

as the case may be, a packing account quoting the Contract number and date of dispatch 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.

- (c) The Railway Receipt/ Consignment Note or Bill of Lading, if any, shall be forwarded to the Consignee by registered post immediately on the dispatch 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.

## **7.2 Progress Reports:**

- (a) 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.
- (b) 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.
- (c) Progressing of deliveries: The Contractor shall allow reasonable facilities and free access to his works and records to the Inspecting 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.

## **7.3 Delivery, Inspection and Acceptance of Goods:**

- (a) The Contractor shall, as may be required by the Purchaser, deliver the Goods as per the conditions of 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.
- (b) 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.
- (c) Notwithstanding any inspection and approval by the Inspecting Officer on the premises of Contractor or manufacturer, as the case may be, property in the Goods shall not pass on to the Purchaser until the Goods have been received, inspected and accepted by the Consignee.
- (d) No Goods shall be deliverable to the Consignee on Sundays and public holidays or beyond normal office hours without the written permission of the Consignee.
- (e) 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.

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#### 7.4 Time is 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 so specified or extended.

#### 7.5 Extension of Time for Delivery:

- (a) If the Contractor fails to deliver the Goods as per the stipulated deadlines in the Contract, for any cause which the Purchaser may admit as reasonable ground for extension of time for delivery, 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 due to delay in effecting delivery. Any failure or delay on the part of Sub-Contractor, though their employment may have been sanctioned by the Purchaser, 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. The decision of the Purchaser in this regard shall be final and binding on the Contractor.
- (b) If extension of time for delivery period is allowed, as above, by the Purchaser with damages, the amendment giving such an extension shall be subject to the following conditions:
  - (i) Levy Liquidated Damages (LD): recover from the Contractor as agreed liquidated damages and not by way of penalty a sum equivalent to  $\frac{1}{2}$  (half) % 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 liquidated Damages in Supply Contracts will be 10% (Ten percent) of value of delayed supplies irrespective of delays, unless otherwise provided, specifically in the Contract. The parties to this Contract willingly agree that this amount of damages is an agreed pre- estimate of damages caused to the Purchaser because of delay in supply of Goods by the Contractor. The Purchaser shall not be called upon by the Contractor to prove any damage/ loss in order to claim the damages due to delay in supply of Goods, if the damages so claimed by the Purchaser are as per this Clause. The Liquidated Damages shall be calculated on the gross value of supply (inclusive of GST) as provided for in the Contract.
  - (ii) Denial Clause (DC) as under:
    - (1) 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

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of the said Goods, as are delivered after the said date; and

- (2) 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.
- (3) 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.

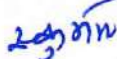
#### **7.6 Consequences of Rejection:**

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:

- (a) 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
- (b) terminate the Contract for the rejected quantity and take further action as per the provision of Clause 13.
- (c) 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 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.

#### **8. System of Payment:**

- 8.1** Unless otherwise agreed upon between the parties, payment for delivery of the Goods will be made on submission of bills in the prescribed manner through online billing mode on authorised e-procurement portal of the Purchaser, in accordance with the instructions given in the Contract, by a cheque or demand draft or through online mode (through 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.
- 8.2** 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) For dispatch by road or dispatch 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. The balance 5% payment shall be made after receipt and acceptance of the material by the Consignee at his end.
- (b) For dispatch by rail on "FOR station of dispatch" basis, 95% payments for the Goods or each consignment thereof will be made to the Contractor against proof of inspection and dispatch. The original railway receipt should be sent to the Accounts Officer responsible for payment along with 95% bill advising the particulars of dispatch to the Consignee. The Accounts Officer after passing the 95% 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. The balance 5% payment shall be made after receipt and acceptance of the material by the Consignee at his end.

**8.3** 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% 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% and 5% payment is not applicable to claims amounting to ₹25,000/- or below.

**8.4 Application for 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. The Purchaser is entitled to, and it shall be lawful for him to reject such claims.

