

GOVERNMENT OF INDIA  
DEPARTMENT OF ATOMIC ENERGY  
DIRECTORATE OF PURCHASE AND STORES

General Conditions of Contract and  
Special Conditions of Contract

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## PREAMBLE

While the conditions contained in General Conditions of Contract will apply to all types of contracts, whereas General Conditions of Contract as well as Special Conditions of Contract will apply to contracts for design/ manufacture, supply installation and commissioning of the plant/machinery/equipment/instrument as the case may be.

## PART-A

### GENERAL CONDITIONS OF CONTRACT

#### 1. AUTHORITY OF PERSON SIGNING THE CONTRACT ON BEHALF OF THE CONTRACTOR

The person/s signing or digitally signing the bid or any other document in respect of the bid or contract on behalf of the bidder or contractor shall be deemed to warrant that he has the authority to bind the contractor.

#### 2. DRAWINGS AND SPECIFICATIONS

2.1. The drawings and specifications are intended to be complementary and to provide for and comprise everything necessary for the completion of the contract. Any material shown on the drawing even if not particularly described in specifications or vice versa is to be supplied by the contractors if it were both shown and specified.

2.2. In case any discrepancy is noted in the drawings and/or specifications and any interpretation of the same be required, the matter shall be referred to the purchaser for clarification which shall be binding upon the contractor. Otherwise, the contractor shall assume responsibility for the interpretation of the drawings and specifications including his sub-contractor(s).

2.3. In case any difference or dispute arises with regard to the true intent and meaning of drawings or specification or in case any portion of the same be obscure or capable of more than one interpretation, the same shall be decided by the purchaser whose decision shall be final.

2.4. All lettering on the drawings is to be considered as part of the specification and contract. In all cases figured dimensions are to be followed rather than those indicated by scale. Large scale drawings will take precedence over smaller scale drawings.

2.5. The contractor's drawings shall, when approved by the purchaser, be deemed to be included in the list of drawings which form part of the contract. The contractor shall not proceed with fabrication until all drawings associated therewith have been duly approved by the purchaser in writing or as specified in the NIT.

2.6. The contractor shall be responsible for and shall pay for any alterations of the stores and shall indemnify the purchaser for any consequential expenditure incurred by the purchaser due to any discrepancies, errors, omissions etc. what so ever in the drawings or other specifications supplied by him whether such drawings etc. whatsoever have been approved by the purchaser or not, provided that such discrepancies, errors or omissions etc. is not due to inaccurate information or specifications furnished to the contractor on behalf of the purchaser.

3. GENERAL WARRANTY

- 3.1. The stores supplied by the contractor under the contract shall be of best quality and workmanship. The contractor shall execute the contract in accordance with the technical specifications unless any deviation has been expressly specified in the contract and any amendments agreed thereto in writing.
- 3.2. The contractor's bid to execute the contract in accordance with the technical specifications shall be deemed to be an admission on his part that he has fully acquainted himself with the details thereof and no claim shall lie against the purchaser on the ground that the contractor did not examine or acquaint himself fully with the technical specifications of the contract.

4. ALTERATIONS

- 4.1. The purchaser may, in exceptional circumstances, make changes in the drawings, technical specifications and issue additional instructions without altering the contract in any manner provided that the changes will be as far as possible not materially alter the character and scope of the contract.
- 4.2. It shall be lawful for the parties to the contract to alter by mutual consent at any time, the drawings and technical specifications of stores. The stores to be supplied shall be in accordance with such altered drawings and technical specifications from the dates specified by the parties; provided that if any such alterations involve increase or decrease in the cost of or in the period required for production, a revision of the contract price and/or the delivery date shall be made by mutual agreement in respect of the stores to which the alteration applies. In all other respects, the contract shall remain unaltered.

5. PACKING

- 5.1. The contractor shall pack the stores at his own cost sufficiently and properly for transit by air/sea/road as the case may be so as to ensure their being free from loss or damage while in transit to the ultimate destination specified in the contract.
- 5.2. Unless otherwise provided in the contract all containers (including packing cases, boxes, tins, drums and wrappings etc.) in which the stores are supplied by the contractor shall be considered as property of the purchaser and their cost as having been included in the contract price.

6. INSPECTION

- 6.1. The contractor shall be responsible for and perform all testing required in accordance with the contract and technical specifications included therewith.
- 6.2. The purchaser may at his option depute inspector(s) for inspection of the stores at contractor's works. The contractor shall facilitate such inspection of stores manufactured by him.
- 6.3. The contractor shall give notice of readiness for inspection to the inspector (deputed under Clause 6.2 above) so that the inspector can be present at the requisite time. The contractor shall dispatch stores only after inspector deputed by the purchaser has issued shipping release.

- 6.4. The contractor shall allow reasonable facility and free access to his work/factory/premises and records to the inspector for the purpose of inspection or for ascertaining the progress of work related to ordered stores under the contract.
- 6.5. The contractor shall provide the drawings, tooling, gauges, instruments etc. and extend all the help required for carrying out the inspection work.
- 6.6. The contractor shall produce an inspection plan to the purchaser's satisfaction notifying check points on the plan. The final inspection shall be conducted as per the approved quality assurance plan.
- 6.7. The contractor shall not supply or deliver the stores unless and until a shipping release or an authorisation for despatch is obtained in the format provided by the purchaser if Pre Despatch Inspection is mentioned in Technical specification. Failure to comply with this instruction as applicable will not only make the contractor ineligible for payment for the supply, but also hold the contractor liable for payment of compensation to the purchaser due to delay in clearance of the stores from the carriers.
- 6.8. If the contractor dispatches stores without obtaining shipping release or authority to dispatch, he will not be entitled to get any payment for such supply, in addition the contractor will pay damages for delayed clearance of the stores from the carrier.

