below:-

Sl. No.	Brief Description of the item Supplied	Name of the Rly./PU with details of Purchase Order No.& Date	Quantity ordered	Quantity supplied within original DD	Balance quantity To be supplied	Copies of the Inspection Notes attached- Yes/No	Copies of R/Notes attached- Yes/No
(1)	(2)	(3)	(4)	(5)	(6)	(8)	(9)

1.	Monthly capacity for supply of Tendered item based on above	
2.	Outstanding load for the Tendered item as on date of Tender opened based on the above details	

**Date:**

**Signature of Tenderer.**

## ANNEXURE – 4

## PROFORMA OF BANK GUARANTEE FOR CONTRACT PERFORMANCE GUARANTEE BOND

Ref..... Dated..... Bank  
Guarantee No.....

To,  
THE PRESIDENT OF INDIA,  
Acting through PFA/NF Railway,  
Maligaon,  
Guwahati –781 011, INDIA

1. Against contract concluded by the Advance Acceptance of the Tender No..... dated.....covering supply of .....(hereinafter called the said contract) entered into between the President of India and ..... (hereinafter called the 'Contractor'), this is to certify that at the request of the Contractor we.....Bank Ltd. are holding in trust in favour of the President of India, the amount of

.....(write the sum here in words) to indemnify and keep indemnified the President of India (Govt. of India) against any loss or damage that may be caused to or suffered by the President of India (Govt. of India) by reason of any breach by the contractor of any of the terms and conditions of the said contract and / or in the performance thereof. We agree that the decision of the President of India (Govt. of India), whether any breach of any of the terms and conditions of the said contract and / or in the performance thereof has been committed by the Contractor and the amount of loss or damage that has been caused or suffered by the President of India (Govt. of India) shall be final and binding on us and the amount of the said loss or damage shall be paid by us forthwith on demand and without demur to the President of India (Govt. of India).

2. We..... Bank Ltd., further agree that the guarantee herein contained shall remain in full force and effect During the period that would be taken for satisfactory performance and fulfillment in All Respects of the said contract by the Contractor i.e. till.....

(viz. the date up to 3 months after the date of the last despatch /delivery of the goods ordered) hereinafter called the 'said date' and that if any Claim accrues or arises against Bank Ltd., by virtue of this guarantee before the said date, the same shall be enforceable against us..... Bank Ltd.), notwithstanding the fact that the same is enforced within six months after the said date, provided that notice of any such claim has been given to

Th  
us..... Bank Ltd., by e President of India (Govt. of India) before the said date. Payment under this letter of guarantee shall be made promptly upon receipt of notice to that effect from the President of India (Govt. of India).

3. It is fully understood that this guarantee is effective from the date of the said contract and that We ..... Bank Ltd., undertake not to revoke this guarantee during its currency without the consent in writing of the President of India (Govt. of India).

4. We undertake to pay to the Government any money so demanded notwithstanding any dispute or disputes raised by the Contractor in any suit or proceedings pending before any court Or Tribunal relating thereto, our liability under this present Being absolute and unequivocal. The payments so made by us under this bond shall be a valid discharge of our liability for payment there under and the Contractor shall have no claim against us for making such payment.



**INSTRUCTIONS FOR TENDERERS**

5. We .....Bank Ltd., further agree that the President of India (Govt. of India) shall have the fullest liberty, without affecting in any manner our obligations hereunder to vary any of the terms and conditions of the said contract or to extend time of performance by the Contractor from time to time or to postpone for any time or from time to time any of the powers exercisable by the President of India (Govt. of India) against the said Contract and to forbear or enforce any of the terms and conditions relating to the said contract and we.....Bank Ltd., shall not be released from our liability under this guarantee by reason of any such variation or extension being granted to the said Contractor or for any forbearance and / or omission on the part of the President of India or any indulgence by the President of India or thing what-so-ever, which under the law relating to sureties, would, but for this provision have the effect of so releasing us from our liability under this guarantee.

6. This guarantee will not be discharged due to the change in the constitution of the Bank or the Contractor.

Signature.....  
Name.....  
Designation  
Date.....  
Place.....  
Witness.....  
.....  
(Bank's Common Seal)

Read and Accepted  
Signature of Tenderer

## ANNEXURE – 5

## PROFORMA OF BANK GUARANTEE FOR SECURITY DEPOSIT

To,  
THE PRESIDENT OF INDIA,  
Acting through PFA/NF Railway,  
Maligaon,  
Guwahati-781011, INDIA

In consideration of the President (hereinafter called "the Government ") having agreed to exempt.....[hereinafter called "the said Contractor(s)"] from the demand, under the terms and conditions of an Agreement dated..... made between.....and ..... (hereinafter called "the said Agreement") for..... of security deposit for the due fulfillment, by the said contractor(s), of the terms and conditions contained in the said Agreement, on production of a Bank Guarantee for Rs..... (Rupees..... .. only), we,.....Bank Ltd.,(hereinafter referred to as "the Bank") do hereby undertake to pay to the Government an amount not exceeding Rs..... against any loss or damage caused to or suffered or would be caused to or suffered by the Government by reason of any breach by the said Contractor(s), of any of the terms or condition contained in the said Agreement.

2. We,.....Bank Ltd, do hereby undertake to pay the amounts due and payable under this guarantee without any demur, merely on a demand from the Government stating that the amount claimed is due by way of loss or damage caused to or would be caused to or suffered by the Government by reason of any breach by the said Contractor(s) of any of the terms or conditions contained in the said Agreement or by reason of the Contractor(s) failure to perform the said Agreement. Any such demand made on the Bank shall be conclusive as regards the amount due and payable by the Bank under this guarantee. However, our liability under this guarantee shall be restricted to an amount not exceeding Rs.....

3. We undertake to pay to the Government any money so demanded notwithstanding any dispute or disputes raised by the Contractor(s)/Supplier(s) in any suit or proceedings pending before any court or Tribunal relating thereto our liability under this present being absolute and unequivocal.

The payment so made by us under this bond shall be a valid discharge of our liability for payment there under and the Contractor(s)/Supplier(s) shall have no claim against us for making such payment.

4. We,..... Bank Ltd., further agree that the guarantee herein contained shall remain in full force and effect during the period that would be taken for the performance of the said Agreement and that it shall continue to be enforceable till all the dues of the Government under or by virtue of the said

Agreement have been fully paid and its claims satisfied or discharged or till .....Office/Department, Ministry of.....certifies that the terms and conditions of the said Agreement have been fully and properly carried out by the said Contractor(s) and accordingly discharges the guarantee. Unless a demand or claim under this guarantee is made on us in writing on or before the....., we shall be discharged from all liability under this guarantee thereafter.

5. We,.... Bank Ltd., further agree with the Government that the Government shall have the fullest liberty without our consent and without affecting in any manner our obligations hereunder to vary any of the terms and conditions of the said Agreement or to extent time of performance by the said Contractor(s) from time-to-time or to postpone for any time or from time-to-time any of the powers exercisable by the Government against the said Contractor(s) and to forbear or enforce any of the terms and conditions relating to the said agreement and we shall not be relieved from our liability by reason of any such variation or extension being granted to the said Contractor(s) or for any forbearance, act or omission on the part of the Government or any indulgence by the Government to the said Contractor(s) or by any such matter or thing whatsoever which under the law relating to sureties would, but for this provision, have effect of so relieving us.

6. This guarantee will not be discharged due to the change in the constitution of the Bank or the Contractor(s)/Supplier(s).

7. We..... Bank Ltd., lastly undertake not to revoke this guarantee during its currency except with the previous consent of the Government in writing.

Dated the.....day of .....20 at

For.....Bank Ltd.

Witness:

1. Signature ----- Name  
----- Age  
-----  
Address -----

2. Signature ----- Name  
----- Age  
-----  
Address -----

-----

**ANNEXURE - 6****TENDER CONDITION – GST RULES.**

The price to be quoted by the Tenderers should take into account the duty set-offs on inputs under the GST Scheme introduced with effect from 1<sup>st</sup> July, 2017. The Tenderer should also furnish the following declaration in the tenders:-

“ We hereby declare that in quoting the above price, we have taken into account the full effect of input tax credits available under GST Scheme introduced with effect from 1<sup>st</sup> July, 2017”.

The following clause should be included in all the quotations by the Suppliers:-

“ we hereby declare that in quoting the above price we have taken into account the entire credit on inputs availed under the GST scheme introduced with effect from 1<sup>st</sup> July, 2017. We further agree to pass on such additional Input Tax Credits and set-offs as may become available in future in respect of all the inputs used for the manufacture of the final product on the date of these supply under the GST Scheme by way of reduction in price and advise the Purchaser accordingly.

The following Clause should be included by the Supplier in their bills.

“We certify that no additional Input Tax Credits on goods supplied by us have accrued under the GST Scheme in force on the date of supply after we submitted our quotation and submitted the present bill”.

In the event of GST Credit being extended by the Government of India to more items than already covered, the firm should advise the Purchaser about the additional benefit accrued through a letter containing the following certificate:-

“We hereby declare that we can avail additional Input Tax Credits set-offs as per latest GST Scheme in force now and we hereby give a reduction of ..... Per unit and agree to revise the price indicated in the order. The current GST Rate of .....per cent is payable on this reduced price. Therefore we request you to amend the order accordingly”.

**DECLARATION/AFFIDAVIT**

I,.....Managing Director/Managing  
Partner/Proprietor representing M/s.....  
..... do hereby declare as follows:-

(i) That the inputs and final products covered by our Bill No.....  
dated.....for Rs..... fall under one or the other of the items under GST  
Scheme.

(ii) The total amount of GST Input Tax Credit admissible/availed of by use on the inputs used in the  
manufacture of the goods specified in the above said bill is Rs.....

(iii) The input and/or the final product described our Bill No.....  
dated..... for Rs..... do not fall under any of the items  
listed in the GST Scheme and not set-off was claimed by us in this behalf.

I hold myself personally responsible for the correctness of the above declaration and hereby undertake to pass on the credit to, if any, received by me under the GST Scheme Railway Administration.

Place:

Date

Managing Director/Partner/Proprietor  
M/s.....

## ANNEXURE - 7

PROFORMA FOR – INPUT TAX CREDIT DECLARATION UNDER GST REGIME**Certificate**To whom so ever it may concern

Contract/Purchase                      Order                      No.....  
dated.....

We hereby declare that additional set offs / input tax credit to the tune of Rs.....has accrued and accordingly the same is being passed on to the purchaser and to that effect the payable amount may be adjusted.

We hereby undertake that in case it is detected by Railway/Government that any input tax credit which has been accrued and not passed on to Railways, then Railways will have full authority to recover the same from this contract or any other pending Railway/Government contract and no dispute to this effect will be raised by us.

Dated.....

Signature with seal

## ANNEXURE - 8

COMPANY LOGO		<b>COMPANY NAME</b> <b>TAX INVOICE</b> Address email address website													
GSTIN: PAN: Consecutive Serial no: Customer Code:		Date of Supply: Time of Supply: Place of Supply/Delivery:													
Details of Receiver (Billed to)										Details of Consignee (Shipped to)					
Name: Address: PAN: State: State Code: GSTIN/Unique ID:										Name: Address: PAN: State: State Code: GSTIN/Unique ID:					
S.No	Description of Service/Goods	SAC/HSN Code	Qty	unit	Rate	Total Value	Abatement	Discount	Taxable value	CGST Rate Amount	SGST Rate Amount	IGST Rate Amount			
					0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00			
										0.00	0.00	0.00	0.00		
Total Invoice Value (In Figure):													0.00		
Amount of Tax Subject to Reverse Charge:													0.00		
Total Invoice Value													0.00		
(Less): Advance Received (Receipt Voucher No)													0.00		
Total Amount Due from you (In Figure):													0.00		
Total Amount (In Words):															
Certified that the Particulars given above are true and correct and the amount indicated  a) Declaration by Company  b) Declaration by Company  c) Declaration by Company  Electronic Reference Number:										For Company Name  Name of the Signatory:  Designation/Status:  Authorised Signatory  Date:					

**Annexure – 9****Format of letter from Executive branch to Accounts Officer for opening of LC**Office of \_\_\_\_\_  
Railway

No. \_\_\_\_\_

Date: \_\_\_\_\_

The PFA,  
NF Railway.

