

No.F.1/11/2019-PPD
Government of India
Ministry of Finance
Department of Expenditure
Procurement Policy Division

512, Lok Nayak Bhawan,
New Delhi. Dated the 7th January, 2021

OFFICE MEMORANDUM

Subject : Seeking inputs from Stakeholders on Draft Standard Bidding Documents (SBDs) for procurement of Goods.

In continuation of this Department's various initiatives for increasing effectiveness, good governance, competition, and value-for-money in public procurement, it has now developed Draft SBD for the procurement of Goods (enclosed). Background Note in this regard is enclosed at Annexure-I.

2. Feedback is solicited from all stakeholders including Ministries/ Departments, attached/ subordinate bodies, CPSUs, Industry & individuals etc. for the SBD only in the format placed at Annexure-II.

3. The feedback may please be sent to undersigned and girish.bhatnagar@gmail.com by 15th February 2021. The copy of this OM is also available on the website of Department of Expenditure.


Kotluru Narayana Reddy
Deputy Secretary to the Govt. of India
Tel. 011-24621305
Email : kn.reddy@gov.in

To,

All the Secretaries/ Financial Advisers of Central Government
Ministries/ Departments

Background

The Model Tender Document is intended to be used by all Central Government Ministries/ Departments and their attached and subordinate offices, Central Public Sector Entities, Autonomous Bodies and Statutory Bodies.

This generic document is made for Single Stage, Two Covers, Domestic Open Tenders through GePNIC eProcurement of general Goods. However, core clauses have been added (without making the document unwieldy) so that it can be customised by adding suitable additional clauses in AITB and SCC to suit Global tender; Single cover; Annual Running Supply Contracts; Rate Contracts; Capital Goods; Contracts involving fabrication/ installation/ Commissioning etc.

This document is for use by different organisations and customisations may be required for many parameters e.g., name of organisation; whom is the bid to be addressed (The President of India, through), Tender number, Title of Tender, portal of e-procurement etc. These may occur at hundreds of places in text and in header/ footer. So, these are embedded in such a way that these can be customised at one place and rest of occurrences would get automatically changed. This would require a modicum of expertise in 'Word'. Please try it out.

There is no standardised nomenclature in Public Procurement in India and a mix of American, European, and Indian nomenclature has become common. 'Tender' is taken to mean (i) 'Tender Document' or 'Tender Process' as well as (ii) the 'Bid' submitted by the bidders. Similarly, participants in the Tender are called tenderers and bidders. This duality is reflected in "Notice Inviting Tenders" and 'Instructions to Bidders' etc.

Although this is not an appropriate forum to discuss this topic in detail that it deserves, an attempt is made to standardise for this document 'Tender' for the (i) above and Bid for (ii) and hence Bidder is used instead of Tenderer and the document is being called 'Tender Document' instead of 'Bid Document'. Similar attempts are made in standardising other nomenclature in this document, without disturbing the nomenclature embedded in CPPP portal.

Please make suggestions also regarding readability; ease of comprehension and length of the document.

Please read obverse sides of cover page and inner cover page for details.



Procuring Organisation

Model Tender Document
Tender Reference Number: Tend No./xxxx
For the Procurement of
GOODS

For Internal Official only - Not for Bidders
Disclaimer

While every care has been taken to ensure that the contents of this document are accurate and updated upto 15-12-2020 the procuring entities are advised to check the precise current provisions of law and other applicable instructions from the original sources. In case of any conflict between the provisions stipulated in this document and in the original source such as GFR or the prevailing laws, this document may be suitably modified. PPD, DoE, Ministry of Finance may be apprised of such changes.

Compliance with Government Policies/ Orders

The Tender Inviting Authority (TIA) hereby confirms that while formulating the Tender Document, following regulations have been complied with:

Sr No.	Description	Subject
1.	Ministry of Finance, Department of Expenditure, Public Procurement Division, Orders (Public Procurement 1, 2 and 3) F.No.6/18/2019-PPD dated 23rd/24th July 2020	Eligibility of bidders from specified countries
2.	Ministry of Finance, Department of Expenditure, Public Procurement Division OM No F.20212014-PPD dated 25.07.2016 and subsequent clarifications dt 20.09.2016; 27.07.2019; 29.06.2020	Relaxation of prior turnover and experience for Start-ups
3.	GFR Rule 170(i) as amended on 25.07.2017	Exemption from EMD for MSEs and Start-ups.
4.	Public Procurement Policy for the Micro and Small Enterprises (MSEs) Order, 2012 and its amendments 09.11.2018	Purchase Preference and facilities to MSEs
5.	"Public Procurement (Preference to Make in India) Order 2017" (PPP-MII) of Department for Promotion of Industry and Internal Trade, (DPIIT - Public Procurement Section) as revised by No. P-45021/2/2017-PP (BE-II) dated 16th September 2020	To encourage 'Make in India' and promote manufacturing and production of goods and services in India.
6.	No.F.6/ 18/ 2019-PPD Dated the 23rd January 2020 issued by Procurement Policy Division, Department of Expenditure Ministry of Finance	Undertaking that category of goods/ services being tendered/ procured is not available on GeM.

**Procuring Organisation
Model Tender Document
Tender Reference Number: Tend No./xxxx
For the Procurement of
GOODS**

Document Authentication

	<i>PPD, Department of Expenditure, Ministry of Finance Government of India</i>
<i>Valid upto</i>	<i>12-2020</i>
<i>Version:</i>	<i>ft beta V04-3</i>
<i>Issued by</i>	<i>Central Government Ministries/ Departments and their attached and subordinate offices, Central Public Sector Entities, Autonomous Bodies and Statutory Bodies. No restriction on use by State Governments also.</i>
<i>Intended for</i>	<i>Single Stage, Two Covers, Domestic Open Tenders through GePNIC eProcurement of general Goods. With suitable additions in AITB and SCC, it may be also be customised for Single Cover or Capital Goods or Rate Contract or Global Tenders.</i>
<i>File Name</i>	<i>ft Goods Tender Document V04-3 15122020.docx</i>
<i>Issued by:</i>	<i>sh Bhatnagar</i>
<i>Reviewed by:</i>	
<i>Approved by:</i>	

For Internal Official only - Not for Bidders

1. {As a convention all grey text in italics within curly brackets {e.g., this paragraph} must be deleted before publishing. All grey text in italics within square/ box brackets [as in Tender Information Summary (TIS) annexed to NIT] must be replaced by appropriate information}

2. {This document is advisory in nature and aims to facilitate the Procuring entities in preparation of Tender Document for the Procurement of Goods. The document is based on General Financial Rules 2017, Manual for Procurement of Goods 2017 as amended till date of its publishing. This document does not intend to replace alternative Tender Document as agreed (if any) with the Multilateral Development Banks (MDBs) i.e. The World Bank, Asian Development Bank etc. for procurements financed by loans/ grants extended by such MDBs.}

3. {For customization certain variable used throughout the document are embedded as 'DocProperty' in this word-file in menu: File → Info → Properties ↓ Advance Properties → Custom tab. If you select the specific property and modify the 'value' and save in this menu, these shall change throughout the document (including headers or footers) automatically. (↓ means dropdown menu, Properties is on right side of Info page). After changing these, 'select all' from editing menu (Ctrl+A to select all text), and press F9 to update all (some computers need Fn+F9).

DocProperty Name	Existing Value	Replace by value specific to this Tender e.g.,	Hereinafter called generically in text in this document
Document Name	Model Tender Document	Tender Document	Tender Document
Document number	Tend No./xxxx	Tender number	the Tender Reference Number
On behalf of	President of India	Authority in whose name the contract is to be entered – President/ Governor or CMD	the Authority
Procuring Organisation	Procuring Organisation	Name of your Organisation	the Procuring Organisation
The Legal Head	Head of Procuring Organisation	Designation who would appoint the Arbitrator	the Head of Procuring Organisation
Head of Procurement	Head of Procurement	Designation to whom Bids are to be formally addressed	the Head of Procurement
Procuring Entity	Procuring Entity	Office inviting the tender	the Procuring Entity
Subject Matter of Procurement	GOODS	Short description of item being procured to serve as Tender Title	the Stores
eProcurement URL	https://eprocure.gov.in/eprocure/app	If you use a different URL or use both CPPP and your own	the Portal
Tender Inviting Authority	Tender Inviting Authority (TIA)	You may add the name and designation of the TIA	the Inviting Authority

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Acronyms

Acronym	Definition	Acronym	Definition
AITB	Annexure to Instructions To Bidders	LD	Liquidated Damages
BOQ	Bill of Quantities (Excel sheet of Price Schedule)	MII	Make In India
CFR	Cost and Freight (named port of destination)	MSE	Micro and Small Enterprises
CFR	Cost and Freight (named port of destination)	MSME	Micro, Small and Medium Enterprises
CGST	Central Goods and Services Tax	MSMED	MSME Development (Act)
CIF	Cost, Insurance & Freight (named port of destination)	NEFT	National Electronic Funds Transfer
CPPP	Central Public Procurement Portal	NIT	Notice Inviting Tender
DAP	Delivered At Place	OEM	Original Equipment Manufacturer
DoE	Department Of Expenditure	PAN	Personal Account Number
DP	Delivery Period	(P)BG	(Performance) Bank Guarantee
DPIIT	Department for Promotion of Industry and Internal Trade	PC	Penal Code
DSC	Digital Signature Certificate	PDF	Portable Document Format
ECS	Electronic Clearing System	PVC	Price Variation Clause
EFT	Electronic Funds Transfer	RAP	Reverse Action (Process)
EMD	Earnest Money Deposit(including the term "Bid security") - a monetary guarantee for securing interests of the Procuring Entity.	SC	Scheduled Caste
ERV	Exchange Rate Variation	SCC	Special Conditions of Contract
FAS	Free Alongside Ship (named port of shipment)	ST	Scheduled Tribe
FDI	Foreign Direct investment	TCS	Tax Collected at Source
FOB	Free on Board (named port of shipment)	TDS	Tax Deducted at Source
FOR	Free On Rail	TIA	Tender Inviting Authority
FOT	Free on Truck (named place of dispatch or destination)	TIS	Tender Information Summary
GCC	General Conditions of Contract		
GST	Goods and Services Tax		
GSTIN	GST Identification Number		
HSN	Harmonized System of Nomenclature		
IEM	Independent External Monitor		
IGST	Integrated Goods and Service Tax		
ITB	Instructions To Bidders		
ITC (HS)	Indian Tariff Code (Harmonised System)		
TIS	Tender Information Summary		
LC	Letter of Credit		

Section I: Notice Inviting Tender (NIT)

1. Notice Inviting Tender (NIT)

The President of India (hereinafter referred as 'the Authority') through the Head of Procurement (herein after called 'the Head of Procurement'), Procuring Entity(hereinafter referred as 'the Procuring Entity')in the Procuring Organisation (hereinafter referred as 'the Procuring Organisation') invites bids for entering into contract for supply of GOODS(hereinafter called 'the Stores') from eligible and qualified Bidders on or before the scheduled bid submission closing date and time, through the <https://eprocure.gov.in/eprocure/app> portal (hereinafter called 'the Portal'),as per details in this Model Tender Document reference number Tend No./xxxx (hereinafter called 'the Tender Document').

2. The Tender Document

2.1 Bidders must read the full 'Tender Document'

This NIT is an integral part of the Tender Document and serves a limited purpose of invitation and does not purport to contain all relevant details for submission of bids. 'Tender Information Summary' (TIS) annexed to this notice gives salient summary of information of this tender. Any generic reference to NIT shall also imply a reference to TIS as well. Bidders must go through the Tender Document for details before submission of their Bids.

2.2 Availability of the Tender Document

The Tender Document shall be published and be available for download as mentioned in TIS, after the date and time of start of availability till the deadline of availability. Unless otherwise specified in TIS, the downloaded Tender Document is free of cost. If the Procuring Entity happens to be closed on the deadline of availability of the bids as specified above, this deadline shall *not* be extended. Any query/ clarification regarding downloading and uploading of Bids on the e-Procurement portal may be addressed to portal Help Desk (contact details given in TIS).

2.3 Clarifications

A Bidder requiring any clarification of the Tender Document may ask questions in writing/ electronically from Office/ Contact Person as mentioned in TIS, provided the questions are raised before the clarification end date mentioned in TIS (or if not mentioned, before 7 days of deadline for submission of bids). This deadline shall not be extended in case of any intervening holidays.

3. Eligibility to participate and preference policies:

- 1) Subject to provisions in the Tender Document, this invitation for Bids is open to all solvent bidders who fulfil the 'Eligibility' and 'Qualification criteria.
- 2) Class-II Local Suppliers and Non-Local Suppliers (as defined in Make-in-India policy) shall be eligible subject to certain conditions as mentioned in the Tender Document/ TIS.
- 3) Any bidder having conflict of interest with other bidders, which substantially affects fair competition, shall not be eligible to Bid in this tender.
- 4) For Bidders from specified countries having land borders with India (but not in development partnership with India) shall be eligible subject to certain conditions as mentioned in the Tender Document/ TIS.
- 5) The bidder, their affiliates, or subsidiaries – including subcontractors or Contractors for any part of the contract – should not stand declared ineligible/ blacklisted/ banned/ debarred by any Government Agency, for participating in its Bids.
- 6) The bidder, their proprietor of the firm, its employee, partner or representative, directors and officers should not have been convicted of offences involving moral

turpitude in business dealings under any applicable laws, within a period of three years preceding the commencement of the procurement process

- 7) Procuring Entity reserves its right to grant purchase preferences to Class-I Local Suppliers; Micro and/ or Small Enterprises (MSEs); and/ or Start-ups and/ or any other category of Bidders as mentioned in The TIS/ ITB/ AITB.
- 8) **Integrity Pact:** If so indicated, in the TIS/ AITB, all Bidders shall have to sign the Integrity Pact with the Procuring Entity as per Appendix 2. Bids without signed Integrity Pact shall be rejected.]

4. Pre-bid Conference:

If so indicated, in TIS in annexure to this notice, Bidders are requested to attend a Pre-bid conference for clarification on technical specifications and commercial conditions of the Tenders, on the time, Date and Place mentioned therein. Participation in such Pre-bid Conference is not mandatory, however, in case a bidder chooses not to participate (or fails to do so), it shall be assumed that they have no issues regarding the Technical/ commercial specifications/ conditions and no subsequent representations from them in this regard shall be admissible.

5. Submission of Bids:

- 1) Bids must be uploaded till the deadline of submission mentioned in TIS. If the office happens to be closed on the deadline of submission of the bids as specified above, this deadline shall *not* be extended.
- 2) If so specified, in TIS, originals (or self-attested copies of originals – as specified therein) of specified scanned uploaded documents must be submitted sealed in double cover and acknowledgement be obtained before the date and time specified at the venue mentioned. Failure to do so, is likely to result in bid being rejected. In case of office being closed, on the deadline for physical submission of originals, it shall stand extended to next working day at the same time and venue.
- 3) No manual Bid shall either be sold or accepted for submission (except for originals of scanned copies as per sub-clause above) and the bidder must comply with the Stores of the eProcurement portal including registration, compatible Digital Signature Certificate (DSC) etc. In case of downloaded documents, the bidder must not make any changes to the contents of the documents while uploading, except for filling the required information.
- 4) Bid Security (EMD) amount, if any, mentioned in TIS shall be furnished in one of the specified forms mentioned therein, otherwise the Bid shall not be accepted. The financial instruments shall be drawn in the manner specified in TIS. In case of e-Procurement, self-attested scan of original financial instruments relating to Bid-security should be uploaded along with bids. If so specified, the bidders must submit the original financial instruments in the office mentioned in TIS to reach on or before date and time mentioned for such submission, failing which the Bid shall be rejected.

6. Opening

Bids received shall be opened online at the specified date and time given in TIS. Bidders can witness the opening of bids online as per procedure specified by the eProcurement portal. If the office happens to be closed on the date of opening of the bids as specified, the bids shall be opened on the next working day at the same time and venue.

7. Disclaimers and Rights of Procuring Entity

The issue of the Tender Document does not imply that the Procuring Entity is bound to select Bid(s) and it reserves the right to reject any or all of the Bids or cancel the tender process; or abandon the

procurement of the Stores; or issue another tender for same or similar Stores, without assigning any reason.

8. For further details please refer to annexed TIS and the full Tender Document.

Digitally Signed by
Tender Inviting Authority (TIA)

[Insert Name, Designation, and contact details of Tender Inviting Authority]

Annexe: Tender Information Summary (TIS)

Annexe to NIT: Tender Information Summary*{Default values printed in black may be replaced if a different value is applicable in the tender}*

Tender Information Summary			
Basic Tender Details (ITB 1.1)			
Tender Title	GOODS		
Tender Reference Number	Tend No./xxxx		
the Procuring Organisation:	Procuring Organisation		
Authority in whose behalf Tender is invited	President of India	Through	Head of Procurement
the Procuring Entity:	Procuring Entity		
Bidding Type	Single Stage	No. of Covers	Two Covers
Tender Type	Open Domestic	E-Reverse Auction Following the Financial Bid Opening	No
Tender Category	Goods	Appointing Authority for Arbitration	Head of Procuring Organisation
Critical Dates			
Published Date	<i>[Fill up]</i>	Bid Validity (Days from date of Tender Opening) – ITB 1.7	<i>[fill up both period (default 90 days) in days and the calculated date]</i>
Document Download Start Date & Time	<i>[Normally start of business on the day after publishing]</i>	Document Download End Date & Time	<i>[Normally up to few hours/ one day before time of Tender Opening]</i>
Clarification Start Date & Time	<i>[Normally start of business on the day after publishing]</i>	Clarification End Date & Time	<i>[Normally later than 7 days before bid submission deadline, to give time to the Procuring Entity for a response]</i>
Bid Submission Start Date & Time	<i>[Normally start of business on the day after publishing]</i>	Bid Submission closing Date & Time	<i>[Normally up to few hours/ one day before time of Tender Opening]</i>
Tender Opening (Techno-commercial Bid) Date & Time	<i>[Please allow enough time for bidders to prepare responsive bids, depending on the documents and details required to be submitted]</i>	Tender Opening (Financial Bid) Date & Time	<i>To be intimated later [In case it is pre-decided, indicate Date and Time]</i>
Requirement Details (ITB 2.0)			
Evaluation Basis	Schedule-wise/ Consignee wise	Part quotation allowed or not ITB 10.1.1	The bidders may submit bids for any or all the schedules. However, he must quote for complete schedule that he quotes for, without exception.
Inspection Type	Pre-dispatch inspection at Factory	Inspection Agency	Nominated Third Party

Schedule	<i>[Add more rows if more than one schedule]</i>		
Item Details:	<i>[Add more rows if more than one items in a schedule]</i>	Qty and Units	
HSN Code:		Consignee/ State:	
Terms of Delivery	<i>[F.O.R. etc]</i>	Completion date of Delivery:	
Eligibility to Participate and Purchase preferences ITB 3.0			
Nature of Bidders eligible – OEMs/ Dealers authorised by OEMs (ITB 3.3 – 2)	OEMs/ Dealers authorized by OEMs <i>[in case it is proposed to exclude authorized dealers, specifically mention that only OEMs are eligible, and dealers are not eligible]</i>		
Make in India Policy ITB 3.7			
Thresholds for Eligibility to participate and preference to Make in India Products ITB	Classification of Local Suppliers based on Minimum local content ITB 3.7.2	Class-I Local Suppliers: 50% Class -II Local Supplier: more than 20% but less than 50% Non-Local Supplier less than 20%	
	Minimum local content for eligibility to participate ITB 3.7.4	50%	
	Margin of purchase preference	20%	
	Entities from countries not eligible to participate on reciprocal basis ITB 3.7.3	<i>[Indicate if any otherwise delete]</i>	
	Classes of Local Suppliers eligible to participate ITB 3.7.4	<i>[Only Class I local Suppliers eligible Or Only Class-I and Class-II local Suppliers not eligible Or All classes of Contractors (Class-I, Class-II and Non-local) eligible]</i>	
	Is the requirement divisible for preference ITB 3.7.6	Yes	
	Would the Contract be split among	No	

	more than one bidder ITB 3.7.6		
	Mandatory Joint venture with Indian Company ITB 3.7.8	<i>[Indicate if yes, otherwise delete]</i>	
Obtaining the Tender Document and clarifications ITB 5.0			
Tender Type	Open - Domestic	Contract Type	Goods
Bidding System	Single Stage	Number of Covers	Two
Sr No.	Document Name	Document Description	
1	NIT_1.pdf	NIT Document	
2	Tend_1.pdf	Tender Document	
3	Price_Schedule.xls	Financial Bid	
eProcurement Portal and helpdesk for Document availability and submission	https://eprocure.gov.in/eprocure/app	0120-4001 002; 0120-4001 005; 0120-6277 787 or support-eproc@nic.in	
	<i>[Fill in your organisation's portal URL and helpdesk, if Tender Document download/ submission facility is also provided there]</i>		
Cost of Tender Document (INR)	Not applicable		
Office/ Contact Person/ email for clarifications	<i>[Fill in Name, Designation, Address; Phones; Fax and Email]</i>		
Pre-bid Conference ITB 6			
Pre-bid Conference applicable or not	No		
	<i>[Include if Applicable] Place, Time, and date of Pre-bid Conference</i>		
	<i>[Include if Applicable] Place, Time, and date before which Written queries for Pre-bid conference must be received.</i>		
	<i>[Include if Applicable] Place, Time, and date before which registration of participants for Pre-bid conference must be received.</i>		
Preparation and Submission of Bids ITB 7.0; 12.0			
Bids to be Addressed to	President of India, Through Head of Procurement, Procuring Entity Head of Procuring Organisation		
Instructions for Online Bid Submission	https://etenders.gov.in/eprocure/app?page=HelpForContractors&service=page		
Allow Resubmission	Yes	Allow offline Submission of Bids	No
Allow Withdrawal before submission deadline	Yes		
Cover No	Cover Type	Description	Document Type
1	Fee/ EMD/ Techno-commercial Bid	Appendix 7: Scanned Documents relating to Earnest Money Deposit	.pdf

		Bid Document as per ITB para 8.2.1 (Appendices: 1 to 6)	.pdf
	List of Originals to be physically submitted	Appendix 7: Documents related to EMD	
2	Financial Bid	Scanned Appendix 8: Bid-Form Financial Bid	.pdf
		Price Schedule	.xls
Originals/ Self-attested copies of Originals of Scanned Documents			
Deadline for physical submission of originals/ self-attested copies of Originals of uploaded scanned documents			<i>[fill up date and time, usually within 2 days of Tender opening]</i>
Address of Physical Submission of Originals	<i>[Fill in Address for submission of originals of uploaded scanned documents]</i>		
Tender Opening Place	On e-procurement portal(s) mentioned above <i>[Fill in Address if the Tender shall also be opened in your organisation, or for submission of originals of uploaded scanned documents]</i>		
Alternate Bids allowed or not ITB 7.1.7	Only one Bid meeting the conflict of interest criteria (as mentioned in this document) shall be considered as valid from a bidder.		
Bid Securities ITB 11.0			
EMD Details	EMD Amount (INR)	Payment Mode of EMD	Offline
Categories of EMD Exemption Allowed	MSEs, Start-up <i>[add any other category]</i>	EMD Validity	<i>[Normally 45 days beyond Bid Validity, mention period as well as calculated date]</i>
Online Payment Modalities	<i>[payment Gateway or ECS/ RTGS (give account Number/ IFSC code/ Details for RTGS and ECS)] as applicable]</i>		
Off-line Payment Instruments Types acceptable	<i>[upload self-attested scanned copy and submit originals physically]</i> Account Payee Demand Draft or Fixed Deposit Receipt or Banker's cheque drawn on a scheduled commercial bank in India		
Original Bid Security to be submitted to	<i>[Fill in Designation and Address]</i>		
EMD Payable To	<i>[Fill in Designation and Address]</i>	EMD Payable At	<i>[Fill in the place where payable at]</i>
Performance Security	<i>[Applicable @ 10% of Order value]</i>		
Additional Clauses			
Clause	Description		
Integrity Pact to be Signed and Submitted along with Bid	No	<i>Independent External Monitor</i>	<i>[Include below if applicable] Name and Contact Details of Independent External Monitor (IEM) for Integrity Pact</i>
Price Variation Clause	No		
Payment Terms ITB 13.3	100% after receipt and acceptance of Goods		
Quantity Splitting/	No.	Divisible Requirement	Yes

Parallel Orders	
Option Quantity Clause	+/- 25%
Fall Clause	Not Included
Standard Governing Conditions	Section IV: General Conditions of Contract and Section V – Special Conditions of Contract
Any material/ equipment/ utility to be provided by Procuring Entity	No

Compliances Required from Bidders

S. No.	Description	Confirmation Required	Remarks Allowed	Documents uploading
Eligibility Conditions				
Commercial Conditions				
1	Import Content %age: Please enter 0 for fully imported items, and 100 for fully indigenous items. The definition and calculation of local content shall be in accordance with the Make in India policy as incorporated in the tender conditions.	Yes	Yes	Allowed (Mandatory)
2	HSN Code for this item is	Yes	Yes	Allowed (Optional)
3	Bidder to indicate and attach proofs, if the firm is owned by SC/ ST/ Women entrepreneur in support of their claim under MSME policy.	Yes	Yes	Allowed (Mandatory)
Technical Compliances				

Responsiveness of Bids

S. No.	Description	Confirmation Required	Remarks Allowed	Documents uploading
Eligibility Conditions				
Commercial Conditions				
1	Import Content %age: Please enter 0 for fully imported items, and 100 for fully indigenous items. The definition and calculation of local content shall be in accordance with the Make in India policy as incorporated in the tender conditions.	Yes	Yes	Allowed (Mandatory)
2	HSN Code for this item is 8607.	Yes	Yes	Allowed (Optional)
3	Bidder to indicate and attach proofs, if the firm is owned by SC/ ST/ Women entrepreneur in support of their claim under MSME policy.	Yes	Yes	Allowed (Mandatory)
Technical Compliances				

Section II: Instructions To Bidders (ITB)

1. The Tender Document

1.1 Basic Tender Details

The Tender Document (hereinafter referred as the 'the Tender Document') details terms and conditions for invitation of Bids for entering into contract for supply of the Stores mentioned in Section VI: "Schedule of Requirements" (hereinafter called 'the Stores' which also indicates, inter-alia, the required delivery schedule and terms & place of delivery). Bidders must go through the Tender Document for further details, but for your ready reference, 'Tender Information Summary' (TIS) is annexed to Section I: Notice Inviting Tender (NIT). In case of conflict, provisions of ITB/ AITB shall prevail over those in TIS.

1.2 Definitions

Definitions which have been used in the Tender Document, shall have the meanings as indicated in clause 1.2 and of Section IV: General Conditions of Contract (GCC).

1.3 Document Conventions

All words and phrases which are defined in clause 1.2 of section IV: General Conditions of Contract (GCC) are written in 'Capitalised font' and shall have the meaning as defined. Rest of the words shall be as per grammar. inter-alia 'Goods' shall indicate definition as given in the GCC while 'goods' shall have normal dictionary meaning.

1.4 Terms and conditions of Information provided

The information contained in the Tender Document or subsequently provided to Bidder(s), whether verbally or in documentary or any other form directly or indirectly by the Procuring Entity or by any of its employees or associated agencies, is provided to Bidder(s) on the terms and conditions set out in the Tender Document and such other terms and conditions subject to which such information is provided.

1.5 Overview of Contents

- 1) The earlier Section I – Notice Inviting Tender (NIT) and its annexure – Tender Information Summary (TIS) provides a synopsis of information relevant for a Bidder to decide on participating in the Tender. In case of any conflict between provisions of NIT/ TIS with those in subsequent sections, the provisions in latter sections shall prevail.
- 2) This Section II: "Instructions to Bidders" - ITB along with Section III: "Annexure to Instructions to Bidders – AITB" provides the relevant information as well as instructions to assist the prospective Bidders in preparation and submission of Bids. It also includes the mode and procedure to be adopted for receipt and opening as well as scrutiny and evaluation of Bids and subsequent award of contract. In case of a conflict, provisions of AITB shall prevail over those in the ITB. Any generic reference to ITB shall also imply a reference to AITB as well. With this limited objective, ITB is not intended to be complete by itself and the rest of this document - AITB, GCC and SCC must also be thoroughly studied before preparing the Bid.
- 3) Section IV – General Conditions of Contract (GCC) and Section V – Special Conditions of Contract (SCC) describe the conditions that shall govern the resulting contract. In case of a conflict, provisions of SCC shall prevail over those in the GCC. Any generic reference to GCC shall also imply a reference to SCC as well. In case of any conflict, provisions of GCC/ SCC shall prevail over those in ITB/ AITB.
- 4) Other information needed by the bidder to prepare his Bid for submission are contained in following Sections, Appendices and Formats and corrigenda/ addenda issued in accordance with clause 6.2 below.

1.6 Sections of the Tender Document (need not be signed or uploaded)

- 1) Section I: Notice Inviting Tender (NIT)

- (a) Annexe: Tender Information Summary (TIS)
- 2) Section II: Instructions to Bidders (ITB)
- 3) Section III: Annexure to Instructions to Bidders (AITB)
- 4) Section IV: General Conditions of Contract (GCC)
- 5) Section V: Special Conditions of Contract (SCC)
- 6) Section VI: Schedule of Requirements
- 7) Section VII: Technical Specifications and Quality Assurance
- 8) Section VIII: Qualification Criteria

1.7 Appendices (Tobe filled, digitally signed, anduploaded by Bidders)

- 1) Appendix 1: Bid Form – Techno-Commercial Bid
 - (a) Annexe 1: Bidder Information
 - (b) Annexe 2: Eligibility Declarations
 - (c) Annexe 3: OEM’s Authorization
 - (d) Annexe 4: Declaration by Agents/ Associates of Foreign Principals/OEMs
- 2) Appendix 2: Integrity Pact
- 3) Appendix 3: Confirmation/ Deviation from Technical Specifications and Quality Assurance
- 4) Appendix 4: Confirmation/ Deviation from Qualification Criteria
 - (a) Annexe: Performance Statement
- 5) Appendix 5: Confirmation/ Deviation From Terms And Conditions
- 6) Appendix 6: Checklist for the Bidders
- 7) Appendix 7: Documents Relating to EMD
- 8) Appendix8: Bid Form – Financial Bid
- 9) Financial Bid – BOQ Excel Sheet (To be Downloaded from the Portal). Just for sample and indication, an Exhibit 1: Price Schedule is shown. But actual Excel Sheet may be slightly different and must be downloaded and filled.

1.8 Other Formats (to be used if/ as required as per ITB/ AITB/ GCC/ SCC)

- 10) Format 1: Contract Form
 - (a) Annexe 1: Bank Guarantee Format for Performance Security
 - (b) Annexe 2: NEFT Mandate Form
 - (c) Annexe 3: No Claim Certificate
 - (d) Annexe 4: Certification by Prospective Arbitrators
- 11) Format 2: Authorization for Attending Pre-bid Conference

2. Procuring Entity - Rights and Disclaimers

2.1 The Procuring Entity

Bids are to be addressed to the Head of Procurement, Procuring Entity in the Procuring Organisation (headed by Head of Procuring Organisation), for and on behalf of President of India. The Tender Inviting Authority (TIA) is the designated officer for uploading and clarification of this Tender Document. Contract shall designate Inspection Agency/ Officer and interim/ ultimate Consignee(s) and Paying authority who shall discharge designated function during contract execution.

2.2 Right to Intellectual Property and confidentiality:

The Tender Document shall always remain the property of the Procuring Entity. The Tender Document and associated correspondence are subject to laws of copyright and must not be shared with third parties or reproduced, whether in whole or part, without the Procuring Entity's prior written consent. This condition shall also apply to bidders who do not submit a Bid after downloading it or who are not awarded contract in the process.

2.3 Disclaimers

2.3.1 Regarding Purpose of the Tender Document

The Tender Document is neither an agreement nor an offer to prospective Bidder(s) or any other party hereunder. The purpose of the Tender Document is to provide the Bidder(s) with information to assist them in the formulation of their Bids for submission.

2.3.2 Regarding Documents/ guidelines

The Tender Document and ensuing bids; communications and Contracts shall alone determine the legal and commercial relationship between the bidders/ contractors and the Procuring Entity. No other Government or Procuring Entity's document/ guidelines/ Manuals including its Procurement Manual (which are for internal and official use of its officers), notwithstanding any mention thereof in the Tender Document have any locus standii in such a relationship. Such documents/ guidelines/ Manuals therefore shall not be admissible in any legal or dispute resolution or grievance redressal proceedings.

2.3.3 Regarding information provided

The Tender Document does not purport to contain all the information Bidder(s) may require. The Tender Document may not be appropriate for all persons, and it is not possible for the Procuring Entity to consider needs of each Bidder. Each Bidder should conduct its own due-diligence, investigation, and analysis, and should check the accuracy, reliability, and completeness of the information in the Tender Document and obtain independent advice from appropriate sources. Information provided in the Tender Document to the Bidder(s) is on a wide range of matters, some of which may depend upon interpretation of law. The information given is not intended to be an exhaustive account of statutory requirements and should not be regarded as a complete or authoritative statement of law. The Procuring Entity, its employees and other associated agencies accept no responsibility for the accuracy or otherwise for any interpretation or opinion on law expressed herein.

2.3.4 Regarding any liabilities

The Procuring Entity, its employees and other associated agencies make no representation or warranty and shall have no liability to any person, including any Bidder under any law, statute, rules or regulations or tort, principles of restitution or unjust enrichment or otherwise for any loss, damages, cost or expense which may arise from or be incurred or suffered on account of anything contained in the Tender Document or otherwise, including the accuracy, adequacy, correctness, completeness or reliability of the Tender Document and any assessment, assumption, statement or information contained therein or deemed to form part of the Tender Document or arising in any way for participation in this Tender. The Procuring Entity, its employees and other associated agencies also accept no liability of any nature whether resulting from negligence or otherwise howsoever caused arising from reliance by any Bidder(s) upon the statements contained in the Tender Document.

3. Bidders - Eligibility and Preferential Policies

3.1 Bidders

Subject to provisions in following paras in this section and provisions in NIT/ TIS/ AITB, this invitation for Bids is open to all bidders who fulfil the 'Eligibility' and 'Qualification Criteria' specified in the Tender Document. In case of Second Stage (after the Pre-Qualification stage) of two Stage Bidding or in case of Special Limited Tenders this invitation is open only to such bidders who have been shortlisted and specifically invited.