## 7. SECURITIES

- 7.1. The contractor shall provide the securities in favour of the purchaser in the form of bank guarantees as stated in sub-clauses indicated herein below for a period covering sixty days beyond the completion period mentioned in the contract or such extended period as may be agreed to between the parties, subject to the following conditions:
  - 7.1.1. Applicable for contracts in INDIAN RUPEE
    - 7.1.1.1. The bank guarantee should be executed by State Bank of India or any Indian nationalized banker Scheduled Banks as appearing in the second schedule of Reserve Bank of India (other than co-operative and Grameen Banks), on a non-judicial stamp paper of appropriate value as per the purchaser's format.
    - 7.1.2. Applicable for contracts other than in INDIAN RUPEE having condition for submission of Bank Guarantee by Foreign Contractor.
      - 7.1.2.1. The bank guarantee should be executed by State Bank of India or any Indian Nationalized banker Scheduled Banks as appearing in the second schedule of Reserve Bank of India (other than co-operative and Grameen Banks) or any Foreign Bank having at least five (5) branches out of the country of the contractor or three (3) branches in continents other than the continent where the contractor is situated. Bank Guarantee drawn from any bank in India shall be on a non-judicial stamp paper of appropriate value whereas Bank Guarantee drawn from Overseas Bank shall be on the Letter Head of the Bank, as per the purchaser's format.
  - 7.1.3. The bank guarantees shall be submitted as per the format available in Annexure.
  - 7.1.4. All bank guarantees are to be sent by the bankers of the contractor directly to the purchaser.
  - 7.1.5. Where the contractor fails to complete the contract within the delivery date, the contractor shall apply to the purchaser for extension of delivery date of the contract. Such application shall be made before the last date of completion of the contract. The purchaser may at his discretion extend delivery date of the stores under such

condition as he may deem fit. All Bank Guarantees so submitted shall also be suitable extended well in time, failing which the purchaser shall have the right to invoke the bank guarantee without prejudice to the terms and conditions of the contract. The contractor shall not supply the material unless the purchaser has extended delivery date of stores in writing.

## 7.2. PERFORMANCE SECURITIES

7.2.1. Contractor shall furnish Performance Security Deposit in the form of bank guarantee for three percent of the value of the contract, including statutory levies, for due performance of the said contract till expiry of warranty period, as per Annexure-I within thirty days from the date of issue of contract in case of Indian Rupee contracts or within thirty days from the date of receipt of Export License by the contractor from respective Government in case of contracts having currency other than Indian Rupee, as the case may be. The Bank Guarantee shall be valid till satisfactory completion of the contract till expiry of warranty period pursuant to General Conditions of Contract, plus a claim period of sixty days from the completion period mentioned in the contract for lodging of claims, if any.

7.2.2. If the contractor fails to provide PSDBG as stated herein above, within thirty days from the date of issue of contract such failure shall constitute a breach of contract and action as deemed fit may be initiated against the contractor.

7.2.3. In case, the contractor fails to fulfill the obligations under the contract; the purchaser shall have the right to invoke and appropriate the PSDBG. This right shall be in addition to and without prejudice to the rights of the purchaser under the terms and conditions of contract.

## 7.3. BANK GUARANTEE FOR FREE ISSUE MATERIAL

7.3.1. Bank Guarantee for Free Issue Material (hereinafter referred to as FIM) (for fabrication of stores at contractor's works outside purchaser's site): The contractor shall submit a Bank Guarantee as per Annexure VIII or IX as applicable to the extent of full value of FIM as security of free issue material issued to the contract or till such time the entire contract is executed and proper account for the FIM is rendered by the contractor to the Purchaser.

## 7.4. INDEMNITY BOND FOR FIM

7.4.1. Indemnity Bond for FIM: The contractor shall execute an indemnity bond in favour of the purchaser indemnifying the purchaser and keeping the purchaser indemnified to the extent of full value of FIM till such time the entire contract is executed and proper account for the FIM is rendered by the contractor to the Purchaser. For this purpose an indemnity bond as per Annexure-VII shall be executed by the contractor.

## 8. DELIVERY DATE – TIME IS THE ESSENCE OF CONTRACT

8.1. The delivery date stipulated in the contract shall be deemed to be the essence of the contract and the contract must be completed not later than date(s) stipulated therein.

### 8.2. PHASED DELIVERY/MILESTONE

8.2.1. Where the contract envisages phased delivery or completion of milestone, the delivery date for each phase or milestone shall be deemed to be the essence of contract.

8.3. Acceptance beyond the delivery date is at the sole discretion of the purchaser and subject to Section C Part A Clause No.10. The contract shall be deemed to be terminated after the expiry of delivery date and subjected to Section C Part A Clause 32.2 and Clause 32.3.

9. ADVANCE INTIMATION OF DELIVERY

9.1. Contractors shall send advance intimation to the consignee preferably by e-mail regarding intended delivery of material at least five days prior to the date of delivery of stores to the consignee so as to make proper arrangements for receipt of the stores. If delivery of stores is being carried out by a vehicle, the contractor shall confirm that the driver carries, as on date of delivery, all valid documents, viz., driving license, vehicle registration documents, insurance cover for the vehicle etc. in addition to delivery challan in duplicate along with other documents if any, as per the contract. Failure to carry the valid documents by the driver will result in denial of entry of vehicle inside consignee's premises and the consignee will not be responsible for any consequences thereof.

10. EXTENSION OF DELIVERY DATE

10.1. The purchaser will without prejudice to the other rights of the purchaser invoke the following damages for extension of delivery date:

Sl. No.	Delivery Period	Liquidated Damages, Rate per Week	Maximum Amount of Liquidated Damages
1.	Delivery period (as originally stipulated) not exceeding one year	@0.5% of the value of delayed/undelivered portion of the stores, per week or part thereof.	5% of the value of delayed/undelivered portion of stores.
2.	Delivery period (as originally stipulated) exceeding one year but not exceeding two years.	@ 0.25% of the value of delayed/ undelivered portion of the stores, per week or part thereof.	5% of the value of delayed/undelivered portion of stores.
3.	Delivery period (as originally stipulated) exceeding two years	@ 0.1% of the value of delayed/ undelivered portion of the stores, per week or part thereof.	5% of the value of delayed/undelivered portion of stores.

10.2. Delivery Period means "The time from date of release of the contract to the date of delivery of stores".

However, the payment of liquidated damages shall not in any way absolve the contractor from any of its obligations and liabilities under the contract.

11. FORECLOSURE OF CONTRACT OR REDUCTION IN SCOPE OF WORK BEFORE DELIVERY DATE

11.1. If before the delivery date, the purchaser may at its discretion, decide to abandon or reduce the scope of the contract for any reason whatsoever and does not require the whole or part of the contract to be executed, the purchaser shall give notice of four weeks in writing to that effect to the contractor and the contractor shall act accordingly in the matter. The contractor shall have no claim for any payment of compensation or otherwise whatsoever, on account of any profit or advantage which he might have derived from the execution of the contract in full but which he did not derive in consequence of the foreclosure of the whole or part of the contract.