Sub: Opening of LC

Ref: Supply Order/Contract Agreement No.

It is requested to open a sight LC against the above referred Supply Order / Contract Agreement in favour of \_\_\_\_\_. The details of beneficiary are as under:

- (i) Name of Contractor/Supplier
- (ii) Vendor Code
- (iii) Address
- (iv) Tender No.
- (v) Contract Agreement No.
- (vi) Description of Goods/Service
- (vii) Value of Contract
- (viii) Stages of payment
- (ix) Validity Period of LC
- (x) Expected payment within 6 months (LC Amount)
- (xi) Beneficiary bank details:
  - a) Bank name
  - b) Address
  - c) Account No.
  - d) IFSC code

It is certified that the supplier/contractor has exercised the option of taking payment due against the tender, through LC arrangement in IREPS portal at the time of bidding itself and the option has been flagged in the IREPS. This has the approval of \_\_\_\_\_.

(Signature)

Name: \_\_\_\_\_

Designation: \_\_\_\_\_

(Official Seal)

---\*\*\*---

## INSTRUCTIONS FOR TENDERERS

Annexure – 10

### Proforma for Bank Guarantee for Release of Rails for Fabrication Contract

The President of India  
Acting through  
The Principal Chief Materials Manager,  
N. F. Railway  
Maligaon  
Guwahati-781011

Bank Guarantee No.  
Dated :  
  
Amount :  
Valid upto :

- (1) In consideration of the President of India, the Principal Chief Materials Manager / PFA, N. F. Railway, Maligaon, Guwahati-781011 (hereinafter called the said "Government") having agreed to exempt M/s. \_\_\_\_\_ (hereinafter called the said "Contractor") from the demand of security deposit to be submitted in the shape of Bank Guarantee Bond for the value of Rails to be supplied by the N.F.Railway Administration (Con) free of cost to the said contractor under the terms and conditions of the contract, Advance acceptance letter/P.O. No. \_\_\_\_\_ dated \_\_\_\_\_ made between the President of India acting through the Principal Chief Materials Manager, N.F. Railway, Maligaon, Guwahati - 781 011 and the said Contractor for fabrication and supply \_\_\_\_\_ on production of Bank Guarantee for Rs. \_\_\_\_\_ (Rupees \_\_\_\_\_).
- (2) We, the Bank do hereby undertake to pay the amount due and payable under this guarantee on demand and without any demur to the Government the cost of the said Rails to be delivered to the said Contractor to the extent of Rs. \_\_\_\_\_ (Rupees \_\_\_\_\_) only on failure of the said Contractor to give proper and satisfactory account of the said Rails and / or on failure of the said Contractor to return the said rails duly fabricated into \_\_\_\_\_ strictly as per terms and conditions of the contract to the Government. The Government's decision as to whether the said contractor has filed to give proper & satisfactory account of the said rails and/or whether the said rails have been returned to the Government after having fabricated into \_\_\_\_\_ strictly as per terms and conditions of the said contract and amount payable by the Bank to the Government shall be final, conclusive and binding to us.
- (3) We, the Bank do hereby undertake to pay the amount due and payable under this guarantee without any demur, merely on a demand from the Government stating that the amount claimed is due by way of loss or damage caused to or would be caused to or suffered by the Government by reason of breach by the said contractor(s) of any of the terms and conditions contained in the said Agreement or by reason of the Contractor's failure to perform the Agreement. Any such demand made on the bank shall be conclusive as regard the amount due and payable by the Bank under this guarantee. However, our liability under this guarantee shall be restricted to an amount not exceeding Rs. \_\_\_\_\_ (Rupees \_\_\_\_\_) only.



## INSTRUCTIONS FOR TENDERERS

- (4) We, the Bank undertake to pay to the government any money so demanded notwithstanding any dispute or disputes raised by the Contractor(s)/Supplier(s) in any suit of proceeding pending before any Court or Tribunal relating thereto our liability under this present being absolute and unequivocal. The payment so made by us under this Bond shall be a valid discharge of our liability for payment there under and the Contractor(s)/Supplier(s) shall have no claim against us for making payment.
- (5) We, the Bank further agree that the guarantee herein contained shall remain full force and effect during the project that would be taken for the performance of the said Agreement and that is shall continue to be enforceable till the Rails are fabricated into\_\_\_\_\_and are supplied to the Railways, Ministry of Railways certifies that the\_\_\_\_\_ have been supplied by the said Contractor(s) as per the terms and conditions of the said Agreement and accordingly discharges this guarantee. Unless a demand or claim under this guarantee is made on us in writing on or before the\_\_\_\_\_we shall be discharged from all liabilities under this Guarantee thereafter.
- (6) We, the Bank further agree with the government that the government shall have the fullest liberty without our consent and without affecting in any manner our obligations hereunder to vary any of the terms and conditions of the said agreement or to extend time of performance by the said Contractor(s) from time to time or to postpone for anything or from time to time any of the powers exercisable by the Government against the said Contractor(s) and to forebear or enforce any of the terms and conditions relating to the said agreement and we shall not be relieved from our liability by reason of any such variation or extension being granted to the said contractor(s) or for any forbearance, act or omission on the part of the Government or any indulgence by the Government to the said Contractor(s) or by any such matter or thing whatsoever which under the law relating to sureties would, but for this provision, have effect of so relieving us.
- (7) The guarantee will not be discharged due to the change in the constitution of the Bank or the Contractor(s)/Supplier(s).
- (8) We, the Bank, lastly undertake not to revoke the guarantee during its currency except with the previous consent of the Government in writing.

ZONAL MANAGER / BRANCH MANAGER

Dated\_\_\_\_\_day of\_\_\_\_\_ of 20\_\_

For (indicate the name of the Bank with address)



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

**INDIAN RAILWAYS**  
**STANDARD CONDITIONS OF CONTRACT**  
**2022**

(REVISED SEPTEMBER 2022)



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



## INDIAN RAILWAYS STANDARD CONDITIONS OF CONTRACT

- 0100 Definitions and Interpretations
- 0101 In the Contract, unless the context otherwise requires;
- 0102 "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 of his tender;
- 0102A "Agent" is a person employed to do any act for another or represent another 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 its principals.
- 0102B "Authorized e-procurement portal" is a web-based portal, being used by the Parties for exchanging online documents during the course of the formation of contract.
- 0103 "Consignee" means where the goods are required by the acceptance of tender to be dispatched by rail, road, air or steamer, the person specified in the Acceptance of Tender to whom they are to be delivered at the destination ; Where the Goods are required by the acceptance of tender to be delivered to a person as an interim consignee for the purpose of dispatch to another person, such other persons; and in any other case the person to whom the goods are required by the acceptance of tender to be delivered in the manner therein specified ;
- 0104 "Contract" means and 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 and includes a repeat order which has been accepted or acted upon by the contractor and a formal agreement if executed;

## VERSION 1.0

- 0105 The "Contractor" means the person, firm or company with whom the order for the supply is placed and shall be deemed to include the contractor's successors (approved by the Purchaser), representatives, heirs, executors and administrators as the case may be, unless excluded by the terms of the contract. The words "Contractor" and "Supplier" shall be used interchangeably;
- 0106 "The Sub-contractor" means any person, firm or company from whom the Contractor may obtain any material or fittings to be used in the supply or manufacture of the goods;
- 0106A "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
- 0107 "Drawing" means the drawing or drawings specified in or annexed to the Schedule or Specifications;
- 0107A "Goods" (including the terms 'Stores', 'Material(s)' in specific contexts) 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) under specific context), procured or otherwise acquired by a Purchaser. Any reference to Goods shall be deemed to include specific small work or some services that are incidental or consequential to the supply of such goods such as transportation, insurance, installation, commissioning, training and maintenance.
- 0108 "Government" means the Central Government or a State Government, as the case may be;
- 0109 "The Inspecting Officer" means the person specified in the contract for the purpose of Inspection of goods or work under the contract and includes his authorised representative;
- 0109A "Intellectual Property Rights" (IPR) means the rights of the intellectual property owner concerning a tangible or intangible possession/ exploitation of such property by others. It includes rights to Patents, Copyrights, Trademarks, Industrial Designs, Geographical indications (GI).
- 0110 "Material" means anything used in the manufacture or fabrication of the goods;
- 0111 "Particulars" include-

- (a) Specifications;
- (b) Drawings;
- (c) Pattern bearing the seal and signature of the Inspecting Officer (hereinafter called the sealed pattern) which shall include also a certified copy thereof sealed by the Purchaser for the guidance of the Inspecting Officer;
- (d) 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;
- (e) 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;
- (f) 'Proprietary mark' or 'brand' means the mark or brand of a product which is owned by an industrial firm;
- (g) Any other details governing the construction, manufacture or supply of goods as may be prescribed by the contract;

- 0112 "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;
- 0113 "The Purchaser" means the President of India in the case of goods ordered for the Indian Government Railways and includes his successors and assignees;
- 0114 Signed" means ink signed or Digitally signed with a valid Digital Signature Certificate as per IT Act 2000 (as amended from time to time). It also includes stamped, except in the case of an acceptance of tender or amendment thereof.
- 0115 "Site" means the place specified in the contract at which any work is required to be executed by the contractor under the contract or any other place approved by the Purchaser for the purpose;
- 0116 Deleted
- 0117 "Supply Order" means an order for supply of goods and includes an order for performance of service;
- 0118 "Test" means such test as is prescribed by the particulars 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;

- 0119 "Unit" and "Quantity" means the unit and quantity specified in the contract;
- 0120 "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;
- 0121 The delivery of the goods shall be deemed to take place on delivery of the goods, accompanied with the inspection certificate and any other requisite documents and in accordance with the terms and conditions of the contract, after approval by the Inspecting Officer if so, provided in the contract, to: —
- (a) The consignee at his premises; or
  - (b) Where so provided the interim consignee at his premises; or
  - (c) A carrier or other person named in the contract for the purpose of transmission to the consignee, or
  - (d) The consignee at the destination station in case of contract stipulating for delivery of goods at destination station.
- 0122 Words in the singular include the plural and vice versa;
- 0123 Words importing the masculine gender shall be taken to include the feminine gender and words importing persons shall include any company or association or body of individuals, whether incorporated or not;
- 0124 The heading of these conditions shall not affect the interpretation or construction thereof;
- 0125 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.
- 0200 Parties
- The parties to the contract are the Contractor and the Purchaser, as defined in Clauses 0105 and 0113.
- 0201 Authority of person signing the Contract on behalf of the Contractor
- 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. 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 of the Purchaser, cancel the contract and hold such person liable to the Purchaser for all costs and damages arising from the cancellation of the contract. The provisions of Clause 0702(b) shall apply for calculating the liability of the person at default.

0202 Address and e-mail of the Contractor and notices and communications on behalf of the Purchaser: -

(a) For all purposes of the contract, including arbitration thereunder, the address & e-mail of the Contractor mentioned in the tender shall be the address & 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. The Contractor shall be solely responsible for the consequence of an omission to notify a change of address in the manner aforesaid.

(b) 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 posts or under certificate of posting or by ordinary post or by hand delivery or through online mode at the option of such officer. The communication 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.

0300 (a) The price quoted by the Contractor shall not be higher than the controlled price fixed by law for the goods or where there is no controlled price, it shall not exceed the prices or contravene the norms for fixation of prices laid down by Government or where no such prices or norms have been fixed by the Government, it shall not exceed the price appearing in any agreement relating to price regulation by any industry in consultation with the Government or the MRP of the item

(b) If the price quoted is higher than the controlled price, the Contractor will 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 702(b) and 0702(c) on such termination.