**9. Withholding and lien in respect of sums claimed:**

- 9.1** 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

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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 any of the dispute resolution mechanism as indicated in the Contract or by the competent court as prescribed under Clause 2.7(c), as the case may be, and that the Contractor will have no claim for interest or damages whatsoever on any account in respect of such withholding or retention under the lien referred to supra and duly notified as such to the Contractor.

**9.2** For the purpose of Clause 9.1, 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.

**9.3 Lien in respect of Claims arising from 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 through dispute resolution mechanism as indicated in the Contract or by the competent court as prescribed under Clause 2.7(c), 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.

**10. Warranty/ Guarantee:**

- (a) The Contractor 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.
- (b) 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

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the Purchaser. If a longer/ shorter period of warranty/ guarantee is specified in the Particulars or any other Contract documents, same shall be applicable instead of period specified in this clause.

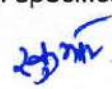
- (c) If during the aforesaid period, the said Goods be discovered not to conform to the description and quality aforesaid or have deteriorated, otherwise than by fair wear and tear, the decision of the Purchaser in that behalf being final and conclusive, the Purchaser will be entitled to reject the said Goods or such portions thereof as may be discovered not to conform to the said description and quality (by way of issue of "Warranty Rejection Advice"). On such rejection, the Goods will be at the Contractor's risk.

Upon receipt of such rejection notice, the Contractor shall, within 60 days, expeditiously repair or replace, at the option of the Purchaser, the defective Goods or parts thereof, free of cost, at the ultimate destination. Alternatively, the Contractor can also be called upon for deposition of equivalent amount of rejected Goods within the aforesaid period.

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 the time from the warranty rejection advice to acceptance of Goods by Consignee after replacement/ rectification.

If the Contractor, having been notified, fails to rectify/ replace the defect(s) within 60 days (or within any other period, if stipulated in the Contract), it shall amount to Breach of Contract for warranty.

- (d) The Contractor shall be allowed to collect the rejected Goods only after deposition of payments already made by the Purchaser to the Contractor, if any, in respect of such Goods or after recovery of equivalent amount by the Purchaser from the pending bills of the Contractor or against replacement quantity supplied by the Contractor. Rejected Goods should be suitably defaced before handing over to the Contractor to avoid its re-use. 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 60 days from the date of such rejection, by way of issue of "Warranty Rejection Advice". 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 relating to the 'rejection of goods' and 'failure' and 'termination' and Clauses 4.2, 6.1, 7.6 and 13 shall apply.
- (e) Purchaser is entitled to provide for an authorized portal (as an extension of authorised e-procurement portal or otherwise) for management of warranty obligations, including monetary recoveries when due, under the Contract and also provide for detailed procedure for working of such a portal. Working procedure (as amended from time to time) of such a portal shall be binding upon the contractor and shall not be rendered ineffective merely on the ground that the same have not been specifically mentioned in the Contract documents.





- (f) Purchaser is entitled to effect due recoveries against warranty rejection advice from the Warranty Security Deposit, if the recoveries from pending bills of the Contractor is not possible.

#### **11. Removal of Rejected Goods:**

- (a) 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 herein after stipulated, within 21 days of the date of issue of intimation of such rejection, except in case of Warranty Rejection Advice, where the period shall be 60 days. 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.

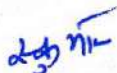
Provided that the Inspecting Officer/ Consignee may call upon the Contractor to remove dangerous, infected or perishable Goods within 48 hours of the receipt of such communication and the decision of the Inspecting Officer in this behalf shall be final in all respects.

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 sub-clause (b) below, save that such retention shall not in any circumstances be deemed to be acceptance of the Goods or waiver of rejection thereon.

- (b) 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 Clause 7.6(c) besides other dues as mentioned above and action can be taken by the Purchaser as per Clause 9, if Contractor fails to pay the amount due to him.

#### **12. Breach of Contract by Contractor and Purchaser's rights thereof:**

Breach of Contract by the Contractor refers to such situations where the Contractor fails to comply with conditions of the Contract. It discharges the Purchaser to proceed further with the performance of his Contractual obligations



and entitles him to a right of action for damages or termination of Contract and to enforce the remedies for such breach as provided in the Contract. A breach of Contract may, however, be waived, with or without damages.