- 11.2. The contractor shall be paid at contract rates, full amount for part of contract executed and delivered to the purchaser. In addition, a reasonable amount as certified by the purchaser will be paid to the contractor for the stores hereunder mentioned which could not be utilized in the contract to the full extent in view of the foreclosure.
- 11.2.1. Purchaser shall have the option to take over contractor's materials or any part thereof either bought for execution of the contract or of which the contractor is legally bound to accept delivery from its contractor (for use in the contract). For materials taken over or to be taken over by purchaser, cost of such materials as calculated by purchaser shall be paid. The cost shall, however, take into account purchase price, cost of transportation and deterioration or damage which may have been caused to materials whilst in the custody of the contractor.
- 11.2.2. If any materials supplied by purchaser are rendered surplus, the same except normal wastage shall be returned by the contractor to purchaser at rates not exceeding those at which these were originally issued, less allowance for any deterioration or damage which may have been caused whilst the materials were in the custody of the contractor. In addition, cost of transporting of such materials from contractor's site to consignee, if so required by purchaser, shall be paid.
- 11.3. The contractor shall, if required by the purchaser, furnish books of accounts and other relevant documents and evidence as may be necessary to enable the purchaser to certify the reasonable amount payable under Clause 11.2 above.
- 11.4. The reasonable amount payable for the stores shall not be in excess of the cost of the contract remaining incomplete on the date of closure, i.e. total stipulated cost excluding taxes of the contract as per accepted tender less the cost of stores actually delivered and also less the cost of contractor's materials at site taken over by the purchaser as above. Provided always that against any payments due to the contractor on this account or otherwise, the purchaser shall be entitled to recover or be credited with any outstanding balances due from the contractor for advance paid in respect of this contract and any other sums which on the date of termination were recoverable by the purchaser from the contractor under the terms of this contract.
12. INSPECTOR'S AUTHORITY
- 12.1. The inspector, wherever deputed by the purchaser under relevant Clauses of the Contract shall have the power:
- 12.1.1. to certify that the stores are not in accordance with the specifications provided in the contract owing to the adoption of any unsatisfactory method of manufacture, before any Stores or parts thereof are inspected.
- 12.1.2. to reject any Stores submitted for inspection or part thereof as not being in accordance with the technical specification provided in the contract.
13. RECTIFICATION AND REPLACEMENT OF DEFECTIVE STORES
- 13.1. If the inspector finds that the contractor has executed any unsound or imperfect work, the inspector shall notify such defects to the contractor in writing with thirty days from the date of delivery and the contractor on receiving the details of such defects or deficiency, shall at his own expenses, within seven days or otherwise within such time as may be mutually agreed upon between the parties as reasonably necessary, proceed to alter, reconstruct or remanufacture the stores to the requisite standard and technical specifications according to the contract.
- 13.2. In case repair/replacement of defective/rejected stores is necessary and becomes essential to return the stores, to the contractor, where full or part payment has already been made by the purchaser, the contractor shall submit bank guarantee for

the value of stores so found defective/rejected as per Annexure-V or VI as may be applicable and valid till receipt and acceptance of repaired/replaced/entire stores within fifteen days of intimation. However, the contractor will not be absolved from his responsibility as specified under Section C Part-A Clause No.8.

14. CONSEQUENCE OF REJECTION

14.1. If the stores are rejected by the inspector or consignee at the destination and the contractor fails to make satisfactory supplies within the delivery date, then the purchaser may:

14.1.1. Allow the contractor to submit for inspection of fresh stores in replacement of the rejected, within extended delivery period subject to Section C Part A Clause No. 10, the contractor bearing the cost of freight on such replacement without being entitled to any extra payment on that account. OR

14.1.2. Purchaser may take recourse to Section C Part A Clause 8.4.

15. RECOVERY OF SUMS DUE

15.1. Whenever any claim for payment arises out of or under this contract against the contractor, the purchaser shall be entitled to recover the sum by appropriating, in part or whole, the security deposited by the contractor or any payment which at any time may become due to the contractor under this or any other contract with the purchaser. If this sum is not sufficient to cover the full amount recoverable, the contractor shall pay to the Purchaser on demand the remaining balance due. Similarly, if the purchaser has or makes any claim, whether liquidated or not, against the contractor under any other contract with the purchaser the amount payable to the contractor under the contract including the security deposit shall be withheld till such claims of the purchaser are finally adjudicated upon and paid by the contractor

16. LIEN IN RESPECT OF CLAIMS IN OTHER CONTRACTS

16.1. It is agreed that any sum of money due and payable to the contractor under any contract may be withheld or retained by way of lien by the purchaser or any other person or persons contracting through the purchaser against any claim of the purchaser or such other person or persons 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 with other such person or persons.

16.2. It is further agreed term of the contract that the sum of money so withheld or retained under this Clause by the purchaser will be kept withheld or retained as such by the purchaser until the claim arising out of in the same contract or any other contract is either mutually settled or determined by the arbitrator, 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.

17. WARRANTY

17.1. The contractor warrants that stores to be supplied under the contract shall be free from all defects and faults in materials, workmanship and manufacture and shall be of the highest grade and consistent with the established and generally accepted standards for stores of the types under the contract in full conformity with the specifications, drawings or samples, if any and shall if operable, operate properly. This warranty shall expire (except in respect of complaints notified to the contractor prior to such date) twelve months after the date of receipt and acceptance of the last lot of stores under the contract at the ultimate destination stipulated in the contract.

- 17.2. In case any defect or deficiency in the stores supplied by the contractor under the contract appear to be discovered within twelve months from the date of receipt and acceptance of the stores in India, the contractor upon notification of such defects or deficiency by purchaser, shall forthwith take measure to rectify every such defect, deficiency or failure without any cost to the purchaser.
- 17.3. In case the contractor opts for return of stores for rectification/repair at their works, contractor shall furnish bank guarantee for the cost of stores as per Annexure-V or VI (as applicable) valid till acceptance of rectified/repared Stores. Further the warranty period will get extended for the period the Stores were not available to the purchaser for his use. If the contractor, after such notification, makes default or delay in rectifying all such defects, deficiencies or failure to the satisfaction of the purchaser, the purchaser may take recourse to the remedies provided for in Section C Part-A Clause no. 11 and14.
18. PERMIT AND LICENSES
- 18.1. The contractor shall secure and pay for all licenses and permit at his end which he may be required to comply with all laws, ordinances and regulations etc. of the public authorities in connection with the performance of his obligations under the contract. The contractor shall be responsible for all damages and shall indemnify and save the purchaser from against all claims for damages and liability which may arise out of the failure of the contractor to secure and pay for any such licenses and permits and/or to comply fully with any and all applicable laws ordinances and regulations etc.
19. PATENT INDEMNIFICATION
- 19.1. The contractor shall indemnify and keep the purchaser indemnified from and against any and all claims, actions, costs, charges and expenses arising from or for infringement of patent rights, copyright or other protected rights, etc. of any design plans, diagrams, drawings in respect of the stores supplied by the contractor or any of the manufacturing methods or process adopted by contractor for the Stores supplied under the contract.
- 19.2. In the event of any claim being made or action being taken against the purchaser in respect of the matter referred to in Clause No. 19.1 above, the contractor shall promptly be notified thereof and he shall at his own expense, conduct all negotiations for the settlement of the same and any litigation that may arise there from.
- 19.3. In the event of any designs, drawing, plans or diagrams or any manufacturing methods or process furnished by the contractor etc. constituting infringement of patent or any other protected rights etc. and use thereof is restrained, the contractor shall procure for purchaser, at no cost to the latter, the rights to continue using the same or to the extent it is possible to replace the same so as to avoid such infringement and subject to approval by the purchaser or modify them so that they become non-infringing, but such modifications shall otherwise be to the entire satisfaction of the purchaser.
- 19.4. The provision of the Clause remains effective and binding upon the contractor even after the completion, expiration or termination of the contract.
20. MODE AND DOCUMENTATION OF PAYMENT
- 20.1. Payment for contracts in currency other than INDIAN RUPEES
- 20.1.1. Unless otherwise specified elsewhere, payment in full (excluding the amount of the commission included in the price payable directly by the purchaser to the Indian agent) shall be made by wire transfer within thirty days of final acceptance of stores.