0400 Contract:

- 0401 This contract is for the supply of the goods of the description, specifications and drawings, and in the quantities set forth in the contract on the date or dates specified therein. 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.
- 0402 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.
- 0403 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.
- 0404 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.
  - (b) The contract document, The Letter of Award (LoA)
  - (c) Special Tender conditions
  - (d) Technical Specifications as given in tender documents
  - (e) Drawings
  - (f) IRS Conditions of contract
  - (g) General Tender Conditions/ instructions to tenderers
  - (h) Contractor's bid
- 0500 Security Deposit.
- 0501 Unless otherwise agreed between the Purchaser and the contractor or otherwise mentioned in the tender document, the contractor shall, within 21 days of posting of written notice of acceptance of the offer to the contractor, deposit with the Railway concerned (in cash or the equivalent in Government Securities or approved Banker's Guarantee Bond or any other approved form as stipulated in the tender document) a sum as stipulated in the tender document, towards Security Deposit.
- Unless otherwise specified in the tender document, Security Deposit should remain valid for a minimum period of 60 days beyond the date of completion of all the contractual obligations of the supplier, including warranty obligations.



- 0502 If the Contractor, having been called upon by the Purchaser to furnish security deposit, fails to make a security deposit within the specified period, it shall be lawful for the Purchaser to cancel the Letter of Award and to recover from the Contractor the amount of such security deposit by deducting the amount from the pending bills of the Contractor under any other contract with the Purchaser or the Government or any person contracting through the Purchaser or otherwise howsoever, duly adjusting the Earnest Money deposit, if any, made by the contractor.
- 0502A If the contractor during the currency of the Contract fails to maintain the requisite security deposit, it shall be lawful for the purchaser at its discretion
- (a) to terminate the Contract for Default besides availing any or all contractual remedies provided for breaches/ default, or
  - (b) without terminating the Contract:
    - (i) to recover from the Contractor the amount of such security deposit by deducting the amount from the pending bills of the Contractor under the contract or any other contract with the Purchaser or the Government or any person contracting through the Purchaser or otherwise howsoever, or
    - (ii) treat it as a breach of contract and avail any or all contractual remedies provided for breaches/ default.
- 0502B In the event of any amendment issued to the contract, the contractor shall furnish suitably amended value and validity of the Performance Security deposit in terms of the amended contract within fourteen days of issue of the amendment.
- 0503 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 Bid Security and Security Deposit or amounts payable to the Contractor under the Contract.
- 0504 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 become due to the Contractor under this or any other contracts with the Purchaser.

- 0505 Subject to the above, the purchaser shall release the security deposit without any interest to the contractor on completing all contractual obligations, including the warranty obligations, if any. Alternatively, for the duration of Warranty obligations, upon the contractor submitting a suitable separate Warranty Security deposit, the original Performance Guarantee Security shall be released mutatis mutandis.
- 0600 Delivery
- 0601 The Contractor shall as may be required by the Purchaser either deliver free or FOR or CIF or as per the delivery terms provided in the contract at the place/places detailed in the contract, the quantities of the goods detailed therein and the goods shall be delivered or despatched not later than the dates specified in the contract. The delivery will not be deemed to be complete until and unless the goods are inspected and accepted by the Inspecting Officer as provided in the contract.
- 0602 The Purchaser shall not be liable to render assistance to the Contractor in securing or to arrange for or provide transport to the Contractor unless it is so specifically stated in the contract, notwithstanding that transport of the goods, is controlled by or under the orders of the Government.
- 0603 Notwithstanding any inspection and approval by the Inspecting Officer on the Contractor's premises, property in the goods shall not pass on to the Purchaser until the goods have been received, inspected and accepted by the consignee.
- 0604 No goods shall be deliverable to the consignee's depots on Sundays and public holidays or beyond normal office hours without the written permission of the consignee.
- 0605 Perishable Goods:
- For Goods with a limited shelf life, the contractor shall ensure that at least 75% (or any other percentage stipulated in the contract) of shelf life remains balance on delivery date. The Purchaser reserves its rights to reject expired or products with less than such specified shelf life.
- 0700 Time for and Date of Delivery; the Essence of the Contract -The time for and the date specified in the contract or as extended for the delivery of the goods shall be deemed to be of the essence of the contract and delivery must be completed not later than the date(s) so specified or extended.

**0701            Progressing of Deliveries -**

The Contractor shall allow reasonable facilities and free access to his works and records to the Inspecting Officer, Progress Officer or such other Officer as may be nominated by the Purchaser for the purpose of ascertaining the progress of the deliveries under the contract.

**0702            Failure and Termination -**

If the Contractor fails to deliver the goods or any instalment thereof within the period fixed for such delivery in the contract or as extended or at any time repudiates the contract before the expiry of such period the Purchaser may without prejudice to his other rights: -

(a) recover from the Contractor as agreed liquidated damages and not by way of penalty a sum equivalent to ½ (half) per cent of the price of any goods (including elements of taxes, duties, freight, etc.) which the Contractor has failed to deliver within the period fixed for delivery in the contract for each week or part of a week during which the delivery of such goods may be in arrears where delivery thereof is accepted after expiry of the aforesaid period. Upper limit for recovery of liquated Damages in Supply Contracts will be 10 % (Ten Per cent) of value of delayed supplies irrespective of delays, unless otherwise provided, specifically in the contract, or

(b) without prejudice to the Purchaser's right to record adverse performance of the contractor for taking appropriate administrative action, cancel the contract or a portion thereof and forfeit the security deposit.

(c) Wherever Security deposit has been exempted for any reason, levy damages from the supplier, not by way of penalty, an amount equal to Security Deposit amount, as would have been applicable had he not been an exempted vendor. These damages shall be treated as recoveries outstanding against the Contractor and dealt with accordingly.

**0703            Consequence of Rejection -**

If on the goods being rejected by the Inspecting Officer or Interim Consignee or Consignee at the destination, the Contractor fails to make satisfactory supplies within the stipulated period of delivery, the Purchaser shall be at liberty to:

i.require the Contractor to replace the rejected goods forthwith but in any event not later than a period of 21 days from the date of rejection and the Contractor shall bear all cost of such replacement including freight, if any, on such replacing and replaced goods but without being entitled to any extra payment

on that or any other account, or

ii. cancel the contract for the rejected quantity and take further action as per the provision of Clause 702(b) and 702(c).

iii. Where under the contract some price is paid to the contractor for the goods so rejected, the Contractor shall be liable, in addition to his other liabilities, to refund of price recoverable in respect of the such rejected goods and to reimburse to the Purchaser the freight and all other expenses incurred by the Purchaser in this regard. The above said liability on the contractor shall arise immediately after the issue of the communication of such rejection to him.

**0800 Extension of Time for Delivery**

If such failure as aforesaid shall have arisen from any cause which the Purchaser may admit as reasonable ground for extension of time, the Purchaser shall allow such additional time as he considers to be justified by the circumstance of the case, and shall forgo the whole or such part, as he may consider reasonable, of his claim for such loss or damage as aforesaid. Any failure or delay on the part of sub-contractor, though their employment may have been sanctioned under Condition 1500 hereof, shall not be admitted as a reasonable ground for any extension of time or for exempting the Contractor from liability for any such loss or damage as aforesaid.

**0801** If extension of time for delivery period is allowed by the purchaser (in cases other than refixation of Delivery period), the amendment giving such an extension shall be subject to the following conditions:

(a) Levy of liquidated damages as per Clause 0702(a)

(b) Denial clause as under:

(i) No increases in price on account of any statutory increase in or fresh Imposition of GST, customs duty or on account of any other taxes/ duty/ cess/ levy), leviable in respect of the Goods and incidental Works/ Services stipulated in the said contract which takes place after the original delivery date, shall be admissible on such of the said Goods, as are delivered after the said date; and

(ii) Notwithstanding any stipulation in the contract for an increase in price on any other ground, including price variation clause or foreign exchange rate variation, or any other variation clause, no such increase after the original delivery date shall be admissible on such goods delivered

after the said date.

(iii) Nevertheless, the Purchaser shall be entitled to the benefit of any decrease in price on account of reduction in or remission of GST, customs duty or on account of any other Tax or duty or any other ground as stipulated in the price variation clause or foreign exchange rate variation or any other variation clause which takes place after the expiry of the original delivery date.

**0900 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.

**1000 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.

**1100 Samples.**

**1101 Advance Sample**

Where an advance sample is required to be approved under the terms of the contract, the Contractor shall submit the sample free of cost to the Inspecting Officer within the time specified in the contract.

If the Contractor is unable to do so, he must apply immediately to the Office issuing the contract for extension of time stating the reasons for the delay. If the Purchaser is satisfied that a reasonable ground for an extension of time exists, he may allow such additional time as he considers to be justified (and his decision shall be final) with or without alteration in the delivery period stipulated in the contract and on such conditions as he deems fit.

In the event of the failure of the Contractor to deliver the advance sample by the date specified in the contract or any other date to which the time may be extended as aforesaid by the Purchaser or of the rejection of the sample, the Purchaser shall be entitled to cancel the contract and take further action as per the provisions of the clause 0702(b) and 0702(c).

- 1102 Unless otherwise provided in the contract, all samples required for test shall be supplied by the Contractor free of cost. Where sample, which is supplied free, is rejected after examination and test, the contractor shall arrange for collection of the same or whatever remains of the sample, after examination and test within three months of the date of such rejection.
- 1103 Marking –  
  
Samples submitted shall be clearly labelled with the Contractor's name and address and the acceptance of tender number.
- 1104 If the Contractor submits a sample whether with, before or after the tender, the same shall not govern the standard of supply except when it has been specifically stated so in the acceptance of tender.
- 1105 Where under the contract, the Contractor is required to submit an advance sample, any expenses incurred by the Contractor on or in connection with the production of goods in bulk, before the sample has been approved unconditionally, shall be borne by the Contractor and he shall not claim any compensation in the event of such sample being found unacceptable by the Inspecting Officer.
- 1106 The rejection of the sample by the Inspecting Authority or Inspecting Officer or Consignee shall be final and binding on the Contractor.
- 1107 Where the contract does not require any advance sample to be approved, the Contractor may before proceed with bulk manufacture or delivery of the goods, if he so desires, submit to the Inspecting Officer for inspection a sample of the goods in which case a quantity not less than one per cent of the total quantity to be supplied unless otherwise authorized by the Inspecting Officer shall be submitted. The Contractor shall not, however, be entitled to be shown any consideration or give any extension of time or claim to be exonerated from completing the delivery within the stipulated period only on the ground of delay in the approval of any such sample.
- 1108 If under the contract, the supplies are governed by a sealed pattern, the Contractor shall be bound to examine such pattern before preparing a sample or manufacturing the goods in bulk as the case may be.

1109      Loan of Sample –

If a certified sample is lent to the Contractor, it will bear a label containing inter alia variations known to the Inspecting Officer between the said sample and the goods desired. If the Contractor finds any further variation between the certified sample and the particulars of specifications mentioned in the contract he shall at once refer the matter to the Inspecting Officer and the Contractors shall also give intimation of such discrepancy to the Purchase Officer. The Contractor shall follow the instructions of the Inspecting Officer as to what sample of particulars should guide the production of goods and the decision of the Inspecting Officer in the matter shall be final and binding on the Contractor.

1110.      The Contractor shall not detach the said label from the certified sample and if for any reasons the said label gets detached the Contractor shall at once return the certified sample to the Inspecting Officer for attaching a fresh label.

1200      Risk of Loss or Damage to Government or Purchaser's Property.

1201      All the property of the Government or Purchaser loaned whether with or without deposit on terms and conditions to be separately agreed upon in respect of each particular contract to the Contractor in connection with the contract shall remain the property of the Government or the Purchaser, as the case may be. The Contractor shall use such property for the purpose of the execution of the contract and for no other purpose whatsoever.

1202      All such property shall be deemed to be in good condition when received by the Contractor unless he shall have within twenty-four hours of the receipt thereof notified the Purchase Officer to the contrary. If the Contractor fails to notify any defect in the condition or quality of such property, he shall be deemed to have lost the right to do so at any subsequent stage.

1203      The Contractor shall return all such property and shall be responsible for the full value thereof to be assessed by the Purchaser whose decision shall be final and binding on the Contractor. The Contractor shall be liable for loss or damage to such property from whatever cause happening while such property is in the possession of or under the control of the Contractor, his servants, workmen or agents.