SN	Cause of Breach of Contract	Purchaser's rights
1.	<p><b>Delay in Performance of the Contract:</b> If the Contractor causes delay in supply of part or whole of the Goods and fails to deliver the Goods within the period stipulated in the Contract, duly complying the conditions of Contract, it constitutes a breach of Contract for delay in performance of the contract, as time is the essence of the Contract.</p>	<p>The breach of Contract is only for the quantities of Goods, in supply of which the Contractor has caused delay. Therefore, the Purchaser's rights in case of breach are available only to the extent of the breach, in this case.</p> <p>Purchaser may waive this breach, with or without damages, in terms of Clause 7.5. Purchaser, at its sole discretion, may decide to waive the breach of Contract, with or without damages, for a part or parts of the Contract and decide, at its sole discretion, not to waive breach of Contract for the balance part or parts of the Contract and decide to terminate such balance part or parts of the Contract.</p> <p>Purchaser, in case decides at its sole discretion, not to waive this breach, for any part of the supply of Goods, may terminate the Contract. Conditions for termination of the Contract are detailed below.</p>
2	<p><b>Default in Performance of the Contract:</b> If the Contractor fails to deliver any or all the Goods within the period stipulated in the Contract or within any extension thereof granted by the Purchaser or fails to perform any other Contractual obligations (except warranty), it shall amount to a Breach of Contract.</p>	<p>Purchaser may terminate the Contract.</p>

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SN	Cause of Breach of Contract	Purchaser's rights
3.	<b>Repudiation of the Contract:</b> If the Contractor refuses to perform the Contract or repudiates it even before the expiry of Delivery Period, the Purchaser may treat such repudiation as a Breach of Contract	Purchaser may terminate the Contract.
4.	<b>Default in attending Warranty failure:</b> If the Contractor, having been notified, fails to rectify/ replace the defect(s) within 60 days (or within any other period, if stipulated in the Contract), it shall amount to a Breach of Contract	Purchaser shall be entitled to take action as per Clause 10.
5.	<b>Default in maintaining requisite SD:</b> If the Contractor during the currency of the Contract fails to maintain the requisite Security Deposit, it shall amount to a Breach of Contract	Purchaser is entitled to take action as per Clause 3.4.
6.	If the prices charged in the Contract are discovered to be higher than any controlled or regulated price, the Purchaser may treat it as a Breach of Contract.	Purchaser is entitled to take action as per Clause 3.3.
7.	<b>Insolvency:</b> 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, the Purchaser may consider it as a Breach of Contract.	Purchaser may terminate the Contract.

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SN	Cause of Breach of Contract	Purchaser's rights
8.	<b>Liquidation:</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, the Purchaser may consider it as a Breach of Contract.	Purchaser may terminate the Contract.
9.	Any violation of the provisions of the Contract under Clause 4.9 or Clause 4.10 by the Contractor may be considered by the Purchaser as a Breach of Contract.	Purchaser is entitled to take action as per Clause 4.9 and Clause 4.10.
10	(a) Failure of the Contractor to obtain a valid licence under the extant Labour Codes and Rules before the commencement of the Contract.  (b) Failure of the Contractor to continue to have such valid licence until the completion of the Contract.	Purchaser is entitled to take action as per Clause 2.7(f)(ii).
11	Contractor sub-lets or assigns or transfers the Contract or any part thereof without the previous consent in writing of the Purchaser.	Purchaser is entitled to take action as per Clause 4.3(c).

### 13. Termination of Contract:

- (a) Upon the Contractor committing a breach of Contract and the Purchaser, having so decided, may terminate the contract, in whole or in part, with following actions:
- (i) Forfeit the Security Deposit in whole, even if the Contractor defaults in complying with part of the obligations under this Contract.
  - (ii) Wherever Security Deposit has been exempted for any reason, levy damages on the Contractor, not by way of penalty, an amount equal to Security Deposit amount, as would have been applicable had the Contractor not been exempted from submission of Security Deposit. These damages shall be treated as recoveries outstanding against the Contractor and dealt with accordingly.
- (b) Purchaser's right to terminate the Contract, in whole or in part, without any

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