3.2 Eligible Bidders

Any bidder participating in the procurement process shall:

- 1) be a natural person or private entity or public entity (legally and financial autonomous Government owned enterprises).
- 2) be a manufacturer of the product offered or be dealer authorised by the OEM.
- 3) not be a Joint Venture/ Consortium; except in case of manufacture under license/ technology collaboration agreements with phased indigenization under the Make-in-India policy (refer to clause 3.6.8 below).
- 4) not be insolvent, in receivership, bankrupt or being wound up, not have its affairs administered by a court or a judicial officer, not have its business activities suspended and must not be the subject of legal proceedings for any of the foregoing reasons. A declaration to this effect shall be submitted by the bidder in the Bid Form (Appendix 1);
- 5) not be (including their affiliates or subsidiaries – including subcontractors or Contractors for any part of the contract) under a declaration of ineligibility or any category of debarment for corrupt and fraudulent practices or for any other misdemeanour by the central government, the state government or any public undertaking, autonomous body, authority by whatever name called under the central or the state government. A declaration to this effect shall be submitted by the bidder in the Bid Form (Appendix 1);
- 6) not have, and their proprietor of the firm, its employee, partner or representative, directors and officers convicted of any offence by a court under the Prevention of Corruption Act, 1988 or under the Indian Penal Code or any other law for the time being in force for offences involving moral turpitude in business dealings within a period of three years preceding the commencement of the procurement process. A declaration to this effect shall be submitted by the bidder in the Bid Form (Appendix 1);
- 7) not have a conflict of interest as laid down in the following clause which substantially affects fair competition.
- 8) fulfil any other additional eligibility condition, if any, as may be prescribed, in AITB or elsewhere in Tender Document.

3.3 Ineligibility of bidders having conflict of interest

3.3.1 Conflict of Interest among Bidders/ Agents

Any bidder having conflict of interest with other bidders, which substantially affects fair competition, shall not be eligible to Bid in this tender. All bids found to have a conflict of interest with other bids shall be disqualified. A bidder shall be considered to have a conflict of interest with one or more parties in this bidding process, if:

- 1) They have controlling partner (s) in common; or
- 2) They receive or have received any direct or indirect subsidy/ financial stake from any of them; or
- 3) They have the same legal representative/ agent for purposes of this Bid; or
- 4) They have relationship with each other, directly or through common third parties, that puts them in a position to have access to information about or influence on the Bid of another Bidder; or
- 5) Bidder participates in more than one Bid in this bidding process. Participation in any capacity by a Bidder in more than one Bid shall result in the disqualification of all bids in which the parties involved: or
- 6) a Bidder or any of its affiliates participated as a consultant in the preparation of the design or technical specifications of the contract that is the subject of the Bid;

3.3.2 Conflict of Interest in case of Agents and Principal

Therefore, one agent cannot represent two Contractors or quote on their behalf in a Tender Process. Such bids shall be rejected. One manufacturer can also authorize only one agent/ dealer. There can be only one Bid from:

- 1) The principal manufacturer directly or through one Indian agent on his behalf
- 2) One Agent on behalf of only one Principal.

3.3.3 Conflict of Interest among associated businesses

- 1) In case of a holding company having more than one independent manufacturing units or more than one unit having common business ownership/ management, only one unit should quote. Similar restrictions shall apply to closely related sister companies.
- 2) Bidder's sister/ Associated/ Allied concern(s) participating or applying against the same tender, shall lead to disqualification of Bidders. Sister/ Associated/ Allied concern means a company, society, partnership firm or proprietorship firm having one or more common persons as Director/ Partner/ Member/ Owner.
- 3) Bidders must proactively declare in their bids such sister/ allied/ associated companies and holding/ common business ownership/ management in same/ similar line of business.

3.4 Eligibility Conditions for use of Agents by Foreign Principals

3.4.1 Foreign Principals utilizing services of Indian Agents

Wherever the foreign principal desires to avail the services of an Indian Agent, the dealings with Indian Agents are to be regulated as follows:

- 1) Such Agents shall provide self-attested documentary evidence about their identity (PAN, Aadhar Card, GSTIN registration, proof of address etc), business details (ownership pattern and documents, type of firm, year of establishment, sister concerns etc) to establish that they are a bonafide business as per Indian Laws.
- 2) Agency agreement between the foreign principal and the Indian Agent (including their associates), should be submitted to the Procuring Entity which should cover - the precise relationship, services to be rendered, mutual interests in business - generally and/ or specifically for the tender. Any payment, which the agent or associate receives in India or abroad from the foreign principal, whether as commission or as a general retainer fee should be brought on record in the Agreement and be made explicit.
- 3) Failure to furnish correct and detailed information as called for in sub-clause above shall render the concerned Bid liable to rejection or in the event of a contract materializing, the same shall be liable to termination. Besides this there shall be a penalty of banning business dealings of the Agent and the foreign principal with the Procuring Entity or damage/ recovery of EMD/ LD/ PBG.

3.4.2 Bidder(s) of Indian Nationality associating with Foreign OEM/ Principals

Bidders of Indian Nationality bidding in association or on behalf of foreign principals, shall furnish the following details in their offers:

- 1) The name and address of the foreign principals, if any, indicating their nationality as well as their status, i.e., whether manufacturer or agents of manufacturer holding the Letter of Authority of the Principal specifically authorizing the agent to make an offer in India in response to tender either directly or through the agents/ representatives.
- 2) The amount of commission/ remuneration included in the price (s) quoted by the Bidder for agent/ associates.
- 3) Confirmation of the foreign principals of the Bidder that the commission/ remuneration, if any, reserved for the Bidder in the quoted price(s), shall be paid by the Procuring Entity in India in equivalent Indian Rupees on satisfactory completion of the Project or supplies of Stores and Spares in case of operation items.

3.5 Eligibility of bidders from specified countries

Orders issued by the Government of India restricting procurement from bidders of certain countries which shares a land border with India shall apply to this procurement.

- 1) Any bidder from a country which shares a land border with India¹, excluding countries as listed in the website of Ministry of External Affairs², to which the Government of India has extended lines of credit or in which the Government of India is engaged in development projects – hereinafter called ‘Restricted Countries’) shall be eligible to bid in this tender only if the bidder is registered³ with the Registration Committee constituted by the Department for Promotion of Industry and Internal Trade (DPIIT). The bidders shall enclose certificate in this regard in the Bid Form (Appendix 1):
- 2) In Bids for Turnkey contracts including Works contracts, the successful bidder shall not be allowed to sub-contract works to any contractor from a such Restricted Countries unless such contractor is similarly registered with the Registration Committee

¹<https://mea.gov.in/india-and-neighbours.htm>

²<http://meadashboard.gov.in/indicators/92>

³<https://dipp.gov.in/sites/default/files/Revised-Application-Format-for-Registration-of-Bidders-15Oct2020.pdf>

- constituted by the Department for Promotion of Industry and Internal Trade (DPIIT). In such cases the bidders shall enclose certificate in the Bid Form (Appendix 1):
- 3) "Bidder" (including the term 'Bidder', 'consultant' or 'service provider' in certain contexts) means any person or firm or company, including any member of a consortium or joint venture (that is an association of several persons, or firms or companies), every artificial juridical person not falling in any of the descriptions of bidders stated hereinbefore, including any agency branch or office controlled by such person, participating in a procurement process.
 - 4) "Bidder from such Restricted Countries" for the purpose of this clause means: -
 - (a) An entity incorporated, established, or registered in such a country; or
 - (b) A subsidiary of an entity incorporated, established, or registered in such a country; or
 - (c) An entity substantially controlled through entities incorporated, established, or registered in such a country; or
 - (d) An entity whose beneficial owner is situated in such a country; or
 - (e) An Indian (or other) agent of such an entity; or
 - (f) A natural person who is a citizen of such a country; or
 - (g) A consortium or joint venture where any member of the consortium or joint venture falls under any of the above
 - 5) The beneficial owner for the purpose of (4) above shall be as under:
 - (a) In case of a company or Limited Liability Partnership, the beneficial owner is the natural person(s) who, whether acting alone or together, or through one or more juridical person, has a controlling ownership interest or who exercises control through other means.
 - (b) Explanation-
 - (i) "Controlling ownership interest" means ownership of or entitlement to more than twenty-five per cent. of shares or capital or profits of the company.
 - (ii) In case of a partnership firm, the beneficial owner is the natural person(s) who, whether acting alone or together, or through one or more juridical person, has ownership of entitlement to more than fifteen percent of capital or profits of the partnership.
 - (iii) In case of an unincorporated association or body of individuals, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person, has ownership of or entitlement to more than fifteen percent of the property or capital or profits of such association or body of individuals;
 - (iv) Where no natural person is identified under (1) or (2) or (3) above, the beneficial owner is the relevant natural person who holds the position of senior managing official.
 - (v) In case of a trust, the identification of beneficial owner(s) shall include identification of the author of the trust, the trustee, the beneficiaries with fifteen percent or more interest in the trust and any other natural person exercising ultimate effective control over the trust through a chain of control or ownership.
 - (vi) An Agent is a person employed to do any act for another, or to represent another in dealings with third person.

3.6 Eligibility to participate and preference to Make in India Products

3.6.1 Make in India Order

Orders issued by the Government of India regarding eligibility to participate and for purchase preference to "Local Suppliers" to encourage 'Make in India' and promote

manufacturing and production of goods and services in India, shall apply to this procurement.

3.6.2 Categories of Local Suppliers

Bidders/ Contractor are divided into three categories based on Local Content (the total value of the item procured (excluding net domestic indirect taxes) minus the value of imported content in the item (including all customs duties) as a proportion of the total value, in percent):

- 1) 'Class-I local Supplier' with local content equal to or more than prescribed in TIS or 50% whichever is higher
- 2) 'Class-II local Supplier' with local content more than prescribed in TIS or 20%, whichever is higher, but less than that applicable for Class-I local Supplier
- 3) 'Non - Local Supplier' with local content less than that applicable for Class-II local Supplier, in sub-clause above.

3.6.3 Ineligibility based on reciprocity

If so indicated, in TIS and/ or Section VI: Schedule of Requirements, entities from such countries identified as not allowing Indian companies to participate in their Government procurement, shall not be allowed to participate on reciprocal basis in this tender. The term 'entity' of a country shall have the same meaning as under the FDI Policy of DPIIT as amended from time to time.

3.6.4 Eligibility to participate

- 1) **Minimum local content for eligibility to participate:** Only bidders meeting the minimum prescribed local content for the product shall be eligible to participate subject to following conditions. This threshold shall be declared in TIS and/ or Section VI: Schedule of Requirements
- 2) **Classes of Local Suppliers eligible to Participate:** Based on the Make in India Policy, classes of local/ non-local Suppliers eligible to participate in tender shall be declared in TIS and/ or AITB. If not so declared only Class-I and Class-II local Supplier shall be eligible to participate and not non-local Suppliers.

3.6.5 Thresholds

- 1) Following thresholds shall be declared in TIS and/ or AITB.
 - (a) **Minimum local content for Contractor classification:** local content percentage prescribed to qualify as Class-I or Class-II local Suppliers for various products.
 - (b) **Minimum local content for eligibility to participate:** Minimum local content percentage prescribed for eligibility for a bid to be considered
 - (c) **Margin of purchase preference:** Bid price quoted by Class-II Local Supplier should be within this percentage from the L1 price quoted by Non-local or Class-II bidders, for being eligible for purchase preference
- 2) If not so declared, default threshold shall be as follows:
 - (a) Local content for eligibility for Class-I; Class-II local Suppliers and Non-local Suppliers shall be 50% and above; 20% and above but less than 50%; and less than 20% respectively.
 - (b) Minimum local content for eligibility to participate shall be 50%,
 - (c) Margin of purchase preference shall be 20%

3.6.6 Purchase preference to Class-I local Suppliers

- 1) For goods and works where the Stores are divisible by nature:
 - (a) Among all qualified bids, the lowest bid shall be termed as L 1. If L 1 is 'Class-I local Supplier', the contract for full quantity shall be awarded to L 1.
 - (b) If L 1 bid is not a 'Class-I local Supplier', 50% of the order quantity shall be awarded to L 1. Thereafter, the lowest bidder among the 'Class-I local Supplier' shall be invited to match the L1 price for the remaining 50% quantity subject to

the Class-I local Supplier's quoted price falling within the margin of purchase preference, and contract for that quantity shall be awarded to such 'Class-I local Supplier' subject to matching the L 1 price. In case such lowest eligible 'Class-I local Supplier' fails to match the L 1 price or accepts less than the offered quantity, the next higher 'Class-I local Supplier' within the margin of purchase preference shall be invited to match the L 1 price for remaining quantity and so on, and contract shall be awarded accordingly. In case some quantity is still left uncovered on Class-I local Suppliers, then such balance quantity shall also be ordered on the L 1 bidder.

- 2) For goods and works where the Stores are not divisible in nature, and in procurement of services where the bid is evaluated on price alone:
 - (a) Among all qualified bids, the lowest bid shall be termed as L 1. If L 1 is 'Class-I local Supplier', the contract shall be awarded to L 1.
 - (b) If L1 is not 'Class-I local Supplier', the lowest bidder among the 'Class-I local Supplier', shall be invited to match the L 1 price subject to Class-I local Supplier's quoted price falling within the margin of purchase preference, and the contract shall be awarded to such 'Class-I local Supplier' subject to matching the L 1 price.
 - (c) In case such lowest eligible 'Class-I local Supplier' fails to match the L 1 price, the 'Class-I local Supplier' with the next higher bid within the margin of purchase preference shall be invited to match the L 1 price and so on and contract shall be awarded accordingly. In case none of the 'Class-I local Supplier' within the margin of purchase preference matches the L 1 price, the contract shall be awarded to the L 1 bidder.
- 3) Where parallel contracts are to be awarded to multiple bidders: In Bids where parallel contracts are to be awarded to multiple bidders subject to matching of L1 rates or otherwise, the 'Class-I local Supplier' shall get purchase preference over 'Class-II local Supplier' as well as 'Non-local Supplier', as per following procedure:
 - (a) In case there is sufficient local capacity and competition for the item to be procured, as notified by the nodal Ministry, only Class I local Suppliers shall be eligible to bid. As such, the multiple Contractors, who would be awarded the contract, should be all and only 'Class I Local Suppliers'.
 - (b) In other Bids, whereas mentioned above, 'Class II local Suppliers' or both 'Class II local Suppliers' and 'Nonlocal Suppliers' may also participate in the bidding process along with 'Class I Local Suppliers'. If 'Class I Local Suppliers' qualify for award of contract for at least 50% of the tendered quantity in any tender, the contract shall be awarded to all the qualified bidders as per award criteria stipulated in the tender documents. However, in case 'Class Local Suppliers' do not qualify for award of contract for at least 50% of the tendered quantity as per award criteria, purchase preference should be given to the 'Class I local Supplier' over 'Class II local Suppliers' / 'Non-local Suppliers' provided that their quoted rate falls within margin of purchase preference of the highest bidder considered for award of contract. To ensure that the 'Class I Local Suppliers' taken in totality are considered for award of contract for at least 50% of the tendered quantity, first purchase preference has to be given to the lowest among such 'Class-I local Suppliers', subject to its meeting the prescribed criteria for award of contract as also the constraint of maximum quantity that can be sourced from any single Contractor. If the lowest among such 'Class-I local Suppliers', does not qualify for purchase preference because of aforesaid constraints or does not accept the offered quantity, an opportunity shall be given to next higher among such 'Class-I local Supplier', and so on.

3.6.7 Verification of local content and violations:

- 1) The 'Class-I local Supplier'/ 'Class-II local Supplier' at the time of tender, bidding or solicitation shall be required to indicate percentage of local content and provide self-certification that the item offered meets the local content requirement for 'Class-I local Supplier'/ 'Class-II local Supplier', as the case may be. They shall also give details of the location(s) at which the local value addition is made.
- 2) In cases of procurement for a value in excess of Rs. 10 crores, the 'Class-I local Supplier'/ 'Class-II local Supplier' shall be required to provide a certificate from the statutory auditor or cost auditor of the company (in the case of companies) or from a practicing cost accountant or practicing chartered accountant (in respect of Contractors other than companies) giving the percentage of local content.
- 3) Complaints about Local content declarations may be made through the channels of Procuring Entity. Procuring Entity and Nodal Ministries may prescribe fees for such complaints.
- 4) For False declarations, a bidder or its successors can be debarred for up to two years by following debarment procedures along with such other actions as may be permissible under law. Such lists shall be consolidated and displayed on websites.

3.6.8 Manufacture under license/ technology collaboration agreements with phased indigenization

- 1) If so, declared in TIS and/ or AITB, foreign companies shall have to enter into a joint venture with an Indian company to participate.
- 2) The Procuring Entity reserves its right, but without being under any obligation to do so, to grant exemption from meeting the stipulated local content to Bidders manufacturing indigenously a product developed abroad under a license from a foreign manufacturer (who holds intellectual property rights) under a technology collaboration agreement/ transfer of technology agreement with clear phasing of increase in local content.

3.6.9 Information to be provided by Bidders regarding Make in India policy

- 1) Self-declaration of their local content (and required certificate, in case of procurements above Rs 10 Crores) and hence their status as Class-I/ Class-II/ Non-local Supplier and also their eligibility to participate as per this clause.
- 2) If TIS and/ or AITB indicates countries identified as not allowing Indian companies to participate in their Government procurement, then a declaration that they are not an 'Entity' of such countries (as per criteria of the FDI Policy of DPIIT as amended from time to time) and are therefore eligible to participate in this tender.
- 3) If a Bidder is claiming exemption (as obtained from relevant authorities) from meeting the stipulated local content on account of manufacturing the product in India under a license from a foreign manufacturer with clear phasing of increase in local content, he must provide proof thereof.

3.7 Support/ Preferential Treatment to Micro & Small Enterprises (MSEs):

3.7.1 Support to MSEs

Policies of the Government to support Micro and Small Industries (MSEs) in comparison to the large-scale Industries shall apply to this procurement and:

- a) Tender sets shall be provided free of cost to MSEs registered with agencies, as mentioned in clause 3.7.3 below, for the item tendered.
- b) MSEs registered with the agencies, as mentioned in clause 3.7.3 below, for the item tendered shall be exempted from payment of Earnest Money.

3.7.2 Purchase Preference to MSEs

The Procuring Entity reserves its option to give price preference to Micro and Small Industries in comparison to the large-scale Industries as per policies of the Government from time to time: If a MSE bidder quotes a price within the band of the lowest (L1) +15 per

cent in a situation where the L1 price is quoted by someone other than an MSE, the MSE bidders are eligible for being awarded 25 per cent of the total tendered value if they agree to match the L1 price. In case of more than one such eligible MSE, the 25 per cent quantity is to be distributed proportionately among these bidders. Within this, a purchase preference of 4 per cent is reserved for MSEs owned by Scheduled Caste (SC)/ Scheduled Tribe (ST) entrepreneurs and 3 per cent is reserved for procurement from MSEs owned by women (if they participate in the tender process and match the L1 price). Provided that, in event of failure of such SC/ ST or Women MSE to participate in tender process or meet tender requirements and L1 price, 4 per cent sub-target shall be met from other MSE.

3.7.3 Registration of MSEs

MSEs, who are interested in availing such benefits, must:

- 1) enclose with their offer the proof of their being MSE registered with any of the agencies mentioned in the notification of Ministry of MSME indicated below: -
 - (a) District Industries Centres
 - (b) Khadi and Village Industries Commission
 - (c) Khadi and Village Industries Board
 - (d) Coir Board
 - (e) National Small Industries Corporation
 - (f) Directorate of Handicraft and Handloom
 - (g) Any other body specified by Ministry of MSME
- 2) MSEs shall be treated as owned by SC/ ST or women entrepreneurs:
 - (a) In case of proprietary MSE, proprietor(s) shall be SC/ ST or women
 - (b) In case of partnership MSE, the SC/ ST or women partners shall be holding at least 51% shares in the unit
 - (c) In case of Private Limited Companies, at least 51% share shall be held by SC/ ST or women promoters.
- 3) The MSEs must also indicate the terminal validity date of their registration.

3.8 Support to Start-up Enterprises

3.8.1 Definition of Start-up Enterprises

As defined by DPIIT an entity shall be considered as a 'start-up':

- 1) Up to five years from the date of its incorporation/ registration,
- 2) If its turnover for any of the financial years has not exceeded Rs 25 (Rupees twenty-five) crore
- 3) It is working towards innovation, development, deployment or commercialisation of new products, processes or services driven by technology or intellectual property.
- 4) Provided further that in order to obtain support a start-up so identified under the above definition shall be required to obtain and submit along with the tender, a certificate of an eligible business from the inter-Ministerial Board of Certification.

3.8.2 Support to Start-ups

Government of India has ordered following support to Start-ups (as defined by Department of Promotion of Industrial and Internal Trade - DPIIT).

- 1) **Exemption from submission of EMD:** Such Start-ups, shall be exempted from payment of Earnest Money.
- 2) **Relaxation in Prior Turnover and Experience:**the Procuring Entity reserves its right, to relax the condition of prior turnover and prior experience for such Start-up enterprises subject to meeting of quality & technical specifications. Decision of the Procuring Entity in this regard shall be final.

4. The Stores, Eligible Goods and Basis of Evaluation

4.1 Eligible Goods –Origin and Minimum Local Content

Unless otherwise stipulated in NIT/ TIS/ AITB, all 'Goods' and related 'Services' to be supplied under the contract shall have their origin in India or other countries and must conform to i) restrictions on certain countries with land-borders with India; ii) minimum local content (Make in India Policy). In case a purchase preference is availed by the bidder as Class-I Local Supplier or as MSE or Start-up enterprise, the Goods must not circumvent the provisions for granting such purchase preference. The term "origin" used in this clause means the place where the goods are mined, grown, produced, or manufactured or from where the incidental Services are arranged and supplied. For purposes of this Clause, the term 'goods' includes commodities, raw material, machinery, equipment, and industrial plants; etc. and 'related services' includes services such as testing, packing, insurance, transportation, installation, transit Insurance, loading/ unloading/ stacking, commissioning, training, and initial warranty/ maintenance etc.

4.2 Section VI – Schedule of Requirements

Section VI – Schedule of Requirements describes the Stores required; HSN codes; Quantities and Units; Delivery Requirements, Destination and State; EMD prescribed; transportation; terms of delivery (F.O.R. etc); scope of supply (accessories; spare parts and incidental services). The Stores may contain more than one schedule and each schedule may contain more than one item of Stores.

4.3 Section VII – Technical Specifications and Quality Assurance

Technical and quality assurance of the Stores are described in Section VII – Technical Specifications and Quality Assurance.

4.4 Basis of Evaluation for Schedules/ packages

- 1) Unless otherwise stipulated in the TIS/ AITB, if there is more than one schedule/ package in the Section VI: Schedule of Requirements, evaluation of financial ranking of bids shall be done separately for each schedule and the Bidder has the option to submit its quotation for any one or more schedules/ packages and, also, to offer special discount for combined schedules. However, while quoting for a schedule, the Bidder shall quote for the complete Stores as specified in that particular schedule.
- 2) Unless otherwise stipulated in the TIS/ AITB, if there is only a list of items without grouping into schedules, evaluation of financial ranking of bids shall be done separately for each item separately and the Bidder has the option to submit its quotation for any one or more items and, also, to offer special discount for combined items. However, while quoting for any item, the Bidder shall quote for all the destinations included in an item.
- 3) Unless otherwise stipulated in the TIS/ AITB, if there is only one item in the Stores with a number of destinations, evaluation of financial ranking of bids shall be done separately for each destination included in that item separately and the Bidder has the option to submit its quotation for any one or more destinations and, also, to offer special discount for all destinations.

4.5 Alternative Bids/ Offers

Unless otherwise specified in the TIS/ AITB, conditional offers, alternative offers, multiple bids by a bidder shall not be considered. The Portal shall permit only one Bid to be uploaded.

5. Bid Prices, Taxes and Duties

5.1 Prices

5.1.1 Undue profiteering

- 1) The price quoted by the Bidder shall not be higher than the controlled price fixed by law for the stores or where there is no controlled price, it shall not exceed the prices or contravene the norms for fixation of prices laid down by Government or where no such prices or norms have been fixed by the Government, it shall not exceed the price appearing in any agreement relating to price regulation by any industry in consultation with the Government. In any case, save for special reasons stated in the bid, the price charged shall not be higher than the Maximum Retail Price (MRP).
- 2) If the price quoted is higher than the controlled price, the Bidder shall specifically mention this fact in his bid giving reasons for quoting higher price(s). If he fails to do so or makes any mis-statement, it shall be lawful for the Procuring Entity, (i) to revise the price at any stage so as to bring it in conformity with the Sub-clause (1) above or (ii) to terminate the contract and forfeit the Security Deposit.

5.1.2 Price Components

- 1) The quoted price shall be considered to include all relevant financial implications including inter-alia the nature of the Stores to be supplied and the incidental services to be performed, location of the bidder, location of the consignee(s), terms of delivery, extant rules and regulations about taxes, duties, customs, transportation, environment, labour of the bidder's country and in India.
- 2) If specified in the Section VI: Schedule of Requirements, the price of the Stores, quoted should include concomitant/ contingent services/ work inter-alia testing, packaging, inland transportation, insurance, and other local costs incidental to supply.

5.1.3 Price Schedule

- 1) Bidders are to upload only the original Price Schedule (in .xls format) after entering the relevant fields without any alteration/ deletion/ modification of other portions of the excel sheet.
- 2) Bidders shall fill in their rates other than zero value in the specified cells without keeping it blank.
- 3) The Bidder shall indicate in the Price Schedule all the specified components of prices shown therein including the unit prices and total Bid prices of the Stores and services it proposes to supply against the requirement. Delivery Schedule and Terms of delivery are also to be quoted. All the columns shown in the price schedule should be filled up as required. If any column does not apply to a Bidder, same should be clarified accordingly by the Bidder.

5.1.4 Provisions of GST

- 1) Break up of different elements of price i.e., as per GST Act shall be indicated separately.
- 2) While quoting the basic rate itself bidder should offset the input credit availed as per the GST Act.
- 3) In case GST is quoted extra but with the provision that it shall be charged as applicable at the time of supply; the offer shall be evaluated for comparison purpose by loading maximum existing rate of GST for the product.

5.1.5 Currencies of Bid and Payment

- 1) The currency of Bid and payment shall be quoted by the bidder entirely in Indian Rupees. All payments shall be made in Indian Rupees only.
- 2) Where the AITB specifies acceptance of quotations in different currencies, then, for domestic Stores, prices shall be quoted in Indian rupees only and for imported Stores, prices shall be quoted either in Indian rupees or in the currency stipulated in the AITB, mentioning, inter-alia, the exchange rate adopted for converting foreign currency into Indian Rupees.
 - (a) As regards price(s) for incidental services, if any required with the Stores, the same shall be quoted in Indian Rupees if such services are to be performed/undertaken in India.
 - (b) Commission for Indian Agent, if any and if payable shall be indicated in the space provided for in the price schedule and quoted in Indian Rupees only.

5.1.6 Break-up of Prices based on Origin of Goods

The quoted prices for Stores offered from within India and that for Stores offered from abroad are to be indicated separately in the applicable Price Schedules. The prices in the corresponding price schedule shall be entered separately in the following manner:

- 1) **Domestic Stores:** For Stores offered indigenously, the prices in the corresponding price schedule shall be entered separately in the following manner:
 - (a) The price of the Stores, quoted ex-factory, ex-showroom, ex-warehouse or off-the-shelf, as applicable, including all taxes and duties like GST/ CGST/ SGST/ UTGST/ IGST, custom duty, etc. already paid or payable on the components and raw material used in the manufacture or assembly of the Stores quoted ex-factory etc or on the previously imported Stores of foreign origin quoted ex-showroom etc.
 - (b) Any GST/ CGST/ SGST/ UTGST/ IGST, which shall be payable on the Stores in India if the contract is awarded.
 - (c) Charges towards inland transportation, insurance, and other local costs incidental to delivery of the Stores to their final destination as specified in the Section VI: Schedule of Requirements and
 - (d) The price of incidental services, as and if mentioned in Section VI: Schedule of Requirements.
- 2) **Foreign Stores:** For Stores offered from abroad, the prices in the corresponding price schedule shall be entered separately in the following manner:
 - (a) The price of Stores quoted FAS/ FOB port of shipment, CIF port of entry in India or CIF specified place of destination in India as indicated in the List of Requirements.
 - (b) Wherever applicable, the amount of custom duty and import duty on the Stores to be imported.
 - (c) The charges for inland transportation, insurance, and other local costs incidental to delivery of the Stores from the port of entry in India to their final destination, as specified in the List of Requirements. and

- (d) The charges for incidental services, as and if mentioned in the List of Requirements.
- (e) Unless otherwise specifically indicated in the Contract, the terms FOB, FAS, CIF etc. for imported Stores offered from abroad, shall be governed by the rules & regulations prescribed in the current edition of INCOTERMS, published by the International Chamber of Commerce, Paris
- (f) The need for indication of all such price components by the Bidders, as required in this clause (viz., ITB clause 5.1.2) is for the purpose of comparison of the Bids by the Procuring Entity and shall no way restrict the Procuring Entity's right to award the contract on the selected Bidder on any of the terms offered.

5.1.7 Non-compliance

Tenders, where prices are quoted in any other way shall be treated as unresponsive and rejected.

5.2 Firm/ Variable Price

5.2.1 Firm Price

Unless otherwise specified in the AITB, prices quoted by the Bidder shall remain firm and fixed during the currency of the contract and not subject to variation on any account.

5.2.2 Price Variation Clause:

- 1) In case the tender documents require offers on variable price basis, the price quoted by the Bidders shall be subject to adjustment during original Delivery Period to take care of the changes in the cost of labour and material components in accordance with the price variation formula to be specified in the AITB.
- 2) If a Bidder submits firm price quotation against the requirement of variable price quotation, that tender shall be prima-facie acceptable and considered further, taking price variation asked for by the Bidder as zero.
- 3) However, as regards taxes and duties, if any, chargeable on the Stores and payable, the conditions stipulated in ITB Clause 13 shall apply for both firm price tender and variable price tender.

5.2.3 Exchange Rate Variation

Subject to provisions of clause 5.2.1 above, where final prices are quoted in Indian Rupees (INR) involving substantial imports content (> 25%) and the deliveries exceed 12 months, Bidder can stipulate Foreign Exchange Rate Variation (ERV) clause. In that case the ERV shall be borne by the Procuring Entity within the original Delivery Period. ERV shall be applicable only for components used in manufacture of supplied Stores that are imported after the Contract date.

- 1) The offer of the Bidder should indicate import content and the currency used for calculating import content. Base Exchange rate of each major currency used for calculating Foreign Exchange content of the contract should be indicated. The base date of ERV shall be contract date and variation after the base date shall be calculated up to the midpoint manufacture, unless bidder has already indicated the time schedule within which material shall be imported by the bidder.
- 2) In case delivery period is refixed/ extended, ERV shall not be admissible, if this is due to default of the Contractor.
- 3) Unless otherwise stipulated in the Contract, documents for claiming ERV shall be:
 - (a) A bill of ERV claim enclosing working sheet
 - (b) Banker's Certificate/ debit advice detailing F.E. paid and exchange rate
 - (c) Copies of import order placed on Contractor
 - (d) Invoice of Contractor for the relevant import order

5.3 Taxes and Duties

5.3.1 Goods and Services Tax (GST)

1) GST Registration Status:

- (a) All the bidders/ Bidders should ensure that they are GST compliant and their quoted tax structure/ rates as per GST Act/ Rules. The bidder should be registered under GST and furnish GSTIN number and GST Registration Certificate issued by appropriate authority of India in their offer unless they are specifically exempted from registration under specific notification/ circular/ section/ rule issued by statutory authorities. The bidder claiming exemption in this respect shall submit certificate from practicing Chartered Accountant (CA) to the effect that the bidder is fulfilling all conditions prescribed in notification to make him exempted from registration.
- (b) **GST Registration Number (15-digit GSTIN).** In case bidder has multiple business verticals in a state and having separate registration for each business vertical, GSTIN of each vertical concerned with the supply and service involved, as per the scope of Schedule of Requirements and Price Schedule to be informed to the Procuring Entity. If supply/ service provided is from multiple states, then bidder should mention GST Registration Number for each state separately.
- (c) **Composition scheme:** Where the bidder has opted for composition levy under Section 10 of CGST, he should declare the fact while bidding along with GSTIN and GST registration certificate.
- (d) **Exemption from Registration:** If bidder is not liable to take GST registration, i.e., having turnover below threshold, bidders need to submit undertaking/ indemnification against tax liability. The bidder/ dealer shall not charge any GST and/ or GST Compensation Cess on the bill/ invoice. In such case, applicable GST shall be deposited under Reverse Charge Mechanism (RCM) by the Procuring Entity directly to concerned authorities. Further the bidder should notify and submit to the Procuring Entity within 15 days from the date of becoming liable to registration under GST.
- (e) The Procuring Entity's state-wise GSTINs are indicated in Section VI – Schedule of Requirements and/ or TIS/ AITB.

2) HSN Code and GST Rate:

- (a) HSN (Harmonized System of Nomenclature) code for the goods being offered by the bidder for each item covered under the Tender Document shall be declared in the Technical bid.
- (b) While submitting offer, it shall be the responsibility of the bidder to ensure that they quote correct GST rate and HSN number.
- (c) As per the GST Act the bid and contract must show the GST Tax Rates (and GST Cess if applicable) and GST Amount explicitly and separate from the bid/ contract price (exclusive of GST). In case the price is stated to be inclusive of GST, the current rate included in the price must be declared by the bidder.
- (d) If a Bidder asks for GST/ CGST/ SGST/ UTGST/ IGST (and GST Cess if applicable) to be paid extra, the rate and nature of such taxes applicable should be shown separately. Bidders should quote 'GST' if payable extra on total basic rate of each item and must quote GST in '%' inclusive of cess. GST shall be applicable on 'basic rate + Packing & forwarding charges + Freight + Insurance'.
- (e) In case GST, other taxes, duties are not clearly specified, or column is left blank in price schedule then it shall be presumed that no such tax/ levy is applicable or payable by the Procuring Entity.
- (f) Unless otherwise specifically indicated in the Contract, the terms FOB, FAS, CIF etc. for imported Stores offered from abroad, shall be governed by the rules & regulations prescribed in the current edition of INCOTERMS, published by the International Chamber of Commerce, Paris

- (g) The need for indication of all such price components by the Bidders, as required in this clause (viz., ITB clause 5.1.2) is for the purpose of comparison of the Bids by the Procuring Entity and shall no way restrict the Procuring Entity's right to award the contract on the selected Bidder on any of the terms offered.

6. Downloading the Tender Document; Corrigenda and Clarifications

6.1 Downloading the Tender Document

The Tender Documents shall be published and be available for download as mentioned in TIS annexed to NIT. The Bidders can obtain the Tender Document after the date and time of start of availability till the deadline of availability. If the office happens to be closed on the deadline of availability of the bids, the deadline shall not be extended.

6.2 Corrigenda/ Addenda to Tender Document

Before the deadline for submission of bids, the Procuring Entity may in its discretion, but without being under any obligation to do so, update, amend, modify, or supplement the information, assessment or assumptions contained in the Tender Document by issuing corrigenda and addenda. The corrigenda and addenda shall be published in the same manner as the original Tender Document. The Portal may, without any liability or obligation, send intimation of such corrigenda/ addenda to bidders, who have downloaded the document under their login. However, it is responsibility of bidders to check the website for any corrigenda/ addenda. Any corrigendum or addendum thus issued shall be considered a part of the Tender Document. To give reasonable time minimum 7 days to the prospective bidders to take a corrigendum/ addendum into account in preparing their bids, the Procuring Entity may extend as necessary the deadline for submission of bids.