1204      Where such property is insured by the Contractor against loss or fire at the request of the Government or Purchaser such insurance shall be deemed to be affected by way of additional Precaution and shall not prejudice the liability of the Contractor as aforesaid.

1300      Inspection by Inspecting Officer.

1301 (a) When inspection during manufacture or before delivery or dispatch is required, notice through the online portal of the purchaser/inspecting agency, if available, or else in writing, shall be sent by the Contractor to the Inspecting Officer when the goods or material to be supplied are ready for inspection and test, and no goods shall be delivered or dispatched until the Inspecting Officer has certified in writing that such goods have been inspected and approved by him.

(b) In cases where the Inspecting Authority specified in the contract requires on behalf of the Purchaser that inspection of the raw materials to be used and/or stage inspection during the manufacturing process of the component/goods, etc. is also to be done, notice through the online portal of the purchaser/inspecting agency, if available, or else in writing, shall be sent by the Contractor to the Inspecting Officer to visit his premises/works to test the raw materials and/or conduct necessary inspection during the manufacturing process of the component/goods, etc. as deemed essential.

(c) In case the purchase orders are placed on traders/agents for the items, which are peculiar to the railways, traders/agents should indicate the source of supply and it should be ensured that inspection for such items is carried out at manufacturer's premises rather than traders/agents premises, to ensure genuineness of quality of the material.

1302 Marking of Goods —

The Contractor shall, if so required, at his own expense, mark all the approved goods with a recognized Government or Purchaser's mark. The goods which cannot be so marked shall, if so, required by the Inspecting Officer, be packed at his own expense in suitable packages or cases, each of which shall be sealed and marked with such mark.

The Inspecting Officer shall also have power to mark the rejected goods with a rejection mark so that they may be easily identified, if resubmitted for inspection.

1303 Facilities for test and Examination —

The Contractor shall, at his own expense afford to the Inspecting Officer all reasonable facilities as may be necessary for satisfying himself, that the goods are being and/or have been manufactured in accordance with the particulars. The Inspecting Officer shall have full and free access at any time during the execution of the contract to the Contractor's work for the purpose aforesaid, and he may require the Contractor to make arrangements for inspection of the goods or any part thereof or any material at his premises or at any other place specified by the Inspecting Officer and if the Contractor has been



permitted to employ the services of a Sub-Contractor, he shall in his contract-with the Sub-Contractor, reserve to the Inspecting Officer a similar right.

**1304 Cost of Test—**

The Contractor shall provide, without any extra charge, all materials, tools, labour and assistance of every kind which the Inspecting Officer may demand of him for any test and examination, other than special or independent test, which he shall require to make on the Contractor's Premises and the Contractor shall bear and pay all costs attendant thereon. If the Contractor fails to comply with the conditions aforesaid, the Inspecting Officer shall, in his sole judgment, be entitled to remove for test and examination all or any of the goods manufactured by the Contractor to any premises other than his (Contractor's) and in all such cases the Contractor shall bear the cost of transport and/or carrying out such tests elsewhere. A certificate in writing of the Inspecting Officer, that the Contractor has failed to provide the facilities and the means, for test examination shall be final.

**1305 Delivery of Goods for Test—**

The Contractor shall also provide and deliver for test, free of charge, at such place other than his premises as the Inspecting Officer may specify, such material or goods as he may require.

**1306 Liability for Costs of Special or Independent Test.—**In the events of rejection of goods or any part thereof by the Inspecting Officer in the consequence of the sample which is removed to the laboratory or other places of test, being found on test not in conformity with the Contract and in the event of the failure of the Contractor for any reason to deliver the goods passed on test within the stipulated period, the Contractor shall, on demand pay to the Purchaser all costs incurred in the inspection and/or test. Cost of test shall be assessed at the rate charged by the laboratory to private persons for similar work.

**1307 Method of Testing —**

The Inspecting Officer shall have the right to put all the goods or materials forming part of the same or any part thereof to such tests as required for the goods specified in the contract. The Contractor shall not be entitled to object on any ground whatsoever to the method of testing adopted by the Inspecting Officer.

**1308 Goods Expended in Test—**

Unless otherwise provided for in the contract if the test proves satisfactory and the goods or any instalment thereof is accepted, the quantity of the goods or materials expended in the test will

be deemed to have been taken delivery of by the Purchaser and be paid for as such.

1309 Powers of Inspecting Officer -

The Inspecting Officer shall have the power: —

- i. before any goods or part thereof are submitted for inspection, to certify that they cannot be inspected in accordance with the contract owing to the adoption of any unsatisfactory method of manufacture.
- ii. to reject any goods submitted as not being in accordance with the particulars.
- iii. to reject the whole of the instalment tendered for inspection, if after inspection of such portion thereof as he may in his discretion think fit, he is satisfied that the same is unsatisfactory.
- iv. the Inspecting Officer's decision as regards the rejection shall be final and binding on the Contractor.

1400 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 of drawings.

1500 Responsibility of the Contractor for Executing the Contract

1501 Risk in the Goods —

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 despatch to the consignee.

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 despatch or delivery or are in the course of

transit from the Contractor to the consignee or, as the case may be, interim consignee. 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, misdelivery, 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.

1502      Consignees Right of Rejection —

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 despatch or delivery or during transit or otherwise howsoever.

Note — In respect of materials pre-inspected at the firm's premises the consignee will issue rejection advice within 90 days from the date of actual receipt of the goods by consignee and all the related documents from the contractor, required to be verified by the consignee on receipt of goods as per contract, before acceptance of the material. The time limit of 90 days specified above, is only for the initial acceptance of the material by 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 3200 within the period specified therein.

1503      Provided that where, under the terms of the contract the goods are required to be delivered to an interim consignee for the purpose of despatch 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.

1504      The provisions contained in Clause 2200 relating to the removal of goods rejected by the Inspecting Officer shall mutatis mutandis apply to goods rejected by the consignee as herein

provided.

1505        Subletting and Assignment: The Contractor shall not, save with the previous consent in writing of the Purchaser, sublet, transfer or assign the contract or any part thereof or interest therein or benefit or advantage thereof in any manner whatsoever.

1506A       Changes in a Firm —

(a)    Where the Contractor is a partnership firm, a new partner shall not be introduced in the firm except with the previous consent in writing of the Purchaser, which may 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 prior to the date of such undertaking.

(b)    On the death or retirement of any partner' of the Contractor firm before complete performance of the contract, the Purchaser may, at his option cancel the contract and in such case the Contractor shall have no claim whatsoever to 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, 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.

1506B       Obligation to Maintain Eligibility and Qualifications

The contract has been awarded to the contractor based on specific eligibility and qualification criteria. The Contractor is contractually bound to maintain such eligibility and qualifications during the execution of the contract. Any change which would vitiate the basis on which the contract was awarded to the contractor should be pro-actively brought to the notice of the purchaser within 7 days of it coming to the Contractor's knowledge.

1506C       Consequence of breach —Should the contractor or any of its partners or its subcontractors or its personnel commit a default or breach of Para 1505 , 1506A, 1506B, 1701, 1702, 1703, the contractor shall remedy such breach within 21 days, keeping the purchaser informed. However, at its discretion, the purchaser shall be entitled, and it shall be lawful on its part, to treat it as breach of contract and avail any or all remedies thereunder. The

decision of the procuring entity as to any matter or thing concerning or arising out of these clauses or on any question whether the contractor or any partner of the contractor firm has committed a default or breach of any of the conditions shall be final and binding on the contractor. The purchaser may also cancel the contract and take action as per provisions of clause 0702 (b) and 0702(c).

1507 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. But, 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.

(b) Every effort made by the Purchaser to supply, or give assistance in the procurement of materials, whether from the Government stock or by purchase 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.

1600 Use of Raw Materials secured with Government Assistance

1601 (a) 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

(b)Where the raw material is issued to the Contractor from Government stock, or

(c)Where advance payments are made to the Contractor to enable him to purchase the raw material, or

(d)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.

On returning such material, the Contractor shall be entitled to such price therefor as the Purchaser may fix, having regard to the condition of such material

- 1602 Where the contract is terminated due to any default on the part of the Contractor, the Contractor shall pay all transport charges incurred for returning any material up to such destination as may be determined by the Purchaser and the decision of the Purchaser in that behalf shall be final and binding on the Contractor.
- 1603 If the Contractor commits breach of any of the conditions in this clause specified, he shall, without prejudice to any other liability, penal or otherwise, be liable to account to the Government for all moneys, advantages or profits accruing from or which, in the usual course, would have accrued to him by reason of such breach.
- 1604 Where the goods manufactured or fabricated by the Contractor out of the material arranged or procured by or on behalf of the Government are rejected, the Contractor shall, without prejudice to any other right or remedy of the Government, pay to the Government, on demand, the cost price or market value of all

such materials whichever is greater.

1700 Indemnity

1701 (a)The contractor shall at all times indemnify and hold harmless, free of costs, the Purchaser and its employees and officers from and against all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of any nature, including attorney's fees and expenses, which may arise in respect of the Goods provided by the contractor under this Contract, as a result of any infringement or alleged infringement of any patent, utility model, registered design, copyright, or other Intellectual Property Rights (IPR) or trademarks, registered or otherwise existing on the date of the contract arising out of or in connection with:

- i. any design, data, drawing, specification, or other documents or Goods provided or designed by the contractor for or on behalf of the purchaser.
- ii. The sale by the purchaser in any country of the products produced by the Goods supplied by the contractor, and
- iii. The installation of the Goods by the contractor or the use of the Goods by the purchaser

(b)Such indemnity shall not cover any use of the Goods or any part thereof or any products produced thereby:

- i. other than for the purpose indicated by or to be reasonably inferred from the contract
- ii. in association or combination with any other equipment, plant, or materials not supplied by the contractor.

(c)If any proceedings are brought, or any claim is made against the purchaser arising out of the matters referred above, the Purchaser shall notify the Contractor of the same and the Contractor shall, at his own expense, either settle any such dispute or conduct any litigation that may arise therefrom.

(d)If the contractor fails to notify the purchaser within twenty-eight (28) days after receiving such notice that it intends to conduct any such proceedings or claim, then the purchaser shall be free to conduct the same on its behalf at the risk and cost to the contractor.

(e)At the contractor's request, the purchaser shall afford all available assistance to the contractor in conducting such proceedings or claim and shall be reimbursed by the contractor for all reasonable expenses incurred in so doing.

1702 The Contractor shall not be liable for payment of any royalty, licence fee or other expenses in respect of or for making use of patents or designs with respect to which he is according to the terms of the contract, to be treated as an agent of the

Government for the purpose of making use of patent or trade mark for fulfilment of the contract

1703

**Confidentiality, Secrecy and IPR Rights**

**(a) Confidentiality**

All documents, drawings, samples, data, associated correspondence or other information furnished by or on behalf of the purchaser to the contractor, in connection with the contract, whether such information has been furnished before, during or following completion or termination of the contract, are confidential and shall remain the property of the purchaser and shall not, without the prior written consent of purchaser neither be divulged by the contractor to any third party, nor be used by him for any purpose other than the design, procurement, or other services and work required for the performance of this Contract. If advised by the purchaser, all copies of all such information in original shall be returned on completion of the contractor's performance and obligations under this contract.

**(b) Secrecy**

If The Contract declares the subject matter of this Contract as coming under the Official Secrets Act, 1923 or if the contract is marked as "Secret", the contractor shall take all reasonable steps necessary to ensure that all persons employed in any connection with the contract, have acknowledged their responsibilities and penalties for violations under the Official Secrets Act and any regulations framed thereunder.

**(c) IPR Rights**

All deliverables, outputs, plans, drawings, specifications, designs, reports, and other documents and software submitted by the contractor under this Contract shall become and remain the property of the purchaser and subject to laws of copyright and must not be shared with third parties or reproduced, whether in whole or part, without the purchaser's prior written consent. The contractor shall, not later than upon termination or expiration of this Contract, deliver all such documents and software to the purchaser, together with a detailed inventory thereof. The contractor may retain a copy of such documents and software but shall not use it for any commercial purpose.