The following documents are required to be sent to the purchaser immediately after shipment of consignment:

1. Bill of Lading/Negotiable Airway Bill evidencing shipment
2. Invoice for the shipment : Four copies
3. Packing list : Four copies
4. Shipping release from inspector or quality surveillance agency nominated by the purchaser for the purpose of inspection: Four copies, if applicable.
5. Shipping authorization from purchaser wherever required.
6. PSDBG acceptance certificate issued by the purchaser.

20.1.2. The contractor shall send invoice only for the net amount payable to him after deducting the amount of agency commission included in the invoice which would be paid to the Indian agents directly by the purchaser. However the contractor's invoice should separately reflect the amount of commission payable to his Indian agent.

## 20.2. PAYMENT FOR CONTRACTS IN INDIAN RUPEE

20.2.1 Unless otherwise mentioned elsewhere, payments for the contract will be made after final acceptance of stores and within a reasonable time on submission of following documents.

- i) GST compliant invoice in favour of paying authority duly pre-receipted.
- ii) Receiving voucher from Stores (RV).
- iii) PSDBG acceptance certificate issued by the purchaser.

20.2.2 Normally thirty days will be allowed for inspection and payment after receipt of the stores.

## 21. STATUTORY DEDUCTIONS

21.1. The purchaser has the right to make statutory deductions from the payments made to the contractor as applicable on the date of making such payment as per the provisions of relevant Act or Rules made there under. Appropriate certificate to that effect will be provided by the purchaser's paying authority.

## 22. AGENCY COMMISSION

22.1. The amount of commission included in the price and payable to the Indian agents of the contractor shall be paid in INR directly to the Indian agents by the purchaser on the basis of an Invoice from the Indian agent. "Payment will be released to the Indian agents after receipt and final acceptance of the goods by the purchaser".

## 22.2. INSURANCE FOR CONTRACTS IN CURRENCY OTHER THAN INDIAN RUPEE

Transit insurance from warehouse to warehouse will be arranged by the purchaser through his underwriters unless this responsibility is specifically entrusted to the contractor in any particular case.

23. MARKING

23.1. The marking shall generally be as under:

Name and address of the consignee	Directorate of Purchase and Stores, Government of India, Department of Atomic Energy
Contract Number and Date	No. _____ Date _____
Brief Description of Goods	
Weight	
Dimension	
Ultimate Destination	
Port of Discharge	
Package Number	

23.2. Each package shall contain a packing note specifying the name and address of the contractor, the number and date of the contract, name and address of the consignee, description of the stores and the quantity contained in such package.

23.3. The inspector, wherever deputed by the purchaser under Section C Part-A Clause No. 6 may reject the stores if the same is not packed and/or marked as aforesaid and in case where the packing materials are specifically prescribed, if such materials are not in accordance with the terms of the contract.

24. CODE OF INTEGRITY

No official of a procuring entity or bidder or contractor shall act in contravention of the codes which include

- (i) Prohibition of
  - (a) making offer, solicitation or acceptance of bribe, reward or gift or any material benefit, either directly or indirectly, in exchange for an unfair advantage in the procurement process or to otherwise influence the procurement process.
  - (b) any omission, or misrepresentation that may mislead or attempt to mislead so that financial or other benefit may be obtained or an obligation avoided.
  - (c) any collusion, bid rigging or anticompetitive behavior that may impair the transparency, fairness and the progress of the procurement process.
  - (d) improper use of information provided by the procuring entity to the bidder with an intent to gain unfair advantage in the procurement process or for personal gain.
  - (e) any financial or business transactions between the bidder and any official of the procuring entity related to tender or execution process of contract; which can affect the decision of the procuring entity directly or indirectly any coercion or any threat to impair or harm, directly or indirectly, any party or its property to influence the procurement process.
  - (f) obstruction of any investigation or auditing of a procurement process.
  - (g) making false declaration or providing false information for participation in a tender process or to secure a contract;
- (ii) Disclosure of conflict of interest.
- (iii) Disclosure by the bidder of any previous transgressions made in respect of the provisions of sub-clause (i) with any entity in any country during the last three years or of being debarred by any other procuring entity.

- (iv) Directorate of Purchase and Stores, after giving a reasonable opportunity of being heard, comes to the conclusion that a bidder or prospective bidder, as the case may be, has contravened the code of integrity, may take appropriate measures as deemed fit, including rejecting his bid and forfeiting EMD and/or debarring him from participating in future bidding.

25. **LAW GOVERNING THE CONTRACT**

This contract shall be governed by the laws of India for the time being in force. The marking of all stores must comply with the requirements of India Acts relating to Merchandise Marks and all the rules made under such Acts.

26. **JURISDICTION**

The courts within the local limits of whose jurisdiction the place from which the contract is issued shall only have jurisdiction to deal with and decide any matter arising out of this contract subject to Section C Part-A Clause no. 28 below.

27. **DISPUTE REDRESSAL**

- 27.1. **Resolution of disputes:** All disputes and differences of any kind whatsoever arising out of or in connection with the contract, whether during the progress of the contract or after its completion, or its cancellation/termination, as the case may be, shall be referred by the Contractor to the "Director, DPS" through "Notice of Dispute."