6.3 Clarification on the Tender Document

A Bidder may seek any clarification of the Tender Document from Office/ Contact Person/ e-procurement Help Desk as mentioned in TIS annexed to NIT, provided the clarifications are raised before the clarification end date mentioned in TIS (or if not mentioned, within 7 days prior to the deadline for submission of bids). The Procuring Entity shall respond within 5 working days of receipt of such a request for clarification. Any modification of the Tender Document which may become necessary as a result of the clarification shall be made by the Procuring Entity through the issue of an Addendum/ Corrigendum pursuant to Clause above.

7. Pre-bid Conference

- 1) In case Pre-bid conference is stipulated in the TIS annexed to NIT, prospective bidders interested in participating in this tender may attend a Pre-bid conference for clarification on technical specifications and commercial conditions of the Tenders, at the venue, date and time specified therein. Participation in the Pre-bid conference is restricted to prospective bidders who have downloaded the Tender Document.
- 2) Participation is not mandatory, however, in case a bidder chooses not to participate (or fails to do so) in the Pre-bid conference, it shall be assumed that they have no issues regarding the Technical/ commercial specifications/ conditions.
- 3) The date and time by which the written queries for the Pre-bid must reach the authority is mentioned in the TIS.
- 4) The last date for registration for participation in the Pre-bid conference is also mentioned in the TIS.
- 5) Delegates participating in the Pre-bid conference must provide a photo identity and an authorization letter as per format in Format 2: "Authorization for attending a Pre-bid Conference" from their Company/ principals, else they shall not be allowed to participate. Pre-bid conference may also be held online at the discretion of the Procuring Entity.

- 6) After the Pre-bid conference, if required, a clarification letter and corrigendum to Tender Documents shall be issued, containing amendments of various provisions of the Tender Document, which shall form part of the Tender Document.

8. Preparation of Bids

8.1 The Bid

8.1.1 Language of the Bid

Unless otherwise specified in the AITB, the Bid submitted by the Bidder and all subsequent correspondence and documents relating to the Bid exchanged between the Bidder and the Procuring Entity, shall be written in the Official Language or English. However, the language of any printed literature furnished by the Bidder in connection with its Bid may be written in any other language provided the same is accompanied by translation in the language of the Bid. For purposes of interpretation of the Bid, the English translation shall prevail.

8.1.2 Acquaintance with local conditions and factors

It is imperative that each bidder at his own cost, responsibility, and risk, fully acquaints himself with all the local conditions and factors, which would have any effect on the price to be quoted by him or affecting performance/ completion of the contract, in all respects inter alia including the legal, environmental, infrastructure, logistics, communications and any other cost aspects. Bidders shall themselves be responsible for compliance with Rules, Regulations, Laws and Acts in force from time to time at relevant places. On such matters, the Procuring Entity shall have no responsibility and shall not entertain any request from the bidders in these regards.

8.1.3 Cost of Bidding

The Bidder(s) shall bear all direct or consequential costs, losses and expenditure associated with or relating to the preparation, submission and subsequent processing of their Bids including but not limited to preparation, copying, postage, delivery fees, expenses associated with any submission of samples, demonstrations or presentations which may be required by the Procuring Entity or any other costs incurred in connection with or relating to their Bids. All such costs, losses and expenses shall remain with the Bidder(s) and the Procuring Entity shall not be liable in any manner whatsoever for the same or for any other costs, losses and expenses incurred by a Bidder(s) in preparation or submission of the Bid, regardless of the conduct or outcome of the Bidding Process.

8.1.4 Failure to provide all required information

Interested Bidders before formulating the Bid and submitting the same to the Procuring Entity, should read and examine all the terms, conditions, instructions etc. contained in all the sections of the Tender Document. Failure to provide and/ or comply with the required information, instructions etc. incorporated in the Tender Documents shall result in rejection of its Bid.

8.1.5 Interpretation of Provisions of the Tender Document

The provisions in the Tender Document, must be interpreted in the context in which these appear. Any interpretation of these provisions far removed from such context or any other contrived or in between the lines interpretation is not acceptable.

8.1.6 Quote quantities/ prices in both numerals and in words

Although the software on the Portal may convert quantities/ rates/ amounts in numerical digits in Bids to words, the bidders are advised to ensure that there is no ambiguity in this regard.

8.2 Documents comprising the Bid:

8.2.1 Techno-commercial Bid/ Cover

"Technical Bid" shall include inter-alia the Original or scanned copies of duly signed or digitally signed copies in pdf format of the following documents. Pdf documents should not be password protected. If so specified in AITB/ ITB, specified originals or self-certified copies of originals shall also be required to be physically submitted as per instruction contained therein. *No price details should be given or hinted in the Technical Bid:*

- 1) Appendix 7: Documents relating to Earnest Money Deposit (amount as specified in the Section VI: Schedule of Requirements) furnished or alternatively, documentary evidence for claiming exemption from payment of earnest money shall be uploaded in accordance with ITB clause 8.4. Original EMD securities or Self certified copies of exemption from EMD are also to be physically submitted as per instructions in ITB/ AITB.
- 2) Appendix 1: Bid Form (to serve as covering letter and declarations applicable for both the Technical Bid - Ref Clause 1.7 also);
 - (a) Annexe 1: Bidder Information(Ref Clause 1.7 also);
 - (b) Annexe 2: Eligibility Declarations(Ref Clause 1.7 also)
 - (c) If applicable, Annexe 3: OEM's Authorizationannexe(Ref Clause 1.7 also): Unless specifically barred in TIS/ AITB, in case the Bidder offers to supply Stores, which are manufactured by some other firm, the Bidder must have been duly authorized by the goods manufacturer to quote for and supply the Stores to the Procuring Entity in this particular tender specifically. The Bidder shall submit OEM's authorization letter to this effect as per this.
 - (d) If applicable. Annexe 4: Declaration by Agents/ Associates of Foreign Principals/OEMs(clause 3.4 above)
- 3) Appendix 4 with Annexe - Confirmation/ Deviation from Qualification Criteria and Performance Statement: Documentary evidence needed to establish the Bidder's qualifications as specified in Section VIII: Qualification Criteria as follows:
 - (i) The Bidder has the required financial, technical and production capability necessary to perform the contract and, further, it meets the qualification criteria incorporated in the Section VIII: Qualification Criteria, if any.
 - (ii) Bidder shall also submit a Performance Statement in annexe, to prove his technical, production and financial capabilities commensurate with requirements of this Tender.
 - (iii) All such Statements and Documents shall be uploaded as Appendix 4.
- 4) Appendix 3: Confirmation/ Deviation from Technical Specifications and Quality Assurance. Even in case of no deviation, please fill in confirmations and nil deviation statement.
 - (a) To establish Technically Suitability and compliance with ITB clause 4.1 Eligible Goods and Section VII: Technical Specifications and Quality Assurance, each bidder is also required to provide, clause by clause compliance/ deviation Statement in a chart form (without ambiguity or conditionality along with justification,) relating to all parameters of Technical Specifications, Quality Assurance, Test Reports/ Certificates and or/ or Type Test Certificates (if applicable/ necessary) from NABL/ ILAC/ Government lab with supporting documents.
 - (b) The Bidder shall upload in its Bid the required and relevant documents like technical data, literature, drawings, and other documents. to establish that the goods and services offered in the Bid fully conform to the goods and services specified by the Procuring Entity in the Tender Document.
 - (c) All such Statements and Documents shall be uploaded as Appendix 3.
 - (d) If a Bidder furnishes wrong and/ or misleading data, statement(s) etc. about technical acceptability of the goods and services offered by it, its Bid shall be

liable to be ignored and rejected in addition to other remedies available to the Procuring Entity in this regard.

- 5) Appendix 5: Confirmation/ Deviation from Terms and Conditions. Bidder must comply with the entire commercial and other clauses of this Tender Document. In case there are any deviations, these should be listed in a chart form without any ambiguity or conditionality along with justification and supporting documents. All such Statements and Documents shall be uploaded as Appendix 5. Even in case of no deviation, please fill in confirmations and nil deviation statement.
- 6) Appendix 6- Checklist for the Bidders. The bidder must also upload the Checklist given in the Tender Document as Appendix 6, to confirm that he has complied with all the instructions in the Tender Document and nothing is inadvertently left out.
- 7) If stipulated in TIS/ AITB, Appendix 2:, duly signed Integrity Pact.
- 8) Any other format/ appendix if specified in AITB or if considered relevant by the bidder.

8.2.2 Financial Bid/ Cover

"Financial Bid" shall include inter-alia following. *No additional Technical details, which have not been brought out in the Technical Bid shall be brought out in the Financial Bid:*

- 1) Scanned copy of duly signed or digitally signed copy in pdf format of Appendix 8: Bid Form – Financial Bid, confirming the terms and conditions for the prices offered. Any other financial implications left out in the Price Schedule may also be mentioned here.
- 2) Price Schedule (To be submitted separately as an excel sheet) considering all financially relevant details including Taxes and Duties as per clause 13 below. Prices shall be quoted duly taking into consideration, all financial implications inter-alia Payment and delivery terms and other conditions in GCC and SCC. Just for sample and indication, an Exhibit 1: Price Schedule is shown. But actual Excel Sheet may be slightly different and must be downloaded and filled.

8.3 Bid Validity

- 1) Unless specified to the contrary in the TIS/ AITB, Bids shall remain valid for a period not less than 90 or the period from the deadline for Bid submission specified in TIS. A Bid valid for a shorter period shall be rejected by the Procuring Entity as non-responsive.
- 2) In case the day upto which the bids are to remain valid falls on/ subsequently declared a holiday or closed day for the Procuring Entity, the Bid validity shall automatically deemed to be extended upto the next working day.
- 3) In exceptional circumstances, prior to expiry of the original time limit, the Procuring Entity may request the bidders to extend the period of validity for a specified additional period. The request and the bidders' responses shall be made in writing or electronically. A bidder may agree to or reject the request. A bidder who has agreed to the Procuring Entity's request for extension of Bid validity, in no case, shall be permitted to modify his Bid.

8.4 Bid Security (EMD)

- 1) The Bidder shall furnish along with its Bid, earnest money for amount as shown in the Section VI: Schedule of Requirements. The earnest money is required to protect the Procuring Entity against the risk of the Bidder's unwarranted conduct as amplified under sub-clause (5) below.
- 2) Following category of Bidders are exempted from payment of earnest money. In case the Bidder falls in these categories, it should furnish/ upload certified copy of its valid registration details:
 - (a) Bidders who are currently registered and, also, shall continue to remain registered during the Bid validity period as Micro & Small Enterprises (MSEs) with agencies mentioned in clause 3.7.3 above
 - (b) Start-ups as per definition of DPIIT, mentioned in clause 3.8.1 above

- (c) Any other category of Bidders exempted from submission of EMD as mentioned in TIS/ AITB
- 3) Unless otherwise specified in the TIS/ AITB, the earnest money shall be furnished in one of the following forms:
 - (a) Account Payee Demand Draft or
 - (b) Fixed Deposit Receipt or
 - (c) Banker's cheque
 - (d) Bank Guarantee, only in the case of Global Tender (International Competitive Bidding), if so stipulated, in TIS/ AITB
- 4) The demand draft, fixed deposit receipt or banker's cheque shall be drawn on any scheduled commercial bank in India, in favour of Account specified in the TIS. Unless otherwise specified in TIS, the earnest money shall be valid for a period of forty-five days beyond the validity period of the Bid. Document for establishing submission or waiver of EMD must be uploaded as Appendix 7.
- 5) Earnest money of a Bidder shall be forfeited, if the Bidder withdraws or amends its Bid or impairs or derogates from the Bid in any respect within the period of validity of its Bid. The successful Bidder's earnest money shall be forfeited if it fails to furnish the required performance security within the specified period. In case of forfeiture of EMD, GST if applicable as per prevailing rate and shall be recovered from the Contractor/ bidder.
- 6) Unsuccessful Bidders' earnest monies shall be returned to them without any interest, after expiry of the Bid validity period, but not later than thirty days after conclusion of the resultant contract.
- 7) The Bid Security (EMD) of the successful bidder shall be discharged when the bidder has furnished the required Performance Security and signed the Agreement.

8.5 Non-compliance of these provisions

Any Bid, that does not fulfil any of the above stipulations and/ or gives evasive information/ reply against any such stipulations, shall be liable to be ignored and rejected. Bids submitted by any other means than that specified in TIS annexed to NIT shall be ignored.

9. Signing and Uploading of Bids

9.1 Relationship between Bidder and eProcurement Portal

In case of e-Procurement, the Procuring Entity is neither a party to nor a principal in relationship between the bidder and the organisation hosting e-procurement portal (hereinafter called the Portal). Bidders must acquaint and train themselves with the rules, regulations, procedures, and implied agreements of the Portal. Bidders intending to participate in the Bid shall be required to register in the Portal using his/ her active personal/ official e-mail ID as his/ her Login ID and attach his/ her valid Digital Signature Certificate (DSC) to his/ her unique Login ID. He/ She must submit the relevant information as asked by the Portal about the firm/ bidder. Bidders shall settle clarifications and disputes, if any, regarding the Portal directly settled with them. In case of conflict between provisions of the Portal with the Tender Document, provisions of the Tender Document shall override. Bidders may study the resources (Online Registration, Downloads, Announcements, Help for Contractors, Information about DSC, FAQ, Contact Us, Bidders' Manual Kit), help, demo-site, and training provided by the Portal for participation in tenders. Foreign Bidders may study requirements for DSC available under 'Downloads'.

9.2 Signing of Bid

- 1) The individual signing/ digitally signing the Bid or any other documents connected therewith should clearly indicate his full name and designation and also specify whether he is signing,
 - (a) As Sole Proprietor of the concern or as attorney of the Sole Proprietor;
 - (b) As Partner (s) of the firm;
 - (c) as Director, Manager or Secretary in case the of Limited Company duly authorized by a resolution passed by the Board of Directors or in pursuance of the Authority conferred by Memorandum of Association.
- 2) An authenticated copy of the letter of authorization/ power of attorney which authorizes the signatory to commit on behalf of the bidder, in this submission of Bid, shall accompany the offer and the details should be filled up in Annexe 1: Bidder Information in Appendix 1: Bid Form.

9.3 Submission/ uploading of Bids

9.3.1 Submission/ Uploading in e-Procurement

- 1) No manual Bids shall either be sold or accepted for submission (except for originals of scanned copies as per sub clause 5 below). In case of downloaded documents, the bidder must not make any changes to the contents of the documents while uploading, except for filling the required information.
- 2) Bid shall be received only *Online* on or before the deadline of submission of bids as notified in TIS annexed to NIT. The bidder shall log on to the portal with his/ her DSC and move to the desired Bid for uploading the documents in appropriate place one by one simultaneously checking the documents.
- 3) Only one copy of Bid can be uploaded, and the bidder shall digitally sign all statements, documents, certificates uploaded by him, owning sole and complete responsibility for their correctness/ authenticity as per the provisions of the IT Act 2000.
- 4) Unless otherwise instructed in the Tender Document, it is not necessary for the Bidder to sign or up-load the drawings and the other Tender Document while uploading his Bid. It is assumed that the bidder commits itself to comply with all the drawings and documents uploaded by the Tender Inviting Officer.
- 5) Besides scanned copies of originals (or self-attested copies of originals – as specified in TIS) as specified (if any) in TIS, the bidder shall also upload scanned originals of self-attested copies of document in support of fulfilment of qualification criteria; cost of the Tender Document (if any); EMD and any other document as required by clause 8 above,

- in Portable Document Format (PDF). The Bidder should ensure clarity/ legibility of the scanned documents uploaded by him.
- 6) All such uploaded scanned documents must also be physically submitted sealed in double cover and acknowledgement be obtained before the specified deadline at the venue mentioned. Failure to do so, is likely to result in bid being rejected. In case of office being closed, on the deadline for physical submission of originals, it shall stand extended to next working day at the same time and venue. The Procuring Entity reserves its right to call for verification originals of all such self-certified documents from the Bidders at any stage of evaluation, especially from the successful Bidder(s) before issue of Letter of Award.
 - 7) Regarding protected Price Schedule (excel format, Cover-2), the bidder shall write his name in the space provided in the specified location only. The bidder shall type rates in figure only in the rate column of respective item(s) without any blank cell or Zero values in the rate column, without any alteration/ deletion/ modification of other portions of the excel sheet.
 - 8) To facilitate easy uploading, bidders are required to upload beforehand documents like Regn certificate, PAN No, BIS certificate, etc. in other Important Documents/ MyDocuments of the Bidder. Additional documents/ information or where space provided is inadequate shall be uploaded in PDF format under "Additional Documents" in the "Bid Cover Content."
 - 9) The date and time of Bid submission shall remain unaltered even if the specified date for the submission of bids declared as a holiday for the Tender Inviting Officer.
 - 10) Bidders shall ensure that their Bids, complete in all respects as per instructions contained in the Tender Document, are uploaded as indicated in TIS on or before the closing date and time indicated therein, failing which the portal shall not accept the Bids.
 - 11) Date and time of e-Procurement server clock, is also displayed on the dashboard of the bidders, shall be taken as reference time for deciding the closing time of Bid submission. Bidders are advised to ensure that they submit their Bid within the due date and time of Bid submission taking server clock as reference. No request on the account that the server clock was not showing the correct time and that a particular bidder could not submit their Bid because of this shall be entertained. Bidders should not wait till the last minute to upload their bids, and failure or defects in internet or heavy traffic at the server shall not be accepted as a reason for a complaint. The Procuring Entity shall not be responsible for any failure, malfunction or breakdown of the electronic system used during the e-procurement process.
 - 12) All Bids uploaded by the Bidder to the portal shall get automatically encrypted. The encrypted Bid can only be decrypted/ opened by the authorised persons on or after the due date and time. The Bidder should ensure correctness of the Bid prior to uploading and take print out of the system generated summary of submission to confirm successful uploading of Bid.
 - 13) The Procuring Entity may extend the date for submission of bids by issuing an amendment in accordance with clause 6.2 above, in which case all rights and obligations of the Procuring Entity and the bidders previously subject to the original date shall then be subject to the new date of submission.
 - 14) Bid submitted through modalities other than those specified in TIS shall be ignored.

9.3.2 Implied acceptance of procedures by Bidders

Submission of Bid in response to the Tender Document is deemed to be acceptance of the tender procedures and conditions of contract included in the Tender Document.

9.3.3 Late Bids

The Bidder shall not be able to submit his Bid after expiry of the date and time of submission of Bid (server time). Therefore, in eProcurement, situation of Late Tender does not arise.

9.4 Modification, Resubmission and Withdrawal of Bids

9.4.1 Modification & Resubmission

Once submitted in e-Procurement, the Bidder cannot view or modify his bid, since it is locked by encryption. However, resubmission of Bid by the bidders for any number of times before the date and time of submission is allowed. Resubmission of Bid shall require uploading of all documents including price Bid afresh. If the bidder fails to submit his modified bids within the deadline for submission of bids, the system shall consider only the last Bid submitted.

9.4.2 Withdrawal

- 1) Bidder may withdraw his bid before the deadline of Bid Submission, and it shall be marked as withdrawn.
- 2) No Bid should be withdrawn after the deadline for submission of Bid and before expiry of the Bid validity period. If a Bidder withdraws the Bid during this period, it shall result in forfeiture of the earnest money furnished by the Bidder in its Bid besides other sanctions by the Procuring Entity.

10. Tender Opening

- 1) The date & time of opening Bid is as specified in TIS. Bids cannot be opened before the specified date & time, even by the Tender Inviting Officer or the Procurement Officer or the Publisher. In case the specified date of tender opening falls on a subsequently declared a holiday or closed day for the Procuring Entity, the Bids shall be opened at the appointed time and place on the next working day.
- 2) All Tender Opening Officers shall log-on to the portal to decrypt the Bid submitted by the bidders. The bidders & guest users can view the summary of opening of bids by logging on the portal with their credentials from any system. Bidders are not required to be present during the Bid opening at the opening location but can do so if they so desired by them.
- 3) In case of all the bids being non-responsive, the Tender Inviting Officer shall complete the e-Procurement process by uploading the official letter for cancellation/ re-bid.
- 4) The technical bids are to be opened in the first instance, at the prescribed time and date. These bids shall be scrutinized and evaluated by the competent committee/ authority with reference to parameters prescribed in the Tender Document.
- 5) Thereafter, in the second stage, the financial bids of only the technically acceptable offers (as decided in the first stage) shall be opened for further scrutiny and evaluation. The authenticity, integrity, and sanctity of unopened Financial Bids during the period between Technical Bid opening and Financial bid opening is ensured by software in eProcurement.

11. Evaluation of Bids and Award of Contract

11.1 General norms

11.1.1 Evaluation only on the basis of declared criteria

Evaluation of bids shall be based only on the criteria/ conditions included in the Tender Document. No other criteria/ condition shall form the basis of this evaluation.

11.1.2 Infirmary/ Irregularity/ Non-Conformity - Substantial or Minor

- 1) If during evaluation, the Procuring Entity finds any infirmity/ irregularity/ non-conformity in any Bid, it shall be considered as a substantive deviation as per following norm and the rest shall be considered as Minor deviation.
 - (a) which affects in any substantive way the scope, quality, or performance of the product;
 - (b) which limits in any substantive way, inconsistent with the Tender Document, the Procuring Entity's rights or the Bidder's obligations under the Contract; or
 - (c) Whose rectification would affect unfairly the competitive position of other Bidders presenting substantively responsive Bids.
- 2) Decision of the Procuring Entity shall be final in this regard. Bids with substantive deviations shall be considered as unresponsive and shall be rejected and not evaluated further.
- 3) Variations and deviations and other offered benefits which are in excess of the Stores of the Tender Documents shall not be influence evaluation Bids. If the Bid is otherwise successful such benefits shall be availed by the Procuring Entity and these would become part of the Contract.
- 4) The Procuring Entity reserves the right to accept or reject bids with any minor deviations. Wherever necessary, the Procuring Entity shall convey its observation as per sub-clause below, on such 'minor' issues to the Bidder by registered/ speed post/ electronically etc. asking the Bidder to respond by a specified date. If the Bidder does not reply by the specified date or gives evasive reply without clarifying the point at issue in clear terms, that Bid shall be liable to be ignored.

11.1.3 Clarification of Bids and shortfall documents

- 1) During evaluation of Techno commercial or Financial Bids of bids, the Procuring Entity may, at its discretion, but without any obligation to do so, ask the bidder for clarification of its Bid by a specified date. The clarification should be answered by the bidder within that specified date (or if not specified 7 days from date of receipt of such request). The request for and the clarification shall be in writing and no change in prices or substance of the Bid shall be sought, offered, or permitted that may grant any undue advantage to such bidder.
- 2) If there are discrepancies between the uploaded scanned copies and the Originals submitted by the bidder, which shall be dealt with as per sub-clause above. The text etc. of the original copy shall prevail.
- 3) The Procuring Entity reserves its right to, but without any obligation to do so, to seek any shortfall information/ documents only in case of historical documents which pre-existed at the time of the tender opening and which have not undergone change since then and does not grant any undue advantage to any bidder.

11.1.4 Contacting Procuring Entity during evaluation

From the time of submission of tender to the time of awarding the contract, no Bidder shall contact the Procuring Entity on any matter relating to the submitted Bid. If a Bidder needs to contact the Procuring Entity for any reason relating to this tender and/ or its Bid, it should do so only in writing. Any effort by a Bidder to influence the Procuring Entity during processing of bids, evaluation, Bid comparison or award decisions shall be treated as Corrupt & Fraudulent Practices, mentioned under clause 14, and shall result in the rejection of the Bidders' Bid.

11.1.5 Right to accept any Bid and to reject any or all Bids

The Procuring Entity reserves the right to accept or reject any or all Bid; cancel the Bidding process and reinvoke the Stores at any time prior to the award of Contract, without thereby incurring any liability to the affected Bidder or Bidders or any obligation to inform the affected Bidder or Bidders of the grounds for the Procuring Entity's action.

11.2 Evaluation of Bids

11.2.1 Preliminary Examination of Bids - Determining Responsiveness

A substantively responsive Bid is one which is complete and conforms to essential and important terms, conditions, and requirements of the Tender Document, without substantive deviation or reservation or infirmity. Only substantively responsive bids shall be considered for further evaluation. If a Bid is not substantively responsive, it shall be rejected. Unless otherwise further supplemented in the AITB, following are some of the important aspects, for which a Bid shall be declared unresponsive and ignored:

- 1) The Bid is not in the prescribed format or is unsigned or not signed as per the stipulations in the bid document.
- 2) Required EMD has not been provided, or exemption from EMD is claimed without acceptable proof of exemption
- 3) The bidder is not eligible to participate in the bid as per laid down eligibility criteria;
- 4) The Stores offered are not eligible as per provision of this tender.
- 5) The Bidder has quoted for Stores manufactured by a different firm without the required authority letter from the proposed manufacturer.
- 6) The Bidder has quoted conditional bid or more than one bids or alternative bids unless this is specifically permitted in the TIS/ AITB.
- 7) The tender validity is shorter than the required period.
- 8) The bid departs from the essential requirements specified in the bidding document;
- 9) Against a schedule in the Section VI: Schedule of Requirement (incorporated in the Tender Document), the Bidder has not quoted for the entire Stores as specified in that schedule.
- 10) Non submission or submission of illegible scanned copies of stipulated documents/ declarations shall render the Bid non-responsive. Also, in case discrepancies are observed between scanned uploaded documents and the copies/ original documents submitted physically then the Bid shall be declared as unresponsive. In case it is determined to be violation of Procurement Code of Ethics (refer clause 14 below), punitive actions shall also be taken as per that clause.

11.2.2 Evaluation process in Single Cover and Multiple CoversTenders

- 1) Only substantively responsive bids shall be evaluated by the Procuring Entity with a view to select the lowest (L1) bidder who meets the qualification criteria and techno-commercial aspects.
- 2) In case of single Cover tender, the evaluation of qualification of bidders, technical, commercial, and financial aspect is done simultaneously.
- 3) In multiple Covers, initially only the techno-commercial bids shall be opened and evaluated for bids which successfully meet the qualification criteria and techno-commercial aspects. The list of successful bidders in techno-commercial evaluation shall be announce on the Portal and also individually to all participant bidders and a date, time, and venue for opening of financial bids shall be declared, if not already indicated in TIS. Till the financial bids are opened, the authenticity, integrity and sanctity of unopened Financial Bids shall be ensured on the Portal. Financial bids of only such successful bidders shall be opened for selecting the L1 bidder among these. Financial bids of unsuccessful bidders shall remain unopened, secure, and inaccessible on the Portal.
- 4) In case of second stage of Pre-Qualification Bidding(PQB) for evaluation of responses from the shortlisted qualified bidders after the PQB stage, evaluation shall be done as in case of multiple Covers tenders.

11.2.3 Evaluation Process in Tender cum e-Reverse Auction

If so specified, in the TIS/ AITB, e-Reverse Auction process shall be mandatorily conducted on the same portal after the financial bid opening (declaration of L1 landed price/ s),

provided the number of valid bidders are more than the stipulated number (3 if not specified). Unless otherwise stipulated in AITB following procedure shall be followed:

1) Shortlisting of bidders eligible to participate in e-Reverse Auction:

- (a) The bids disallowed from participating in the Reverse Auction(e-RA) shall be the highest bidder(s) in the tabulation of prices in financial bid. In case the highest bidders quote the same rate, the Price Offer received last, as per time log of the Portal, shall be removed first, on the principle of last in first out by the system.
- (b) In case number of valid bidders is 3 or less Reverse auction shall not be conducted, and evaluation of the financial bids shall be done. In case of 4 to 6 valid bidders lowest three (3) bidders shall be allowed to participate in reverse auction. In case of more than 6 valid bidders only 50% of the bidders (rounded up to next integer) shall be allowed to participate.
- (c) However, if MSE bidders or Class-I Local suppliers under Make in India policy who do not come under above criteria but their prices in financial bids are within the margin of preference of the policy shall be allowed to participate. Such bidders would be over and above the short-list mentioned above.

2) Reverse Auction Process (RAP)

- (a) Upon opening of the financial bids, a reverse auction platform shall be created. Reverse auction shall start within specified period in AITB (two hours if not specified) of the Bid. There shall be no participation fees for e-Reverse auction.
- (b) Unless modified by TIA, L1 landed price in financial bid (as per the calculation schema based on evaluation criteria of the Tender Document) shall be the start bid price on which the auction shall be initiated.
The decrement value shall be as specified by the TIA before start of e-Reverse Auction (or if not specified 0.5% of the start bid price rounded off to next unit, tens, hundreds, thousands etc with minimum of Rs. 1). The reduction shall have to be made as per decrement value or in multiple thereof.
- (c) Initial period of reverse auction shall be as stipulated in AITB (or two hours if not specified). All times and periods are as per server time-stamp. There shall be auto extensions of time every time by specified minutes (ten minutes if not specified) in case of any reduction recorded in the last auto-extension period. The reverse auction shall end only when there is no further reduction recorded in the last extension periods.
- (d) In case of disruption of service at the service provider's end during reverse auction, the reverse auction process shall start all over again, with the last recorded lowest price of prematurely ended RAP as the 'Start Bid' price. The prices quoted in the prematurely ended RAP shall be binding on all the bidders for consideration if the restarted process does not trigger within the stipulated time (or by the 5.00pm on the same day, if not stipulated). Disruption and restarting of RAP shall be intimated to all the bidders through system/ SMS/ e-mail through e procurement portal.

3) Bidders must submit only the landed price in reverse auction and only the item wise L1 price shall be displayed without disclosing number of bids and names of the bidders. The landed price cannot be same for two bidders even if any bidder makes such an attempt. While evaluating the bids, the exchange rate captured by the e-procurement system shall be considered for conversion of foreign currency into Indian Rupees.

On expiry of the closing of the auction, the bid history showing all the last valid bids offered along with name of the bidders shall be published. All bidders shall have the facility to see and get a print of the same for their record.

4) All electronic bids submitted during the reverse auction process shall be legally binding on the bidder. Only the chronologically last bid submitted by the bidder till the end of the auction shall be considered as the valid financial bid of the bidder and consideration

of the same for entering into a contract by the Procuring Entity shall be binding on the bidder. If a bidder does not submit his bid in the Reverse Auction, the price quoted by him in the price shall be considered as the valid price of that bidder. The status of the bidder (L1, L2 etc) shall be evaluated considering either the bid price submitted in Reverse auction or the Price quoted in the financial bid, whichever is lower.

- 5) The successful L1 bidder after the reverse auction has to upload within a stipulated period (within 2 working days, if not specified) the breakup of Landed Prices in the shortfall documents, at which the Contract shall be awarded. While giving the breakup, the bidder shall include the same rate of taxes and duties as quoted while submitting the e financial bid. In case the L1 bidder fails to submit the breakup of landed price within stipulated period, the Procuring Entity shall place order on the basis of the breakup of the financial bid submitted by the bidder and the same shall be binding on the bidder.
- 6) **Purchase Preference**
In case ITB/ AITB provides for purchase preference Policies to any category of bidders, and if any of the short-listed bidders are eligible for such purchase preference in terms of policy, such bidders would get opportunity to match the L-1 prices concluded after reverse auction, if their final prices in Reverse Auction fall within the permitted percentage.

11.3 Techno-commercial Evaluation

In evaluation of the techno-commercial Bid, conformity to the eligibility/ qualification criteria; technical specifications and Quality Assurance; and commercial conditions of the offered Stores to those in the Tender Document is ascertained. Additional factors, if any, incorporated in the Tender Document may also be considered in the manner indicated therein.

11.3.1 Evaluation of eligibility

Procuring Entity shall determine, to its satisfaction, whether the Bidders are eligible, to participate in the contract as per submission in Annexe 2: Eligibility Declarations in Appendix 1: Bid Form. Tenders that do not meet the required eligibility criteria prescribed shall be treated as unresponsive and not considered further. Such determination shall be based upon scrutiny and examination of all relevant data and details submitted by the Bidder in its/ his Bid as well as such other allied information as deemed appropriate by Procuring Entity.

11.3.2 Evaluation of Qualification Criteria

Procuring Entity shall determine, to its satisfaction, whether the Bidders are qualified, and capable in all respects to perform the contract satisfactorily as per submission in Appendix 4 and its annexe. Tenders that do not meet the required qualification criteria prescribed shall be treated as unresponsive and not considered further. This determination shall, inter-alia, consider the Bidder's financial, technical and production or any other capabilities for satisfying all Procuring Entity's requirements as incorporated in the Tender Document. Such determination shall be based upon scrutiny and examination of all relevant data and details submitted by the Bidder in its/ his Bid as well as such other allied information as deemed appropriate by Procuring Entity. Additional determination of qualification shall be done, if so specified in AITB.

11.3.3 Evaluation of Conformity to Technical Specification and Quality Assurance

The description, specifications, drawings and other technical terms and conditions shall be examined by the Procuring Entity, as per submission of Appendix 3. Unless otherwise stated in the TIS/ AITB, alternative offers/ makes/ models shall *not* be considered. The Appendix 3 regarding Technical exceptions/ deviation submitted by the Bidders shall be examined by the

Procuring Entity. It shall be determined exception/ deviation, if any from Technical Specifications and Quality Assurance is minor or substantive.

11.3.4 Evaluation of Conformity to Commercial and Other Clauses

Bidder must comply with all the Commercial and other clauses of the Tender Documents as per submissions in Appendix 5. The Procuring Entity shall also evaluate the commercial conditions quoted by the Bidder to confirm that all terms and conditions specified in the GCC/ SCC have been accepted without reservations by the Bidder. It shall be determined if an exception/ deviation is minor or substantive.

11.3.5 Considering Minor Deviations in Technical and Commercial Conditions

Procuring entity reserves its right to consider and allow minor deviations in Technical Conditions and Commercial Conditions, which do not amount to substantive deviations as per clause 11.1.2. Unless indicated in AITB/ TIS, no loading of Price Bid shall be done based on acceptable/ unacceptable deviations. The Procuring Entity's decision in this regard shall be final. Bids with substantive exception, deviation, reservation, or omission shall be rejected.

11.3.6 Declaration of Technically Suitable Bidders and Opening of Financial Bids

- 1) Bids that pass all the above steps shall be declared as successful in of techno-commercial evaluation.
- 2) If it is a multiple Covers tender, then the Procuring Entity shall declare the list of successful bidders (including informing the failed Bidders). Financial bids shall be opened at a pre-publicised date, time on the portal in case of e-Procurement.
- 3) In single cover tender, no interim declaration of results of techno-commercial evaluation shall be done.