**(d) Obligations of the contractor**

i. Without the purchaser's prior written consent, the contractor shall not use the information mentioned above except for the sole purpose of performing this contract.



ii. The contractor shall treat and mark all information as confidential (or Secret – as the case may) and shall not, without the written consent of the purchaser, divulge to any person other than the person(s) employed by the contractor in the performance of the contract. Further, any such disclosure to any such employed person shall be made in confidence and only so far as necessary for such performance for this contract.

iii. Notwithstanding the above, the contractor may furnish to its holding company or its Subcontractor(s) such documents, data, and other information it receives from the purchaser to the extent required for performing the contract. In this event, the contractor shall obtain from such holding company/ Subcontractor(s) an undertaking of confidentiality (or secrecy – as the case may be) similar to that imposed on the contractor under the above clauses.

iv. The obligation of the contractor under sub-clauses above, however, shall not apply to information that:

- (a) the contractor needs to share with the institution(s) participating in the financing of the contract;
- (b) now or hereafter is or enters the public domain through no fault of Contractor;
- (c) can be proven to have been possessed by the contractor at the time of disclosure and which was not previously obtained, directly or indirectly, from the purchaser; or
- (d) otherwise lawfully becomes available to the contractor from a third party that has no obligation of confidentiality.

v. The above provisions shall not in any way modify any undertaking of confidentiality (or Secrecy – as the case may be) given by the contractor before the date of the contract in respect of the contract/ the Tender Document or any part thereof.

vi. The provisions of this clause shall survive completion or termination for whatever reason of the contract.

- |      |                                                                                                                                                                                                                                                                      |
|------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1800 | Packing.                                                                                                                                                                                                                                                             |
| 1801 | The Contractor shall pack at his own cost the goods sufficiently and properly for transit by rail/road, air and/or sea as provided in the contract so as to ensure their being free from loss or damage or adverse impact on quality on arrival at their destination |
| 1802 | Unless otherwise, provided in the contract all containers                                                                                                                                                                                                            |

(including packing cases, boxes, tins, drums and wrappings) in which the goods are supplied by the contractor, shall be considered as non-returnable and their cost as having been included in the contract price.

1803 If the contract provides that the containers shall be returnable, they must be marked 'returnable' and they will be returned to the Contractor as per terms of the contract.

1804 If the contract provides that returnable containers shall be separately charged; they shall be invoiced by the Contractor at the price specified in acceptance of tender. In such cases, the Contractor shall give full credit for the invoiced amount if the containers are returned to the Contractor. Return of containers shall be made within a reasonable time and in the event of any dispute or difference arising as to whether the containers were so returned, the decision of the Purchaser thereon shall be final and binding and the Purchaser may, in his discretion award, such compensations as may in his opinion be proper for any undue delay in returning the containers.

1805 Each bale or package delivered under the contract shall be marked by the Contractor at his own expense. Such marking shall be distinct (all previous irrelevant marking being carefully obliterated) and shall clearly indicate the description and quantity of the goods, the name and address of the Consignee, the gross weight of the package and the name of the Contractor with a distinctive number or mark sufficient for the purpose of identification. All markings shall be carried out with such material as may be found satisfactory by the Inspecting Officer as regards quickness of drying, fastness and indelibility.

1806 The Inspecting Officer may reject the goods if the goods are not packed/or marked as aforesaid and in case where the packing materials are separately prescribed, if such materials are not in accordance with the terms of the contract. Such rejection of the goods by the Inspecting Officer shall be final and binding on the Contractor.

1807 Each bale or package shall contain a packing note specifying the name and address of the Contractor, the number and date of the acceptance of tender or supply order and the designation of the Purchase Officer, the description of the goods and the quantity contained in such bale or package.

1900 Notification of Delivery

Notification of delivery or despatch in regard to each and every instalment shall be made to the consignee and to the indenter immediately on despatch or delivery. The Contractor shall further supply to the consignee, or the interim consignee, as the case may be, a packing account Quoting number of the acceptance of

tender and/or supply or repeat and date of despatch of the goods. All packages, containers, bundles and loose materials part of each and every instalment shall be fully described in the packing account and full details of the contents of the packages and quantity of materials shall be given to enable the consignee to check the goods on arrival at destination. The Railway Receipt/Consignment Note or Bill of Lading, if any, shall be forwarded to the consignee by registered post immediately on the despatch of goods. The contractor shall bear and reimburse to the Purchaser demurrage charges, if any, paid by reason of delay on the part of the Contractor in forwarding the Railway Receipt, Consignment Note or Bill of Lading.

- 2000 Progress Reports.
- 2001 The Contractor shall from time-to-time, render such reports concerning the progress of the contract and/or supply of the goods in such form as may be required by the Purchaser.
- 2002 The submission, receipt and acceptance of such reports shall not prejudice the rights of the Purchaser under the contract, nor shall operate as an estoppel against Purchaser merely by reason of the fact that he has not taken notice of/or subjected to test any information contained in such report
- 2100 Freight.
- If as per Contract conditions, freight is to be borne by the Purchaser at actual, the goods shall be booked by the most economical route or most economical tariff available at the time of despatch as the case may be. Failure to do so will render the Contractor liable for any avoidable expenditure caused to the Purchaser.
- 2101 In respect of road deliveries where the Municipal/local authorities do not accept Octroi Duty Exemption Certificate, the Octroi Duty shall be borne by the Contractor.
- 2200 Removal of Rejected Goods
- 2201 On rejection of all goods submitted for inspection at a place other than the premises of the Contractor, such goods shall be removed by the Contractor at his own cost subject as hereinafter stipulated, within 21 days of the date of issue of intimation of such rejection by communication means detailed in clause 0202. The communication will be deemed to have been served on the contractor at the time when such communication would, in the course of ordinary communication, reach the contractor through the means of communication used.

Provided that the Inspecting Officer/Consignee may call upon the Contractor to remove dangerous, infected or perishable goods within 48 hours of the receipt of such communication and the decision of the Inspecting Officer in this behalf shall be final in all respects.

Provided further that where the price or part thereof has been paid, the consignee is entitled without prejudice to his other rights to retain the rejected goods till the price paid for such goods is refunded by the Contractor or dispose of as per clause 2202 save that such retention shall not in any circumstances be deemed to be acceptance of the goods or waiver of rejection thereon.

- 2202 All rejected goods shall in any event and circumstances remain and always be at the risk of the Contractor immediately on such rejection. If such goods are not removed by the Contractor within the periods aforementioned, the Inspection Officer/Consignee may remove the rejected goods and either return the same to the contractor at his risk and cost by such mode of transport as the Purchaser or Inspecting Officer may decide, or dispose of such goods at the Contractor's risk and on his account and adjust such portion of the proceeds, if any from such disposal as may necessary to recover any expense incurred in connection with such disposals (or any price refundable as a consequence of such rejection). The Purchaser shall, in addition, be entitled to recover from the Contractor ground rent/demurrage charges on the rejected goods after the expiry of the time limit mentioned above. Disposal of rejected goods in aforesaid manner will not in any way exonerate contractor but still hold him liable to pay to the purchaser, the dues detailed under para 0703(iii) besides other dues as mentioned above and action can be taken by the Purchaser as per clause 2400, if contractor fails to pay the amount due to him.
- 2203 Deleted
- 2300 System of Payment
- 2301 Unless otherwise agreed upon between the parties, payment for delivery of the goods will be made on submission of bills in the prescribed form which may be obtained from the Purchase Officer or through online billing mode on e-procurement portal of the purchaser, as decided by the purchaser, in accordance with the instructions given in the Acceptance of Tender, by a cheque or demand draft or through online mode on a branch of the Reserve Bank of India or State Bank of India transacting government business or through e-payment to the registered bank account of the Contractor at the option of the purchaser.
- 2302 Payment for the goods or for each consignment thereof will be made to the Contractor on submission of bills accompanied by required document in accordance with the following procedure in

contracts where such a facility to the Contractor has specifically been agreed to by the Purchaser: —

(a) (i) For despatch by road or despatch by rail on FOR destination basis, 95% payments for the goods or each consignment thereof will be made to the Contractor against proof of inspection and proof of delivery in good condition at consignee's end. Receipted Challan signed by the Gazetted officer at consignee's end will be taken as the proof of delivery but not construe the acceptance by the consignee.

(ii) For despatch by rail on FOR station of despatch basis, 95 per cent payments for the goods or each consignment thereof will be made to the firms against proof of inspection and despatch. The original railway receipt should be sent to the Accounts Officer responsible for payment along with 95 per cent bill advising the particulars of despatch to the consignee. The Accounts Officer after passing the 95 per cent bill should pass on the original railway receipt to the consignee for taking delivery of the consignment. It should, however, be ensured that there is no delay in the Accounts Office transmitting the original railway receipt to the consignee.

(b) The balance 5% payment shall be made after receipt and acceptance of the material by the consignee at his end.

(c) In the case of FOB& CFR contract, 95 per cent of the price will be paid on presentation of shipping documents and inspection certificate and the remaining 5 per cent on receipt of the goods in accordance with the terms of the contract in good condition by the Consignee, and on producing the certificate of such receipt endorsed on one copy of the Inspection Note by the Consignee, or alternatively at the Contractor's option, the full value of the goods will be paid after inspection, on receipt of the consignment in accordance with the terms of the contract in good condition by the Consignee and on producing a certificate of such receipt endorsed on one copy of the Inspection Note.

2303 In all other contracts or in contracts where the Inspecting Officer also acts as the interim " consignee or where inspection is carried on by the Consignee himself at destination and in all cases of local delivery full payment shall be made on submission of "Final 100 per cent bill" supported by the Inspection Certificates and consignee's receipt and acceptance certificate as aforesaid to the Accounts Officer concerned.

Note —

The system of 95 per cent and 5 per cent payment is not applicable to claims amounting to Rs. 25,000/- or below.

2304 Payment Against Time-Barred Claims

All claims against the Purchaser shall be legally time-barred after

three years calculated from the date when the payment falls due unless the payment claim has been under correspondence. The Purchaser is entitled to, and it shall be lawful for it to reject such claims.

2400 Withholding and lien in respect of sums claimed.

2401 Whenever any claim or claims for payment of a sum of money arises out of or under the contract against the Contractor, the Purchaser shall be entitled to withhold and also have a lien to retain such sum or sums in whole or in part from the security, if any, deposited by the Contractor and for the purpose aforesaid, the Purchaser shall be entitled to withhold the said cash security deposit or the security, if any, furnished as the case may be and also have a lien over the same pending finalisation or adjudication of any such claim. In the event of the security being insufficient to cover the claimed amount or amounts or if no security has been taken from the Contractor, the Purchaser shall be entitled to withhold and have lien to retain to the extent of the such claimed amount or amounts referred to supra, from any sum or sums found payable or which at any time thereafter may become payable to the Contractor under the same contract or any other contract with the Purchaser or the Government pending finalisation or adjudication of any such claim.

It is an agreed term of the contract that the sum of money or moneys so withheld or retained under the lien referred to above, by the Purchaser will be kept withheld or retained as such by the Purchaser till the claim arising out of or under the contract is determined by the Arbitrator (if the contract is governed by the arbitration clause) or by the competent court as prescribed under Clause 2703 hereinafter provided, as the case may be, and that the Contractor will have no claim for interest or damages what so ever on any account in respect of such withholding or retention under the lien referred to supra and duly notified as such to the Contractor.

2402 For the purpose of Clause 2401, where the Contractor is a partnership firm or a limited company, the Purchaser shall be entitled to withhold and also have a lien to retain towards such claimed amount or amounts in whole or in part from any sum found payable to any partner/limited company, as the case may be, whether in his individual capacity or otherwise.

2403 Lien in respect of Claims in other Contracts —

- (a) Any sum of money due and payable to the Contractor (including the security deposit returnable to him) under the contract may be withheld or retained by way of lien by the Purchaser or Government against any claim of the Purchaser or Government in respect of payment of a sum of money arising out of or under any other contract made by the Contractor with the

Purchaser or Government.