Provided that no such notice shall be served later than 15 days from incidence of dispute or cancellation/termination order served upon the contractor or after the date of validity of the contract. The Director, DPS shall, within 30 days after receipt of the Contractor's "Notice of Dispute", notify the constitution of dispute redress committee hereinafter referred to as "DRC" to the Contractor.

The DRC shall be constituted, as far as possible within 30 days and it shall assist the parties to reach an amicable settlement in an independent and impartial manner within the terms of the contract. The DRC shall have three members, one officer from DPS Purchase Unit, one officer from DPS Accounts Wing and one officer from a constituent DAE Unit.

If the parties agree to settle the dispute, they shall draw up and sign a written settlement agreement duly signed by the parties including the DRC members. When the parties sign the settlement agreement, it shall be final and binding on the parties.

Till finalization of the DRC recommendation, the parties shall not initiate any arbitral or judicial proceedings in respect of all disputes which are subject matter of the DRC proceedings.

The committee proceedings shall be terminated as per the provisions of Section 76 of 'The Arbitration and Conciliation (Amendment) Act, 2015' as amended from time to time.

28. **Arbitration**

- 28 (1) **Demand for Arbitration:**

- 28.1(i) In the event of any unsettled issues or dispute(s) or difference(s) between the parties hereto as to the execution of this contract or the respective rights and liabilities of the parties specified in the contract on any matter in question, or any payment to which the Contractor may claim to be entitled to remain unresolved even after submission of final recommendation of DRC, the contractor within 30 days from the date of the recommendation of the DRC on the disputed matters shall demand in writing that the dispute or difference be referred to arbitration.
- 28.1(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, given by the purchaser, shall be referred to arbitration and other matters shall not be included in the reference.
- 28.1(ii)(b) The parties may waive off the applicability of Sub-Section 12(5) of Arbitration and Conciliation (Amendment) Act, 2015 as amended from time to time, if they agree for such waiver in writing, after dispute having arisen between them, in the format given under Annexure ii of these conditions.
- 28.1(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 Purchaser.
- 28.1(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.
- 28.1(iii)(c) The Purchaser shall submit its defense statement and counter claim(s), if any, within a period of 30 days of receipt of copy of claims from the Arbitral Tribunal, unless otherwise extension has been granted by the Arbitral Tribunal.
- 28.1(iii)(d) **Place of Arbitration:** The place of arbitration would be at the place from where the contract was issued or Mumbai as decided by the Director, DPS.
- 28.1(iv) No new claim shall be added during arbitral 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 the Arbitral Tribunal having due regard to the delay in making it.
- 28.1(v) If the Contractor(s) does/do not prefer his/their specific and final claims in writing, within a period of 5 working days of receiving the intimation from the Purchaser that the final payment is made to the contractor, he/they will be deemed to have accepted the payment and waived his/their claim(s) and the Purchaser shall be discharged and released of all liabilities under the contract in respect of these claims.
- 28.2) **Obligation During Pendency of the Arbitration:** Work under the contract shall, unless otherwise directed by the Purchaser, continue during the arbitration proceedings, and no payment due or payable by the Purchaser shall be withheld on account of such proceedings, provided, however, it shall be open for the Arbitral Tribunal to consider and decide whether or not such work should continue during arbitration proceedings.

**28.(3) Appointment of Arbitrator:**

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

28.(3)(a)(i) In cases where the total value of all claims in question added together does not exceed ₹ 25,00,000/- (Rupees Twenty Five Lakh), the Arbitral Tribunal shall consist of a Sole Arbitrator who shall be a Gazetted Officer of DPS/DAE Unit/DAE not below the rank of the Purchase Officer /Deputy Controller of Accounts, nominated by the Director, DPS. The sole arbitrator shall be appointed by Director, DPS within 30 days from the day when a written and valid demand for arbitration is received by the Director, DPS.

28.(3)(a)(ii) In cases not covered by the Clause 29(3)(a)(i), the Arbitral Tribunal shall consist of a panel of three Gazetted Officers of DPS/DAE Unit/DAE not below the rank of Deputy Director P & S/Joint Controller of Finance and Accounts or two Gazetted Officers of DPS/DAE unit/DAE not below the rank of Deputy Director, P & S/Regional Director, P & S /Joint Controller of Finance and Accounts and a retired Officer of DPS/DAE unit/DAE, retired not below the rank of Joint Director, P & S/Joint Controller of Finance and Accounts/Regional Director, P & S/Scientist 'H', working in DAE as the arbitrators. For this purpose, Director, DPS will send a panel of at least four (4) names of Gazetted Officers of one or more Units of the DAE/DAE which may also include the name(s) of retired Officer(s) empanelled to work as DPS Arbitrator to the Contractor within 30 days from the day when a written and valid demand for arbitration is received by the Director, DPS.

Contractor will be asked to suggest to Director, DPS at least 2 names out of the panel for appointment as Contractor's nominee within 30 days from the date of dispatch of such request by Director, DPS. The Director, DPS 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. The Director, DPS shall complete this exercise of appointing the Arbitral Tribunal within 30 days from the receipt of the names of Contractor's nominees.

28.3.(a).iii The serving officer working in Arbitral Tribunal in the ongoing arbitration cases as per clause 28.(3)(a)(i) and clause 28.(3)(a)(ii) above, can continue as arbitrator in the Arbitral Tribunal even after his retirement.

**28.(3)(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 ₹ 50,00,000/- (Rupees Fifty Lakh), the Arbitral Tribunal shall consist of a Retired Officer of DPS/DAE Unit/DAE, retired not below the rank of Joint Director, P & S/Joint Controller of Finance and Accounts/Regional Director, P & S/Scientist 'H', as the arbitrator. For this purpose, the Director, DPS will send a panel of at least four (4) names of the retired Officers empanelled to work as DPS Arbitrator duly indicating their retirement dates to the Contractor within 30 days from the day when a written and valid demand for arbitration is received by the Director, DPS.

Contractor will be asked to suggest to Director, DPS at least 2 names out of the panel for appointment as arbitrator within 30 days from the date of dispatch of the request by Director, DPS. The Director, DPS 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 exceed ₹ 50,00,000/- (Rupees Fifty Lakh), the Arbitral Tribunal shall consist of a Panel of three (3) retired Officer of DPS/DAE Unit/DAE, retired not below the rank of Joint Director, P &S/Joint Controller of Finance and Accounts/Regional Director, P & S/Scientist 'H', as the arbitrators. For this purpose, the Director, DPS will send a panel of at least four (4) names of retired Officers empanelled to work as DPS Arbitrator duly indicating their retirement date to the Contractor within 30 days from the day when a written and valid demand for arbitration is received by the Director, DPS.