11.4 Evaluation of Financial Bids and Ranking of Bids

11.4.1 Ranking of Financial Bids

- 1) Unless otherwise specified in AITB, evaluation of the financial bids shall be on the price criteria only. Evaluation of Financial Bids of all technically suitable bids shall be done to rank them and to determine the lowest priced bidder.
- 2) Unless otherwise stipulated in the AITB, the comparison of the responsive Bids shall be on total outgo from the Procuring Entity's pocket, for the procurement to be paid to the Contractor or any third party, including all elements of costs as per the terms of the proposed contract, on FOR/ FOT destination basis, duly delivered, commissioned, etc. as the case may be, including any taxes, duties, levies etc, freight, transit Insurance, loading/ unloading/ stacking, insurance etc.
- 3) If any bidder offers conditional discounts/ rebates in his bid or suo motu discounts and rebates after opening of the tender (techno-commercial or financial), such rebates/ discounts shall not be considered for the purpose of ranking the offer. But if such a bidder does become L1 without discounts/ rebates, such discounts/ rebates shall be incorporated in the contracts;
- 4) Unless announced beforehand in AITB, the quoted price should not be loaded on the basis of deviations in the commercial conditions. If it is so declared such a loading pf price bid shall be done as per the relevant provision;
- 5) As per policies of the Government from time to time, the Procuring Entity reserves its option to give purchase preferences as indicated in the Tender Document
- 6) evaluation of a tender shall include and consider the following taxes/ duties:
 - (a) in the case of Stores manufactured in India or Stores of foreign origin already located in India, GST/ CGST/ SGST/ UTGST/ IGST & other similar duties, which shall be contractually payable (to the bidder), on the Stores if a contract is awarded on the bidder; and

(b) In the case of Stores of foreign origin offered from abroad, customs duty and other similar import duties/ taxes, which shall be contractually payable (to the bidder) on the Stores if the contract is awarded on the bidder.

- 7) **Price Variation:** If the tenders have been invited on variable price basis, the tenders shall be evaluated, compared, and ranked on the basis of the position as prevailing on the day of (technical bid) tender opening and not on the basis of any future date.
- 8) **Ambiguous Price Bid:** If the price Bid is ambiguous so that it may very well lead to two equally valid total price amounts, then the Bid shall be treated as unresponsive.

11.4.2 Time Preference Contracts - Acceptance of Higher Bids for earlier Deliveries

- 1) Time Preference Clause is stipulated when deliveries required in procurement are time-sensitive, and the Procuring Entity reserves its right to place contract on a higher offer, in preference to the lower acceptable offer, in consideration of offer of earlier delivery.
- 2) If so stipulated, in the AITB, Time Preference clause shall be applicable in the evaluation of the Bids. If a contract is placed on a higher offer in terms of this clause in consideration of offer of earlier delivery in case and such promised earlier delivery does not materialize following Time Preference Price Reduction Clause shall be applicable.
- 3) **Time Preference Price Reduction Clause:** In case of contracts finalized on the basis of Time Preference Clause, in case of failure to complete supplies within the date of offered earlier delivery, the price payable (on the basis of final price f. o. r. destination including all elements of Freight, Sales tax, Local taxes, Duties and other incidentals) under the contract shall be reduced by difference between the contract rate and that of the lowest acceptable bidder, in proportion to the delays as per formula given below:

$$P = P_H - (P_H - P_L)X (D - D_L) / (D_H - D_L)$$
 (Where P= Price actually paid; P_H= Higher rate awarded in view of earlier delivery; P_L is the lower rate passed over due to longer delivery quoted; D= Actual Delivery in weeks (rounded up); D_H= Longer delivery quoted in weeks passed over of P_L; D_L = Earlier delivery quoted of P_H.)
- 4) In case of delays beyond D_H, LD at usual rate shall be levied over and above the reduced price payable. This is in addition and without prejudice to the rights of the Procuring Entity to recover all other losses and damages resulting from delayed supplies, including the right of cancellation and repurchase at Contractor's risk and expense.

11.4.3 Global Tender Enquiry (GTE)

- 1) Additional aspects of evaluation of the financial offer in GTE tenders are:

(a) Currency of Tender

In GTE tenders, if permitted in AITB, the price of the Bid could be in foreign currencies, in addition to the Indian Rupees, except for expenditure incurred in India (including incidental services rendered in India and agency commission if any) which should be stated in Indian Rupees. For financial evaluation, all Bids shall be converted to Indian Rupees based on the "Bill currency selling" exchange rate on the date of tender opening (Techno-commercial offer) from a source as specified in the tender document.

(b) Evaluation of Offers

- (i) In case there are no domestic bidders, a comparison of foreign offers can be made on the basis of CIF/ landed costs since the rest of costs would be same for all bidders, provided the port of entry is same for all bidders.
- (ii) In case both Indian and foreign bidders have quoted in the tender, the comparison of the offers would be done on the basis of FOR/ FOT destination including all applicable taxes and duties (on the principle of the total outgo from Procuring Entity's pockets). In the case of FAS/ FOB offers, the freight and insurance shall be (after ascertaining, if not quoted) added to build-up the CIF cost. To arrive at the Free On Rail (FOR) destination cost,

one per cent shall be added over and above CIF price as port handling charges and adding thereon custom duty, countervailing duty and surcharges, as applicable on the date of opening of the tender, as well as clearing agency charges, inland freight, as assessed. For bids with Letter of Credit (LC) payment, the likely LC charges (as ascertained from the Procuring Entity's bankers) should also be loaded. The FOR/ FOT destination price for domestic offers may be calculated as in indigenous tenders.

- (iii) If so stipulated, in AITB, foreign bidders shall quote both on FAS/ FOB basis and also on Cost and Freight (CFR)/ CIF basis duly indicating the break-up of prices for freight, insurance, and so on, with the Procuring Entity reserving the right to order on either basis. They should also indicate the ITC(HS) code and custom duty applicable in India

11.4.4 Cartel Formation/ Pool Rates

- 1) Cartel formation or quotation of Pool/ Coordinated rates, leading to "Appreciable Adverse Effect on Competition" (AAEC) as identified in Competition Act, 2002, as amended by Competition (Amendment) Act, 2007, shall be considered as a serious misdemeanour and shall be dealt accordingly as per clause 14 below, besides filing of the information with the Competition Commission of India, for further action.
- 2) Unless the Procuring Entity decides this to be case of Cartel/ Pool Rates, if more than one bidder quote same total evaluated price, then the Procuring Entity reserves its right to distribute unequal quantities to the bidders based on considerations like past performance, distance of destination godowns from the location of the factories, production capacities, any extra features/ benefits offered etc.

11.4.5 Consideration of Abnormally Low Bids

An Abnormally Low Bid is one in which the Bid price, in combination with other elements of the Bid, appears so low that it raises substantive concerns as to the capability of the Bidder to perform the contract at the offered price. Procuring Entity shall in such cases seek written clarifications from the Bidder, including detailed price analyses of its Bid price in relation to scope, schedule, allocation of risks and responsibilities, and any other requirements of the bids document. If, after evaluating the price analyses, procuring entity determines that the Bidder has substantively failed to demonstrate its capability to deliver the contract at the offered price, the Procuring Entity shall reject the Bid/ proposal.

11.4.6 Price Negotiation

Normally there shall be no price negotiations. However, the Procuring Entity reserves its right to negotiate with the lowest acceptable bidder (L1), who is technically cleared/ approved for supply of bulk quantity and on whom the contract would have been placed but for the decision.

12. Award of Contract

12.1 The Procuring Entity's Rights

12.1.1 Right to Vary Quantities at the Time of Award

The Procuring Entity reserves the right at the time of contract award to increase or decrease the quantity of Stores originally specified in Section VI: Schedule of Requirements, without any change in the unit prices or other terms and conditions of the Tender and the Tender Document, provided this does not exceed the percentages indicated in the AITB (or by 20 (twenty) per cent of tendered quantity, if not so specified).

12.1.2 Parallel Contracts or Splitting of Award

The Procuring Entity reserves its right to split the quantities and conclude Parallel contracts, with more than one bidder (for the same tender) in following circumstances:

(i) After due processing, if it is discovered that the quantity to be ordered is far more than what L-1 alone is capable of supplying and there was no prior stipulation in the TIS and AITB to split the quantities, then it reserves its rights to distribute the quantity being finally ordered, among the other bidders by counter offering the L1 rate to willing L2 or higher bidders, in a manner to avail full assessed capacities of lower priced bidders first, before inviting higher priced bidders. Decision of Procuring Entity shall be final.

(ii) When it is declared in the TIS/ AITB to have more than one source of supply due to the critical/ strategic/ specific nature of the supplies/ Stores, the manner of deciding relative share of lowest bidder (L1) contractor and the rest of the Bidders shall be clearly defined, along with the minimum number of Bidders sought for the contract. In such cases the bidders should not quote for less than 25% of the tendered quantity; otherwise, their offer shall be considered as unresponsive. Unless otherwise stipulated in the AITB, in case of splitting in two and three, the ratio of 70:30; 50:30:20, respectively shall be used. These ratios are approximate, and the Procuring Entity reserves its right to marginally vary quantities to suit capacity of the bidder/ unit loads of packing or transportation.

12.2 Award of Contract and Notification of Award (NoA)

12.2.1 Selection of Successful Bidder(s)

The Procuring Entity shall award the Contract to the Bidder(s) whose Bid(s) has been determined to be substantively responsive, eligible, and Qualified, Technically suitable and who has offered the lowest evaluated Bid price as per evaluation criteria detailed in the Tender Document.

12.2.2 Notification of Award

The Bidder, whose Bid has been accepted, shall be notified of award by the Procuring Entity prior to expiration of the Bid validity period by written or electronic means and confirmed by letter sent through post. This notification (hereinafter and in the Conditions of Contract called the "Notification of Award") shall state the sum (hereinafter and in the Contract called the "Contract Price") that the Procuring Entity shall pay the Bidder in consideration of the supply of the Stores by the Contractor as prescribed by the Contract. The notification of award shall constitute legal formation of the Contract, subject only to the furnishing of a performance security in accordance with the provisions of clause 12.2.4 below.

12.2.3 Verification of Original Documents

Along with NoA, before signing the Contract, the Procuring Entity shall ask the Bidder to submit for verification the originals of all such documents whose scanned copies were submitted on-line along with Technical Bid. The photocopies of such self-certified documents shall be verified and signed by the competent officer and shall be kept in the records as part of the contract agreement. In case of Bidder's failure to provide such originals or in case of serious discrepancies in such documents, it shall be presumed that the Bidder has not followed the terms and conditions as specified in the tender and consequently his opportunity for executing the contract agreement shall stand withdrawn and his Bid shall be treated as cancelled and he shall be subjected to further penalties.

12.2.4 Performance Security

1) Within 14 days of receipt of the Notification of Award, performance Security (unless otherwise stipulated otherwise in AITB, @ 10% of the Contract Price) through Account Payee Demand Draft, Fixed Deposit Receipt, Banker's Cheque or Bank Guarantee (in Annexe 1 to Format 1: Contract Form) from any of the commercial banks in acceptable form shall be submitted by the Contractor to the Procuring Entity with validity up to 60 days beyond the warranty period of the delivered store. It shall be returned/ refundable after satisfactory completion of all obligations under the Contract including warranty obligation.

- 2) Failure to Submit Performance Security within time: In the event of the successful Bidder failing to comply with the Stores of Sub- clause 12.2.4 shall constitute a breach of contract resulting in annulment of the award, forfeiture of the Bid Security (EMD), and any such other remedy the Procuring Entity may take under the contract, including debarment of the Bidder from participation in its future procurements.
- 3) In the eventuality of failure on the part of the lowest successful bidder to produce the original documents, or submit the performance security, the next successful bidder shall be required to produce his original documents for consideration of his Bid at the counter-offered rate equal to lowest bidder. Otherwise, the tender shall be cancelled.

12.2.5 Signing of Contract

- 1) Within seven working days of receipt of performance security, the Procuring Entity shall send the contract form (as per Appendix 9 along with Annexes) duly completed and signed, in duplicate, to the successful Bidder by registered/ speed post.
- 2) Within seven days from the date of issue of the contract, the successful Bidder shall return the original copy of the contract, duly signed, and dated, to the Procuring Entity by registered/ speed post.

12.2.6 Return of EMD

Upon the furnishing by the successful Bidder of the Performance Security, the Procuring Entity shall promptly notify the other Bidders that their Bids have been unsuccessful. The earnest money of the successful Bidder and the unsuccessful Bidders shall be returned to them without any interest, whatsoever, in terms of ITB clause 8.4 above.

12.2.7 Publication of Tender Result

The name and address of the successful Bidder(s) receiving the contract(s) shall be published in the Portal and notice board/ bulletin/ web site of the Procuring Entity.

13. Grievance Redressal/ Complaint Procedure

- 1) The bidder has the right to submit a written and signed complaint or seek de-briefing regarding rejection of his Bid within 10 days of declaration of results of pre-qualification, technical or financial evaluation stages of procurement process. The complaint shall be addressed to the Head of Procurement.
- 2) The Tender Inviting Officer shall, within 5 working days of receipt of the complaint, acknowledge the receipt in writing to the complainant indicating that it has been received and the response shall be sent in due course after detailed examination.
- 3) The Tender Inviting Officer shall convey the final decision to the complainant within 15 days of receiving the complaint. No response shall be given regarding the confidential process of evaluation of bids and award of contract, before the award is notified, although the complaint shall be kept in view during such process. However, no response shall be given regarding following topics explicitly excluded from such complaint process:
 - (a) Only a bidder who has participated in the concerned procurement process i.e. pre-qualification, bidder registration or bidding, as the case may be, can make such representation
 - (b) Only a directly affected bidder can represent in this regard.
 - (i) In case pre-qualification bid has been evaluated before the bidding of Technical/ financial bids, an application for review in relation to the technical/ financial bid may be filed only by a bidder who has qualified in pre-qualification bid;
 - (ii) In case technical bid has been evaluated before the opening of the financial bid, an application for review in relation to the financial bid may be filed only by a bidder whose technical bid is found to be acceptable
 - (c) Following decisions of the Procuring Entity shall not be subject to review:

- (i) Determination of the need for procurement.
- (ii) Complaints against specifications except under the premise that they are either vague or too specific so as to limit competition shall be permissible.
- (iii) Selection of the mode of procurement or bidding system;
- (iv) Choice of selection procedure.
- (v) Provisions limiting participation of bidders in the procurement process, in terms of policies of the Government.
- (vi) Provisions regarding purchase preferences to certain categories of bidders in terms of policies of the Government
- (vii) The decision to enter into negotiations with the L1 bidder; and
- (viii) Cancellation of the procurement process except where it is intended to subsequently re-tender the same Stores

14. Code of Integrity in Public Procurement and Serious Misdemeanours:

Procuring authorities as well as bidders, suppliers, contractors, and consultants - should observe the highest standard of ethics and should not indulge in prohibited practices or other serious misdemeanours, either directly or indirectly, at any stage during the procurement process or during execution of resultant contracts. In this regard the clause 16 of the GCC shall apply mutadis mutandis during the pre-award tender process including the penalties prescribed therein.

Section III: Annexure to Instructions to Bidders (AITB)

[the Procuring Entity shall fill up the details required in the AITB, only in case ITB clause is not to be applied or additional provision are to be added or existing provisions to be altered, otherwise such rows may be deleted. Clauses other than those mentioned below may also be mentioned, if these need to be changed]

Following clauses (in column 1), wherever these appear in ITB shall be taken to be negated or additional provision be added to, or existing provisions be altered as per column 2	
Column 1 ITB clauses	Column 2 To be read as
ITB 3 Bidders - Eligibility and Preferential Policies	
ITB 3.2, 3.3	<i>[Mention any additional condition for determining eligibility of bidder]</i>
ITB 3.4	<i>[Mention any additional condition for Agents]</i>
ITB 3.5	<i>[Mention any changes in the policy]</i>
ITB 3.6	<i>[Mention any changes in the policy, and also type of dispensation allowed to JV as per ITB 3.6.8]</i>
ITB 3.7	<i>[Mention any changes in the policy]</i>
ITB 3.8	<i>[Mention any changes in the policy]</i>
ITB 7 to 11 Preparation of Bids	
ITB 7.1.1	<i>[Language in which bids are to be submitted other than Official language specified in NIT and English, please specify it here].</i>
ITB 10.1.4	<i>[If prices are permitted to be quoted in currencies other than INR also, please mention it here, as in case of Global Tenders]</i>
ITB 10.2	<i>[If Price Variation clause is to be permitted, please mention it here, otherwise, only fixed prices are allowed. Also provide a PVC formula and clause]</i>
ITB 11.	<i>[Any additional category of Contractors exempted from submission of EMD]</i>
ITB 14 Evaluation of Bids	
ITB 14.4	<i>[Mention any additional condition for determining responsiveness of the bid]</i>
ITB 14.4.7	<i>[Mention procedure for e-Reverse Auction if it so decides]</i>
ITB 14.5.3	<i>[Mention any additional eligibility/ qualification criteria]</i>
ITB 14.6.1	<i>[Mention any additional financial evaluation criteria in addition to price criteria]</i>
ITB 14.6.1	<i>[If the basis of financial evaluation is different that total out of pocket cost to the Procuring Entity, mention it here]</i>
ITB 14.6.2	<i>[Mention if Time Preference Clause is applicable to select quicker deliveries with higher prices]</i>
ITB 14.6.9	<i>[If evaluation is not to be done Schedule by Schedule/ Package by Package separately (i.e., only total value for all packages taken together shall be evaluated) mention it here]</i>
ITB 15.1.2	<i>[If a %age different from 20%, is intended as quantity variation at the time of ordering, please specify it here]</i>
ITB 15.1.3,	<i>[If it is decided to conclude parallel contracts on more than one bidder, please specify the number of parallel contracts and ratios (in %, say 70:30 or 50:30:20 etc) for such distribution. Please also ensure matching entry in TIS under Make in India]</i>

Section IV: General Conditions Of Contract(GCC)

1. General

1.1 Interpretation

- 1) The heading of these conditions shall not affect the interpretation or construction thereof.
- 2) Writing or Written includes matter either in whole or in part, in electronic communications, manuscript, typewritten, lithographed, cyclostyled, photographed, or printed under or over signature or seal or digitally acceptable authentication, as the case may be.
- 3) Words in the singular include the plural and vice-versa.
- 4) Words importing the masculine gender shall be taken to include other genders and words importing persons shall include any company or association or body of individuals, whether incorporated or not
- 5) Terms and expression not herein defined shall have the meanings assigned to them in the Indian Sale of Goods Act, 1930 (as amended) or the Indian Contract Act, 1872 (as amended) or the General Clauses Act, 1897 (as amended) as the case may be.
- 6) Any generic reference to GCC shall also imply a reference to SCC as well.
- 7) In case of conflict, provisions of SCC shall prevail over those in GCC.

1.2 Definitions

In the contract, unless the context otherwise requires:

- 1) "Bid" (including the term 'tender', 'offer', 'quotation' or 'proposal' in certain contexts) means an offer to supply goods, services or execution of works made in accordance with the terms and conditions set out in a document inviting such offers.
- 2) "Bidder" (including the term 'bidder', 'consultant' or 'service provider' in certain contexts) means any eligible person or firm or company, including a consortium (that is an association of several persons, or firms or companies), participating in a tender process with a Procuring Entity.
- 3) "Consignee" means the person to whom the goods are required to be delivered as specified in the Contract. If the goods are required to be delivered to a person as an interim consignee for the purpose of despatch to another person as provided in the Contract then that "another" person is the consignee, also known as ultimate consignee.
- 4) "Contract" means the letter or memorandum communicating to the Contractor the acceptance of his Bid and includes "Notification of Award" of his Bid; "Contract" includes Notice Inviting Tender, Instructions to Bidders, Bid, Notification of Award, General Conditions of Contract, Schedule of Requirements, Special, and the other conditions specified in the Notification of Award and includes a repeat order which has been accepted or acted upon by the Contractor and a formal agreement, if executed;
- 5) "Contractor" or "Supplier" means the individual or the firm supplying the goods and services. The term includes his employees, agents, successors, authorized dealers, stockists, and distributors. Other homologous terms are: Vendor, Firm, Manufacturer, OEM, Bidder etc.;
- 6) "Day" means calendar day.
- 7) "Drawing" means the drawing or drawings specified in or annexed to the Specifications or the Tender Document/ Contract;
- 8) "Goods" (including the term 'Stores', 'Material(s)' in certain contexts) includes all articles, material, commodity, livestock, medicines, furniture, fixtures, raw material, consumables, spare parts, instruments, machinery, equipment, industrial plant, vehicles, aircrafts, ships, railway rolling stock assemblies, sub-assemblies, accessories, a

group of machines comprising an integrated production process or such other categories of goods or intangible, products like technology transfer, licenses, patents or other intellectual properties (but excludes books, publications, periodicals, etc., for a library), procured or otherwise acquired by a Procuring Entity. Procurement of goods may include certain small work or some services, which are incidental or consequential to the supply of such goods, such as transportation, insurance, installation, commissioning, training, and maintenance;

- 9) "Government" means the Central Government or a State Government as the case may be;
- 10) "Inspection" means activities such as measuring, examining, testing, analysing, gauging one or more characteristics of the product or service and comparing the same with the specified requirement to determine conformity.
- 11) "Inspecting Officer" means the person, or organisation specified in the contract for the purpose of inspection under the contract and includes his/ their authorised representative;
- 12) "Parties": The parties to the contract are the "Contractor" and the Procuring Entity, as defined above;
- 13) "Performance Security" means monetary guarantee to be furnished by the successful Bidder in the form prescribed for due performance of the contract placed on it. Performance Security is also known as Security Deposit or Performance Bank Guarantee.
- 14) "Place of Delivery" the delivery of the stores shall be deemed to take place on delivery of the stores, after approval by the Inspecting Officer (If provided in the contract) at following places in accordance with the terms of the contract -
 - (a) The consignee at his premises; or
 - (b) Where so provided, the interim consignee at his premises; or
 - (c) A carrier or other person named in the contract for the purpose of transmission to the consignee: or
 - (d) The consignee at the destination station in case of contract stipulating for delivery of stores at destination station.
- 15) "the Procuring Entity" means the entity in The Procuring Organization procuring goods and services as incorporated in the Tender Document;
- 16) "Procurement Officer" means the officer signing the acceptance of Bid and includes any officer who has authority to execute the relevant contract on behalf of the Procuring Entity;
- 17) "Scheduled Commercial Bank" means a bank, defined as a scheduled bank under section 2(e) of the Reserve Bank of India Act, 1934.
- 18) "Services" means services allied and incidental to the supply of goods, such as testing, packaging, transportation, transit insurance, loading/ unloading/ stacking at destination, installation, commissioning, provision of technical assistance, training, after sales service, maintenance service and other such obligations of the Contractor covered under the contract.
- 19) "Specification" or "Technical Specification" means the drawing/ document/ standard that prescribes the requirement to which product or service has to conform.
- 20) "Signed" includes digitally signed and or stamped, except in the case of an acceptance of Bid or any amendment thereof;
- 21) "Tender"; "Tender Document"; "Tender Enquiry" or "Tender Process": Tender Document means the document (including all its sections, appendices, and formats etc.) published by the Procuring Entity to invite bids in a Tender Process, which is the whole process from publishing of the Tender Document till the resultant award of the Contract.

Both the Tender Document, as well as Tender Process may be generically referred as “Tender’ or ‘Tender Enquiry’ which would be clear from context without ambiguity.

- 22) “Test” means such test as is prescribed by the particulars or considered necessary by the Inspecting Officer whether performed or made by the Inspecting Officer or any agency acting under the direction of the Inspecting Officer;

1.3 Abbreviations:

Acronym	Definition
CFR	Cost and Freight (named port of destination)
CIF	Cost, Insurance & Freight (named port of destination)
FAS	Free Alongside Ship (named port of shipment)
FOB	Free on Board (named port of shipment)
FOR	Free On Rail
GCC	General Conditions of Contract
GST	Goods and Services Tax
HSN	Harmonized System of Nomenclature
IGST	Integrated Goods and Service Tax
MSE	Micro and Small Enterprises
OEM	Original Equipment Manufacturer
SCC	Special Conditions of Contract

2. Communications

2.1 Communications

- 1) Unless otherwise specified in the SCC, all communications which the contract requires, shall be served by the parties on each other in writing, in the language of the contract and served in a manner, which ensures
 - (i) acceptability in business and commercial custom
 - (ii) proof to the sender of its receipt by the receiver and
 - (iii) authenticity of and non-repudiability by the sender to the receiver
 - (iv) integrity and non-tampering of the document
 - (v) that it is legally binding on the sender.
- 2) The effective date of such communications shall be either the date when delivered to the recipient or the effective date specifically mentioned in the communication, whichever is later.
- 3) No communication shall amount to amendment of the terms and conditions of the contract, except a formal letter of amendment of contract, so designated.
- 4) Such communications would be either an instruction, a notification, an acceptance or a certificate from the Procuring Entity or it would be a submission or a notification from the Contractor. A notification or certificate which the contract requires must be communicated separately from other communications.

2.2 Person signing the Communications

- 1) For all purposes of the contract, including arbitration thereunder all communications to other party shall be signed by:
 - (a) In case of the Contractor, the person who has signed the contract on his behalf. A person signing communication in respect of the Contract on purported to be on behalf of the Contractor, without disclosing his authority to do so, shall be deemed to warrant that he has authority to bind the Contractor. If it is discovered at any time, that the person so signing has no authority to do so, the Procuring Entity may, without prejudice to any other right or remedy, terminate the contract for default in terms of clause 15.1 below and all remedies available

therein and hold such person personally liable to the Procuring Entity for all costs and damages arising from such remedies for termination of the contract.

- (b) Unless otherwise specified in the Contract or the SCC, the Procurement Officer signing the contract shall administer the Contract and sign communications on behalf of the Procuring Entity. Interim or ultimate consignees; Inspecting Agency/ officers and the paying authorities mentioned in the contract or SCC shall also administer respective functions during Contract Execution.

2.3 Address of the parties for sending communications by the other party

- 1) For all purposes of the contract, including arbitration thereunder the address of parties to which all communications and notices shall be addressed by the other party shall be:
 - (a) The address of the Contractor mentioned in the Contract, unless the Contractor has notified change by a separate letter containing no other communication and sent by any means of acknowledged receipt to the Procuring Entity. The Contractor shall be solely responsible for the consequence of an omission to notify a change of address in the manner aforesaid, and
 - (b) The address of the Procuring Entity shall be the address mentioned in the Contract. Contractor shall also send additional copies to officers of the Procuring Entity presently dealing with the contract.
 - (c) In case of the Procuring Entity copies of communications shall be marked to the Procurement Officer signing the Contract, Inspecting Agency/ Officer; interim/ ultimate consignee and paying authorities mentioned in the Contract or SCC. Unless already specified in the Contract or SCC before the start of the contract the Procuring Entity and the Contractor shall notify each other if additional copies of communications are to be addressed to additional addresses.

3. Applicable Conditions of the Contract

3.1 Language of Contract:

Unless otherwise specified in SCC, the contract shall be written in Official Language or English language following the provision as contained in ITB clause 8.1.1. All correspondence and other documents pertaining to the contract, which the parties exchange, shall also be written accordingly in that language.

3.2 The Contract

- 1) This contract is for the supply of the stores of the description, specifications, and drawings, and in the quantities set forth in the contract on the date or dates specified therein. Unless otherwise specified, the stores shall be entirely brand new and of shall conform to quality and workmanship as specified in the Contract or as per best standards in the market where not so specified.
- 2) Any variation or amendment of the contract shall not be binding on the Procuring Entity unless and until the same is duly endorsed on the contract incorporated in a formal instrument or in exchange of letters and signed by the parties.
- 3) The effective date of Contract shall be the date on which it has been signed by the Procuring Entity or the date on which it is received by the Contractor or the date mentioned in the Contract as the effective date, whichever is later. The dates of deliveries shall be counted from such a date. No notice to commence the contract shall be issued separately.

3.3 Parties

The parties to the contract are the Contractor and the Procuring Entity, as defined in Clauses 1.2 above.

3.4 GCC and SCC

The General Conditions of Contract incorporated in this section shall be applicable for this Contract to the extent the same are not superseded by the Special Conditions of Contract (SCC) prescribed under Section V of the Tender Document.

3.5 Contract Documents

Besides GCC and SCC following conditions and documents shall also be considered integral part of the contract, irrespective of the fact these are not attached to the Contract document:

- i. Contractor's Bid Submissions including revised offer during negotiations if any;
- ii. Correspondence including counteroffers if any; between the Contactor and the Procuring Entity during the tender finalization
- iii. Conditions in other schedules, appendices, and formats of the Tender Document, including NIT, TIS, ITB, AITB etc
- iv. Integrity Pact if any signed in terms of the Tender Document
- v. Notification of Award and Contract Documents
- vi. Subsequent Amendments to the Contract

4. Applicable Law

4.1 Governing Laws and jurisdiction

- 1) This contract shall be governed by the Laws of India for the time being in force.
- 2) Irrespective of the place of delivery, or the place of performance or the place of payments under the contract, the contract shall be deemed to have been made at the place from which the Notification of Award has been issued. The courts of such a place shall alone have jurisdiction to decide any dispute arising out or in respect of the contract.
- 3) Following Laws of the country shall also be applicable and shall be considered as part of the contract:
 - (a) Indian Contracts Act, 1872
 - (b) Sale of Goods Act, 1930
 - (c) Arbitration and Conciliation Act, 1996 and its amendment acts of 2015 and 2019
 - (d) Competition Act, 2002 as amended by Competition (Amendment Act), 2007
 - (e) Any other law as specified in SCC or applicable as per subject matter of the Contract

4.2 Compliance with provisions of Contract Labour (Regulation and Abolition) Act, 1970:

This clause shall be applicable only if it is specifically included in SCC.

- (1) In cases where incidental services are to be performed by the Contractor at the premises of the Procuring Entity or Consignee, the Contractor shall comply with the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 and the Contractor Labour (Regulation and Abolition) Central Rules, 1971, as modified from time-to-time, wherever applicable and shall also indemnify the Procuring Entity from and against any claims under the aforesaid Act and the Rules.
- (2) the Contractor shall obtain a valid licence under the aforesaid Act as modified from time-to-time before the commencement of the contract and continue to have a valid licence until the completion of the contract. Any failure to fulfil this requirement shall attract the penal provisions of the contract arising out of the resultant non-execution of the contract.
- (3) the Contractor shall pay to labour employed by him directly or through Sub-Contractors the wages as per provisions of the aforesaid Act and the Rules wherever applicable. The Contractor, shall, notwithstanding the provisions of the contract to the contrary, cause to be paid the wages to labour indirectly engaged on the contract including any engaged by his Sub-Contractors in connection with the said contract, as if the labour had been immediately employed by him.
- (4) In respect of all labour directly or indirectly employed in the contract for performance of the Contractor's part of the contract, the Contractor shall comply with or cause to be complied with the provisions of the aforesaid Act and the Rules wherever applicable.
- (5) In every case in which, by virtue of the provisions of the aforesaid Act or the Rules, the Procuring Entity is obliged to pay any amount of wages to a workman employed by the Contractor or his Sub-Contractor in execution of the contract or to incur any expenditure in providing welfare and health amenities required to be provided under the aforesaid Act and the Rules or to incur any expenditure on account of the contingent liability of the Procuring Entity due to the Contractor's failure to fulfil his statutory obligations under the aforesaid Act or the Rules the Procuring Entity shall recover from the Contractor, the amount of wages so paid or the amount of expenditure so incurred, and without prejudice to the rights of the Procuring Entity under Section 20, Sub-section (2) and Section 21, Sub-section (4) of the aforesaid Act, the Procuring Entity shall be at liberty to recover such amount or part thereof by deducting it from the security deposit and/ or from any sum due by the Procuring Entity to the Contractor whether under the contract or otherwise. The Procuring Entity shall not be bound to contest any claim made against it under Sub-section ((i) of Section 20 and Subsection (4) of Section 21 of the aforesaid Act except on the written

request of the Contractor and upon his giving to the Procuring Entity full security for all costs for which the Procuring Entity might become liable in contesting such claim. The decision of the Procuring Entity regarding the amount actually recoverable from the Contractor as stated above, shall be final and binding on the Contractor.

4.3 Changes in Laws and Regulations

Unless otherwise specified in the Contract, if after the date of 28 days prior to date of Bid submission, any law, regulation, ordinance, order or bye law having the force of law is enacted, promulgated, abrogated, or changed in India (which shall be deemed to include any change in interpretation or application by the competent authorities) that subsequently affects the Delivery Date and/ or the Contract Price, then such Delivery Date and/ or Contract Price shall be correspondingly increased or decreased, to the extent that the Contractor has thereby been affected in the performance of any of its obligations under the Contract. Notwithstanding the foregoing, such additional or reduced cost shall not be separately paid or credited if the same has already been accounted for in the price adjustment provisions where applicable.

5. Modification of contract

- 1) Once a contract has been concluded, the terms and conditions thereof shall not be varied. However, if necessary, requests for such changes and modifications may be submitted by the Contractor. The Procuring Entity at any time during the currency of the contract, may suo-moto or on request from the Contractor, by a written order, amend the contract by making alterations and modifications within the general scope of contract.
- 2) No variation in or modification of the terms of the Contract shall be made except by written amendment signed by the parties. In the event of any such modification/ alteration causing increase or decrease in the cost of Stores and services to be supplied and provided, or in the time required by the Contractor to perform any obligation under the contract, an equitable adjustment shall be made in the contract price and/ or contract delivery schedule, as the case may be, and the contract amended accordingly. If the Contractor does not agree to the adjustment made by the Procuring Entity, the Contractor shall convey its views to the Procuring Entity within twenty-one days from the date of the Contractor's receipt of the Procuring Entity's amendment/ modification of the contract. Otherwise, it shall be assumed that the Contractor has consented to the amendment.

6. Contractor's Obligations and restrictions on its Rights

6.1 Changes in Contractor's business

6.1.1 Changes in a Firm

- 1) Where the Contractor is a partnership firm, a new partner shall not be introduced in the firm except with the previous consent in writing of the Procuring Entity, which shall be granted only upon execution of a written undertaking by the new partner to perform the contract and accept all liabilities incurred by the firm under the contract prior to the date of such undertaking.
- 2) On the death or retirement of any partner' of the Contractor firm before complete performance of the contract, the Procuring Entity may, at his option terminate the contract for default in accordance with clause 15.1 and avail all remedies thereunder.
- 3) If the contract is not terminated as provided in Sub-clause (2) above notwithstanding the retirement of a partner from the firm that partner shall continue to be liable under the contract for acts of the firm until a copy of the public notice given by him under Section 32 of the Partnership Act, has been sent by him to the Procuring Entity by registered post acknowledgement due.