- (b) It is an agreed term of the contract that the sum of money so withheld or retained under this clause by the Purchaser or Government will be kept withheld or retained as such by the Purchaser or Government till his claim arising out of the same contract or any other contract is either mutually settled or determined by the arbitrator, if the contract is governed by the arbitration clause or by the competent court under Clause 2703 hereinafter provided, as the case may be, and that the Contractor shall have no claim for interest or damages whatsoever on this account or on any other ground in respect of any sum of money withheld or retained under this clause and duly notified as such to the Contractor.

2500 Code of Integrity in Public Procurement; Misdemeanours and Penalties

2501 Corrupt Practices

The Contractor shall not offer or give or agree to give to any person in the employment of the Purchaser or working under the orders of the Purchaser any gift or consideration of any kind as an inducement or reward for doing or for bearing to do or for having done or for borne to do any act in relation to the obtaining or execution of the contract or any other contract with the Purchaser or Government or for showing any favour or for bearing to show disfavour to any person in relation to the contract or any other contract with the Purchaser or Government. Any breach of the aforesaid condition by the Contractor, or any one employed by him or acting on his behalf (whether with or without the knowledge of the Contractor) or the commission of any offence by the Contractor or by any one employed by him or acting on his behalf under Chapter IX of the Indian Penal Code, 1860 (as amended from time to time) or the Prevention of Corruption Act, 1988 ( as amended from time to time) or any other act enacted for the prevention of corruption by public servants shall entitle the Purchaser to cancel the contract and all or any other contracts with the Contractor and take further actions as per clause 2505 and 2506 below.

2502 Code of Integrity

Procuring authorities as well as bidders, suppliers, contractors, and consultants - should observe the highest standard of ethics and should not indulge in following prohibited practices, either directly or indirectly, at any stage during the Tender Process or during the execution of resultant contracts:

- (a) "Corrupt practice" - making offer, solicitation or

acceptance of a bribe, reward or gift or any material benefit, in exchange for an unfair advantage in the Tender Process or to otherwise influence the Tender Process (Please also see Para 2501 above);

- (b) "Fraudulent practice" - any omission or misrepresentation that may mislead or attempt to mislead so that financial or other benefits may be obtained or an obligation avoided. Such practices include a false declaration or false information for participation in a tender process or to secure a contract or in the execution of the contract;
- (c) "Anti-competitive practice" - any collusion, bid-rigging or anti-competitive arrangement, or any other practice coming under the purview of the Competition Act, 2002, between two or more bidders, with or without the knowledge of the Purchaser, that may impair the transparency, fairness, and the progress of the Tender Process or to establish bid prices at artificial, non-competitive levels;
- (d) "Coercive practice" - harming or threatening to harm persons or their property to influence their participation in the Tender Process or affect the execution of a contract;
- (e) "Conflict of interest" - participation by a bidding firm or any of its affiliates who are either involved in the Consultancy Contract to which this procurement is linked; or if they are part of more than one bid in the procurement; or if their personnel have a relationship or financial or business transactions with any official of Purchaser who are directly or indirectly related to tender or execution process of contract; or improper use of information obtained by the (prospective) bidder from the Purchaser with an intent to gain unfair advantage in the Tender Process or for personal gain;
- (f) "Obstructive practice" - materially impede Purchaser investigation into allegations of one or more of the above mentioned prohibited practices either by deliberately destroying, falsifying, altering; or by concealing of evidence material to the investigation; or by making false statements to investigators and/ or by coercive practices mentioned above, to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or by impeding the Purchaser's rights of audit or access to information;



2503 Obligations for Proactive Disclosures:

- (a) Procuring authorities, bidders, suppliers, contractors, and consultants are obliged under this Code of Integrity to suo-moto proactively declare any conflict of interest (coming under the definition mentioned above - pre-existing or as and as soon as these arise at any stage) in any Tender Process or execution of the contract. Failure to do so shall amount to a violation of this code of integrity.
- (b) Any bidder must declare, whether asked or not in a bid-document, any previous transgressions of such code of integrity during the last three years or of being under any category of debarment by the Central Government or by the Ministry/ Department of the Procuring Organisation from participation in Tender Processes. Failure to do so shall amount to a violation of this code of integrity.

2504 Misdemeanours

The following shall be considered misdemeanours - if a bidder/ contractor either directly or indirectly, at any stage during the Tender Process or during the execution of resultant contracts:

- (a) commits any of the following misdemeanours:
  - i. violates the code of Integrity, if included in the Tender/ Contract;
  - ii. any other misdemeanour, e.g., supply of sub-standard quality of material/ services/ work or non-performance or abandonment of contract or failure to abide by 'Bid Securing Declaration'.
- (b) commits any of the following misdemeanours:
  - i. has been convicted of an offence under the Prevention of Corruption Act, 1988(as amended from time to time)or
  - ii. the Indian Penal Code (as amended from time to time) or any other law for the time being in force for causing any loss of life or property or causing a threat to public health as part of the execution of a public procurement contract.
  - iii. is determined by the Government of India to have doubtful loyalty to the country or national security consideration.
  - iv. Employs a government servant, who has been

dismissed or removed on account of corruption or employs a non-official convicted for an offence involving corruption or abetment of such an offence, in a position where he could corrupt government servants or employs a government officer within one year of his retirement, who has had business dealings with him in an official capacity before retirement.

**2505 Penalties for Misdemeanours**

Without prejudice to and in addition to the rights of the Purchaser to other remedies as per the Tender-documents or the contract, If the Purchaser concludes that a (prospective) bidder/ contractor directly or through an agent has committed a misdemeanour in competing for the tender or in executing a contract, the Purchaser shall be entitled, and it shall be lawful on his part to take appropriate measures, including the following:

- (a) if his bids are under consideration in any procurement
  - i. Enforcement of Bid Securing Declaration in lieu of forfeiture or encashment of Bid Security.
  - ii. calling off of any pre-contract negotiations, and;
  - iii. rejection and exclusion of Bidder from the Tender Process
- (b) if a contract has already been awarded
  - i. Termination of Contract for Default and availing all remedies prescribed thereunder;
  - ii. Encashment and/ or Forfeiture of any contractual security or bond relating to the procurement;
  - iii. Recovery of payments including advance payments, if any, made by the Purchaser along with interest thereon at the prevailing rate (MIBID - Mumbai Interbank Bid Rate);

**2506 Remedies in addition to the above:**

In addition to the above penalties, the Purchaser shall be entitled, and it shall be lawful on his part to:

- (a) File information against Bidder or any of its successors, with the Competition Commission of India for further processing, in case of anti-competitive practices;
- (b) Initiate proceedings in a court of law against Bidder or any of its successors, under the Prevention of Corruption Act, 1988 or the Indian Penal Code or any other law for

transgression not addressable by other remedies listed in this sub-clause.

(c) Remove Bidder or any of its successors from the list of registered/approved suppliers for a period not exceeding two years. Suppliers removed from the list of registered/approved vendors or their related entities may be allowed to apply afresh for registration after the expiry of the period of removal.

(d) Initiation of suitable disciplinary or criminal proceedings against any individual or staff found responsible.

(e) Debar, a bidder/ contractor from participation in future to purchaser's procurements without prejudice to legal rights and remedies. Debarment shall automatically extend to all the allied firms of the debarred firm. In the case of Joint Venture/ consortium, all its members shall also stand similarly debarred

(f) The Ministry/Department may debar a bidder or any of its successors from participating in any Tender Process undertaken by all its Purchaser for a period not exceeding two years commencing from the date of debarment for misdemeanours listed above. The Ministry/Department shall maintain such a list which shall also be displayed on their website.

(g) Central Government (Department of Expenditure (DoE), Ministry of Finance) may debar a bidder or any of its successors from participating in any Tender Process undertaken by all its Procuring Entity for a period not exceeding two years commencing from the date of debarment for misdemeanours listed above. DoE shall maintain such a list which shall be displayed on Central Public Procurement Portal (CPPP).

2507 Any dispute or difference in respect of either the interpretation effect or application or the above condition or of the amount recoverable thereunder by the Purchaser from the Contractor, shall be decided by the Purchaser, whose decision there on shall be final and binding on the Contractor.

2600 Insolvency and Breach of Contract

2601 The Purchaser may at any time, by notice in writing summarily determine the contract without compensation to the Contractor in any of the following events, that is to say: —

(a) if the Contractor being an individual or if a firm, any partner thereof, shall at any time, be adjudged insolvent or shall have a receiving order or order for administration of his estate made against him or shall take any proceeding for

composition under any Insolvency Act for the time being in force or make any conveyance or assignment of his effects or enter into any assignment or composition with his creditors or suspend payment or if the firm be dissolved under the Partnership Act, or

(b) if the Contractor being a company is wound up voluntarily or by the order of a Court or a Receiver, Liquidator or Manager on behalf of the Debenture—holders is appointed or circumstances shall have arisen which entitle the Court or Debenture— holders to appoint a Receiver, Liquidator or Manager, or

(c) if the Contractor commits any breach of the contract not herein specifically provided for.

Provided always that such determination shall not prejudice any right of action or remedy which shall have accrued or shall accrue thereafter to the Purchaser and provided also that, in addition to other actions against the contractor as per the terms of the contract, the Purchaser shall be entitled to take further action as per the provisions of clause 0702(b) and 0702(c)

## 2602 Force Majeure

(a) On the occurrence of any unforeseen event, beyond the control of either Party, directly interfering with the delivery of Services arising during the currency of the contract, such as war, hostilities, acts of the public enemy, civil commotion, sabotage, fires, floods, explosions, epidemics, quarantine restrictions, strikes, lockouts, or acts of God, the affected Party shall, within a week from the commencement thereof, notify the same in writing to the other Party with reasonable evidence thereof. Unless otherwise directed by the Purchaser in writing, the contractor shall continue to perform its obligations under the contract as far as reasonably practicable and shall seek all reasonable alternative means for performance not prevented by the Force Majeure event. If the force majeure condition(s) mentioned above be in force for 90 days or more at any time, either party shall have the option to terminate the contract on expiry of 90 days of commencement of such force majeure by giving 14 days' notice to the other party in writing. In case of such termination, no damages shall be claimed by either party against the other, save and except those which had occurred under any other clause of this contract before such termination.

(b) Notwithstanding the remedial provisions contained elsewhere in the contract, none of the Party shall seek any such remedies or damages for the delay and/ or failure of the other Party in fulfilling its obligations under the contract if it is the result of an event of Force Majeure.

- 2700        Laws governing the Contract
- 2701        This contract shall be governed by the Laws of India for the time being in force.
- 2702        Irrespective of the place of delivery, the place of performance or place of payment under the contract, the contract shall be deemed to have been made at the place from which the acceptance of tender has been issued.
- 2703        Jurisdiction of courts —The Courts of the place from where the acceptance of tender has been issued shall alone have jurisdiction to decide any dispute arising out of or in respect of the contract.
- 2704        Marking of goods —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.
- 2705        Obligations of the contractor under Labour Codes and Rules
- (a) The contractor shall comply with the provisions of the Labour Codes, which including Code on Wages, 2019, The Industrial Relations Code 2020, Code on the Social Security 2020, and The Occupational Safety, Health and Working Conditions 2020, and Draft Rules made thereunder, as modified from time-to-time, wherever applicable and shall also indemnify the Purchaser from and against any claims under the aforesaid Labour codes and the Rules.
- (b)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.
- (c)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.
- (d)The Contractor shall pay the wages as per the Code on Wages 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 its discretion, monitor that such payments are being made.

(e) 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.

2706      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, its employees, agents, and subcontractors performing under this Contract are not employees or agents of the Procuring Organisation or Purchaser or Central or State Government or their agencies/ Enterprises, simply by execution of this contract including Services delivered under this Contract.

2800      Headings

The headings of conditions hereto shall not affect the construction thereof.

2900      Settlement of Disputes

2901      Conciliation of disputes

All disputes and differences of any kind whatsoever arising out of or in connection with the contract, whether during the currency of the contract or after its completion and whether before or after the determination of the contract, shall be referred by any of the parties to the concerned "Chief Materials Manager (CMM) " or "Divisional Railway Manager" or "Executive Director" through "Notice of Dispute". CMM or Divisional Railway Manager or Executive Director shall, within 30 days after receipt of "Notice of Dispute", notify the name of sole conciliator to the parties,

The Conciliator shall assist the parties to reach an amicable settlement in an independent and impartial manner within the terms of contract.