The Contractor will be asked to suggest to the Director, DPS at least 2 names out of the panel for appointment as the Contractor's nominee within 30 days from the date of dispatch of the request by the Director, DPS. The Director, DPS 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. The Director, DPS shall complete this exercise of appointing the Arbitral Tribunal within 30 days from the receipt of the names of the Contractor's nominees.

- 28.(3)(c)(i) If one or more of the arbitrators appointed as above refuses to act as an 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 Director, DPS fails to act without undue delay, the Director, DPS 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 Arbitral Tribunal may, at its discretion, proceed with the reference from the stage at which it was left by the previous arbitrator(s).

- 28.(3) (c) (ii) (a) The Arbitral Tribunal shall have power to call for such evidence by way of affidavits or otherwise as the Arbitral Tribunal shall think proper, and it shall be the duty of the parties hereto to do or cause to be done all such things as may be necessary to enable the Arbitral Tribunal to make the award without any delay. The proceedings shall normally be conducted on the basis of documents and written statements.

- (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 the Arbitral Tribunal, validity of arbitration agreement, jurisdiction and scope of the Arbitral Tribunal to deal with the dispute(s) submitted to the 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 Arbitral Tribunal should be provided to both the parties.

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

(a) Serving Gazetted Officers of not below Purchase Officer, DPS/Deputy Controller of Accounts, DAE Grade level.

(b) Retired Officers not below Joint Director, P & S /Joint Controller of Finance and Accounts/Regional Director, P &S,/Scientist H 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 28.(3)(a)(i), 28.(3)(a)(ii), 28.(3)(b)(i) & 28.(3)(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 DPS official(s) expressed views on all or any of the matters under dispute or differences. A certification to this effect as per Annexure-ii shall be taken from the Arbitrators also. The proceedings of the Arbitral tribunal or the award made by such Arbitral 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.

28.(3)(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.

28.(3)(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 Arbitral Tribunal and interpretation of a specific point of award to Arbitral Tribunal within 30 days of receipt of the award.

28.(3)(d)(iii) A party may apply to Arbitral Tribunal within 30 days of receipt of award to make an additional award as to claims presented in the arbitral proceedings but omitted from the arbitral award.

28.(4) In case of the Arbitral Tribunal, comprising of three members, any ruling on award shall be made by a majority of members of Arbitral Tribunal. In the absence of such a majority, the views of the Presiding Arbitrator shall prevail.

28.(5) 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.

28.(6) The cost of arbitration shall be borne by the respective parties. The cost shall inter-alia include fee of the arbitrator(s) and the fees shall be borne equally by both the parties, provided parties sign an agreement in the format given at Annexure I to these condition after/ while referring these disputes to Arbitration. Further, the fee payable to the arbitrator(s) shall be as per schedule IV of the Arbitration and Conciliation (Amendment) Act, 2015 and as amended from time to time, irrespective of the fact whether the arbitrator(s) is/are appointed by the Purchaser or by the court of law unless specifically directed by Hon'ble court otherwise on the matter.

28.(7) Subject to the provisions of the aforesaid Arbitration and Conciliation (Amendment) Act, 2015 and as amended from time to time and the rules there under and relevant para of General Conditions of Contract (GCC) and any statutory modifications thereof shall apply to the appointment of arbitrators and arbitration proceedings under this Clause.

ANNEXURE-i

Reference Para 28.3 & 28.6

Agreement towards Waiver under Section 12(5) and Section 31A (5) of Arbitration and Conciliation (Amendment) Act

I/we..... (Name of the Supplier) with reference to Purchase Order no..... raise disputes and differences arising out of or in connection with the contract, during the progress of the contract after its completion, its cancellation/termination, as to the construction and operation of this contract, or the respective rights and liabilities, withholding of certificate and demand arbitration in respect of following claims:

Brief of claim:

- (i) Claim 1- Detailed at Annexure-
(ii) Claim 2 -
(iii) Claim 3 -

I/we..... (purchaser) with reference to Purchase Order no..... hereby raise disputes and differences arising out of or in connection with the contract, whether during the progress of the contract after its completion, its cancellation/termination, as to the construction and operation of this contract, or the respective rights and liabilities, withholding of certificate and demand arbitration in respect of following claims:

- (i) Claim 1- Detailed at Annexure-
(ii) Claim 2-
(iii) Claim 3-

I/we.....do/do not agree to waive off applicability of section 12(5) of Arbitration and Conciliation Act 1996 as amendment from time to time.

Signature of Claimant \_\_\_\_\_ Signature of Respondent \_\_\_\_\_

\_\_\_\_\_

Agreement under Section 31(5)

I/we..... (Name of claimant) with reference to Purchase Order no..... hereby waive off the applicability of sub section 31-A (2) to 31-A (4) of the Arbitration and Conciliation (Amendment) Act. We further agree that the cost of arbitration will be shared by the parties as per Clause 29(6) of GCC.

Signature of Claimant \_\_\_\_\_ Signature of Respondent \_\_\_\_\_

\*Strike out whichever not applicable.

**Certification by Arbitrators appointed under Clause 28 of DPS General Conditions of Contract**

1. Name:
2. Contact Details:
3. Prior experience (Including Experience with Arbitrations):
4. I do not have more than ten on-going Arbitration cases with me.
5. I hereby certify that I have retired from DPS/DAE w.e.f. \_\_\_\_\_ and empanelled as DPS Arbitrator as per 'The Arbitration and Conciliation (Amendment) Act, 2015' and as amended from time to time.
6. 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:

7. 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 (Amendment) Act, 2015 and as amended from time to time.

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 (Amendment) Act, 2015 and as amended from time to time. The details of such relationship or interests are as under:

8. 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:

29. TRANSFER OF OWNERSHIP

29.1. Ownership of the stores supplied by the foreign contractor shall be transferred to the purchaser in accordance with the payment terms or INCOTERMS accepted.

29.2. Ownership of the stores supplied by the Indian contractor shall be transferred to the purchaser when the stores are delivered and accepted by the purchaser

29.3. Transfer of title shall not in any way absolve the contractor from his responsibilities and liabilities under the contract. Notwithstanding the transfer of ownership of the stores, the responsibility for care and custody thereof together with the risk of loss or damage thereto shall remain with the contractor until safe delivery of the stores to the purchaser' site.

29.4. INTELLECTUAL PROPERTY RIGHTS

29.4.1. All rights of design documents and drawings, if paid by the purchaser separately or compositely included in the contract cost, will remain with the purchaser and the contractor shall have no claim whatsoever on these rights.