6.2 Obligation to Maintain Eligibility and Qualifications

The Contract has been awarded to the Contractor based on certain eligibility and qualification criteria. The Contractor is contractually bound to maintain such eligibility and qualifications. Any change which would affect its eligible or qualification to receive this Contract should be pro-actively brought to the notice of the Procuring Entity, within 7 days of it coming to Contractor's knowledge, otherwise it would amount to breach of contract and also violation of Code of Integrity. These changes include but not restricted to:

- 1) Change regarding declarations made by it in its Bid including but not restricted to:
 - (a) its ownership and incorporation pattern
 - (b) its status as a going concern – insolvency, bankruptcy, receivership
 - (c) Suspension of its business or commercial activities for any reason including a legal proceeding
 - (d) Its (including their affiliates or subsidiaries – including subcontractors or Contractors for any part of the contract) being declared ineligible or debarred for corrupt and fraudulent practices or for any other misdemeanour by Government or Public Entity
 - (e) Its proprietor, employee, partner or representative, directors and officers being convicted of any offence by a court involving moral turpitude in business dealings
 - (f) A conflict of interest as defined in the Tender Document, having developed/ discovered, in respect of staff of the Procuring Entity or the Inspecting Agency; or its OEM or its Agents;
 - (g) Change in its declared status under the following
 - (i) restriction on entities from countries with land-borders with India,
 - (ii) Make in India provisions or local content of its offered product(s)
 - (iii) MSE and Start-up
- 2) Change in its qualification criteria submitted in its Bid – Technical, production and financial qualifications, including any change in committed Machinery & Plant or Technical Employees

6.3 Consequence of breach by Partners

- 1) Should a partner in the Contractor firm commit a breach of clause 6.2 or 6.1.1 above, it shall be lawful for the Procuring Entity to terminate the contract for default as per clause 15.1 and avail any or all remedies available to thereunder.
- 2) The decision of the Procuring Entity as to any matter or thing concerning or arising out of this clause or on any question whether the Contractor or any partner of the Contractor firm has committed a breach of any of the conditions in this clause shall be final and binding on the Contractor.

6.4 Assignment and Sub-contracting

6.4.1 Subletting and Assignment

- 1) the Contractor shall not, save with the previous consent in writing of the Procuring Entity, sublet, transfer, or assign the contract or any part thereof or interest therein or benefit or advantage thereof in any manner whatsoever.
- 2) the Contractor shall notify the Procuring Entity in writing of all subcontracts awarded under the contract if not already specified in its Bid. Such notification, in its original Bid or later, shall not relieve the Contractor from any of its liability or obligation under the terms and conditions of the contract. Subcontract shall be only for bought out items and incidental services. Subcontracts must comply with and should not circumvent Contractor's compliance with its obligations under this clause 6.1 to 6.9.
- 3) If the Contractor's subletting or assigning this contract or any part thereof without such permission, the Procuring Entity shall be entitled, and it shall be lawful on his part, to treat it as breach of contract as per clause 15.1 and avail all remedies there under.

6.5 Indemnities for breach of Patents etc.

- 1) the Contractor shall indemnify and hold harmless, free of costs, the Procuring Entity and its employees and officers from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of any nature, including attorney's fees and expenses, which may arise in respect of the Stores provided by the Contractor under this Contract, as a result of any infringement or alleged infringement of any patent, utility model, registered design, copyright, or other Intellectual Proprietary Rights (IPR) or trademarks, registered or otherwise existing on the date of the Contract arising out of or in connection with:
 - (a) any design, data, drawing, specification, or other documents or Stores provided or designed by or on behalf of the Procuring Entity
 - (b) The sale by the Procuring Entity in any country of the products produced by the Stores supplied by the Contractor, and.
 - (c) The installation of the Stores by the Contractor or the use of the Stores at the Procuring Entity's Site
- 2) Such indemnity shall not cover any use of the Stores or any part thereof other than for the purpose indicated by or to be reasonably inferred from the Contract, neither any infringement resulting from the use of the Stores or any part thereof, or any products produced thereby in association or combination with any other equipment, plant, or materials not supplied by the Contractor.
- 3) If any proceedings are brought or any claim is made against the Procuring Entity arising out of the matters referred above, the Procuring Entity shall promptly give the Contractor a notice thereof, and the Contractor may at its own expense and in the Procuring Entity's name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim, keeping the Procuring Entity informed.
- 4) If the Contractor fails to notify the Procuring Entity within twenty-eight (28) days after receipt of such notice that it intends to conduct any such proceedings or claim, then the Procuring Entity shall be free to conduct the same on its own behalf at the risk and cost to the Contractor.
- 5) The Procuring Entity shall, at the Contractor's request, afford all available assistance to the Contractor in conducting such proceedings or claim, and shall be reimbursed by the Contractor for all reasonable expenses incurred in so doing.

6.6 Confidentiality and Secrecy of information

6.6.1 Confidentiality

All documents, drawings, samples, data, or other information furnished by or on behalf of the Procuring Entity to the Contractor, in connection with the Contract and the Tender Document, whether such information has been furnished prior to, during or following completion or termination of the Contract, are confidential and shall remain the property of the Procuring Entity. If advised by the Procuring Entity, all copies of all such information in original shall be returned on completion of the Contractor's performance and obligations under this contract.

6.6.2 Secrecy

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

6.6.3 Obligations of the Contractor

- 1) the Contractor shall not, without the Procuring Entity's prior written consent, make use of information mentioned above except for the sole purpose of performing this contract.
- 2) the Contractor shall treat and mark all information as confidential (or Secret – as the case may be) and shall not, without the written consent of the Procuring Entity, divulge to any person other than the person(s) employed by the Contractor in the performance of the contract. Further, any such disclosure to any such employed person shall be made in confidence and only so far as necessary for the purposes of such performance for this contract.
- 3) Notwithstanding the above, the Contractor may furnish to its Subcontractor such documents, data, and other information it receives from the Procuring Entity to the extent required for the Subcontractor to perform its work under the Contract, in which event the Contractor shall obtain from such Subcontractor an undertaking of confidentiality (or secrecy – as the case may be) similar to that imposed on the Contractor under above clauses.
- 4) The obligation of the Contractor under sub-clauses above, however, shall not apply to information that:
 - (a) the Contractor need to share with the institution(s) participating in the financing of the Contract;
 - (b) now or hereafter is or enters the public domain through no fault of Contractor;
 - (c) can be proven to have been possessed by Contractor at the time of disclosure and which was not previously obtained, directly or indirectly, from the Procuring Entity; or
 - (d) otherwise lawfully becomes available to the Contractor from a third party that has no obligation of confidentiality.
- 5) The above provisions shall not in any way modify any undertaking of confidentiality (or Secrecy – as the case may be) given by the Contractor prior to the date of the Contract in respect of the Contract/ the Tender Document or any part thereof.
- 6) The provisions of this clause shall survive completion or termination for whatever reason, of the Contract.

6.6.4 Penalties for violation

Any breach of the aforesaid conditions shall entitle the Procuring Entity to treat it as breach of contract as per Clause 15.1 and avail all remedies thereunder.

6.7 Performance Bond/ Security

- 1) Within fourteen days after the issue of notification of award by the Procuring Entity, the Contractor shall furnish performance security to the Procuring Entity for an amount mentioned in the Contract (and if not mentioned equal to 10% (Ten per cent) of the total value of the contract), valid up to sixty days after the date of completion of all contractual obligations by the Contractor, including the warranty obligations.
- 2) The Performance security shall be denominated in Indian Rupees or in the currency of the contract and shall be in one of the following forms:
 - (a) Unless otherwise specified in SCC, Account Payee Demand Draft or Fixed Deposit Receipt drawn on any commercial bank in India, in favour of the Procuring Entity.
 - (b) Bank Guarantee issued by a commercial bank in India, in the prescribed form as provided in Annexe 1 to Format 1: Contract Form.
- 3) If the Contractor, having been called upon by the Procuring Entity to furnish security, fails to make and/ or maintain a performance security within the specified period, it shall be lawful for the Procuring Entity:
 - (a) To recover from the Contractor the amount of such security deposit by deducting the amount from the pending bills of the Contractor under the

- contract or any other contract with the Procuring Entity or the Government or any person contracting through the Procuring Organisation or otherwise howsoever, or
- (b) To treat it as breach of contract as per Clause 15.1 and avail all remedies thereunder.
- 4) In the event of any amendment issued to the contract, the Contractor shall, within fourteen days of issue of the amendment, furnish suitably amended value and validity of the Performance Security in terms of the amended contract.
- 5) The Procuring Entity shall be entitled, and it shall be lawful on his part,
- (a) to deduct from the performance securities or to forfeit the said security in whole or in part in the event of:
- (i) any default, or failure or neglect on the part of the Contractor in the fulfilment or performance in all respect of the contract under reference or any other contract with the Procuring Organisation or any part thereof
- (ii) for any loss or damage recoverable from the Contractor which the Procuring Entity may suffer or be put to for reasons of or due to above defaults/ failures/ neglect
- (b) and in either of the events aforesaid to call upon the Contractor to maintain the said performance security at its original limit by making further deposits, provided further that the Procuring Entity shall be entitled, and it shall be lawful on his part, to recover any such claim from any sum then due or which at any time thereafter may become due for similar reasons.
- 6) Subject to sub-clause above, the Procuring Entity shall release the performance security without any interest to the Contractor on completion of the Contractor's all contractual obligations including the warranty obligations.
- 7) No claim shall lie against the Procuring Entity in respect of interest on cash deposits or Government Securities or depreciation thereof.

6.8 Book Examination Clause

If so explicitly specified in SCC or the Contract, the Procuring Entity reserves the right for 'Book Examination' as follows:

- 1) the Contractor shall whenever called upon and required to produce or cause to be produced for examination by any Government Officer duly authorised in that behalf, any cost or other account book of account, voucher, receipt, letter, memorandum, paper or writing or any copy of or extract from any such document and also furnish information any way relating to such transaction and procedure before the duly authorised Government Officer returns verified in such manner as may be required relating in any way to the execution of this contract or relevant for verifying or ascertaining the cost of execution of this contract (the decision of such Government Officer on the question of relevancy of any document, information of return being final and binding on the parties). The obligation imposed by this clause is without prejudice to the obligation of the Contractor under any statute, rules or orders shall be binding on the Contractor.
- 2) the Contractor shall, if the authorised Government Officer so requires (whether before or after the prices have been finally fixed), afford facilities to the Government Officer concerned to visit the Contractor's works for the purpose of examining the processes of manufacture and estimating or ascertaining the cost of production of the articles. If any portion of the work be entrusted or carried out by a sub-contractor or any of its subsidiary or allied firm or company, the authorised Government Officer shall have power to examine all the relevant books of such subcontractor or any subsidiary or allied firm or company shall be open to his inspection as mentioned in sub-clause above.

- 3) If on such examination, it is established that the contracted price is in excess of the actual cost plus reasonable margin of profit, the Procuring Entity shall have the right to reduce the price and determine the amount to a reasonable level.
- 4) The Contractor or its agency is bound to allow examination of its books within a period of 60 days from the date the notice is received by the Contractor, or its agencies calling for the production of documents as under sub-clause (1) above. In the event of Contractor's or his agency's failure to do so, the contract price would be reduced and determined according to the best judgment of the Procuring Entity which would be final and binding on the Contractor and his agencies.

6.9 Custody and Return of the Procuring Entity's Materials/ Equipment/ Documents loaned to Contractor

- 1) Unless stipulated in the SCC or the Contract, no asset/ property/ drawings/ material/ samples/ equipment/ utility shall be provided or loaned to the Contractor for performance of the Contract. Whenever such assets are required to be issued to the Contractor (inter-alia in fabrication or design or development) as per the Contract, these would be issued only as per terms and conditions specified therein and against appropriate Insurance and/ or Bank Guarantee. The Contractor shall use such property for the purpose of the execution of the contract and for no other purpose whatsoever.
- 2) All such property shall be deemed to be in good condition when received by the Contractor unless he has within twenty-four hours of the receipt thereof notified the Procuring Entity to the contrary, otherwise he shall be deemed to have lost the right to do so at any subsequent stage.
- 3) Such assets of the Procuring Entity provided/ loaned to the Contractor shall remain to be the property of the Procuring Entity. The Contractor shall be liable for loss or damage to such property from whatever cause happening while such property is in the possession of or under the control of the Contractor, his servants workmen or agents.
- 4) Where such property is insured by the Contractor against loss or fire at the request of the Procuring Entity such insurance shall be deemed to be by way of additional precaution and shall not prejudice the liability of the Contractor as aforesaid.
- 5) The Contractor shall return all such property in good working condition, before the completion/ closure/ termination of the contract and shall be responsible for the full value thereof to be assessed by the Procuring Entity whose decision shall be final and binding.

7. Scope of Supply, Technical Specifications and Quality Assurance

7.1 Technical Specifications and Standards

The Stores & Services to be provided by the Contractor under this contract shall conform to the technical specifications and quality control parameters mentioned in 'Technical Specification and Quality Assurance' under Sections VII of the Tender Document or as specified in the Contract. For standards and requirements where no applicable specifications/ Quality Assurance are mentioned, appropriate latest authoritative standards and quality assurance issued by the concerned institution shall be applicable. The Stores supplied shall be

- 1) new, unused, and incorporate all recent improvements in design and materials unless prescribed otherwise by the Procuring Entity in the contract.
- 2) 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.

7.2 Quantity Tolerance

Unless otherwise stipulated in the SCC, the obligation for completing supplies shall be considered complete if the Stores have been supplied to the tolerance of plus or minus 5% of the quantity or of total value of Stores ordered in the contract. Only the actually supplied quantity shall be paid for as per the terms of the Contract.

7.3 Eligible Goods - Country of Origin and Minimum Local Content

Unless otherwise stipulated in SCC or Contract, country of origin of 'Goods' and related 'Services' to be supplied under the contract shall have their origin in India or other countries and must conform to declaration made by the Contractor in its Bid regarding but not limited to i) restrictions on certain countries with land-borders with India; ii) minimum local content (Make in India Policy); iii) Contractor's status as MSE or Start-up. The term "origin" used in this clause means the place where the goods (including subcontracted components) are mined, grown, produced, or manufactured or from where the incidental Services are arranged and supplied. For purposes of this Clause, the term 'goods' shall have the meaning as defined in Clause 1.1.

7.4 Option Clause:

Unless otherwise indicated in SCC or the Contract, the Procuring Entity may reserve the right, but without any obligation to do so, to increase the ordered quantity by 25% at any time, till final delivery date of the contract, by giving reasonable notice even though the quantity ordered initially has been supplied in full before the last date of Delivery Period.

7.5 Spare parts

- 1) If specified in Section VI: Schedule of Requirements and in the resultant contract, the Contractor shall supply/ provide any or all of the following materials, information etc. pertaining to spare parts manufactured and/ or supplied by them:
 - (a) The spare parts as selected by the Procuring Entity to be purchased from the Contractor, subject to the condition that such purchase of the spare parts shall not relieve the Contractor of any contractual obligation including warranty obligations; and
 - (b) In case the production of the spare parts is discontinued within the service life of the equipment supplied hereunder (or a period specified in SCC or the Contract):
 - (i) sufficient advance notice to the Procuring Entity before such discontinuation to provide adequate time for it to purchase the required spare parts etc., and

- (ii) immediately following such discontinuation, as and if requested by the Procuring Entity, provide free of cost, the designs, drawings, layouts, specifications, and alternative sources of supply of the spare parts.
- 2) the Contractor shall carry sufficient inventories to assure ex-stock supply of consumable spares for the Stores so that the same are supplied to the Procuring Entity promptly on receipt of order from the Procuring Entity.

7.6 Incidental services

- 1) Subject to the stipulation to the contrary, if any, in the SCC (Section-V) and the Technical Specifications and Quality Assurance (Section – VII), the Contractor shall be required to perform any or all the following services.
 - (a) Testing, certifications, and license
 - (b) Non-returnable packaging and containers
 - (c) Transportation upto final destination
 - (d) Transit Insurance
 - (e) Loading/ Unloading and stacking at intermediate and final destinations
 - (f) Providing after sales service during the tenure of the contract, including warrantee period.
 - (g) Installation or Commissioning
- 2) Prices to be paid to the Contractor by the Procuring Entity for any of the required incidental services, if not already included in the contract price during the placement of the contract, shall be settled and decided in advance by the Procuring Entity and the Contractor. However, such prices shall not exceed the contemporary rates charged by the Contractor to other customers for similar services.

7.7 Permits, Approvals and Licenses

Whenever the supply of Stores and incidental Services requires that the Contractor obtain permits, approvals, and licenses from local public authorities, it shall be sole responsibility of the Contractor to obtain these and keep these current and valid. This may include but not be restricted to export licence or environmental clearance, if required. The Procuring Entity shall, if required by the Contractor, make its best effort to assist the Contractor in complying with such requirements in a timely and expeditious manner, without any dilution of Contractor's responsibility in this regard.

8. Inspection and Quality Assurance

8.1 Tests and Inspections

- 1) The 'Technical Specification and Quality Assurance' (Section VII) shall specify inspections and tests (including raw materials and/ or stage inspections, if so specified) to be carried out and, also, where and how they are to be conducted. If such inspections and tests are conducted in the premises of the Contractor or its subcontractor(s), all reasonable facilities and assistance, including access to relevant drawings, design details and production data, shall be furnished by the Contractor to the Procuring Entity's inspector at no charge to the Procuring Entity.
- 2) The Procuring Entity and/ or its nominated representative(s) shall, without any extra cost to the Procuring Entity, inspect and/ or test the ordered Stores and the incidental Services to confirm their conformity to the contract specifications and other quality assurance details incorporated in the contract. As soon as a consignment is getting ready, the Contractor shall submit a request for inspection to the Inspecting Officer and the Procuring Entity. The Inspecting officer shall inform the Contractor in advance, in writing, its programme for such inspection and, also the identity of the officials to be deputed for this purpose.
- 3) If so stipulated, in SCC, the Contractor shall before proceeding with bulk manufacture or delivery of the stores, submit to the Inspecting Officer for inspection a sample of the

stores in which case a quantity not less than one per cent of the total quantity to be supplied unless otherwise stipulated by the Inspecting Officer shall be submitted. The Contractor shall not, however, be entitled to be shown any consideration or give any extension of time or claim to be exonerated from completing the delivery within the stipulated period only on the ground of delay in the approval of any such sample.

- 4) Unless otherwise stipulated, in SCC or the Contract, all costs of tests and inspections (including any special or third-party tests), whether at the Contractor's premises, shall be borne by the Contractor. However, in case of stipulation for type testing/ proto-type testing of machinery and plant involving special tests, Contract shall indicate the apportionment of costs of test and expended material among the parties.
- 5) If any of Stores is expended during the tests, the same shall be paid for by the Procuring Entity, if it passes the inspection and by the Contractors if it fails in inspection.
- 6) Under no circumstances does the Inspecting officer have the authority to modify the governing specifications, approved drawings, or samples during inspection without reference to the Procuring Entity.

8.2 Consequence of Rejection

Upon the stores being rejected by the Inspecting Officer or Interim Consignee or Consignee at the destination, the Procuring Entity shall be at liberty to:

- (a) require the Contractor to replace the rejected stores 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 stores but without being entitled to any extra payment on that or any other account.
- (b) All rejected stores shall in any event and circumstances remain and always be at the risk of the Contractor immediately on such rejection. If such stores are not removed by the Contractor within the periods aforementioned, the Procuring Entity may remove the rejected stores and either return the same to the Contractor at his risk and cost by such mode of transport as the Procuring Entity or Inspecting Officer may decide, or dispose off such stores at the Contractor's risk and on his account and retain 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 Procuring Entity shall, in addition, be entitled to recover from the Contractor ground rent/ demurrage charges on the rejected stores after the expiry of the time-limit mentioned above.
- (c) where under the contract the price payable is fixed F.O.R. dispatching station, the Contractor shall, if the stores are rejected at destination by the consignee, be liable, in addition to his other liabilities, including refund of price recoverable in respect of the stores so rejected, to reimburse to the Procuring Entity the freight and all other expenses incurred by it in this regard. The Contractor shall be allowed to take back rejected Stores, only after reimbursing such refunds are received by the Procuring Entity.

8.3 Inspections at the last moment

- 1) In case the contract stipulates pre-despatch inspection of the ordered Stores at Contractors premises, the Contractor shall put up the Stores for such inspection to Inspecting Officer well ahead of the contractual delivery period, so that he is able to complete the inspection within the contractual delivery period.
- 2) In cases where only a portion of the stores ordered is tendered for inspection at the last moments of the delivery period and also in cases where inspection is not completed in respect of the portion of the stores tendered for inspection during the delivery period,

the inspector shall carry out the inspection and complete the formality beyond the contractual delivery period at the risk and expense of the Contractor. The fact that the Stores have been inspected after the contractual delivery period shall not have the effect of keeping the contract alive and this shall be without any prejudice to the legal rights and remedies available to the Procuring Entity under the terms & conditions of the contract.

- 3) If the stores tendered for inspection during or at the last moments of the delivery period are not found acceptable after carrying out the inspection, the Procuring Entity is entitled to cancel the contract in respect of the same at the risk and expense of the contractor. If, however, the stores tendered for inspection are found acceptable, the Procuring Entity may grant an extension of the delivery period subject to conditions mentioned in clause 10.10 below.

8.4 Consignee's right of Rejection of Inspected Stores

- 1) Stores accepted by the Procuring Entity and/ or its inspector at initial inspection and in final inspection in terms of the contract shall in no way dilute the Procuring Entity's right to reject the same later, if found deficient in terms of the warranty clause of the contract, as incorporated under Clause 12.
- 2) Notwithstanding any approval which the Inspecting Officer may have given in respect of the stores or any materials or other particulars or the work or workmanship involved in the performance of the contract (whether with or without any test carried out by the Contractor or the Inspecting Officer or under the direction of the Inspecting Officer) and notwithstanding delivery of the stores where so provided to the interim consignee, it shall be lawful for the consignee, on behalf of the Procuring Entity, to inspect, test and, if necessary, reject the Stores or any part, portion or consignment thereof, after the Stores' arrival at the final destination within a reasonable time after actual delivery thereof to him at the place or destination specified in the contract, if such stores or part, portion or consignment thereof is not in all respects in conformity with the terms and conditions of the contract whether on account of any loss, deterioration or damage before despatch or delivery or during transit or otherwise howsoever.

Note: In respect of materials pre-inspected at the firm's premises during manufacture or before delivery or dispatch the consignee shall issue rejection advice within 90 days from the date of receipt.

9. Packing, Transportation, Insurance and Receipt

9.1 Packing Specifications and Quality

- 1) The marking of the stores must comply with the Stores of the laws relating to merchandise marks for the time being in force in India.
- 2) The packing for the Stores to be provided by the Contractor should be strong and durable enough to withstand, without limitation, the entire journey during transit including transshipment (if any), rough handling, open storage etc. without any damage, deterioration etc. As and if necessary, the size, weights and volumes of the packing cases shall also take into consideration, the remoteness of the final destination of the Stores and availability or otherwise of transport and handling facilities at all points during transit upto final destination as per the contract.
- 3) The quality of packing, the manner of marking within & outside the packages and provision of accompanying documentation shall strictly comply with the Stores as provided in 'Technical Specification and Quality Assurance' under Sections VII and in SCC under Section V. In case the packing requirements are amended due to issue of any amendment to the contract, the same shall also be taken care of by the Contractor accordingly.

- 4) Unless otherwise, provided in the contract all containers (including packing cases, boxes, tins, drums, and wrappings) in which the stores are supplied by the contractor, shall be considered as non- returnable and their cost as having been included in the contract price.
- 5) If the contract provides that the containers shall be returnable, they must be marked 'returnable' and they shall be returned to the Contractor as per terms of the contract. Unless otherwise specified, the cost of reverse transportation shall be borne by the Contractor.
- 6) If the contract provides that returnable containers shall be separately charged, they shall be invoiced by the Contractor at the price specified in the Contract. In such cases, the Contractor shall give full credit for the invoiced amount if the containers are returned to the Contractor. Return of containers shall be made within a reasonable time and in the event of any dispute or difference arising as to whether the containers were so returned, the decision of the Procuring Entity thereon shall be final, and binding and the Procuring Entity may, in his discretion award, such compensations as may in his opinion be proper for any undue delay in returning the containers.

9.2 Packing instructions

Unless otherwise mentioned in the 'Technical Specification and Quality Assurance' under Sections VII and in SCC under Section V, the Contractor shall make separate packages for each consignee (in case there is more than one consignee mentioned in the contract) and mark each package on three sides with the following with indelible paint of proper quality:

- a) An iconic graphical mark to visually identify a particular consignment
- b) Name of the Procuring Entity; contract number and date
- c) brief description of Stores including quantity
- d) gross weight of package
- e) Serial number of this package and the total number of packages in the consignment
- f) packing list reference number
- g) country of origin of goods
- h) consignee's name and full address and
- i) Contractor's name and address

9.3 Transfer of Title of Goods

- 1) Unless otherwise stated in the SCC, notwithstanding any inspection and approval by the Inspecting Officer on the Contractor's premises, or any payments made to the Contractor, property in the stores (and resultant rights and liabilities) shall not pass on to the Procuring Entity until the stores have been received, inspected, and accepted by the consignee. The stores and every constituent part thereof, whether in the possession or control of the Contractor, his agents or servants or a carrier, or in the joint possession of the Contractor, his agents or servants and the Procuring Entity, his agents, or servants, shall remain in every respect at the risk of the Contractor, until their actual delivery to a person specified in the contract as interim consignee for the purpose of despatch to the consignee. The Contractor shall be responsible for all loss, destruction, damage, or deterioration of or to the stores from any cause whatsoever while the stores after approval by the Inspecting Officer are awaiting despatch or delivery or are in the course of transit from the Contractor to the consignee or, as the case may be, interim consignee. The Contractor shall alone be entitled and responsible to make claims against any carrier in respect of non-delivery, short delivery, mis-delivery, loss, destruction, damage, or deterioration of the Stores entrusted to such carrier by the Contractor for transmission to the consignee or the interim consignee as the case may be.
- 2) Provided that where, under the terms of the contract the stores are required to be delivered to an interim consignee for the purpose of despatch to the consignee, the stores shall be at the Procuring Entity's risk after their delivery to the interim consignee.

9.4 Transportation

9.4.1 Instructions for transportation of domestic Stores

In case no instruction is provided in this regard in the SCC, the Contractor shall arrange transportation of the ordered Stores as per its own procedure.

9.4.2 Shipping Arrangement for Foreign Contracts:

In the case of FOB/ FAS contracts, shipping arrangements shall be made by the Procuring Entity. The Contractor shall give adequate, notice to the Procuring Entity and its Forwarding Agents/ Nominees about the readiness of the cargo from time to time and at least six weeks' notice in advance of the required position for finalising the shipping arrangements. In the case of CFR contracts, the Contractor shall arrange shipment in accordance with the instructions from the Procuring Entity.

9.4.3 Airlifting

Should the Procuring Entity intend to airlift all or some of the stores the Contractor shall pack the stores accordingly on receipt of intimation to that effect from the Procuring Entity. Such deliveries shall be agreed upon well in advance and paid for as may be mutually agreed.

9.5 Freight

The stores shall be despatched at public tariff rates. In the case of F.O.R. station of despatch contract, the stores shall be booked by the most economical route or most economical tariff available at the time of despatch as the case may be. Failure to do so shall render the Contractor liable for any avoidable expenditure caused to the Procuring Entity. Where alternative routes exist, the Procuring Entity shall, if called upon to do so, indicate the most economical route available, or name the authority whose advice in the matter shall be taken and acted upon. If any advice of any such authority is sought, his decision or advice in the matter shall be final and binding on the Contractor,

9.6 Insurance

- 1) Unless otherwise instructed in the SCC, the Contractor shall arrange for insuring the Stores against loss or damage incidental to manufacture or acquisition, transportation, storage, and delivery in the following manner:
- 2) In case of supply of domestic Stores on CIF/ FOR destination basis, the Contractor shall be responsible till the entire stores contracted for arrive in good condition at destination. The transit risk in this respect shall be covered by the Contractor by getting the stores duly insured at its own cost. The insurance cover shall be obtained by the Contractor in its own name and not in the name of the Procuring Entity or its Consignee.
- 3) In the case of FOB and CFR offers for import of Stores, insurance shall be arranged by the Procuring Entity. However, the Contractor must give sufficient notice to the Procuring Entity prior to the date of shipment, so that the Insurance Cover for the shipment can be activated. the Contractor must co-ordinate so as to ensure that the Shipment sails only with Insurance cover in place.
- 4) In case of import of Stores, even in case where the insurance is paid by the Procuring Entity, it shall entirely be the responsibility of the Contractor to make good loss/ damage without waiting for settlement of insurance claim so that equipment is commissioned within the time specified in the contract. After the settlement of insurance claim, reimbursement shall be made by the Procuring Entity to the Contractor.

9.7 Receipt of Consignment

9.7.1 Preliminary Acknowledgement

At the time of the delivery at the destination the consignee shall receive the Stores on a "subject to inspection" basis and shall issue the preliminary receipt as an acknowledgement of having received the claimed quantity (not the quality) of consignment.

9.7.2 Goods Receipt and Inspection Report

If the received consignment successfully passes the quantity and quality checks, a Goods Receipt, and Inspection Report (GRIR, or by any other name similar voucher may be called in the Organisation) shall be issued by the Procuring Entity based on which (inter-alia other specified documents) the Contractor may claim payment as per the Contract.

9.7.3 Rejection of Consignment by the Consignee

In case the received consignment or part thereof fails to pass quantity and quality checks, a Rejection Note shall be issued by the Procuring Entity, noting the reasons for rejection. The Paying Authority shall recover any part payment or freight charges paid for the rejected consignment. The Contractor shall take back the rejected consignment as per clause 8.2 above within 21 days unless otherwise specified in the SCC.

9.7.4 Perishable Stores

For Stores that have a limited shelf life, the Contractor shall ensure that at least 50% (or any other percentage stipulated in SCC or the Contract) of shelf life remains balance on the date of delivery, unless otherwise specified in SCC. The Procuring Entity reserves its rights to reject expired or products with less than such specified shelf life.

10. Terms of Delivery and delays

10.1 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 stores shall be deemed to be of the essence of the contract and delivery must be completed not later than the date(s) so specified or extended.

10.2 Destination Places

The destination(s) where the Stores are to be delivered shall be as specified in the Contract or Section VI – Schedule of Requirements.

10.3 Terms of Delivery

- 1) Terms of delivery (e.g., F.O.R. destination/ CIF etc.) shall determine the point at which the responsibilities and property in goods passes over from the Contractor to the Procuring Entity. Time of delivery is also determined by these terms.
- 2) the Contractor shall either deliver free or F.O.R. or C.I.F. at the place/ places or otherwise as detailed in the contract, the quantities of the stores detailed therein, and the stores shall be delivered or despatched not later than the dates specified in the contract. The delivery shall not be deemed to be complete until and unless the stores are inspected and accepted by the Inspecting Officer as provided in the contract. No stores shall be deliverable to the consignee on Sundays and public holidays or outside designated working hours, without the written permission of the consignee.
- 3) the Contractor shall not despatch the Stores after expiry of the delivery period. The Contractor is required to apply to the Procuring Entity for extension of delivery period and obtain the same before despatch. In case the Contractor despatches the Stores without obtaining an extension, it would be doing so at its own risk and no claim for payment for such supply and/ or any other expense related to such supply shall lie against the Procuring Entity.

10.4 Part Supplies

the Contractor shall not arrange part-shipments and/ or transshipment without the express/ prior written consent of the Procuring Entity.

10.5 Progressing of Deliveries

the Contractor shall allow reasonable facilities and free access to his works and records to the Inspecting Officers such other Officer as may be nominated by the Procuring Entity for the purpose of ascertaining the progress of the deliveries under the contract. The Contractor shall from time-to-time, render such reports concerning the progress of the contract and/ or supply of the stores in such form as may be required by the Procuring Entity. The submission, receipt and acceptance of such reports shall not prejudice the rights of the Procuring Entity under the contract, nor shall operate as an estoppel against the Procuring Entity merely by reason of the fact that he has not taken notice of/ or subjected to test any information contained in such report

10.6 Notification of Delivery.

Notification of delivery or despatch in regard to each and every instalment shall be made to the consignee and to the Procuring Entity immediately on despatch or delivery. The Contractor shall further supply to the consignee, or the interim consignee, as the case may be, packing list of the consignment and the Contract references. All packages, containers, bundles and loose materials part of each and every instalment shall be fully described in the packing list and full details of the contents of the packages and quantity of materials shall be given to enable the consignee to check the stores on arrival at destination. The Railway Receipt/ Consignment Note or Bill of Lading, if any, shall be forwarded to the consignee by registered post immediately on the despatch of stores. The Contractor shall bear and reimburse to the Procuring Entity demurrage/ wharfage or other 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.

10.7 Dispatches at the last moment or after expiry of delivery

- 1) If the Contractor locally supplies a consignment after the expiry of contracted delivery date, the Consignee may refuse to receive it or receive it without prejudice to the rights of the Procuring Entity under the terms and conditions of the Contract. Such a receipt by the consignee shall not acquiesce or condone the late delivery and shall not intend or amount to an extension of the delivery period or keeping the Contract alive. The Contractor must apply for an extension of delivery date from the Procuring Entity.
- 2) As regards supplies coming from outside if the Contractor dispatches the stores after expiry of the delivery period, it shall be at his own risk and responsibility, and that the consignee is not liable for any demurrage, wharfage, and deterioration of Stores at the destination station and, in his own interest, the Contractor shall get an extension of the delivery period from the Contracting Entities.
- 3) In case of imports, the Contractor must not dispatch the consignment after expiry of the delivery period without taking prior extension of the delivery period, otherwise payment against the LC shall be denied.

10.8 Delay in the Contractor's performance

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

- 1) recover from the Contractor as agreed liquidated damages and not by way of penalty a sum equivalent to 2 per cent of the price of any stores (including elements of taxes, duties, freight, etc.) which the Contractor has failed to deliver within the period fixed for delivery in the contract or as extended for each month or part of a month during which the delivery of such stores may be in arrears where delivery thereof is accepted after expiry of the aforesaid period, or

- 2) treat the delay as a breach of contract as per clause 15.1 below and avail all the remedies therein.
- 3) Where action is taken under Sub-clause (b) above, the Contractor shall be liable for any loss which the Procuring Entity may sustain on that account provided the purchase, or, if there is an agreement to purchase, such agreement is made, in case of failure to deliver the stores within the period fixed for such delivery in the contract or as extended within six months from the date of such failure and in case of repudiation of the contract before the expiry of the aforesaid period of delivery, within six months from the date of cancellation of the contract. The Contractor shall not be entitled to any gain on such purchase and the manner and method of such purchase shall be in the entire discretion of the Procuring Entity. It shall not be necessary for the Procuring Entity to serve a notice of such purchase on the Contractor.

Note: In respect of the stores which are not easily available in the market and where procurement difficulties are experienced, the period for making risk purchase shall be nine months instead of six months provided above.

10.9 Inordinate Delays

Inexcusable delays of more than one-fourth (25%) of the total completion period shall be treated as inordinate delays and shall amount to breach of the Contract. Such inordinate delays shall be noted as poor performance against the Contractor. A show-cause notice shall be issued to the Contractor before declaring it as a breach of the Contract or poor performance. Such poor performance would disable the Contractor from qualifying in future tenders.