If the parties reach agreement on settlement of the dispute, they shall draw up a written settlement agreement duly signed by parties and conciliator. When the parties sign the settlement agreement, it shall be final and binding on the parties.

The parties shall not initiate, during the conciliation proceedings, any arbitral or judicial proceedings in respect of dispute that is the subject matter of the conciliation proceedings.

The conciliation proceedings shall be terminated:

- 1) By the signing of the settlement agreement, on the date of agreement: or
- 2) By written declaration of the conciliator, after consultation with the parties, to the effect that further efforts at conciliation are no longer justified, on the date of declaration: or
- 3) By a written declaration of any party to the conciliator to the effect that the conciliation proceedings are terminated, on the date of declaration:

2902

**Matters Finally Determined by the Railway:** All disputes and differences of any kind whatsoever arising out of or in connection with the contract, whether during the currency of the contract or after its completion and whether before or after the determination of the contract, shall be referred by the contractor to the General Manager (for the purpose of para 2900 the term General Manager shall imply Additional General Managers of Zonal Railways , General Managers for Production Units, Additional Member (Railway Stores), Member of the Railway Board, Head of the Organisation in case of contracts entered into by other organizations under the Ministry of Railways) and the General manager shall, within 120 days after receipt of the representation, make and notify decisions on all matters referred to by the Contractor in writing. Provided that matters for which provision has been made in any Clause of the Special or General

Conditions of the Contract shall be deemed as 'excepted matters' (matters not arbitrable) and decisions of the Railway authority, thereon shall be final and binding on the Contractor; provided further that "excepted matters" shall stand specifically excluded from the purview of the Arbitration Clause.

Provided further that where Railways has raised the dispute, para 2902 shall not apply.

2903

Demand for Arbitration:

1) In the event of any dispute or difference between the parties hereto as to the construction or operation of this contract, or the respective rights and liabilities of the parties on any matter in question, dispute or difference on any account, or if the Railway fails to make a decision within 120 days (as referred in 2902), then and in any such case, but except in any of the "excepted matters" referred to in Clause 2902 of these Conditions, parties to the contract, after 120 days but within 180 days of their presenting their final claim on disputed matters, shall demand in writing that the dispute or difference be referred to arbitration. Provided that where the claim is raised by Railways para 2903(1) shall not apply.

2) (a) The demand for arbitration shall specify the matters which are in question, or subject of the dispute or difference as also the amount of claim item-wise. Only such dispute or difference, in respect of which the demand has been made, together with counter claims or set off, shall be referred to arbitration and other matters shall not be included in the reference,

(b) The parties may waive off the applicability of Sub-Section 12(5) of Arbitration and Conciliation Act 1996 (as amended), if they agree for such waiver in writing, after dispute having arisen between them.

3) (a) The Arbitration proceedings shall be assumed to have commenced from the day, a written and valid demand for arbitration is received by the Railway.

(b) The claimant shall submit his claims stating the facts supporting the claims along with all the relevant documents and the relief or remedy sought against each claim within a period of 30 days from the date of appointment of the Arbitral Tribunal.

(c) Respondent shall submit its defence statement and counter



claim(s), if any, within a period of 60 days of receipt of copy of claims from Tribunal, unless otherwise extension has been granted by Arbitral Tribunal.

(d) Place of Arbitration: The place of arbitration would be within the geographical limits of the Division of the Railway where the cause of action arose or the Headquarters of the concerned Railway or any other place with the written consent of both the parties.

4) No new claim shall be added during proceedings by either party. However, a party may amend or supplement the original claim or defence thereof during the course of arbitration proceedings subject to acceptance by Tribunal having due regard to the delay in making it.

2904 Obligation During Pendency of Arbitration: Supplies under the contract shall, unless otherwise directed by the Purchase Officer, continue during the arbitration proceedings, and no payment due or payable by the Railway shall be withheld on account of such proceedings, provided, however, it shall be open for Arbitral Tribunal to consider and decide whether or not, supplies should continue during arbitration proceedings.

2905 Appointment of Arbitrator

2905 (a) Appointment of Arbitrator where applicability of section 12 (5) of Arbitration and Conciliation Act has been waived off:

i. In cases where the total value of all claims in question added together does not exceed Rs. 1,00,00,000/- (Rupees One Crore only), the Arbitral Tribunal shall consist of a Sole Arbitrator who shall be a Gazetted Officer of Railway not below Junior Administrative Grade, nominated by the General Manager. The sole arbitrator shall be appointed within 60 days from the day when a written and valid demand for arbitration is received by General Manager.

ii. In cases where the total value of all claims in question added together exceeds Rs. 1,00,00,000/- (Rupees One Crore only), the Arbitral Tribunal shall consist of a panel of three Gazetted Railway Officers not below Junior Administrative Grade or 2 Railway Gazetted Officers not below Junior Administrative Grade and a retired Railway Officer, retired not below the rank of Senior Administrative Grade Officer, as the arbitrators. For this purpose, the Railway will send a panel of at least four (4) names of Gazetted Railway Officers of one or more departments of the

Railway which may also include the name(s) of retired Railway Officer(s) empanelled to work as Railway Arbitrator to the Contractor within 60 days from the day when a written and valid demand for arbitration is received by the General Manager.

Contractor will be asked to suggest to General Manager at least 2 names out of the panel for appointment as Contractor's nominee within 30 days from the date of dispatch of the request by Railway. The General Manager shall appoint at least one out of them as the Contractor's nominee and will, also simultaneously appoint the balance number of arbitrators either from the panel or from outside the panel, duly indicating the 'presiding arbitrator' from amongst the 3 arbitrators so appointed. General Manager shall complete this exercise of appointing the Arbitral Tribunal within 30 days from the receipt of the names of Contractor's nominees. While nominating the arbitrators, it will be necessary to ensure that one of them is from the Accounts Department. An officer of Selection Grade of the Accounts Department may be considered of equal status to the officers in Senior Administrative Grade of other departments of the Railway for the purpose of appointment of arbitrator.

- iii. The serving railway officer working in arbitral tribunal in the ongoing arbitration cases as per clause 2903(a)(i) and clause 2905(a)(ii) above, can continue as arbitrator in the tribunal even after his retirement.

2905 (b) Appointment of Arbitrator where applicability of Section 12 (5) of Arbitration and Conciliation Act has not been waived off:

- i. In cases where the total value of all claims in question added together does not exceed Rs.50,00,000/- (Rupees Fifty Lakh only), the Arbitral Tribunal shall consist of a Retired Railway Officer, retired not below the rank of Senior Administrative Grade Officer, as the arbitrator. For this purpose, the Railway will send a panel of at least four (4) names of retired Railway Officer(s) empanelled to work as Railway Arbitrator duly indicating their retirement dates to the Contractor within 60 days from the day when a written and valid demand for arbitration is received by the General Manager.

Contractor will be asked to suggest to General Manager at least 2 names out of the panel for appointment as arbitrator within 30 days from the date of dispatch of the request by Railway. The General Manager shall appoint at least one out of them as the arbitrator.

- ii. In cases where the total value of all claims in question added together exceeds Rs.50,00,000/- (Rupees Fifty Lakh only), the Arbitral Tribunal shall consist of three (3) retired Railway Officers (retired not below the rank of Senior Administrative Grade Officer). For this purpose, the Railway will send a panel of at least four (4) names of retired Railway Officer(s) empanelled to work as Railway Arbitrators duly indicating their retirement date to the Contractor within 60 days from the day when a written and valid demand for arbitration is received by the General Manager.

Contractor will be asked to suggest to General Manager at least 2 names out of the panel for appointment as Contractor's nominee within 30 days from the date of dispatch of the request by Railway. The General Manager shall appoint at least one out of them as the Contractor's nominee and will, also simultaneously appoint the balance number of arbitrators either from the panel or from outside the panel, duly indicating the 'Presiding Arbitrator' from amongst the 3 arbitrators so appointed. General Manager shall complete this exercise of appointing the Arbitral Tribunal within 30 days from the receipt of the names of Contractor's nominees. While nominating the arbitrators, it will be necessary to ensure that one of them has served in the Accounts Department.

- 2905(c) i. If the contractor does not suggest his nominees for the arbitral tribunal within the prescribed timeframe, the General manager shall proceed for appointment of arbitral tribunal within 30 days of the expiry of such time provided to contractor.
- ii. If one or more of the arbitrators appointed as above refuses to act as arbitrator, withdraws from his office as arbitrator, or vacates his/their office/offices or is/are unable or unwilling to perform his functions as arbitrator for any reason whatsoever or dies or in the opinion of the General Manager fails to act without undue delay, the General Manager shall appoint new arbitrator/arbitrators to act in his/their place in the same manner in which the earlier arbitrator/arbitrators had been appointed. Such re-constituted Tribunal may, at its discretion, proceed with the reference from the stage at which it was left by the previous arbitrator (s).
- (a) Fast Track procedure: Parties to the arbitration agreement, may, at any stage either before or at the time of appointment of the arbitral tribunal, agree in writing to have their dispute resolved by fast-track procedure specified in Section 29B of the

Arbitration & Conciliation Act, 1996, as amended.

(b) Before proceeding into the merits of any dispute, the Arbitral Tribunal shall first decide and pass its orders over any plea submitted/objections raised by any party, if any, regarding appointment of Arbitral Tribunal, validity of arbitration agreement, jurisdiction and scope of the Tribunal to deal with the dispute (s) submitted to arbitration, applicability of time 'limitation' to any dispute, any violation of agreed procedure regarding conduct of the arbitral proceedings or plea for interim measures of protection and record its orders in day to day proceedings, A copy of the proceedings duly signed by all the members of tribunal should be provided to both the parties.

iii.(i) Qualification of Arbitrator (s):

(a) Serving Gazetted Railway Officers of not below JA Grade level.

(b) Retired Railway Officers not below SA Grade level, one year after his date of retirement,

(c) Age of arbitrator at the time of appointment shall be below 70 years.

(ii) An arbitrator may be appointed notwithstanding the total number of arbitration cases in which he has been appointed in the past.

(iii) While appointing arbitrator(s) under Sub-Clause 2905(a)(i), 2905(a)(ii), 2905(b)i) & 2905(b)(ii) above, due care shall be taken that he/they is/are not the one/those who had an opportunity to deal with the matters to which the contract relates or who in the course of his/their duties as Railway servant(s) expressed views on all or any of the matters under dispute or differences. A certification to this effect as per annexure (given after this para) shall be taken from Arbitrators. The proceedings of the Arbitral tribunal or the award made by such Tribunal will, however, not be invalid merely for the reason that one or more arbitrator had, in the course of his service, opportunity to deal with the matters to which the contract relates or who in the course of his/their duties expressed views on all or any of the matters under dispute.

**Annexure (Ref para (iii) of Clause 2905(c) (iii))**

Certification by persons under consideration to be nominated as Arbitrator.

1. Name
2. Contact Details:
3. I hereby certify that I have retired from Railways w.e.f. \_\_\_\_\_ in \_\_\_\_\_ grade.

Or

I hereby certify that I am serving Railway Officer and am presently posted as \_\_\_\_\_ in grade.

4. I have no any past or present relationship in relation to the subject matter in dispute, whether financial, business, professional or other kind.

Or

I have past or present relationship in relation to the subject matter in dispute, whether financial, business, professional or other kind. The list of such interests is as under:

5. I have no any past or present relationship with or interest in any of the parties whether financial, business, professional or other kind, which is likely to give rise to justifiable doubts as to my independence or impartiality in terms of the Arbitration and Conciliation Act 1996.

Or

I have past or present relationship with or interest in any of the parties whether financial, business, professional or other kind, which is likely to give rise to justifiable doubts as to my independence or impartiality in terms of the Arbitration and Conciliation Act 1996. The details of such relationship or interest are as under:

6. There are no concurrent circumstances which are likely to affect my ability to devote sufficient time to the arbitration and in particular to finish the entire arbitration within twelve months.