30. EXERCISING THE RIGHTS AND POWERS OF THE PURCHASER

30.1. Director, Directorate of Purchase and Stores, Department of Atomic Energy is the authorized person to deal with, exercise, negotiate on behalf of the purchaser having all the rights, discretions and powers of the purchaser under this contract and any reference to the opinion of the purchaser in the terms and conditions contained in these General Conditions of Contract/Special Conditions of Contract shall mean and be construed as reference to the opinion of any of the persons authorized by him as mentioned in this Clause. All notices on behalf of the purchaser shall be issued by Director, Directorate of Purchase and Stores, Department of Atomic Energy.

31. TERMINATION OF CONTRACT

31.1. In case of non-compliance of any of the Terms and Conditions of the Contract, Purchaser reserves the right to terminate the contract after serving notice to the contractor.

31.2. Performance Security, if any, already available shall be forfeited.

31.3. In addition to the above, the contractor will be liable to be debarred and/or banned from participation against any tender issued by Directorate of Purchase and Stores, including its regional units, and/or the bid of defaulting contractor is being considered for award of contract of stores.

## PART-B

In addition to the General Conditions of Contract contained in Section C Part-A the following Special Conditions of Contract shall apply to contracts for design/manufacture, supply, installation and commissioning of plant/machinery/equipment/instrument as the case may be . These Special Conditions of Contract in Part-B shall override the General Conditions of Contract, wherever there is any ambiguity/conflict.

### SPECIAL CONDITIONS OF CONTRACT

#### 1. RESPONSIBILITY FOR COMPLETENESS

- 1.1. All fittings or accessories which may not be specifically mentioned in the tender specifications of the contract but which are necessary are to be provided by the contractor without any extra charge and the stores comprising plant/machinery/equipment/instruments must be completed in all respect within the delivery date.

#### 2. FINAL TEST

- 2.1. The final tests to ascertain the performance and guarantee shall commence within one month of completion of installation. The contractor will inform the purchaser well in advance the services/facilities required to start the final test, as mentioned in the contract.

#### 3. REJECTION OF DEFECTIVE PLANT

- 3.1. If the completed plant or any portion thereof before it is finally accepted is found to be defective or fails to fulfill the requirements of the contract during the currency of the contract including warranty period, the purchaser shall give the contractor notice setting forth with the details of such defects or failure and the contractor shall forthwith rectify the defective plant or alter the same to make it comply with the requirement of the contract at the earliest and in any case not later than thirty days from the date of such intimation of the incident. In case the contractor fail to do so within the abovementioned time the purchaser may reject and replace at the cost of the contractor, the whole or any portion of the plant as the case may be, which is defective or fails to fulfill the requirement of the contract. Such replacement shall be carried out by the purchaser within a reasonable time and at reasonable price and to the same specifications as far as possible and under competitive conditions. The contractor shall be liable to pay to the purchaser the extra cost, if any, of such replacement procured and/or erected as provided for in the contract, such extra cost being the difference between the price paid by the purchaser under the contract for such replacement and the original price admitted in the contract placed with the contractor or the cost as determined by the purchaser out of the price admitted in the original contract, where separate price for such defective/rejected stores is not available in the contract. Contractor shall refund to purchaser any sum paid by the purchaser to the contractor in respect of such defective plant when rejected and no replacement is procured by the purchaser.

#### 4. WARRANTY

- 4.1. The contractor shall provide warranty of stores supplied for a minimum period of twelve calendar months after the stores comprising plant/machinery/equipment/instruments has been put into operation (or a suitable mutually agreed longer period to be reckoned from the date of last major shipment depending upon the nature of the stores comprising plant/machinery/equipment/instrument) the contractor shall be

responsible for any defects that may develop under conditions provided for in the contract and under proper use, arising from the faulty materials, design or workmanship in the plant or from faulty erection of the plant by the contractor, but otherwise and shall rectify such defects at his own cost when called upon to do so by the purchaser who shall state in writing such defects.

- 4.2. If it becomes necessary for the contractor to replace or renew any defective portions of the plant for purpose of rectification under this Clause, the provisions of this Clause shall apply to the portions of the plant so replaced or renewed until expiration of six months from the date of such replacement or renewal or until the end of the above mentioned period of twelve months whichever is later. If any defect is not rectified within a reasonable time, the purchaser may cancel the contract or part thereof whose decision will be final and binding on the contractor and the contractor will refund the money so paid to the contractor forthwith without any demur.
- 4.3. All inspections adjustments, replacements or renewals carried out by the contractor during the warranty period shall be subject to the same conditions as in the contract.
- 4.4. The contractor shall, give advance notice of not less than twelve months to the purchaser whenever spare parts of the stores are going out of production so that the purchaser may order requirement of spares in one lot or more lots if so desired.
- 4.5. The contractor shall further guarantee up to the plant/equipment/instrument/stores life that if spare parts go out of production, the contractor will make available blue prints, drawings of spare parts and specifications of stores at no cost to the purchaser, if and when required in connection with the stores to enable purchaser to fabricate or procure spare parts from other sources.
- 4.6. The provision of this Clause shall remain effective and binding upon the contractor even after the completion and fifteen years of expiration of the contract or till the stores supplied under the contract is in use by the purchaser, whichever is earlier.

## 5. ERECTION AND COMMISSIONING

- 5.1. In all cases where contract provide for supervision of erection and commissioning or for test at the purchaser's premises, the contractor shall indicate in advance the services required for installation and commissioning and the purchaser except where otherwise specified, shall provide free of charge, such labour, materials, fuels, apparatus and instruments as may be required from time to time and as may reasonably be demanded by the contractor to carry out efficiently such supervision of erection and commissioning and for the requisite test. In case of contract requiring electricity or services for the completion of erection, commissioning and testing at site, such electricity or services shall be supplied free of cost to the contractor or as specified in the NIT.
- 5.2. Action by the purchaser under the Clause shall not relieve the contractor of his warranty obligations under the contract.

## 6. TRAINING

- 6.1. The contractor shall, if required by the purchaser, provide facilities for the practical training of purchaser's engineering or technical personnel and for their active association on the manufacturing process through the manufacturing period of the contract/stores, number of such personnel shall be mutually agreed upon.

## 7. PAYMENT TERMS

### 7.1. FOR CONTRACTS IN INDIAN RUPEE ONLY

7.1.1 90% of total contract value exclusive of charges for installation and commissioning, if applicable after delivery of all consignment and preliminary inspection by purchaser's inspector.

- i) GST compliant invoice in favour of paying authority duly pre-receipted.
- ii) Original shipping release containing the stamp and signature of the purchaser's inspection authority.
- iii) Preliminary Inspection Report alongwith Material receipt confirmation documents from Stores.
- iv) PSDBG acceptance certificate issued by the purchaser.