10.10 Extension of Delivery Period:

- 1) If at any time during the currency of the contract, the Contractor encounters conditions hindering timely delivery of the Stores and performance of services, the Contractor shall promptly inform the Procuring Entity in writing about the same and its likely duration and make a request to the Procuring Entity for extension of the delivery schedule. On receiving the Contractor's communication, the Procuring Entity shall examine the situation and, at its discretion, may agree to extend the delivery schedule, with or without liquidated damages and with and without denial clause by issuing an amendment to the contract.
- 2) **Conditions for Extension of Delivery Period:** When the period of delivery is extended due to unexcused delay by the Contractor, the amendment extending the delivery period shall, inter alia be subject to the following conditions:
 - (a) **Liquidated Damages:** the Procuring Entity shall recover from the Contractor, under the provisions of the clause 10.11 of the General Conditions of Contract, liquidated damages on the Stores and services, which the Contractor has failed to deliver within the delivery period stipulated in the contract.
 - (b) **Denial Clause:**
 - (i) No increases in price on account of any statutory increase in or fresh Imposition of GST, customs duty or on account of any other taxes/ duty/ cess/ levy), leviable in respect of the Stores and services specified in the said contract which takes place after the original delivery date, shall be admissible on such of the said Stores, as are delivered after the said date; and
 - (ii) Notwithstanding any stipulation in the contract for increase in price on any other ground including price variation clause or foreign exchange rate variation, no such increase which takes place after the original delivery date shall be admissible on such of the said Stores as are delivered after the said date.

- (iii) But nevertheless, the Procuring Entity 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 on any other ground as stipulated in the price variation clause or foreign exchange rate variation which takes place after the expiry of the original delivery date.

10.11 Liquidated damages

- 1) Subject to GCC clause 10.8, if the Contractor fails to deliver any or all of the Stores or fails to perform the incidental services within the time frame(s) incorporated in the contract, the Procuring Entity shall, without prejudice to other rights and remedies available to the Procuring Entity under the contract, deduct from the contract price, as liquidated damages, but not as a penalty, a sum equivalent to the ½% percent (or any other percentage if prescribed in the SCC) of the delivered price (including elements of GST & freight) of the delayed Stores and/ or services for each week of delay or part thereof until actual delivery or performance, subject to a maximum deduction of the 10% (or any other percentage if prescribed in the SCC) of the delayed Stores' or services' contract price(s). During the above-mentioned delayed period of supply and/ or performance, the denial incorporated under GCC sub-clause 10.10-2(b) above shall also apply
- 2) Any failure or delay on the part of sub-contractor, though their employment may have been sanctioned under clause 6.4 above, shall not be admitted as a ground for any extension of time or for exempting the Contractor from liability for any such loss or damage as aforesaid.

10.12 Force Majeure

- 1) In the event of any unforeseen event directly interfering with the supply of stores arising during the currency of the contract, such as war, hostilities, acts of the public enemy, civil commotion, sabotage, fires, floods, explosions, epidemics, quarantine restrictions, strikes, lockouts, or acts of God, the Contractor shall, within a week from the commencement thereof, notify the same in writing to the Procuring Entity with reasonable evidence thereof. Unless otherwise directed by the Procuring Entity in writing, the Contractor shall continue to perform its obligations under the contract as far as reasonably practical and shall seek all reasonable alternative means for performance not prevented by the Force Majeure event. If the force majeure condition(s) mentioned above be in force for a period of 90 days or more at any time, either party shall have the option to terminate the contract on expiry of 90 days of commencement of such force majeure by giving 14 days' notice to the other party in writing. In case of such termination, no damages shall be claimed by either party against the other, save and except those which had occurred under any other clause of this contract prior to such termination.
- 2) Notwithstanding the provisions contained in GCC clauses 16, 17 and 19 the Contractor shall not be liable for imposition of any such sanction so long the delay and/ or failure of the Contractor in fulfilling its obligations under the contract is the result of an event of Force Majeure.
- 3) In case due to a Force Majeure event the Procuring Entity is unable to fulfil its contractual commitment and responsibility, the Procuring Entity shall notify the Contractor accordingly and subsequent actions taken on similar lines described in above sub-clauses.

11. Distribution of Despatch Documents for Clearance/ Receipt of Stores

- 1) the Contractor shall send all the relevant despatch documents well in time to the Procuring Entity to enable the Procuring Entity to clear or receive (as the case may be)

the Stores in terms of the contract. Unless otherwise specified in the SCC, the usual documents involved and the drill to be followed in general for this purpose are as follows:

- 2) For Domestic Stores within 24 hours of despatch, the Contractor shall notify the Procuring Entity, consignee, and others concerned if mentioned in the contract, the complete details of despatch and also supply the following documents to them by registered post/ speed post (or as instructed in the contract or SCC):
 - (a) the Contractor's Invoice indicating, inter alia description and specification of the Stores, quantity, unit price, total value;
 - (b) Packing list;
 - (c) Insurance certificate;
 - (d) Railway receipt/ Road Consignment note;
 - (e) Manufacturer's guarantee certificate and in-house inspection certificate;
 - (f) Inspection certificate issued by the Procuring Entity's inspector
 - (g) Expected date of arrival of Stores at destination and
 - (h) Any other document(s), as and if specifically mentioned in the contract.
- 3) For Imported Stores, within 3 days of despatch, the Contractor shall notify the Procuring Entity, consignee and other concerned if mentioned in the contract, the complete details of despatch and also supply the following documents to them by Courier (or as instructed in the Contract or SCC), besides advance intimation by Fax/ electronically:
 - (a) Clean on Board Airway Bill/ Bill of Lading (B/ L)
 - (b) Original Invoice
 - (c) Packing List
 - (d) Certificate of Origin from Seller's Chamber of Commerce
 - (e) Certificate of Quality and current manufacture from OEM
 - (f) Dangerous Cargo Certificate, if any.
 - (g) Insurance Policy of 110% if CIF contract.
 - (h) Performance Bond/ Warranty Certificate

12. Warranty/ Guarantee

- 1) the Contractor hereby covenants that it is a condition of the contract that all Stores to the Procuring Entity under this contract shall be free of all defects and faults arising from design, materials (except when the design adopted and/ or the material used are as per the Procuring Entity's specifications) or workmanship or from any act or omission of the Contractor, that may develop under normal use of the supplied Stores under the conditions prevailing in India
- 2) Unless otherwise indicated in the SCC, the Contractor also guarantees that the said goods/ stores/ articles would continue to conform to the description and quality as aforesaid, for a period of 30 months after their delivery or 24 months from the date of placement in service whichever shall be sooner.
- 3) Obligations of the Contractor under the warranty clause shall survive notwithstanding the fact that:
 - (a) The goods/ stores/ articles may have been inspected, accepted and payment therefore made by the Procuring Entity.
 - (b) Contract is terminated for any reason whatsoever.
- 4) If during the aforesaid period, the said goods/ stores/ articles 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 Procuring Entity in that behalf being final and conclusive and the Procuring Entity shall promptly notify the same in writing to the Contractor.

- 5) Upon receipt of such notice, the Contractor shall, within 21 days (or within any other period, if specified in the SCC), expeditiously remedy, or replace the defective Stores or parts thereof, free of cost, at the ultimate destination. The Contractor shall take over the replaced parts/ Stores after providing their replacements and no claim, whatsoever shall lie on the Procuring Entity for such replaced parts/ Stores thereafter.
- 6) In the event of any rectification of a defect or replacement of any defective Stores during the warranty period, the warranty for the rectified/ replaced Stores shall be extended to a further period of twelve months from the date such rectified/ replaced Stores starts functioning to the satisfaction of the Procuring Entity.
- 7) If the Contractor, having been notified, fails to rectify/ replace the defect(s) within 21 days (or within any other period, if specified in the SCC), it shall amount to breach of Contract and the Procuring Entity shall proceed to take such remedial action(s) as deemed fit by it as detailed.

13. Prices and Payments

13.1 Prices

13.1.1 Charged Prices

Prices to be charged by the Contractor for supply of Stores and provision of services in terms of the contract shall not vary from the corresponding prices quoted by the Contractor in its Bid or during negotiations, if any, and incorporated in the contract except for any price adjustment authorized in the SCC.

13.1.2 Controlled Prices

The price charged by the Contractor shall not be higher than the controlled price fixed by law for the Stores or where there is no controlled price, it shall not exceed the minimum of Maximum Retail Price (MRP) at which the same or similar Stores are available in market in relevant region or contravene the norms for fixation of prices laid down by Government or where no such prices or norms have been fixed by the Government, it shall not exceed the price appearing in any agreement relating to price regulation by any industry in consultation with the Government.

13.1.3 Price Components and Incidental Services

Unless otherwise stated in SCC or the Contract, The Procuring Entity shall not pay for consignment of incomplete components unless the full useable Schedule of Stores (as per the Contract/ Schedule of Requirement) has been received. Spares would not be paid for unless the main Stores are received. Deficiencies in incidental services shall also amount to breach of Contract.

13.1.4 Firm Prices

Unless otherwise specified in the SCC or the Contract, Prices shall be fixed and firm. In case a Price Variation Clause or an Exchange Rate Variation Clause is included, such up and down variations shall also be payable.

13.1.5 Fall Clause

- 1) *This clause shall be applicable, only if explicitly stipulated, in SCC:*
 - (a) The price charged for the stores supplied under the Contract by the Contractor shall in no event exceed the lowest price at which the Contractor sells the stores or offer to sell stores of identical description. To any persons/ organisations including the Procuring Entity or any Department of the Central Government or any Railway Office or any Railway Undertaking, as the case may be during the period till performance of all Supply Orders placed during the currency of the contract is completed. The lower price shall be applicable to supplies made after

the date of coming into force of such reduction or sale or offer to sell at a reduced rate.

- (b) If at any time, during the said period the Contractor reduces the sale price, sells or offer to sell such stores to any persons organisation including the Procuring Entity or any Department of Central Government or any Railway Office or any Railway Undertaking as the case may be at a price lower than the price chargeable under the contract, he shall forthwith notify such reduction or sale or offer of sale to the Procuring Entity and the price payable under the contract for the stores supplied after the date of coming into force or such reduction or sale or offer of sale shall stand correspondingly reduced.
 - (c) The above stipulation shall, however, not apply to:
 - (i) Exports by the Contractor
 - (ii) Sale of Stores as original equipment at prices lower than the prices charged for normal replacement.
 - (iii) Sale of Stores such as drugs which have expiry dates.
- 2) the Contractor shall furnish the following certificate to the concerned Accounts Officer along with each bill for payment of supplies made against the Contract.
- * We certify that there has been no reduction in sale price of the stores of description identical to the stores supplied to the Procuring Entity under the contract herein and such stores have not been offered/ sold by me/ us to any person/ organisation including any Ministry/ Department/ Attached and Subordinate Office/ Public Sector Undertaking of Central or State Government(s) as the case may be upto the date of bill/ the date of completion of Contracts at a price lower than the price charged under this contract except for quantity of stores categories under (i), (ii) and (iii) of sub-clause (c) above, details of which are as follows.....”*
- 3) **Penalties for overcharging**
- If the price charged is higher than the controlled price or where there is no controlled price, the price usually charged by the Contractor from a private Procuring Entity, domestic or foreign, as well as Procuring Entity Government for the stores of the same nature, class, or description, unless the Contractor had specifically mentioned this fact in his bid giving reasons for quoting higher price (s), or makes any mis-statement, it shall be lawful for the Procuring Entity to,
- (a) To revise the price at any stage so as to bring it in conformity with the Sub-clause (2) above or
 - (b) To terminate the contract and forfeit the Security Deposit. In any case, save for special reasons stated in the tender, the price charged shall not be higher than the lowest price charged by the Contractor for stores of the same nature, class, or description to a private Procuring Entity, domestic or foreign as well as Procuring Entity Governments.

13.2 Taxes and Duties

- 1) the Contractor shall be entirely responsible for all taxes, duties, fees, levies etc. incurred until delivery of the contracted Stores to the Procuring Entity. Further instruction, if any, shall be as provided in the SCC.
- 2) The Procuring Entity shall not be responsible for any misclassification of HSN number or incorrect GST rate if quoted by the bidder.
- 3) If applicable under relevant tax laws and rules, the Procuring Entity shall deduct from all payments and deposited to respective authorities on account of GST Reverse Charge Mechanism; Tax Deducted at Source (TDS) and Tax Collected at Source (TCS) relating to Income Tax, labour cess, royalty etc.
- 4) **Payment of GST Tax under the Contract:**

- (a) GST shall be paid as per the rate at which it is liable to be assessed or has actually been assessed provided the transaction of sale is legally liable to such taxes and is payable as per the terms of the contract.
 - (b) The payment of GST and GST Cess to contractor shall be made only on the latter submitting a Bill/ invoice in accordance with the provision of relevant GST Act and the rules made there under.
 - (c) All necessary adjustment vouchers such as Credit Notes/ Debit Notes for any short/ excess supplies or revision in prices or for any other reason under the Contract shall be submitted to the Procuring Entity in compliance with GST provisions.
 - (d) Wherever the successful bidder invoices the Stores at GST rate or HSN number which is different from that incorporated in the purchase order; payment shall be made as per GST rate which is lower of the GST rates incorporated in the purchase order or billed.
 - (e) The Procuring Entity shall, however, not be responsible for the payment of tax or duty made by the Contractor under misapprehension of law.
 - (f) Bidder is informed that she/ he shall be required to adjust her/ his basic price to the extent required by higher tax billed as per invoice to match the all-inclusive price as mentioned in the purchase order.
 - (g) In case of profiteering by the Contractor relating to GST tax, the Contractor shall be liable to administrative actions such as deregistration, suspension of business dealing and/ or banning of business dealing, in addition to recovery and action by the GST authorities under the Act.
 - (h) Contractor should issue Receipt vouchers immediately on receipt of all types of payments along with tax invoice after adjusting advance payments if any as per Contractual terms and GST Provisions.
 - (i) Any late delivery i.e., delivery after the due date attracts payment of damages by the vendor/ contractor as agreed mutually. It is agreed by the Contractor that such damages become recoverable by the Procuring Entity with applicable GST thereon.
- 5) **GST Compliance Rating of Bidders:**
- (a) Contractor of Goods/ Services shall make all out efforts to comply with the provisions under GST Act and Rules thereunder and also strive to maintain high compliance rating score under GST during the period of contract with the Procuring Entity.
 - (b) In case the GST rating of vendor on the GST portal/ Govt. official website is negative/ blacklisted, then the bids shall be rejected by the Procuring Entity.
 - (c) Further, in case rating of bidder is negative/ blacklisted after award of work for supply of goods/ services, then the Procuring Entity shall not be obligated or liable to pay or reimburse GST to such Contractors and shall also be entitled to deduct/ recover such GST along with all penalties/ interest, if any, incurred by the Procuring Entity.
 - (d) In the event of default on Contractor's part in payment of tax and submission/ uploading of monthly returns, the Procuring Entity shall be well within its contractual right to withhold payments, especially the tax portion, until Contractor corrects the default and/ or complies with the Stores of GST and produces satisfactory evidence to that effect or upon GST appearing on the Company GST portal.
- 6) **Imported Stores not liable to Above-mentioned Taxes and Duties:** Above mentioned GST/ CGST/ SGST/ UTGST/ IGST are not leviable on imported Stores and hence shall not be reimbursed.

- 7) **Statutory Variations:** Any amendment to GST rate or HSN number in the contract shall be as per the contractual conditions and statutory amendments in the quoted GST rate and HSN number, under Statutory Variation Clause.
- 8) **Duties/ Taxes on Raw Materials**
The Procuring Entity is not liable for any claim from the Contractor on account of fresh imposition and/ or increase (including statutory increase) of GST, custom duty, or other duties on raw materials and/ or components used directly in the manufacture of the contracted Stores taking place during the pendency of the contract, unless such liability is specifically agreed to in terms of the contract.
- 9) **Customs Duty**
In respect of imported stores offered from abroad, the Bidder shall specify the rate as well as the total amount of customs duty payable. The Bidder shall also indicate the corresponding Indian Tariff Code (ITC-HS) applicable for the Stores in question.
 - (a) For transportation of imported Stores offered from abroad, relevant instructions as incorporated under GCC Clause 9 shall be followed.
 - (b) For insurance of Stores to be supplied, relevant instructions as provided under GCC Clause 9 shall be followed.

13.3 Terms and Mode of Payment

13.3.1 For Domestic Stores:

- 1) Unless otherwise specified in SCC, usual payment term is 100% on receipt and acceptance of Stores at 'the destination' by the Procuring Entity and on production of all required documents by the Contractor.
- 2) Unless otherwise specified in the SCC, payments to Contractors are usually made by account payee cheque or through ECS only. The Bidder shall give his consent in a mandate form for receipt of payment through NEFT (Annexe 2 to Format 1: Contract Form). In case of non-payment through EFT, or where EFT facility is not available, payment may be released through cheque.
- 3) Where the terms of delivery is FOR dispatching Station, the %age of payment as specified in the Contract shall be paid on proof of despatch and other related documents and balance on receipt at site and acceptance by the consignee.
- 4) Unless otherwise specified in the Contract, where the terms of delivery is CIF destination/ delivery at site/ FOR destination, payment term shall 100% on receipt and acceptance of Stores by the consignee and on production of all required documents by the Contractor.
- 5) Unless otherwise specified in the Contract, where Stores to be supplied also need installation and commissioning by the Contractor, the payment terms shall be as under:
 - (a) For a contract with terms of delivery as FOR dispatching station
 - (i) 60% on proof of despatch along with other specified documents
 - (ii) 30% on receipt of the Stores at site by the consignee and balance
 - (iii) 10% on successful installation and commissioning and acceptance by the user department.
 - (b) For a contract with terms of delivery as CIF destination/ Delivery at site/ FOR destination
 - (i) 90% on receipt and acceptance of goods by the consignee at destination and on production of all required documents by the Contractor
 - (ii) 10% on successful installation and commissioning and acceptance by the consignee.

13.3.2 For Imported Good:

- 1) Unless otherwise specified in the Contract, payments are made through an irrevocable Letter of Credit (LC).

- (a) Cases where Installation, Erection and Commissioning (if applicable) are not the responsibility of the Contractor – 100 % net FOB/ FAS price is to be paid against invoice, shipping documents, inspection certificate (where applicable), manufacturers' test certificate, etc.
- (b) Cases where Installation, Erection and Commissioning are the responsibility of the Contractor – the percentage specified in the contract of the net FOB/ FAS price shall be paid against invoice, inspection certificate (where applicable), shipping documents etc. and balance within 21 - 30 days of successful installation and commissioning at the consignee's premises and acceptance by the consignee.
- (c) Payment of Agency Commission against FOB/ FAS Contract – Entire 100% agency commission shall be paid in Indian Rupees; after expiry of 90 days after the discharge of all obligations under the contract and after all other payments have been made to the Contractor in terms of the contract. Tax deduction at source is applicable to the agency commission paid to the Indian agent as per the prevailing rules.

13.3.3 General Payment condition for payment

- 1) In Domestic Contracts payments shall only be made in Indian Rupees. In case Foreign Bidders in Global Tenders, payment shall be made in the currency/ currencies authorized in the contract. However, agency commission and local value addition shall be paid only in Indian Rupees.
- 2) the Contractor shall send its claim for payment in writing as per GST compliant Invoice and documents, when contractually due, along with relevant documents etc., duly signed with date, as specified in Contract and in a manner as also specified therein.
- 3) While claiming payment, the Contractor is also to certify in the bill that the payment being claimed is strictly in terms of the contract and all the obligations on the part of the Contractor for claiming that payment has been fulfilled as required under the contract.
- 4) Unless otherwise specified documents which the Contractor is to furnish while claiming payment are:
 - (a) Original Invoice (GST Compliant format)
 - (b) Packing List
 - (c) Certificate of country of origin of the goods from seller's Chamber of Commerce.
 - (d) Certificate of pre-despatch inspection by the Procuring Entity's representative/ nominee
 - (e) Manufacturer's test certificate
 - (f) Performance/ Warrantee Bond
 - (g) Certificate of Insurance
 - (h) Clean on Bill of lading/ Airway bill/ Rail receipt or any other despatch document
 - (i) Consignee's Certificate confirming receipt and acceptance of Stores
 - (j) Dangerous Cargo Certificate, if any, in case of Imported Stores.
 - (k) Any other document specified.
- 5) While claiming reimbursement of duties, taxes etc. (like GST) from the Procuring Entity, as and if permitted under the contract, the Contractor shall also certify that, in case it gets any refund out of such taxes and duties from the concerned authorities at a later date, it (the Contractor) shall refund to the Procuring Entity, the Procuring Entity's share out of such refund received by the Contractor. The

Contractor shall also refund the applicable amount to the Procuring Entity immediately on receiving the same from the concerned authorities.

- 6) While claiming payments where Price Variation Clause (PVC) or Exchange Rate Variation (ERV) clause is applicable, the Contractor must submit with each invoice its calculations for PVC and ERV, even if payment on account of these variations is nil.
- 7) Unless a different intention appears from the terms of the Contract, statutory variations in duties and taxes shall be only allowed during the original or re-fixed delivery period but not during any extension period.
- 8) Taxes and duties and statutory variations on raw materials or components used in manufacture of Stores shall be borne entirely by the Contractor.
- 9) In case where the Contractor is not in a position to submit its bill for the balance payment for want of receipted copies of Inspection Note from the consignee and the consignee has not complained about the non-receipt, shortage, or defects in the supplies made, balance amount shall be paid by the paying authority without consignee's receipt certificate after three months from the date of the preceding part payment for the Stores in question, subject to the following conditions:
 - (a) the Contractor shall make good any defect or deficiency that the consignee (s) may report within six months from the date of despatch of Stores.
 - (b) Delay in supplies, if any, has been regularized.
 - (c) The contract price where it is subject to variation has been finalized.
 - (d) the Contractor furnishes the following undertakings:

"We, _____ certify that We have not received back the Inspection Note duly receipted by the consignee or any communication from the Procuring Entity or the consignee about non-receipt, shortage or defects in the Stores supplied. We _____ agree to make good any defect or deficiency that the consignee may report within three months from the date of receipt of this balance payment or six months from the date of despatch whichever is later.
- 10) **Advance/ mobilization Payment not allowed:** Payments for supplies made or incidental services rendered shall be released only after the services have been rendered or supplies made as detailed in Contract. Partial payments against dispatch documents as provided in Contract shall not be considered as advance payment for purpose of this clause. Unless specifically provided for in
- 11) **Withholding and lien in respect of sums claimed:**
 - (a) Whenever any claim or claims for payment of a sum of money arises out of or under the contract against the Contractor, the Procuring Entity shall be entitled, and it shall be lawful on his part, 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 Procuring Entity shall be entitled, and it shall be lawful on his part, 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 Procuring Entity shall be entitled, and it shall be lawful on his part, to withhold and have lien to retain to the extent of the such claimed amount or amounts referred to supra, from any sum or sums found payable or which at any time thereafter may become payable to the Contractor under the same contract or any other contract with the Procuring Entity pending finalisation or adjudication of any such claim.
 - (b) 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 Procuring Entity shall be kept

withheld or retained as such by the Procuring Entity till the claim arising out of or under the contract is determined by the Arbitrator (if the contract is governed by the Arbitration Agreement) or by the competent court, as the case may be, and that the Contractor shall have no claim for interest or damages what so ever on any account in respect of such withholding or retention under the lien referred to supra and duly notified as such to the Contractor.

- (c) Where the Contractor is a partnership firm or a limited company, the Procuring Entity shall be entitled, and it shall be lawful on his part, 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.
- (d) **Lien in respect of Claims in other Contracts:** Any sum of money due and payable to the Contractor (including the security deposit returnable to him) under the contract may withhold or retain by way of lien by the Procuring Entity or Government against any claim of the Procuring Entity 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 Procuring Entity or Government.

13.4 Payment Against Time Barred Claims

All claims against the Procuring Entity shall be legally time barred after a period of three years calculated from the date when the payment falls due unless the payment claim has been under correspondence. The Procuring Entity is entitled to and it shall be lawful for it to reject such claims.

14. Resolution of disputes

14.1 Disputes and Excepted Matters

All disputes and differences between the parties hereto as to the construction or operation of this contract; or the respective rights and liabilities of the parties on any matter in question; or on any other account whatsoever but excluding the Excepted Matters (detailed below); arising out of or in connection with the contract; whether during the currency of the contract or after its completion; and whether before or after the completion/ termination of the contract that cannot be resolved amicable between the Procurement Officer and the Contractor, shall be hereinafter called the "Dispute". The Dispute shall be resolved without recourse to courts through dispute resolution mechanisms detailed subsequently, in the sequence as mentioned below and the next mechanism shall not be invoked unless the earlier mechanism has been involved or has failed to resolve it within the deadline mentioned therein. Aggrieved party shall give a 'Notice of Dispute' indicating the Dispute and claims with relevant Contractual clause to the designated authority requesting for invoking the mechanism.

- 1) Adjudication
- 2) Conciliation
- 3) Arbitration

14.2 Excepted Matters

Matters for which provision has been made in any Clause of the Special or General Conditions of the Contract shall be deemed as 'excepted matters' (matters not disputable/ arbitrable) and decisions of the Procuring Entity, thereon shall be final and binding on the Contractor. The 'excepted matters' shall stand specifically excluded from the purview of the sub-clauses below, including Arbitration. However, where the Procuring Entity has raised the dispute, this sub-clause shall not apply. Unless otherwise specified in SCC, excepted matters shall include but not limited to:

- 1) Issues related to pre-award tender process or conditions

- 2) Issues related to ambiguity in contract terms shall not be taken up after a contract has been signed, all such issues should be highlighted before consummation of the contract by the Contractor
- 3) Provisions incorporated in the Contract, which are beyond the purview of The Procurement Entity or are in pursuance of policies of Government, including but not limited to
 - (i) Provisions regarding local content and Class-I Local suppliers in terms of Make in India policy of the Government
 - (ii) Provisions regarding restrictions on Entities from Countries having land-borders with India in terms of Government's policies in this regard.
 - (iii) Purchase preference policies in regard to MSEs and Start-ups

14.3 Adjudication

After exhausting efforts to resolve the Dispute with the Purchasing Officer executing the contract on behalf of the Procuring Entity, the Contractor shall give a 'Notice of Dispute' specifying the matters which are in question, or subject of the dispute or difference indicating the relevant contractual clause, as also the amount of claim item-wise to Head of Procuring Organisation (hereinafter called the "Adjudicator") for invoking resolution of dispute through Adjudication. During his adjudication, the Adjudicator, shall give adequate opportunity to the Contractor to present his case. The Adjudicator shall, within 60 days after receipt of the representation, make and notify decisions on all matters referred to by the Contractor in writing. The parties shall not initiate, during the adjudication proceedings, any conciliation or arbitral or judicial proceedings in respect of dispute that is the subject matter of the conciliation proceedings. If not satisfied by the decision in adjudication, the Contractor may proceed to invoke the process of Conciliation as follows.

14.4 Conciliation of disputes

- 1) Any of the parties may invoke Conciliation by submitting "Notice of Dispute" specifying the matters which are in question, or subject of the dispute or difference indicating the relevant contractual clause, as also the amount of claim item-wise to the Head of Procuring Organisation. Since conciliation is a voluntary process, the Head of Procuring Organisation shall, provided the other party is agreeable to enter Conciliation, within 30 days after receipt of "Notice of Dispute", notify the name of sole conciliator to the parties. If other party is not agreeable to Conciliation, the aggrieved party shall be informed to invoke Arbitration if he so chooses to do.
- 2) The Conciliator shall proactively assist the parties to reach an amicable settlement in an independent and impartial manner within the terms of contract.
- 3) If the parties reach agreement on settlement of the dispute, they shall draw up a written settlement agreement duly signed by parties and conciliator. When the parties sign the settlement agreement, it shall be final and binding on the parties. The conciliation/ dispute shall be treated as resolved on the date of such agreement.
- 4) The parties shall not initiate, during the conciliation proceedings, any arbitral or judicial proceedings in respect of dispute that is the subject matter of the conciliation proceedings.
- 5) Termination of Conciliation: Disputes shall remain alive if the conciliation is terminated as follows:
 - (a) By written declaration of the conciliator, after consultation with the parties, to the effect that further efforts at conciliation are no longer justified, on the date of such declaration; or
 - (b) By a written declaration of any party to the conciliator to the effect that the conciliation proceedings are terminated, on the date of such declaration;

- 6) On termination of Conciliation, the aggrieved party shall be free to invoke Arbitration, if it is so inclined.

14.5 Arbitration Agreement

14.5.1 This Agreement

- 1) This Arbitration agreement (hereinafter referred to as this “Agreement”) relating to this Contract (hereinafter called the “Main Agreement” for the purpose of this agreement) is made under the provisions of The Arbitration and Conciliation Act, 1996 as amended by Arbitration and Conciliation (Amendment) Act, 2015 and 2019 and the rules there under and any statutory modifications thereof for the time being in force (all of these taken together, hereinafter called The Arbitration Act). This Agreement shall continue to survive termination, completion, or closure of the Main Agreement for a period of 120 days thereafter.
- 2) Subject to aforesaid provisions relevant clauses of GCC and SCC of Contract and any statutory modifications thereof shall apply to the appointment of arbitrators and arbitration proceedings under this Agreement.
- 3) The Micro, Small and Medium Enterprises Development (MSMED) Act, 2006 provides parties to a dispute (where one of the parties is a Micro or Small Enterprise) to make a reference to Micro and Small Enterprises Facilitation Council, if the dispute is in regard to any amount due under Section 17 of the MSMED Act, 2006. In case a Micro or Small Enterprise, being a party to dispute, makes a reference under the provisions in MSMED Act 2006, the provisions of the MSMED Act 2006, shall prevail over this Agreement.

14.5.2 Notice for Arbitration

- 1) **Authority to Appoint Arbitrator(s):** For the purpose of this Arbitration Agreement ‘The Appointing Authority’, to appoint the arbitrator shall be Head of Procuring Organisation named in the SCC and includes, if there be no such authority, the officer who is for the time being discharging the functions of that authority, whether in addition to other functions or otherwise.
- 2) In the event of any dispute or difference between the parties hereto as to the construction or operation of this contract, or the respective rights and liabilities of the parties on any matter in question, dispute or difference on any account but excluding the Excepted Matters, or if the Adjudicator fails to make a decision within 60 days (as referred in 16.2 above), or the Conciliation is terminated (as referred in sub-clause 14.4 above) then and in any such case, parties to the contract, after 60 days but within 120 days of ‘Notice of Dispute’ shall request the Appointing Authority through a “Notice for Arbitration” in writing requesting that the dispute or difference be referred to arbitration.
- 3) The “Notice for arbitration” shall specify the matters which are in question, or subject of the dispute or difference indicating the relevant contractual clause, as also the amount of claim item-wise.

14.5.3 Reference to Arbitration

The Appointing Authority after appointing Arbitrator(s) refer the Dispute to them. Only such dispute or difference, in respect of which the demand has been made, together with counter claims or set off, shall be referred to arbitration and other matters shall not be included in the reference.

14.5.4 Appointment of Arbitrator**1) Qualification of Arbitrators:**

- (a) In case of retired officers of The Procuring organisation, he shall have retired in the rank of Senior administrative grade (or equivalent) and shall have retired at least 1 year prior and must not be over 70 years of age on the date of Notice for arbitration.
- (b) In case of serving officer, he shall be at least in the grade of Junior Administrative Grade (Or equivalent).
- (c) He/ they shall not have had an opportunity to deal with the matters to which the contract relates or who in the course of his/ their duties as officers of the Procuring Organisation expressed views on any or all of the matters under dispute or differences. A certification to this effect (as per Annex 4 to Format 1: Contract Form) shall be taken from Arbitrators. The proceedings of the Arbitral tribunal or the award made by such Tribunal shall, 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.
- (d) Such arbitrators once appointed shall continue to be arbitrators even after their transfer or retirement.
- (e) An Arbitrator may be appointed notwithstanding the total no. of arbitration cases in which he has been appointed in the past.
- (f) Not be other than the person appointed by The Appointing Authority and that if for any reason that is not possible, the matter shall not be referred to arbitration at all.

2) Replacement of Arbitrators

If one or more of the arbitrators appointed as above refuses to act as arbitrator, withdraws from his office as arbitrator, or in the event of the arbitrator dying, neglecting/ unable or unwilling or refusing to act or resigning/ vacating his/ their office/ offices for any reason, or his award being set aside by the court for any reason, or in the opinion of The Appointing Authority fails to act without undue delay, the Appointing Authority shall appoint new arbitrator/ arbitrators to act in his/ their place in the same manner in which the earlier arbitrator/ arbitrators had been appointed. Such re-constituted Tribunal may, at its discretion, proceed with the reference from the stage at which it was left by the previous arbitrator (s).

3) Waiver of Sub-section 12(5)

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

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

- (a) In cases where the total value of all claims in question added together does not exceed Rs 1,00,00,000/- (Rupees One Crore only), the Arbitral Tribunal shall consist of a Sole Arbitrator who shall be a serving officer of the Procuring Organisation nominated by The Appointing Authority. The sole arbitrator shall be appointed within 60 days from the day when a written and valid notice for arbitration is received by The Appointing Authority.
- (b) In cases where the total value of all claims in question added together exceeds Rs. 1,00,00,000/- (Rupees One Crore only), the Arbitral Tribunal shall consist of a panel of three serving Officers of the Procuring Organisation or 2 such officers and a retired Officer of the Procuring Organisation, as the arbitrators. For this

purpose, The Appointing Authority shall send a panel of at least four (4) names of such officers of one or more departments of the Procuring Organisation which may also include the name(s) of retired Officer(s) empanelled to work as Arbitrator to the Contractor within 60 days from the day when a written and valid demand for arbitration is received by The Appointing Authority.

- (c) Contractor shall be asked to suggest to The Appointing Authority at least 2 names out of the panel for appointment as Contractor's nominee within 30 days from the date of dispatch of the request by The Appointing Authority. The Appointing Authority shall appoint at least one out of them as the Contractor's nominee and shall, 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 Appointing Authority shall complete this exercise of appointing the Arbitral Tribunal within 30 days from the receipt of the names of Contractor's nominees.
 - (d) If the Contractor does not suggest his nominees for the arbitral tribunal within the prescribed timeframe, The Appointing Authority shall proceed for appointment of arbitral tribunal within 30 days of the expiry of such time provided to contractor.
- 5) Appointment of Arbitrator where applicability of Section 12 (5) of Arbitration and Conciliation Act has not been waived off:**
- (a) In cases where the total value of all claims in question added together does not exceed Rs 50,00,000/- (Rupees Fifty Lakh only), the Arbitral Tribunal shall consist of a retired officer of the Procuring Organisation as the arbitrator. For this purpose, The Appointing Authority shall send a panel of at least four (4) names of such Officer(s) empanelled to work as Arbitrator duly indicating their retirement dates to the Contractor within 60 days from the day when a written and valid notice for arbitration is received by The Appointing Authority.
 - (b) Contractor shall be asked to suggest to The Appointing Authority at least 2 names out of the panel for appointment as arbitrator within 30 days from the date of dispatch of the request by The Appointing Authority. The Appointing Authority shall appoint at least one out of them as the arbitrator.
 - (c) In cases where the total value of all claims in question added together exceeds Rs 50,00,000/- (Rupees Fifty Lakh only), the Arbitral Tribunal shall consist of three (3) retired Officers of the Procuring Organisation. For this purpose, The Appointing Authority shall send a panel of at least four (4) names of such Officer(s) empanelled to work as Arbitrators duly indicating their retirement date to the Contractor within 60 days from the day when a written and valid demand for arbitration is received by The Appointing Authority.
 - (d) Contractor shall be asked to suggest to The Appointing Authority at least 2 names out of the panel for appointment as Contractor's nominee within 30 days from the date of dispatch of the request by The Appointing Authority. The Appointing Authority shall appoint at least one out of them as the Contractor's nominee and shall, 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 Appointing Authority shall complete this exercise of appointing the Arbitral Tribunal within 30 days from the receipt of the names of Contractor's nominees.
 - (e) If the Contractor does not suggest his nominees for the arbitral tribunal within the prescribed timeframe, The Appointing Authority shall proceed for

appointment of arbitral tribunal within 30 days of the expiry of such time provided to contractor.