Or

There are circumstances which are likely to affect my ability to devote sufficient time to the arbitration and in particular to finish the entire arbitration within twelve months. The list of such circumstances is as under:

- 2905(d)
- (i): The arbitral award shall state item wise, the sum and reasons upon which it is based. The analysis and reasons shall be detailed enough so that the award could be inferred there from.
  - (ii): A party may apply for corrections of any computational errors,

any typographical or clerical errors or any other error of similar nature occurring in the award of a Tribunal and interpretation of a specific point of award to Tribunal within 60 days of receipt of the award.

(iii): A party may apply to Tribunal within 60 days of receipt of award to make an additional award as to claims presented in the arbitral proceedings but omitted from the arbitral award.

- 2906 In case of the Tribunal, comprising of three members, any ruling on award shall be made by a majority of members of Tribunal. In the absence of such a majority, the views of the Presiding Arbitrator shall prevail.
- 2907 Where the arbitral award is for the payment of money, no interest shall be payable on whole or any part of the money for any period till the date on which the award is made.
- 2908 (a): The cost of arbitration shall be borne by the respective parties. The cost shall inter-alia include fee of the arbitrator(s), as per the rates fixed by Railway Board from time to time and the fee shall be borne equally by both the parties. Further, the fee payable to the arbitrator(s) would be governed by the instructions issued on the subject by Railway Board from time to time irrespective of the fact whether the arbitrator(s) is/are appointed by the Railway Administration or by the court of law unless specifically directed by Hon'ble Court otherwise on the matter.
- (b): Sole arbitrator shall be entitled for 25% extra fee over the fee prescribed by Railway Board from time to time.
- 2909 The Micro, Small and Medium Enterprises Development (MSMED) Act, 2006 provides parties to a dispute (where one of the parties is a Micro or Small Enterprise) to make a reference to Micro and Small Enterprises Facilitation Council, if the dispute is in regard to any amount due under Section 17 of the MSMED Act, 2006. In case a Micro or Small] Enterprise, being a party to dispute, makes a reference under the provisions in MSMED Act 2006, the provisions of the MSMED Act 2006, shall prevail over conciliation and arbitration agreement as contained in the contract.
- 2910 Subject to the provisions of the aforesaid Arbitration and Conciliation Act 1996 (as amended from time to time) and the rules thereunder and relevant para of IRS Conditions of Contract and any statutory modifications thereof shall apply to the appointment of arbitrators and arbitration proceedings under this Clause.
- 3000 Repealed
- 3100 Inspection & Rejection

Where under a contract, the price payable is fixed on F.O.R. station of despatch 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.

**3101. Notification of Result of Inspection**

Unless otherwise provided in the specification of schedule, the examination of the goods will be made as soon as practicable after the same have been submitted for inspection and the result of the examination will be notified to the Contractor.

**3102. Inspection Notes—** On the goods being found acceptable by the inspecting Officer he shall furnish the Contractor with necessary copies of Inspection Notes duly completed, for being attached to the Contractor's bill in support thereof.

**3200 Warranty/Guarantee—**

**3201** The Contractor/ Seller hereby covenants that it is a condition of the contract that all goods furnished to the Purchaser under this contract shall be of the highest grade, free of all defects and faults and of the best materials, quality, manufacture and workmanship throughout and consistent with the established and generally accepted standards for materials of the type ordered and in full conformity with the contract specification, drawing or sample, if any and shall, if operable, operate properly.

**3202** The Contractor also guarantees that the said goods would continue to conform to the description and quality as aforesaid, for a period of 30 months after their delivery and this warranty shall survive notwithstanding the fact that the goods may have been inspected, accepted and payment therefore made by the Purchaser. If a longer/shorter period of warranty/guarantee is specified in the 'Particulars' mentioned under clause 0111 or any other contract documents, same shall be applicable instead of period specified in this clause.

**3203** (a) If during the aforesaid period, the said goods be discovered not to conform to the description and quality aforesaid or have deteriorated, otherwise that by fair wear and tear the decision of the Purchaser in that behalf being final and conclusive that the Purchaser will be entitled to reject the said goods or such portions thereof as may be discovered not to conform to the said description and quality. On such rejection, the goods will be at the Seller's risk.

(b) Upon receipt of such rejection, the contractor shall, within 21 days (or within any other period, if stipulated in the contract), expeditiously repair or replace, at the option of the purchaser, the defective Goods or parts thereof, free of cost, at the ultimate

destination.

(c) In case of any rectification of a defect or replacement of any defective Goods during the warranty period, the warranty for the rectified/ replaced Goods shall remain till the original warranty period plus response time beyond specified time allowed for rectification/replacement.

(d) If the contractor, having been notified, fails to rectify/ replace the defect(s) within 21 days (or within any other period, if stipulated in the contract), it shall amount to breach of Contract for default and the Purchaser shall avail any or all remedial action(s) thereunder.

3204        The rejected goods may be taken over by the Contractor or his agents for disposal in such manner as he may deem fit within a period of 3 months from the date of such rejection. At the expiry of the period, no claim whatsoever shall lie against the Purchaser in respect of the said goods, which may be disposed of by the Purchaser in such manner as he thinks fit. Without prejudice to the generality of the foregoing, all the provisions in the Indian Railways Standard Conditions of Contract relating to the 'rejection of goods' and 'failure' and 'termination' add and Clause 3100-02 above shall apply.

3300        Book Examination Clause— The Government reserves the right for 'Book Examination' as follows: -

(i) The Contractor shall whenever called upon and requiring to produce or cause to be produced for examination by any Government Officer duly authorised in that behalf, any cost or other account book of account, voucher, receipt, letter, memorandum, paper or writing or any copy of or extract from any such document and also furnish information any way relating to such transaction and procedure before the duly authorised Government Officer returns verified in such manner as may be required relating in any way to the execution of this contract or relevant for verifying or ascertaining the cost of execution of this contract (the decision of such Government Officer on the question of relevancy of any document, information of return being final and binding on the parties).

The obligation imposed by this clause is without prejudice to the obligation of the contractor under any statute, rules or orders shall be binding on the Contractor.

(ii) The Contractor shall, if the authorised Government Officer so requires (whether before or after the prices have been finally fixed), afford facilities to the Government Officer concerned to visit the Contractor's works for the purpose of examining the processes of manufacture and estimating or ascertaining the cost of production of the articles. If any portion of the work be entrusted or carried out by a sub-contractor or any of its



subsidiary or allied firm or company, the authorised Government Officer shall have power to examine all the relevant books of such sub-contractor or any subsidiary or allied firm or company shall be open to his inspection as mentioned in clause (i).

(iii) If on such examination, it is established that the contracted price is in excess of the actual cost-plus reasonable margin of profit, the Purchaser shall have the right to reduce the price and determine the amount to a reasonable level.

(iv) The Contractor or its agency is bound to allow examination of its books within a period of 60 days from the date the notice is received by the Contractor, or its agencies calling for the production of documents as under clause (i) above. In the event of Contractor's or his agency's failure to do so, the contract price would be reduced and determined according to the best judgment of the Purchaser which would be final and binding on the Contractor and his agencies.

**3400 Inspection at the Fag End of the Delivery Period—**

In cases where only a portion of the goods ordered is tendered for inspection at the Fag end of the delivery period and also in cases where inspection is not completed in respect of the portion of the goods tendered for inspection during the delivery period, the Purchaser reserves the right to cancel the balance quantity not tendered for inspection within the delivery period fixed in the contract without any further reference to him and take further actions as per provisions of clause 702. If the goods tendered for inspection during or at the fag end of the delivery period are not found acceptable after carrying out the inspection, the purchaser is entitled to cancel the contract in respect of the same and take suitable measures as aforementioned. If, however, the goods tendered for inspection are found acceptable, the Purchaser may grant an extension of the delivery period as per clause 0801.

**3401** The Contractor shall not despatch the Goods till such time as an extension in terms of para 3400 above is granted by the Purchaser and accepted by the Contractor. If the goods are despatched by the Contractor before an extension letter as aforesaid is issued by the Purchaser and the same are accepted by the Consignee, the acceptance of the goods shall be deemed to be subject to the conditions mentioned in the paragraph 0801 above.

**3402** In case where the entire quantity has not been tendered for inspection within the delivery period stipulated in the contract and the Purchaser chooses to grant an extension of the delivery period the same would be subject to conditions mentioned in the paragraph 0801 above.

**3500** Following (special) conditions wherever they differ from the Invitation to Tender and Instruction to Tenderers override the

latter

**(ADDITIONAL) SPECIAL CONDITIONS**

**(Vide Para 417-S)**

In addition to Standard Conditions of Contract, the following special conditions shall apply to (Running) Contract: -

- 3600 Purpose of Contract and Parties to the Contract
- 3601 The parties to the contract, which shall be deemed to be a "Running Contract" and which is intended for the supply of the goods of the descriptions and approximately in the quantities set forth in the contract during the period specified therein, shall be the Contractor of the one part and the authorities named in the contract hereinafter called the Purchaser (which expression shall, where the context so admits or implies, be deemed to include his successors and assigns) of the other part. The quantities shown in the said Contract, are only approximate, and cannot be guaranteed.
- 3602 The Purchaser may authorise any officer (who shall hereinafter be called Direct Demanding Officer) at any time during the period of the contract, to place orders direct on the Contractor.
- 3603 Any variation of this contract shall not be binding on the Purchaser unless or until same is endorsed on the contract or incorporated in a formal instrument in exchange of letters and signed by the parties.
- 3700 Delivery.
- 3701 The Contractor shall as may be required by the Purchaser either deliver free or FOR or CIF at the place or places specified in the contract such quantities of the goods detailed in the said contract as may be ordered direct from the Contractor from time-to-time by the Purchaser or by the Direct Demanding Officer. The Contractor shall deliver or despatch the full quantity of the goods so ordered within the period specified in the said contract.
- 3800 Increase or Decrease of Quantities.
- The purchaser shall be entitled to vary the approximate total quantities of each description of goods shown in the said contract up to 30 percent, in one or more instalments, any time within the last date of delivery period (including extended delivery period) by giving a reasonable notice in writing of such variation.

- 3900 Maintenance and Replacement of Stocks.
- 3901 To meet casual demands, the Contractor shall maintain at all time in stock (until 70 per cent of the requirements have been drawn), at the place(s) specified in the contract, the quantity/quantities mentioned therein. All demands should be complied with immediately they are received by the Contractor or within the period, if any, stipulated in individual orders. As soon as the Contractor is called upon to effect supplies, he shall take action to replenish the guaranteed stocks until such time as 70 percent of the total approximate requirement has been drawn and such replenishment shall be completed with the period specified in the contract, after the receipt by the Contractor of casual demands. Due notice will be given to the Contractor by the Direct Demanding Officers or by the Purchaser, if any additional quantities over and above 70 per cent of the total approximate requirements are required and Contractor shall then arrange stocks accordingly.
- 3902 The period for replenishment of stocks will be allowed only if the material is not in stock. If the material is in stock, this Provision will be inoperative even though the guaranteed stock quantity may have been supplied against the contract.
- 3903 As an alternative to Clause 3901 and 3902 above, at the option of the Purchaser, or Direct Demanding Officer, he may order more than one instalment of deliveries at a time by stipulating instalment wise start date and completion date of supply. Delivery period of all the instalments except the first one shall be deemed tentative/provisional till the start date of the corresponding instalment unless otherwise expressly communicated in main contract or any subsequent communication by the purchaser to the contractor. Purchaser, without prejudice to other provisions under the contract, reserves the right to make deferment in the aforementioned tentative/provisional delivery period of any instalment, constituting the elements of start date and completion date of supply for that instalment. Unless mutually agreed by Parties, the maximum period of deferment for any instalment will be limited to six months.
- 4000 Reporting Progress of Contract.
- The Contractor shall, three calendar months before the termination of the contract or at such intervals as may be specified in the contract, submit a report to the Purchaser stating the total quantity of goods delivered or despatched under the contract.
- 4100 Special conditions where they differ from Standard Conditions override the latter.