And balance payment will be released against following documents:

- i) Installation, commissioning and training certificate if applicable
- ii) Receiving voucher receipt from Stores.
- iii) PSDBG acceptance certificate issued by the Purchaser.

### 7.2. FOR CONTRACTS IN CURRENCIES OTHER THAN INDIAN RUPEE

7.2.1. Unless otherwise specified elsewhere in the NIT, payment for the stores will be made as follows

90% of total contract value exclusive of charges for installation and commissioning, if applicable by Irrevocable Letter of Credit on submission of the following documents:

- i. Bill of Lading/Negotiable Airway Bill evidencing shipment
  - ii. Invoice for the shipment : Four copies
  - iii. Packing List : Four copies
  - iv. Shipping release from Inspector or Quality Surveillance Agency nominated by the Purchaser for the purpose of inspection : Four copies
  - v. Shipping authorization from purchaser wherever required.
  - vi. Any other document(s) as specified in the contract.
  - vii. PSDBG acceptance certificate issued by the Purchaser.
- } if stipulated in the Order.

7.2.2. An advance copy of invoice along with details of documents forwarded through bank should be sent to the Paying Authority mentioned in the contract to enable him to verify the documents and honor the claim without delay.

7.2.3. The contractor shall be responsible to make available to the purchaser the documents which are essential for arranging customs clearance in India. The contractor shall arrange through his bank to have the documents air mailed to the purchaser's bank without any delay. He shall also arrange to forward directly to the purchaser, three copies of Airway Bill, along with a copy of the invoice and packing list. If the purchaser incurs any extra expenditure by way of penalty payable to the Airport authorities in India or any other such expenditure due to delay in receipt of shipping documents specified by purchaser, the contractor shall be responsible for making good such extra expenditure incurred by the purchaser.

7.2.4. While the purchaser shall bear the bank charges payable to his bankers in India

(State Bank of India) the contractor shall bear all the bank charges payable outside India including the charges towards advising/amendments, commission.

- 7.2.5. The contractor shall send invoice only for the net amount payable to him after deducting the amount of agency commission included in the invoice which would be paid to the Indian agents directly by the purchaser in Indian Rupee. However the contractor's invoice should separately reflect the amount of commission payable to his Indian agent.
- 7.2.6. Balance payment will be made by wire transfer after final inspection, testing, installation, commissioning (where applicable), final acceptance and submission of PSDBG acceptance letter from the Purchaser against following documents.
- i. Acceptance Report
  - ii. Receiving voucher from Stores
  - iii. PSDBG acceptance certificate issued by the Purchaser

## 8. FORCE MAJEURE

### 8.1. DEFINITION OF FORCE MAJEURE

- 8.1.1. Force Majeure shall mean any event which is beyond the control of the contractor or the purchaser, as the case may be, which they could not foresee or with a reasonable amount of diligence could not have foreseen and which substantially affects the performance of the contract, such as
- 8.1.2. war, hostilities or warlike operations (whether a state of war be declared or not), invasion, act of foreign enemy and civil war.
- 8.1.3. rebellion, insurrection, mutiny, usurpation of civil or military government, civil commotion.
- 8.1.4. embargo, import restriction, confiscation, nationalization, mobilization, commandeering or requisition by or under the order of Central, State Government or Local Authority in India or any other act or failure to act, of any local, state or national government in India
- 8.1.5. riot
- 8.1.6. state/region/country wide transporters strike
- 8.1.7. earthquake, landslide, volcanic activity, fire, flood or inundation, tidal wave, typhoon or cyclone hurricane, storm, lightning and pressure waves or other natural disaster
- 8.1.8. nuclear event causing nuclear radiation, radioactive contamination

### 8.2. NOTICE OF FORCE MAJEURE

- 8.2.1. If either party is prevented, hindered or delayed from or in performing any of its obligations under the contract by an event of force majeure, then it shall notify the other in writing of the occurrence of such event and the circumstances thereof within fourteen days after the occurrence of such event. A party shall give notice to the other party when it ceases to be affected by the force majeure. Failure to notify the purchaser about occurrence of such event within the time frame specified, the contractor shall have no right to claim any provisions under clause 8.4 below (consequences of force majeure)

### 8.3. DUTY TO MINIMISE THE EFFECT

- 8.3.1. The party or parties affected by the event of force majeure shall use reasonable

efforts to mitigate the effect thereof upon its or their performance of the contract and to fulfill its or their obligations under the contract

#### 8.4. CONSEQUENCES OF FORCE MAJEURE

8.4.1. The party who has given notice of force majeure shall be excused from the performance or punctual performance of its obligations under the contract for so long as the relevant event of force majeure continues and to the extent that such party's performance is prevented, hindered or delayed. The delivery time shall be re-fixed in accordance with Section C Part-A Clause 10, even though such force majeure event may occur after contractor's performance of his obligations has been delayed for other cause. No delay or non-performance by either party hereto caused by the occurrence of any event of force majeure shall

8.4.1.1. Constitute a default or breach of the contract give rise to any claim for damages or additional cost or expense occasioned thereby; if and to the extent that such delay or non-performance is caused by the occurrence of an event of force majeure. If the performance of the contract is substantially prevented, hindered or delayed for a single period of more than sixty days or an aggregate period of more than one hundred and twenty days on account of one or more events of force majeure during the currency of the contract, the parties will attempt to develop a mutually satisfactory solution.

#### 8.5. FORCE MAJEURE AFFECTING SUB-CONTRACTOR

8.5.1. Conditions as enumerated in Section C Part B Clause 8 will be applicable to sub-contractor.

8.5.2. If any sub-contractor is entitled under the contract for Force Majeure on terms additional to or broader than those specified in this Clause, such additional or broader Force Majeure events or circumstances shall not excuse the Contractor's non-performance or entitle him to relief under this Clause.

#### 9. LIMITATIONS

9.1. Anything in this Contract to the contrary notwithstanding

9.1.1. The affected party shall not be relieved from obligations under this contract to the extent any gross negligence of the affected party aggravates the force majeure event; and

9.1.2. Force majeure shall not apply to obligations of either party to make payments to the other party under the contract.

#### 10. HINDRANCES

10.1. The contractor is required to maintain hindrance register for reporting hindrance if any, while executing the work, as per Annexure-X. The contractor shall get record of hindrances in the hindrance register(s) approved/ endorsed by the purchaser. Such hindrance in the work endorsed by the purchaser will only be taken into consideration for granting delivery date re-fixation.