14.5.5 Failure to appoint Arbitrators

If The Appointing Authority fails to appoint an arbitrator within 60 (sixty) days, or in case of 3 member arbitral tribunal, if the two appointed arbitrators fail to agree on the third arbitrator, then subject to survival of this Arbitration agreement, the Supreme Court of India shall designate the arbitral institution for the appointment of arbitrators (in international commercial arbitration) whereas the High Court shall designate arbitral institutions in case of national arbitrations. These arbitration institutions must have been graded by the Arbitration Council of India. It is mandatory that these arbitral institutions must complete the process of selection within thirty days from the acceptance of the request for the arbitrator's appointment.

14.5.6 The Arbitral Procedure

- 1) **Effective Date of Entering Reference:** The arbitral tribunal shall be deemed to have entered the reference on the date on which the arbitrator(s) have received notice of their appointment. All subsequent time limits shall be counted from such a date.
- 2) **Venue of Arbitration:** The venue of arbitration shall be the place from which the Notice of Award or the Contract is issued or such other place as the arbitrator at his discretion may determine in terms of section 20 of The Arbitration Act.
- 3) If the mechanisms of Adjudication and/ or Conciliation had not been exhausted before such reference to Arbitration, the Arbitrator shall ask the aggrieved party to approach designated authority for such mechanisms before the Arbitration proceedings are started.
- 4) The claimant shall submit to the Arbitrator(s) with copies to the respondent, 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 unless otherwise extension has been granted by Arbitral Tribunal.
- 5) On receipt of such claims, respondent shall submit its defence statement and counter claim(s), if any, within a period of 60 days of receipt of copy of claims, unless otherwise extension has been granted by Arbitral Tribunal.
- 6) No new claim shall be added during proceedings by either party. However, a party may amend or supplement the original claim or defence thereof during the course of arbitration proceedings subject to acceptance by Tribunal having due regard to the delay in making it.
- 7) Statement of claims, counterclaims and defence shall have to be completed within six months from the effective date of reference.
- 8) **Oral arguments to be held on a day-to-day basis:** Oral arguments as far as possible shall be heard by the arbitral tribunal on a day to day basis and no adjournments shall be granted without sufficient cause. Arbitrator(s) may impose exemplary cost on the party seeking adjournment without sufficient cause.
- 9) **Award within 12 (twelve) months:** The arbitral tribunal is statutorily bound to deliver an award within 12 (twelve) months from the date when arbitral tribunal enters reference. The award can be delayed by a maximum period of six months only under the special circumstances where all parties give their consent to such extension of time. Where the award is not made out within such extended period the court's approval shall be required for further extension. During the period of an application for extension of time is awaiting before the court the proceedings of the arbitrator shall continue till the disposal of the application.
- 10) **Fast Track Procedure:** The parties to arbitration may choose to opt for a fast track procedure either before or after the commencement of the arbitration. The award in

fast track arbitration is to be made out within six months and the arbitral tribunal shall be entitled to additional fees. The salient features of the fast track arbitration are:

- (a) Dispute is to be decided based on written pleadings only.
- (b) Arbitral Tribunal shall have the power to call for clarifications in addition to the written pleadings where it deems necessary.
- (c) Oral hearing maybe held only if all the parties make a request or if the arbitral tribunal considers it necessary.
- (d) The parties are free to decide the fees of the arbitrator(s) for fast track procedure.

- 11) **Powers of Arbitral Tribunal to grant Interim Relief:** The parties to arbitration may approach the arbitral tribunal for seeking interim relief on the grounds available under section 9 of the act. The tribunal has the powers of a court while making interim awards in the proceedings before it.
- 12) **Confidentiality:** As provided in Section 42A of The Arbitration Act all the details and particulars of the arbitration proceedings shall be kept confidential excluding facts of the arbitral award in certain situations like if the disclosure is necessary for the implementation or execution of that arbitral award.
- 13) **Obligation During Pendency of Arbitration:** Performance of the contract shall, unless otherwise directed by the Procuring Entity, continue during the arbitration proceedings, and no payment due or payable by the Procuring Entity shall be withheld on account of such proceedings, provided, however, it shall be open for Arbitral Tribunal to consider and decide whether or not the performance of the contract or payment therein should continue during arbitration proceedings.

14.5.7 The Arbitral Award

- 1) In case of the Tribunal, comprising of three members, any ruling on award shall be made by a majority of members of Tribunal. In the absence of such a majority, the views of the Presiding Arbitrator shall prevail.
- 2) 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.
- 3) It is further a term of this arbitration agreement that 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 in terms of Section 31 (7) (a) of The Arbitration Act.
- 4) The award of the arbitrator shall be final and binding on the parties to this contract.
- 5) A party may apply for corrections of any computational errors, any typographical or clerical errors or any other error of similar nature occurring in the award of a Tribunal and interpretation of a specific point of award to Tribunal within 60 days of receipt of the award.
- 6) A party may apply to Tribunal within 60 days of receipt of award to make an additional award as to claims presented in the arbitral proceedings but omitted from the arbitral award.

14.5.8 Savings: Any matter related to Arbitration, not covered under this Arbitration Agreement shall be decided by the Arbitral Tribunal as per the provisions of The Arbitration Act.

14.5.9 Cost of Arbitration and fees of the Arbitrator(s)

- 1) The cost of arbitration shall be borne by the concerned parties in terms of section 31 (A) of The Arbitration Act: The cost shall inter-alia include fees of the Arbitrator. Further, the fees payable to the Arbitrator shall be governed by instructions issued on the subject by the Procuring Entity and/ or the Government from time to time, in line with the Arbitration and Conciliation Act, irrespective of the fact whether the Arbitrator is appointed by the Procuring Entity or the Government under this clause or by any court of law unless specifically directed by Hon'ble court otherwise on the matter. Sole arbitrator shall be entitled for 25% extra fee over such prescribed fee.
- 2) Arbitrator shall be entitled to 50 percent extra fee, if award is made within 6 months in terms of provisions contained in section 29(A) (2) of The Arbitration Act.
- 3) Besides above, Arbitrator shall also be entitled for this extra fee, in cases, where Fast Track Procedure in terms of section 29 (B) of The Arbitration Act is followed.

15. Defaults, Breaches, Termination, and closure of Contract**15.1 Termination due to Breach, Default, and Insolvency****15.1.1 Defaults and Breach of Contract**

In case the Contractor undergoes insolvency or receivership; neglects or defaults or expresses inability or disinclination to honour his obligations relating to performance of contract or ethical standards or any other obligation that substantively affects the Procuring Entity's rights and benefits under the Contract, it shall be treated as a breach of Contract. Such defaults could include inter-alia:

- 1) **Default in Performance and Obligations:** if the Contractor fails to deliver any or all of the Stores or fails to perform any other contractual obligations (including Code of Ethics) within the time period specified in the contract, or within any extension thereof granted by the Procuring Entity pursuant to GCC sub-clauses 16.3 and 16.4.
- 2) **Insolvency:** if the Contractor being an individual or if a firm, any partner thereof, shall at any time, be adjudged insolvent or shall have a receiving order or order for

administration of his estate made against him or shall take any proceeding for composition under any Insolvency Act for the time being in force or make any conveyance or assignment of his effects or enter into any assignment or composition with his creditors or suspend payment or if the firm be dissolved under the Partnership Act, or

- 3) **Liquidation:** 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

15.1.2 Notice for Default:

As soon as a breach of contract is noticed, a show-cause 'Notice of Default' shall be issued to the Contractor, giving two weeks' notice, reserving the right to invoke contractual remedies. After such a show-cause notice, all payments to the Contractor would be temporary withheld to safeguard needed recoveries, that may become due on invoking contractual remedies.

15.1.3 Contractual Remedies for Breaches and Defaults

If there is an unsatisfactory resolution within this period, the Procuring Entity shall take one; or more of following contractual remedies.

- 1) Temporary withhold payments due to the Contractor till recoveries due to invocation of other contractual remedies are complete.
- 2) Call back any loaned property or advances of payment, if any with levy of interest at prevailing rate
- 3) Recover liquidated damages and invoke denial clause for delays
- 4) Encash and/ or Forfeit performance or other contractual securities
- 5) Prefer claims against insurances if any
- 6) Terminate contract for default, fully or partially including its right for Risk-and-Cost Purchase as per following sub-clause
- 7) Debar the Contractor following due process, from participation in the Procuring Organisations tenders, including delisting from list of registered suppliers.
- 8) Initiate proceedings in court of law for transgression of law, tort, and loss, not addressable by above means.

15.1.4 Terminations for Default

- 1) **Notice for Termination for Default:** In the event of unsatisfactory resolution of 'Notice of Default' within two weeks of issue of Notice of Default to the Contractor as per sub-clause above, the Procuring Entity, if so decided, shall by written Notice of Termination for Default sent to the Contractor, terminate the contract in whole or in part, without compensation to the contractor
- 2) Such termination shall not prejudice or affect the rights and remedies which have accrued and/ or shall accrue thereafter to the Procuring Entity.
- 3) Unless otherwise instructed by the Procuring Entity, the Contractor shall continue to perform the contract to the extent not terminated.
- 4) All warranty obligations shall continue to survive despite the termination.
- 5) **Risk and Cost Purchase:** In addition to above termination, the Procuring Entity shall be entitled, and it shall be lawful on his part, to procure Stores and/ or services similar to those cancelled, with such terms and conditions and in such manner as it deems fit at the "Risk and Cost" of the Contractor and the Contractor shall be liable to the Procuring Entity for the extra expenditure, if any, incurred or accrued by the Procuring Entity for arranging such procurement. However, the Contractor shall not be entitled to benefits if any, from such procurements. It shall, however, be at the discretion of the Procuring

Entity to collect or not, the security deposit from the firm/ firms on whom the contract is placed at the risk and expense of the defaulted firm.

15.1.5 Limitation of Liability

Except in cases of criminal negligence or wilful misconduct, the aggregate liability of the Contractor to the Procuring Entity, whether under the Contract, in tort or otherwise, shall not exceed the total Contract Price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment, or to any obligation of the Contractor to indemnify the Procuring Entity with respect to patent infringement.

15.2 Termination for Convenience and Frustration

15.2.1 Notice for Determination of Contract

- 1) The Procuring Entity reserves the right to terminate the contract, in whole or in part for its (the Procuring Entity's) convenience or frustration of contract as per clause 15.2.2 below, by serving written 'Notice for Determination of Contract' on the Contractor at any time during the currency of the contract. The notice shall specify that the termination is for the convenience of the Procuring Entity or for frustration. The notice shall also indicate inter-alia, the extent to which the Contractor's performance under the contract is terminated, and the date with effect from which such termination shall become effective.
- 2) Such termination shall not prejudice or affect the rights and remedies which have accrued and/ or shall accrue thereafter to the Procuring Entity.
- 3) Unless otherwise instructed by the Procuring Entity, the Contractor shall continue to perform the contract to the extent not terminated.
- 4) All warranty obligations shall continue to survive despite the termination.
- 5) The Stores and services which are complete and ready in terms of the contract for delivery and performance within thirty days after the Contractor's receipt of the notice of termination shall be accepted by the Procuring Entity following the contract terms, conditions, and prices. For the remaining Stores and services, the Procuring Entity may decide:
 - (a) To get any portion of the balance completed and delivered at the contract terms, conditions, and prices; and/ or
 - (b) To cancel the remaining portion of the Stores and services and compensate the Contractor by paying an agreed amount for the cost incurred by the Contractor, if any, towards the remaining portion of the Stores and services.

15.2.2 Frustration of Contract

- 1) **Notice of Frustration Event:** Upon a supervening cause occurring after the effective date of the Contract, including a change in law, beyond the control of either party whether as a result of Force Majeure clause or within the scope of section 56 of the Indian Contract Act, 1872, that makes it impossible to perform the Contract within a reasonable timeframe, the affected party shall give a 'Notice of Frustration Event' to the other party giving justification. The parties shall use reasonable efforts to agree to amend the Contract, as may be necessary to complete its performance. However, if the parties cannot reach mutual agreement within 60 days of the initial notice, the Procuring Entity, shall issue a 'Notice for Determining the Contract' and terminate the contract due to its frustration as in sub-clause above.
- 2) However, following shall not be considered as such a supervening cause
 - (a) Commercial impossibility or unviability or unprofitability or lack of funds
 - (b) if caused by either party's breach of its obligations under this Contract or failure to act in good faith or use commercially reasonable due diligence to prevent such an event.

15.3 Closure of Contract

15.3.1 No Claim Certificate and Release of Contract Securities

After mutual reconciliations of outstanding payments and assets on either side the Contractor shall submit a 'No-claim certificate' to the Procuring Entity requesting further for release of its contractual securities, if any. The Procuring Entity shall release the contractual securities without any interest, if there is no outstanding obligation, asset, or payments due from Contractor.

15.3.2 Completion of obligation

The contract shall stand closed upon successful performance of all obligations by both parties to the contract, including completion of warrantee obligations and final payment.

15.3.3 Upon Termination

Contract shall also be treated as closed on Termination and settlements if any thereafter as per clause 15.1 and 15.2 above.

16. Code of Integrity in Public Procurement and Serious Misdemeanours:

16.1 Code of Integrity

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

- 1) **"Corrupt practice"** - making offer, solicitation or acceptance of bribe, reward or gift or any material benefit, in exchange for an unfair advantage in the procurement process or to otherwise influence the procurement process;
- 2) **"Fraudulent practice"** - any omission, or misrepresentation that may mislead or attempt to mislead so that financial or other benefit may be obtained, or an obligation avoided. This includes making false declaration or providing false information for participation in a tender process or to secure a contract or in execution of the contract;
- 3) **"Anti-competitive practice"** - any collusion, Bid rigging or anti-competitive arrangement, or any other practice coming under the purview of The Competition Act, 2002, between two or more bidders, with or without the knowledge of the Procuring Entity, that may impair the transparency, fairness, and the progress of the procurement process or to establish Bid prices at artificial, non-competitive levels;
- 4) **"Coercive practice"** - harming or threatening to harm, persons, or their property to influence their participation in the procurement process or affect the execution of a contract;
- 5) **"Conflict of interest"** –participation by a bidding firm or any of its affiliates who are either involved in the Consultancy Contract to which this procurement is linked; or if they are part of more than one Bid in the procurement; or if their personnel have relationship or financial or business transactions with any official of procuring entity who are directly or indirectly related to tender or execution process of contract; or improper use of information obtained by the (prospective) bidder from the Procuring Entity with an intent to gain unfair advantage in the procurement process or for personal gain;
- 6) **"Obstructive practice"** - materially impede procuring entity's investigation into allegations of one or more of the above mentioned prohibited practices either by deliberately destroying, falsifying, altering; or by concealing of evidence material to the investigation; or by making false statements to investigators and/ or by coercive practices mentioned above, to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or by impeding the Procuring Entity's rights of audit or access to information;

16.2 Obligations for proactive disclosures:

- 1) Procuring authorities as well as bidders, suppliers, contractors, and consultants, are obliged under this Code of Integrity to *suo-moto* proactively declare any conflict of interest (coming under the definition mentioned above - pre-existing or as and as soon as these arise at any stage) in any procurement process or execution of contract. Failure to do so shall amount to violation of this code of integrity.
- 2) Any bidder must declare, whether asked or not in a Bid-document, any previous transgressions of such code of integrity with any entity in any country during the last three years or of being debarred by any other procuring entity. Failure to do so shall amount to violation of this code of integrity.

16.3 Serious Misdemeanours

16.3.1 Serious Misdemeanours

Following shall be considered serious misdemeanours - if a bidder/ contractor:

- 1) Other than in situations of force majeure, after opening of financial bids, the Contractor withdraws from the procurement process or after being declared as successful bidder:
(a) withdraws from the process; (b) fails to enter into a procurement contract; or (c) fails to provide performance security or any other document or security required in terms of the Tender Document.
- 2) directly or through an agent violates during procurement or execution of the contract - the code of ethics mentioned in clause 16.1 of the GCC or the Integrity Pact, if applicable as per the SCC;
- 3) Violates the safety or statutory norms that result in industrial accidents leading to loss or injury to life or property or to any other legal liability to the Procuring Entity;
- 4) Violates the Clause 24 of GCC: Fall clause included in the rate contract;
- 5) Employs a government servant, who has been dismissed or removed on account of corruption or employs a non-official convicted for an offence involving corruption or abetment of such an offence, in a position where he could corrupt government servants or employs a government officer within two years of his retirement, who has had business dealings with him in an official capacity before retirement; or
- 6) Is determined by an appropriate agency of the Government, to have doubtful loyalty to the country or national security consideration.

16.4 Penalties

Without prejudice to and in addition to the rights of the Procuring Entity to other remedies as per the Bid-documents or the Contract, If the Procuring Entity concludes that a (prospective) bidder/ contractor directly or through an agent has violated this code of integrity or committed a serious misdemeanour in competing for the contract or in executing a contract, the Procuring Entity shall take appropriate measures including the following:

- 1) **if his bids are under consideration in any procurement**
 - (a) Forfeiture or encashment of Bid Security (EMD)
 - (b) calling off of any pre-contract negotiations, and;
 - (c) rejection and exclusion of the bidder from the procurement process
- 2) **if a contract has already been awarded**
 - (a) Termination of Contract for Default and availing all remedies prescribed thereunder;
 - (b) Encashment and/ or Forfeiture of any contractual security or bond relating to the procurement;
 - (c) Recovery of payments including advance payments, if any, made by the Procuring Entity along with interest thereon at the prevailing rate;
- 3) **Remedies in addition to above:**
 - (a) Debarment from participation in future procurements of the Procuring Entity for a period upto a period of two years and/ or removal from the list of registered Contractors or
 - (b) In case of anti-competitive practices, information for further processing shall be filed under a signature of the Joint Secretary level officer, with the Competition Commission of India;
 - (c) Initiate proceedings in court of law for transgression not addressable by above means.
 - (d) Initiation of suitable disciplinary or criminal proceedings against any individual or staff found responsible.

Section V: Special Conditions of Contract (SCC)

The following Special Conditions of Contract (SCC) shall apply for this purchase. The corresponding clauses of General Conditions of Contract (GCC) relating to the SCC stipulations have also been incorporated below. These Special Conditions shall modify/ substitute/ supplement the corresponding (GCC) clauses. Whenever there is any conflict between the provision in the GCC and that in the SCC, the provision contained in the SCC shall prevail.

[Clauses of GCC listed below include a possibility for variation in their provisions through SCC. There could be other clauses in SCC as deemed fit]

GCC Clause No.	Topic	Modified/ replaced by SCC Provisions
1.2, 1.3	Definitions and Abbreviations	<i>[Add additional Abbreviations if any]</i>
2.1, 2.2, 2.3	Communications and notices	<i>[Add additional communication requirements if any]</i>
3.1	Language of Contract	<i>[Add additional Language if any]</i>
3.5	Contract Documents	<i>[Add additional documents which would be part of the Contract if any] [Add additional laws, codes, rules, regulation that would be attracted in the Contract if any]</i>
4.1-3)	Governing Laws and jurisdiction	<i>[Add additional laws if any]</i>
4.2	Compliance of Labour Laws	<i>[Specifically mention if applicable]</i>
6.6	Confidentiality and Secrecy of information	<i>[Mention confidentiality or secrecy requirements, if any. If the Contract is covered by official secrets act, please prominently mark Contract and correspondence as Secret]</i>
6.7	Performance Bond/ Security	<i>[Add additional information if any]</i>
6.8	Book Examination Clause	<i>[Specifically mention if applicable]</i>
6.9	Custody and Return of the Procuring Entity's Materials/ Equipment/ Documents loaned to Contractor	<i>[Mention if any asset is agreed to be loaned and conditions for such loan – Bank Guarantee, insurance etc.]</i>
7.2	Quantity Tolerance	<i>[Mention any change in tolerance% if any]</i>
7.3	Country of Origin and Minimum Local Content	<i>[Mention additional restrictions if any]</i>
7.4	Option Clause	<i>[Mention any change in option % if any]</i>
7.6	Incidental Services	<i>[Mention incidental services required if any]</i>
8.1	Tests and Inspections	<i>[Mention any special pre-production samples or type testing is required in a private testing house, if any. Mention who shall bear the cost]</i>
9.	Packing, Transportation and Receipt	<i>[Add additional information if any, especially see 9.7.4 for perishable Stores]</i>
10.4	Part shipment allowed	<i>[Mention if part shipments or instalments are allowed]</i>
10.11	Liquidated Damages	<i>[Mention any change in LD % if any]</i>
11	Distribution of Despatch Documents	<i>[Add additional documents if any]</i>
12	Warranty/ Guarantee	<i>[Mention any change in periods if any]</i>

13.1.4	Price Variations	<i>[Mention any price adjustment if any]</i>
13.1.3	Fall Clause	<i>[Mention specifically if Fall clause is applicable]</i>
13.2	Taxes and Duties	<i>[Mention any instruction regarding Taxes and Duties if any]</i>
13.3.1, 13.3.2	Terms and Mode of payments	<i>[Mention any further information if any]</i>
13.3.3	Payment Conditions	<i>[Mention any further stipulations if any]</i>
13.3.4	Advance Payment	<i>[Mention specifically if applicable]</i>
14.2	Excepted Matters	<i>[Mention any change in excepted matters if any]</i>
14.5	Arbitration Agreement	<i>[Mention any change in Arbitration parameters if any]</i>
15.1.4-5)	Risk and Cost Purchase	<i>[Mention specifically if not applicable]</i>
16.3	Integrity Pact	<i>[Mention specifically if applicable]</i>

Section VI: Schedule of Requirements

Tender Title										
Tender Reference No										
Schedule	EMD (in Rs.)	Item Sr	HSN Code	Minimum Local Content (%)	Description of Stores	Quantity	Units of Quantity	Delivery Requirements	Destination, State	GSTIN
1	2	3	4	5	6	7	8	9	10	11
Schedule-1		1.1								
		1.2								
		1.3								
Schedule-2		2.1								
		2.2								
		2.3								

Notes: [Add notes regarding logistics etc. - mode of transportation, terms of delivery, insurance – if not mentioned in AITB]

(1) Preferred Transportation: [inter-alia Transportation by Road, Rail, Sea or Air]

(2) Required Delivery Schedule:

(3) Required Terms of Delivery: [inter-alia Free at Destination/ Delivered at Place DAP], Destination, Ultimate Consignee

(4) Scope of Supply, including any Accessories, Mandatory Spares, optional spares etc

(5) Incidental services: Installation, Commissioning, Training, or any other incidental requirements

Section VII: Technical Specifications and Quality Assurance

Schedule-1:

.....
.....

Schedule- 2:

.....
.....

[Technical Specification shall clearly indicate compliance required by Central and State Pollution Control Boards, including transportation and handling of hazardous materials/ packaging. Any Energy saving requirements e.g., BEE star classification shall also be included.]

Note: Bidder's attention is drawn to ITB clause 8.2.1 and AITB.

Prospective bidders shall comply with the feature specifications (including Warrantee Obligations) and submit in Appendix 3: 'Confirmation/ Deviation From Technical Specifications And Quality Assurance' with their Technical Bid. The bidder is to provide the required details, information, confirmations, etc accordingly, failing which its tender is liable to be ignored.

Section VIII: Qualification Criteria

(To be submitted as part of Technical Bid)

[Procuring entity should specifically mention, if any and to what extent dispensation shall be permissible for Start-ups under ITB 3.8.2-2) and to MII-JVs under ITB 3.6.8-2)

Bidder to furnish stipulated documents in support of fulfilment of qualifying criteria. Non-submission or incomplete submission of documents may lead to rejection of offer.

Appendix 1: Bid Form– Techno-Commercial Bid

(Ref Clause 1.7 and 8.2 of ITB)

(To be submitted as part of Technical Bid, along with supporting documents, if any)

(on Bidder's Letterhead)

(Strike out alternative phrases not relevant to you)

Bidder's Name _____

[Address and Contact Details]

Bidder's Reference No. _____ Date.....

To

The President of India, through

Head of Procurement

Procuring Organisation

[Complete address of the Procuring Entity]

Ref: Your Tender Document No. Tend No./xxxx; Tender Title: GOODS

1) **Credentials:**

We hereby certify that we are firm of -

Or

We are agents of our Indian/ foreign principals who are (Annexe 4: Declaration by Agents/ Associates of Foreign Principals/OEMs is enclosed) -

Or

We are authorised dealer offering goods manufactured by our Indian/ foreign OEMs who are (Annexe 3: OEM's Authorization and in case of foreign principals, Annexe 4: Declaration by Agents/ Associates of Foreign Principals/ OEMs is enclosed) -

- proven, established and reputed manufacturers M/ s..... with factories at which are fitted with modern equipment and where the production methods, quality control and testing of all materials and parts manufactured or used by us are open to inspection by the representative of the Procuring Entity.

Our company law and taxation regulatory requirements as well as authorization for signatories and related documents are submitted in Annexe 1 of this Bid Form.

And

Our foreign principal/ OEMs law and taxation regulatory requirements as well as authorization for signatories and related documents are submitted in Annexe 3 of this Bid Form.

2) **Our eligibility to participate**

We comply with all the eligibility criteria of this tender and the relevant declarations are made along with documents in Annexe 2 of this Bid-form.

3) **Our Bid to supply:**

We offer to supply the subject Stores within Delivery Schedules as specified in the Schedule of Requirements and in conformity with the Tender Document at the price as mentioned separately in Financial Bid (Price Schedule).

4) **Affirmation to terms and conditions of the Bid Document:**

We confirm that we have understood the Instructions to Bidders and Additional Instructions to Bidders (ITB and AITB), and also the General and Special Conditions of Contract (GCC and SCC) attached to the tender and have thoroughly examined specifications/ Quality Assurance Requirements and other stipulations in Section VII – Technical Specifications and Quality Assurance; and are thoroughly aware of the nature of stores required and our offer is to supply stores strictly in accordance with the Stores and according to the terms of the tender. Notwithstanding the fact that we are not signing and submitting some of the sections of the Tender Document, We hereby confirm unconditional acceptance and compliance to abide by all the techno-commercial and financial terms and conditions as mentioned in Tender without any reservations or deviations whatsoever, except

those submitted by us in Appendix 3, 4, 5 and 8. We also confirm acceptance of Arbitration Agreement as given in Tender Document.

5) Abiding by the Bid Validity

We agree to keep our Bid valid for acceptance for a period upto -----, as required in the ITB clause 8.3, read with modification, if any in Section-III: “Annexure to Instructions to Bidders” or for subsequently extended period, if any, agreed to by us. We also accordingly confirm to abide by this Bid upto the aforesaid period and this Bid may be accepted any time before the expiry of the aforesaid period.

6) Performance Guarantee and Signing the Contract

We further confirm that, if our Bid is accepted, we shall provide you with a performance security of required amount in an acceptable form in terms of GCC clause 6.7, read with modification, if any, in Section V – “Special Conditions of Contract”, for due performance of the contract. We are fully aware of the fact that in the event of our failure to deposit the required security amount and failure to execute the agreement, our earnest money deposited with the Procuring Entity shall be forfeited besides other penalties under the conditions of this Tender Document.

7) Non-tempering of Downloaded Bid Document and Uploaded Scanned Copies

We confirm that in case of downloaded Tender Document, we have not changed/ edited its contents. We realise that in case any such change is noticed at any stage including after the award of contract, we shall be liable to action under clause 8.5 of the ITB. We also confirm that scanned copies of documents/ affidavits/ undertakings, uploaded along with our Technical Bid are valid, true, and correct to the best of our knowledge and belief. In case any dispute, if arises, related to the validity and truthfulness of any of such documents/ affidavits/ undertakings, we shall be fully responsible and liable for the same. Upon acceptance of our Financial Bid, we undertake to submit for scrutiny, on demand by the Procuring Entity, originals, and self-certified copies of all such certificates, documents, affidavits/ undertakings.

8) A Binding Contract:

We further confirm that, if our Bid is accepted, all such terms and conditions shall continue to be acceptable and applicable to the resultant contract, even though some these documents may not be included in the Contract Documents signed by us. We do hereby undertake that, until a formal Contract is signed, or notification of award is issued, this bid, together with your written acceptance thereof, shall constitute a binding contract between us.

9) Signatories:

We confirm that we are duly authorized to submit this Bid on behalf of the bidder and to make commitments on behalf of the bidder in all respects related to this tender, and supporting documents are submitted in Annexe 1 to this Bid-Form.

10) Rights of the Procuring Entity to Reject Bid(s):

We further understand that you are not bound to accept the lowest or any Bid you may receive against your above-referred Tender Document.

.....
(Signature with date)

.....
(Name and designation)

Duly authorized to sign Bid for and on behalf of
[name & address of the Bidder and seal of company]

Annexe 1 to Bid Form: Bidder Information

(Ref Clause 1.7 and 8.2 of ITB)

(To be submitted as part of Technical Bid)

(on Company Letterhead)

(Along with supporting documents, if any)

Bidder's Name _____

[Address and Contact Details]

Bidder's Reference No. _____ Date.....

Tender Document No. Tend No./xxxx; Tender Title: GOODS

The Bidder shall fill in this Form in accordance with the instructions indicated below. No alterations to its format shall be permitted and no substitutions shall be accepted. Wherever necessary and applicable, the Bidder shall enclose certified copy as documentary proof/ evidence to substantiate the corresponding statement.

In case a bidder furnishes a wrong or misleading answer against any of the under mentioned question/ issues, its tender shall be liable to be ignored.

1) **Bidder/ Contractor particulars:**

- (a) Name of the Company:.....
- (b) Corporate Identity No. (CIN):
- (c) Registration if any with 'The Principal':
- (d) Complete Postal Address:
- (e) Pin code/ ZIP code:
- (f) Telephone nos. (with country/ area codes):
- (g) Fax No.: (with country/ area codes):
- (h) Cell phone Nos.: (with country/ area codes):
- (i) Contact persons/ Designation:
- (j) Email IDs:

Documents to be submitted: Self-certified copy of registration certificate – in case of partnership firm – Deed of Partnership; in case of Company – Notarized and certified copy of its Registration; and in case of Society – its Byelaws and registration certificate of firm.

2) **Taxation Registrations:**

- (a) PAN number:
 - (b) Type of GST Registration (Registered, Unregistered, Composition, SEZ, RCM etc.):
 - (c) GSTIN number: in Consignor and Consignee States
 - (d) Registered/ Certified Works/ Factory where the Stores would be mainly manufactured and Place of Consignor for GST Purpose:
 - (e) Contact Names, Nos. & email IDs for GST matters (Please mention primary and secondary contacts):
- We solemnly declare that our GST rating on the GST portal Govt. official website is not negative/ blacklisted

Documents to be submitted: Self attested Copies of PAN card and GSTIN Registration

3) **Authorization of Person(s) signing the Bid on behalf of the Bidder**

- (a) Full Name: _____
- (b) Designation: _____
- (c) Signing as:

A sole proprietorship firm and the person signing the bid document is the sole proprietor/ constituted attorney of sole proprietor,

☐ A partnership firm, and the person signing the bid document is a partner of the firm and he has authority to refer to arbitration disputes concerning the business of the partnership by virtue of the partnership agreement/by virtue of general power of attorney,

☐ A company and the person signing the bid document is the constituted attorney by a resolution passed by the Board of Directors or in pursuance of the Authority conferred by Memorandum of Association.

Documents to be submitted: Original of Power of Attorney issued in favour of Authorized Person by the Bidder on Non-Judicial Stamp Paper of Rs.1,000/- (Rupees one thousand only), or Authority Letter on Non-Judicial Stamp Paper of Rs.1,000/- (Rupees one thousand only)

4) **Bidder's Authorized Representative Information**

- (a) Name: [insert Authorized Representative's name]
- (b) Address: [insert Authorized Representative's Address]
- (c) Telephone/ Fax numbers: [insert Authorized Representative's telephone/ fax numbers]
- (d) Email Address: [insert Authorized Representative's email address]

(Signature with date)

.....

(Name and designation)

Duly authorized to sign Bid for and on behalf of

[name & address of the Bidder and seal of company]

DA: 1.

- 1) Registration Certificate etc. as per 1 above.
- 2) PAN card and GST Registration as per 2 above
- 3) Original power of Attorney etc. as per 3 above

.....

Annexe 2 to Bid Form: Eligibility Declarations

(Ref Clause 1.7 and 8.2 of ITB)

(To be submitted as part of Technical Bid)

(On Company Letter head)

(Along with supporting documents, if any)

Tender Document No. Tend No./xxxx; Tender Title: GOODS

Bidder's Name _____

[Address and Contact Details]

Bidder's Reference No. _____ Date.....

[Statements and Documents to Performance Statement may be mentioned/ attached here. The list below is indicative only, you may attach more documents as required to conform your eligibility criteria.]

Eligibility Declarations

(Please cross out any declaration not applicable to the bidder)

ITB 3.3 Eligible Bidders

we hereby confirm that we are comply with all the stipulation of this clause and declare as under:

- 1) Legal Entity of Bidder: _____
- 2) OEM/ Manufacturer/ Dealership Status: _____
- 3) we are/ are not a JV _____
- 4) we declare that in accordance with ITB clause 3.2 -4) we are not insolvent, in receivership, bankrupt or being wound up, not have our affairs administered by a court or a judicial officer, not have our business activities suspended and are not the subject of legal proceedings for any of the foregoing reasons;
- 5) We, solemnly declare, in accordance with ITB clause 3.2 -5) that neither we nor any of our affiliates or subsidiaries – including subcontractors or Contractors for any part of the contract – do not stand declared ineligible/ blacklisted/ banned/ debarred by any Government Agency anywhere in the world, for participating in its Bids, under that country's laws or official regulations.
- 6) We, solemnly declare, in accordance with ITB clause 3.2 -6) that neither we and none of our proprietor, employee, partners or representatives, directors and officers have been convicted of any offence by a court under the Prevention of Corruption Act, 1988 or under the Indian Penal Code or any other law for the time being in force for offences involving moral turpitude in business dealings within a period of three years preceding the commencement of the procurement process;
- 7) We certify that we have no conflict of interest in accordance with ITB clause 3.3, and the prices quoted against the Tender are competitive and without adopting any unfair/ unethical means including cartelization.
- 8) we certify that we fulfil any other additional eligibility condition, if any, as are prescribed, in AITB or elsewhere in Tender Document.
- 9) **Restrictions on procurement from bidders from a country or countries, or a class of countries under Rule 144 (xi) of the General Financial Rules 2017**

"We have read the clause regarding restrictions on procurement from a bidder of a country which shares a land border with India; and solemnly certify that we are not from such a country or, if from such a country, we are registered with the Competent Authority (copy enclosed). We hereby certify that we fulfil all requirements in this regard and are eligible to be considered."

And;

"We have read the clause regarding restrictions on procurement from a bidder of a country which shares a land border with India and on sub-contracting to contractors from such countries; and solemnly certify that we are not from such a country or, if

from such a country, we are registered with the Competent Authority (copy enclosed) and we shall not subcontract any work to a contractor from such countries unless such contractor is registered with the Competent Authority. We hereby certify that we fulfil all requirements in this regard and are eligible to be considered."

10) MSME Status:

Having read and understood the Public Procurement Policy for Micro and Small Enterprises (MSEs) Order, 2012 (as amended and revised till date), and solemnly declare the following:

- (a) Company/ Partnership Firm/ Proprietary Concern/ Society/ Trust/ NGO/ Others (Please Specify):.....
- (b) Micro/ Small/ Medium Enterprise/ SSI/ Govt. Deptt./ PSU/ Others:.....
- (c) Name of MSME Registering Body (NSIC/ DIC/ KVIC/ KVIB etc.):.....
- (d) MSME Registration no. (with copy of registration):.....
- (e) Udyog Aadhaar Memorandum no.....
- (f) Whether Proprietor/ Partner belongs to SC/ ST or Women category. (Please specify names and percentage of shares held by SC/ ST Partners):.....

11) Start-up Status

we confirm that we are/ are not a Start-up entity as per the definition of Department of Promotion of Industrial and Internal Trade – DPIIT.

12) Make in India Status:

Having read and understood the Public Procurement (Preference to Make in India PPP - MII) Order, 2017 (as amended and revised till date) and related notifications from the relevant Nodal Ministry/ Department, and solemnly declare the following:

(a) Self-Certification for category of suppliers:

(provide a certificate from statutory auditors/ cost accountant in case of Tenders above Rs 10 Crore for Class-I or Class-II Local Suppliers)

- Class Local Supplier/
- ClassII Local Supplier/
- NonLocal Supplier.

(b) We also declare that

- There is no country whose bidders have been notified as ineligible on reciprocal basis under this order for offered product, or
- We do not belong to any Country whose bidders are notified as ineligible on reciprocal basis under this order

13) Self-Declaration by Indian Agents of Foreign Principals

- (a) Self-attested documentary evidence about their identity (PAN, Aadhar Card, GSTIN registration, proof of address etc), business details (ownership pattern and documents, type of firm, year of establishment, sister concerns etc) to establish that they are a bonafide business as per Indian Laws – are submitted as part of Annexe 1 above.
- (b) Agency Agreement covering the precise relationship, services to be rendered, mutual interests in business - generally and/ or specifically for the tender; any payment, which the agent or associate receives in India or abroad from the foreign OEM/ principal, whether as commission or as a general retainer fee shall be submitted with Appendix 8: Bid Form – Financial Bid.

14) Declaration by India Agents/ Bidders associating with Foreign Principals

- (a) The name and address of the foreign principals, if any, indicating their nationality as well as their status, i.e., whether manufacturer or agents of manufacturer holding the Letter of Authority of the Principal specifically authorizing the agent to make an offer in India in response to tender either directly or in association with the agents/ Bidders is shown in Annexe 3 herewith.

- (b) The amount of commission/ remuneration included in the price (s) quoted by the Bidder for agents or associated bidder is detailed in Appendix 8: Bid Form – Financial Bid
- (c) Confirmation of the foreign principals of the Bidder that the commission/ remuneration, if any, reserved for the Bidder in the quoted price(s), shall be paid by the Procuring Entity in India in equivalent Indian Rupees on satisfactory completion of the Project or supplies of Stores and Spares in case of operation items is given in Annexe 3 below.

15) Penalties for false or misleading declarations:

we hereby confirm that the particulars given above are factually correct and nothing is concealed and also undertake to advise any future changes to the above details. We understand that any wrong or misleading self-declaration by us would be violation of Code of Integrity and would attract penalties as mentioned in this tender document, including debarment.

.....
(Signature with date)

.....
(Name and designation)
Duly authorized to sign Bid for and on behalf of

.....
.....
[name & address of the Bidder and seal of company]
DA: As in Sr 9 to 14 above, as applicable

Annexe 3 to Bid Form: OEM’s Authorization

(Ref Clause 1.7 and 8.2 of ITB)
 (On Company Letter Head)
 (Along with supporting documents, if any)
 (To be submitted as part of Technical Bid)
 OEM’s Name _____
 [Address and Contact Details]
 OEM’s Reference No. _____ Date.....
 The President of India, through
 Head of Procurement
 Procuring Organisation
 [Complete address of the Procuring Entity]

Dear Sirs,

Ref. Your Tender Document No. Tend No./xxxx; Tender Title: GOODS

- 1) We,, who are proven and reputable manufacturers of (*name and description of the Stores offered in the Bid*) having factories at....., hereby authorise Messrs..... (*name and address of the authorised dealer*) to submit a Bid, process the same further and enter into a contract with you against above referred Tender Document for supply of above Stores manufactured by us.
- 2) We further confirm that no Contractor or firm or individual other than Messrs. (*name and address of the above authorised dealer*) is authorized (registration number with us....., dated/ since.....) for this purpose.
- 3) We commit ourselves to extend our full warranty, as applicable as per clause 12 of the General Conditions of Contract read with modification, if any, in the Special Conditions of Contract for the Stores and services offered for supply by the above firm against this Tender Document.
- 4) Our details are as under.
 - (a) Name of the Company:.....
 - (b) Complete Postal Address:
 - (c) Pin code/ ZIP code:
 - (d) Telephone nos. (with country/ area codes):
 - (e) Fax No.: (with country/ area codes):
 - (f) Cell phone Nos.: (with country/ area codes):
 - (g) Contact persons/ Designation:
 - (h) Email IDs:

We enclose herewith:

- 1) Self-certified copy of registration certificate – in case of partnership firm – Deed of Partnership; in case of Company – Notarized and certified copy of its Registration; and in case of Society – its Byelaws and registration certificate.
- 2) Original of Power of Attorney or Authority Letter issued in favour of Authorized Person signing this letter.

Yours faithfully,

.....
.....

[signature with date, name, and designation]

for and on behalf of Messrs.....

[name & address of the OEM and seal of company]

DA: 1. Registration Certificate etc 2. Power of Attorney etc.

Annexe 4 to Bid Form: Declaration by Agents/ Associates of Foreign Principals/OEMs

(Ref Clause 3.4 of ITB)

(On Company Letter Head)

(Along with supporting documents, if any)

(To be submitted as part of Technical Bid)

Agent's Name _____

[Address and Contact Details]

Principal's Reference No. _____ Date.....

The President of India, through

Head of Procurement

Procuring Organisation

[Complete address of the Procuring Entity]

Dear Sirs,

Ref. Your Tender Document No. Tend No./xxxx; Tender Title: GOODS

- 1) We,, are a bonafide business as per Indian Laws. We have been retained as agent/ associates by our principals/OEM, Messrs..... (*name and address of the principal*) to associate with them in participation in this Contract.
- 2) Agency/ dealership agreement with principals/OEM containing details including payments as per clause 3.4.1-2) is enclosed with Appendix 8: Bid Form – Financial Bid.
- 3) We understand that any failure or non-disclosures as per that clause may render our/ principal's bid as unresponsive, beside any further action under violation of Code of Ethics.
- 4) The required details as per clause 3.4.1 of ITB are as follows.
 - (a) Name of the Agent:.....
 - (b) Documents regarding ownership pattern: Self-certified copy of registration certificate – in case of partnership firm – Deed of Partnership; in case of Company – Notarized and certified copy of its Registration; and in case of Society – its Byelaws and registration certificate of firm.
 - (c) Year of establishment.....
 - (d) Sister Concerns.....
 - (e) Corporate Identity No. (CIN):
 - (f) Aadhar Card of Owner/ CEO/ Partner
 - (g) PAN number:
 - (h) Complete Postal Address:
 - (i) Pin code/ ZIP code:
 - (j) Telephone nos. (with country/ area codes):
 - (k) Fax No.: (with country/ area codes):
 - (l) Cell phone Nos.: (with country/ area codes):
 - (m) Contact persons/ Designation:
 - (n) Email IDs:
 - (o) Type of GST Registration (Registered, Unregistered, Composition, SEZ, RCM etc.):
 - (p) GSTIN number: in Consignor and Consignee States
 - (q) Registered office from where agency services would be mainly provided for GST Purpose:
 - (r) Contact Names, Nos. & email IDs for GST matters (Please mention primary and secondary contacts):
- 5) Details required under clause 3.4.2 regarding the principal/ OEM are given below.
 - (a) Name of the Company:.....

- (b) Nationality/ Country of operation/ incorporation.....
 - (c) Status:
 - (i) manufacturer or
 - (ii) agents of manufacturer holding the Letter of Authority of the Principal specifically authorizing the agent to make an offer in India in response to tender either directly or through the agents/ representatives
 - (d) Complete Postal Address:
 - (e) Telephone nos. (with country/ area codes):
 - (f) Fax No.: (with country/ area codes):
 - (g) Cell phone Nos.: (with country/ area codes):
 - (h) Contact persons/ Designation:
 - (i) Email IDs:
- 6) Our agreement with principal/ OEM in line with clause 3.4.1-2) shall be enclosed with Appendix 8: Bid-Form – Financial Bid, duly indicating any payments.
 - 7) In accordance with clause 3.4.2-3) we are authorized to confirm on behalf of our principals that that the commission/ remuneration, if any, reserved for us in the quoted price(s), shall be paid by the Procuring Entity in India in equivalent Indian Rupees on satisfactory completion of the Project or supplies of Stores and Spares in case of operation items.
 - 8) We enclose herewith:
 - 1) Self-certified copy of registration certificate – in case of partnership firm – Deed of Partnership; in case of Company – Notarized and certified copy of its Registration; and in case of Society – its Byelaws and registration certificate.
 - 2) Original of Power of Attorney or Authority Letter issued in favour of Authorized Person signing this letter.

Yours faithfully,

.....
.....

[signature with date, name, and designation]

for and on behalf of Messrs.....

[name & address of the OEM and seal of company]

DA: 1. Registration Certificate etc 2. Power of Attorney etc.

Appendix 2: Integrity Pact

(If specified in TIS, ref Claus 8.2.1 of ITB)

(To be signed on Plain Paper)

(To be submitted as part of Technical Bid)

Integrity Pact for Tender Document No. Tend No./xxxx; Tender Title: GOODS

This Agreement (hereinafter called the Integrity Pact) is made on ____ day of the month of ____ 202__ at _____, India

BETWEEN

Procuring Organisation, ----- through Head of Procuring Organisation, for and on behalf of President of India (hereinafter called the "The Principal", which expression shall mean and include, unless the context otherwise requires, his successors in office and assigns) of the First Part

AND

M/ s. _____ (hereinafter called the "The Bidder/ Contractor" which expression shall mean and include, unless the context otherwise requires, his successors and permitted assigns) of the Second Part.

PREAMBLE

'The Principal' intends to award, under laid down organizational procedures, contract/ s for _____, 'The Principal' values full compliance with all relevant laws of the land, rules, regulations, economic use of resources and of fairness/ transparency in its relations with its Bidder(s) and/ or Contractor(s).

In order to achieve these goals, the Principal shall appoint Independent External Monitors (IEMs) who shall monitor the tender process and the execution of the contract for compliance with the principles mentioned above.

Section 1 - Commitments of the 'The Principal'

(1) 'The Principal' commits itself to take all measures necessary to prevent corruption and to observe the following principles: -

a. No employee of the Principal, personally or through family members, shall in connection with the tender for , or the execution of a contract, demand, take a promise for or accept, for self or third person, any material or immaterial benefit which the person is not legally entitled to.

b. The Principal shall, during the tender process treat all Bidder(s) with equity and reason. The Principal shall in particular, before and during the tender process, provide to all Bidder(s) the same information and shall not provide to any Bidder(s) confidential/ additional information through which the Bidder(s) could obtain an advantage in relation to the tender process or the contract execution.

c. The Principal shall exclude from the process all known prejudiced persons.

(2) If the Principal obtains information on the conduct of any of its employees which is a criminal offence under the IPC/ PC Act, or if there be a substantive suspicion in this regard, the Principal shall inform the Chief Vigilance Officer and in addition can initiate disciplinary actions.

Section 2 - Commitments of the 'Bidder/ Contractor'

- (1) The 'Bidder/ Contractor' commit themselves to take all measures necessary to prevent corruption. The 'Bidder/ Contractor' commit themselves to observe the following principles during participation in the tender process and during the contract execution.
- a. The 'Bidder/ Contractor' shall not, directly or through any other person or firm, offer, promise, or give to any of the Principal's employees involved in the tender process or the execution of the contract or to any third person any material or other benefit which he/ she is not legally entitled to, in order to obtain in exchange any advantage of any kind whatsoever during the tender process or during the execution of the contract.
 - b. The 'Bidder/ Contractor' shall not enter with other Bidders into any undisclosed agreement or understanding, whether formal or informal. This applies in particular to prices, specifications, certifications, subsidiary contracts, submission or non-submission of bids or any other actions to restrict competitiveness or to introduce cartelisation in the bidding process.
 - c. The 'Bidder/ Contractor' shall not commit any offence under the relevant IPC/ PC Act; further the 'Bidder/ Contractor' shall not use improperly, for purposes of competition or personal gain, or pass on to others, any information or document provided by the Principal as part of the business relationship, regarding plans, technical proposals, and business details, including information contained or transmitted electronically.
 - d. The 'Bidder/ Contractor' of foreign origin shall disclose the name and address of the Agents/ representatives in India, if any. Similarly, the Bidder/ Contractors of Indian Nationality shall furnish the name and address of the foreign principals, if any. Further details as mentioned in the "Guidelines on Indian Agents of Foreign Suppliers" shall be disclosed by the Bidder/ Contractor. Further, as mentioned in the Guidelines all the payments made to the Indian agent/ representative have to be in Indian Rupees only. Copy of the "Guidelines on Indian Agents of Foreign Suppliers" is placed at Annexe to this agreement.
 - e. The 'Bidder/ Contractor' shall, when presenting their bid, disclose any and all payments made, is committed to, or intends to make to agents, brokers, or any other intermediaries in connection with the award of the contract.
 - f. Bidder/ Contractor who have signed the Integrity Pact shall not approach the Courts while representing the matter to IEMs and shall wait for their decision in the matter.
- (2) The 'Bidder/ Contractor' shall not instigate third persons to commit offences outlined above or be an accessory to such offences.

Section 3 - Disqualification from tender process and exclusion from future contracts

If the 'Bidder/ Contractor', before award or during execution has committed a transgression through a violation of Section 2, above or in any other form such as to put their reliability or credibility in question, the Principal is entitled to disqualify the 'Bidder/ Contractor' from the tender process or take action as per the procedure mentioned in the "Guidelines on Banning of business dealings".

Section 4 - Compensation for Damages

- (1) If the Principal has disqualified the 'Bidder/ Contractor' from the tender process prior to the award according to Section 3, the Principal is entitled to demand and recover from 'Bidder/ Contractor' the damages equivalent to Earnest Money Deposit/ Bid Security.
- (2) If the Principal has terminated the contract according to Section 3, or if the Principal is entitled to terminate the contract according to Section 3, the Principal shall be entitled to demand and recover from the Contractor liquidated damages of the Contract value or the amount equivalent to Performance Bank Guarantee.

Section 5 - Previous transgression

- (1) The Bidder declares that no previous transgressions occurred in the last three years with any other Company in any country conforming to the anti-corruption approach or with any Public Sector Enterprise in India that could justify his exclusion from the tender process.
- (2) If the Bidder makes incorrect statement on this subject, he can be disqualified from the tender process or action can be taken as per the procedure mentioned in "Guidelines on Banning of business dealings".

Section 6 - Equal treatment of all Bidders/ Contractors/ Subcontractors

- (1) In case of Sub-contracting, the Principal Contractor shall take the responsibility of the adoption of Integrity Pact by the Sub-contractor.
- (2) The Principal shall enter into agreements with identical conditions as this one with all Bidders and Contractors.
- (3) The Principal shall disqualify from the tender process all bidders who do not sign this Pact or violate its provisions.

Section 7 - Criminal charges against violating Bidder(s)/ Contractor(s)/ Subcontractor(s)

If the Principal obtains knowledge of conduct of a Bidder, Contractor or Subcontractor, or of an employee or a representative or an associate of a Bidder, Contractor or Subcontractor which constitutes corruption, or if the Principal has substantive suspicion in this regard, the Principal shall inform the same to the Chief Vigilance Officer.

Section 8 - Independent External Monitor

- (1) The Principal appoints competent and credible Independent External Monitor for this Pact after approval by Central Vigilance Commission. The task of the Monitor is to review independently and objectively, whether and to what extent the parties comply with the obligations under this agreement.
- (2) The Monitor is not subject to instructions by the representatives of the parties and performs his/ her functions neutrally and independently. The Monitor would have access to all Contract documents, whenever required. It shall be obligatory for him/ her to treat the information and documents of the Bidders/ Contractors as confidential. He/ she reports to Head of Procuring Organisation of Procuring Organisation.
- (3) The Bidder(s)/ Contractor(s) accepts that the Monitor has the right to access without restriction to all Project documentation of the Principal including that provided by the Contractor. The Contractor shall also grant the Monitor, upon his/ her request and demonstration of a valid interest, unrestricted and unconditional access to their project documentation. The same is applicable to Sub-contractors.
- (4) The Monitor is under contractual obligation to treat the information and documents of the Bidder/ Contractor(s)/ Sub-contractor(s) with confidentiality. The Monitor has also signed declarations on 'Non-Disclosure of Confidential Information' and of 'Absence of Conflict of Interest'. In case of any conflict of interest arising at a later date, the IEM shall inform Head of Procuring Organisation of Procuring Organisation and recuse himself/ herself from that case.
- (5) The Principal shall provide to the Monitor sufficient information about all meetings among the parties related to the Project provided such meetings could have an impact on the contractual relations between the Principal and the Contractor. The parties offer to the Monitor the option to participate in such meetings.
- (6) As soon as the Monitor notices, or believes to notice, a violation of this agreement, he/ she shall so inform the Management of the Principal and request the Management to discontinue or take corrective action, or to take other relevant action. The monitor can in this regard submit non-binding recommendations. Beyond this, the Monitor has no right to demand from the parties that they act in a specific manner, refrain from action, or tolerate action.
- (7) The Monitor shall submit a written report to Head of Procuring Organisation of Procuring Organisation within 8 to 10 weeks from the date of reference or intimation to him by the Principal and, should the occasion arise, submit proposals for correcting problematic situations.
- (8) If the Monitor has reported to Head of Procuring Organisation of Procuring Organisation, a substantiated suspicion of an offence under relevant IPC/ PC Act, and Head of Procuring Organisation of Procuring Organisation has not, within the reasonable time taken visible action to proceed against such offence or reported it to the Chief Vigilance Officer, the Monitor may also transmit this information directly to the Central Vigilance Commissioner.
- (9) The word 'Monitor' would include both singular and plural.

Section 9 - Pact Duration

This Pact begins when both parties have legally signed it. It expires for the Contractor 12 months after the last payment under the contract, and for all other Bidders 6 months after the contract has been awarded. Any violation of the same would entail disqualification of the bidders and exclusion from future business dealings.

If any claim is made/ lodged during this time, the same shall be binding and continue to be valid despite the lapse of this pact as specified above, unless it is discharged/ determined by Head of Procuring Organisation of Procuring Organisation.

Section 10 - Other provisions

- (1) This agreement is subject to Indian Law. Place of performance and jurisdiction is the Registered Office of the Principal, i.e., New Delhi.
- (2) Changes and supplements as well as termination notices need to be made in writing. Side agreements have not been made.
- (3) If the Contractor is a partnership or a consortium, this agreement must be signed by all partners or consortium members.
- (4) Should one or several provisions of this agreement turn out to be invalid, the remainder of this agreement remains valid. In this case, the parties shall strive to come to an agreement to their original intentions.
- (5) Issues like Warranty/ Guarantee etc. shall be outside the purview of IEMs.

(6) In the event of any contradiction between the Integrity Pact and its Annexure, the Clause in the Integrity Pact shall prevail.

For and on behalf of the Principal

(Name of the Officer and Designation)

(Office Seal)

For and on behalf of 'Bidder/ Contractor'

(Name of the Officer and Designation)

(Office Seal)

For and on Behalf of the Principal

Place

Date

Witness 1:

(Name & Address)

Witness 2:

(Name & Address)

⇔

Annexe to Integrity Pact Guidelines for Indian Agents of Foreign Suppliers

1.0 There shall be compulsory registration of agents for all Global (Open) Tender and Limited Tender. An agent who is not registered with 'The Principal' shall apply for registration in the registration form with appropriate unit.

1.1 Registered agents shall file an authenticated Photostat copy duly attested by a Notary Public/ Original certificate of the Principal confirming the agency agreement. It should cover - the precise relationship, services to be rendered, mutual interests in business - generally and/ or specifically for the tender. Any commission/ remuneration/ salary/ retainership, which the agent or associate receives in India or abroad from the OEM, whether should be brought on record in the Agreement and be made explicit.

1.2 Wherever the Indian representatives have communicated on behalf of their principals and the foreign parties have stated that they are not paying any commission to the Indian agents, and the Indian representative is working on the basis of salary or as retainer, a written declaration to this effect should be submitted by the party (i.e., Principal) before finalizing the order.

2.0 Disclosure of particulars of agents/ representatives in India, if any.

2.1 Bidders of Foreign nationality shall furnish the following details in their offers:

2.1.1 The 'Bidder/ Contractor' of foreign origin shall disclose the name and address of the agents/ representatives in India if any and the extent of authorization and authority given to commit the Principals. In case the agent/ representative be a foreign Company, it shall be confirmed whether it is existing Company and details of the same shall be furnished.

2.1.2 The amount of commission/ remuneration included in the quoted price(s) for such agents/ representatives in India.

2.1.3 Confirmation of the Bidder that the commission/ remuneration, if any, payable to his agents/ representatives in India, may be paid by 'The Principal' in Indian Rupees only.

2.2 Bidders of Indian Nationality shall furnish the following details in their offers:

2.2.1 The 'Bidder/ Contractor' of Indian Nationality shall furnish the name and address of the foreign principals, if any, indicating their nationality as well as their status, i.e., whether manufacturer or agents of manufacturer holding the Letter of Authority of the Principal specifically authorizing the agent to make an offer in India in response to tender either directly or through the agents/ representatives.

2.2.2 The amount of commission/ remuneration included in the price (s) quoted by the Bidder for himself.

2.2.3 Confirmation of the foreign principals of the Bidder that the commission/ remuneration, if any, reserved for the Bidder in the quoted price(s), may be paid by 'The Principal' in India in equivalent Indian Rupees on satisfactory completion of the Project or supplies of Stores and Spares in case of operation items.

2.3 In either case, in the event of contract materializing, the terms of payment shall provide for payment of the commission/ remuneration, if any payable to the agents/ representatives in India in Indian Rupees on expiry of 90 days after the discharge of the obligations under the contract.

2.4 Failure to furnish correct and detailed information as called for in clauses above shall render the concerned tender liable to rejection or in the event of a contract materializing, the same liable to termination by 'The Principal'. Besides this there would be a penalty of banning business dealings with 'The Principal' or damage or payment of a named sum.

Appendix 3: Confirmation/ Deviation from Technical Specifications and Quality Assurance

(Ref Clause 4.1 and 8.2 of ITB)

(To be submitted as part of Technical Bid)

(Along with supporting documents, if any)

(on Company Letterhead)

Tender Document No. Tend No./xxxx; Tender Title: GOODS

Bidder's Name _____

[Address and Contact Details]

Bidder's Reference No. _____ Date.....

Bidders shall comply with the feature specifications (including Warrantee Obligations) and submit a clause by clause in this appendix, failing which its Bid is liable to be ignored. If stores were tested to any standard specification, copies of original test certificates should be submitted. Bidder may also submit relevant documents like technical data, literature, drawings, and other documents.

SI. No.	Ref of Technical Specification and Quality Assurance Clause		Subject	Confirmation/ Deviation/ Exception	Justification/ Reason
	Section	Clause/ Clause			

We hereby agree to fully comply with, abide by, and accept without variation, deviation, or reservation all Technical Specifications, Quality Assurance and Warranty requirements except for deviations/ exceptions mentioned above and any contrary terms and conditions if mentioned in our Bid (Un-priced as well as Priced Part), shall not be recognized, and shall be treated as null and void. Any exceptions/ deviations brought out elsewhere in the Bid shall not be construed as valid.

.....
(Signature with date)

.....
(Name and designation)

Duly authorized to sign Bid for and on behalf of

.....
[name & address of the Bidder and seal of company]

DA: Relevant documents like technical data, literature, drawings, and other documents

Appendix4: Confirmation/ Deviation fromQualification Criteria

(Ref Clause 8.2 of ITB)

(To be submitted as part of Technical Bid)

(Along with supporting documents, if any)

(on Company Letterhead)

Tender Document No. Tend No./xxxx; Tender Title: GOODS

Bidder's Name _____

[Address and Contact Details]

Bidder's Reference No. _____ Date.....

[Statements and Documents to confirm conformity to Qualification Criteriamay be mentioned/ attached here. The list below is indicative only, you may attach more documents as required to conform your qualification criteria.]

- 1) Location of the manufacturing Factory
- 2) Details of Plant and Machinery executed and function in each department (Monographs & description pamphlets) be supplied, if available.
- 3) Details of arrangement for quality control of products such as laboratory etc.
- 4) Details of Technical Supervisory staff-in-charge of production and quality control.
 - (a) Skilled labour employed
 - (b) Unskilled labour employed
 - (c) Maximum number of workers (skilled & unskilled) employed on any day during the 18 months preceding the date of application.
- 5) Installed production capacity of item(s) quoted for, with the existing plant and machinery.
 - (a) The installed monthly production capacity for----- and the type of---
 - (b) What portion of the production capacity shall be reserved for this contract? This should be indicated clearly in terms of number of items of stores per month.
 - (c) average monthly production of ----- during the last 5 years on single shift basis
 - (d) Existing order on hand for -----
- 6) Have you supplied the stores tendered for or other identical items in the past? If so, details of supplies in the last five years may be furnished in Annexe.
- 7) Details relating to Section VIII: Qualification Criteria.....

8) Documents Attached supporting the compliance to qualification criteria:

Sr	Document Attached, duly filled, signed, and copies self-attested
1	
2	
3	

.....
(Signature with date)

.....
(Name and designation)

Duly authorized to sign Bid for and on behalf of

.....
[name & address of the Bidder and seal of company]

DA: As above if any

Annexe to Appendix 4: Performance Statement

Statement of Supplies During Last Five Years and Current Outstanding Orders

(Ref Clause 8.2 of ITB)

(To be submitted as part of Technical Bid)

(on Company Letterhead)

(Along with supporting documents, if any)

Tender Document No. Tend No./xxxx; Tender Title: GOODS

Bidder's Name _____

[Address and Contact Details]

Bidder's Reference No. _____ Date.....

[Statements and Documents to Performance Statement may be mentioned/ attached here. The list below is indicative only, you may attach more documents as required to conform your qualification criteria]

Order issued by	Order No. & Date	Qty ordered	Quantity supplied	Price at which supplied	Total value of order	Delay in supplies (if any) with reasons thereof

.....
(Signature with date)

.....
(Name and designation)
Duly authorized to sign Bid for and on behalf of

.....
.....
[name & address of the Bidder and seal of company]
DA: Performance records/ contracts

Appendix5: Confirmation/ Deviation from Terms And Conditions

(Ref Clause 8.2 of ITB)

(To be submitted as part of Technical Bid)

(on Company Letterhead)

(Along with supporting documents, if any)

Bidder's Name _____

[Address and Contact Details]

Bidder's Reference No. _____

Date.....

Tender Document No. Tend No./xxxx; Tender Title: GOODS

Sl. No.	Ref of Tender Document Section, Clause		Subject	Deviation/ Exception	Justification/ Reason
	Section	Clause/ Clause			

We hereby agree to fully comply with, abide by, and accept without variation, deviation, or reservation all commercial conditions except for deviations/ exceptions mentioned above and any contrary terms and conditions if mentioned in our Bid (Un-priced as well as Priced Part), shall not be recognized, and shall be treated as null and void. Any exceptions/ deviations brought out elsewhere in the Bid shall not be construed as valid.

.....
(Signature with date)

.....
(Name and designation)
Duly authorized to sign Bid for and on behalf of

.....
.....
[name & address of the Bidder and seal of company]
DA: If any, at the option of the Bidder.

Appendix 6: Check-List for Bidders

(Ref Clause 8.2 of ITB)

(To be submitted as part of Technical Bid)

(on Company Letterhead)

Bidder's Name _____

[Address and Contact Details]

Bidder's Reference No. _____ Date.....

Tender Document No. Tend No./xxxx; Tender Title: GOODS

(This check-list is merely to help the bidders to prepare their bids, it does not over-ride or modify the requirement of the tender. Bidders must do their own due diligence also.)

Sr	Documents submitted, duly filled, signed	Yes/ No/ NA
1.	Appendix 1.- Bid Form (to serve as covering letter and declarations applicable for both the Technical Bid)	
2.	Annexe 1 to Appendix 1: Bidder Information along with Power of attorney and Registration Certificates etc.	
2.a	Self-attested copy of Registration certificates etc. of the firm.	
2.b	Self-attested copy of PAN	
2.c	Self-attested copy of GSTIN registration(s)	
2.d	Self-attested copy of Power of Attorney etc authorizing signatories on stamp paper to sign the bid	
3.	Annexe 2 to Appendix 1: Eligibility Declarations, along with supporting documents	
3.a	Self-attested copy of Registration certificate for bidders/ subcontractors from restricted neighbouring countries	
3.b	Self-attested copy of MSME registration	
3.c	Self-attested copy of Start-up registration/ status	
3.d	Self-attested copy of certificate of Local Supplier Status for Make in India policy, from auditors/ cost accountant in case of Tenders above Rs 10 Crore	
4.	If applicable, Annexe 3 to Appendix 1: OEM's Authorization Form duly filled up (if applicable to the bidder concerned)	
4.a	Self-attested copy of Registration certificates etc. of the OEM/ principal.	
4.b	Self-attested copy of Power of Attorney etc authorizing signatories on stamp paper to sign Annexe 3 of OEM/ Principal	
5.	If applicable, Annexe 4 to Appendix 1: Declaration by Agents/ Associates of Foreign Principals/ OEMs	
5.a	Self-attested copy of Registration certificates etc. of the agent/ dealer.	
5.b	Self-attested copy of Power of Attorney etc authorizing signatories on stamp paper to sign Annexe 4 of Agent Dealer	
6.	If applicable, Appendix 2: Duly signed Integrity Pact, If stipulated in AITB,.	
7.	Appendix 3: Documents Establishing Technical Suitability of Stores and Services offered as per ITB Clause 8.4	
7.a	Relevant documents like technical data, literature, drawings, and other documents, at the option of Bidder	
8.	Appendix 4: Documents Establishing the Qualification of the Bidder	
8.a	Documents Attached supporting the compliance to qualification criteria	

9.	Annexe to Appendix 4: Performance Statement	
9.a	Documents/ contracts supporting the performance statement	
10.	Appendix 5: Documents Establishing Conformity to Commercial and other Clause of the Tender Document as per ITB clause 8.4	
10.a	Documents if any at the option of Bidder, supporting deviation	
11.	Appendix 6: This Checklist	
12.	Appendix 7: Documents establishing Submission/ waiver of Earnest Money Deposit	
13.	Any other requirements, if specified in AITB; or if considered relevant by the Bidder	
14.	Appendix 8: Bid Form – Financial Bid. As part of Financial Bid	
14.a	If applicable, Agency/ Dealership agreement	
15.	Price Schedule (BOQ) Excel Sheet (only sample given here, actual excel sheet to be downloaded from the Portal)	

.....
 (Signature with date)

.....
 (Name and designation)

Duly authorized to sign Bid for and on behalf of.....

[name & address of the Bidder and seal of company]

Appendix 7: Documents Relating To EMD

(Ref Clause 8.2 of ITB)

(To be submitted as part of Technical Bid)

(on Company Letterhead)

(Along with supporting documents, if any)

Tender Document No. Tend No./xxxx; Tender Title: GOODS

Bidder's Name _____

[Address and Contact Details]

Bidder's Reference No. _____ Date.....

We hereby enclose the documents relevant for compliance/ waiver of Earnest Money Deposit.

.....

(Signature with date)

.....

(Name and designation)

Duly authorized to sign Bid for and on behalf of.....

[name & address of the Bidder and seal of company]

DA:.....

Appendix8: Bid Form – Financial Bid

(Ref Clause8.2.2 of ITB)

(To be submitted as part of Financial Bid only)

(on Company Letterhead)

(Along with supporting documents, if any)

Bidder’s Name _____

[Address and Contact Details]

Bidder’s Reference No. _____

Date.....

To

The President of India, through

Head of Procurement

Procuring Organisation

[Complete address of the Procuring Entity]

Tender Document No. Tend No./xxxx; Tender Title: GOODS

Sir/ Madam

Having examined the abovementioned tender document and having submitted the techno commercial bid for the same, we, the undersigned, hereby submit the financial bid for supply of goods and services as per the schedule of requirements and in conformity with the said tender documents.

- 1) **Competitive Prices:**We hereby offer to supply the Goods/Services at the prices and rates mentioned in the separately uploaded Price-Schedule in Excel format. We have quoted our lowest prices and certify that these prices are competitive and without adopting any unfair/ unethical means including cartelization.
- 2) **Terms, Conditions and Validity:** All terms, conditions and declarations contained in Appendix 1 and its Annexes , as well as the rest of Techno-commercial Bid submitted by us, shall apply mutadis mutandis to this Financial Bid. Our prices shall remain valid for the validity period confirmed in Appendix 1.
- 3) **The Financial Bid:**This Financial bid comprises the Price-schedule in the Excel format, filled up as per guidelines and as per commitment of non-tampering given by us in Appendix 1: Bid Form – Techno-commercial Bid. Statement of Confirmation/ Deviations from Financial Terms and Conditions over and above Appendix 5 are submitted in Annexe to this Bid Form – Financial Bid.

4) **Agents/ Associates of foreign principals/ OEMs:**

We are submitting this bid on our own behalf and hence there are no agents/ dealers involved in this tender and hence no agency agreement or payments/ commissions/ gratuity is involved.

Or;

As mentioned in Appendix 1 and its annexures, agreement between us and our principals containing details in accordance with clause 3.4.1-2) is enclosed herewith. We have paid/ received, or will pay/ receive the following commissions, gratuities, or fees with respect to the tender process or execution of the Contract: [insert complete name of each recipient, its full address, the reason for which each commission or gratuity was paid and the amount and currency of each such commission or gratuity. If none has been paid or is to be paid, indicate –none.]

Name of Recipient	Address	Services to be provided	Amount

--	--	--	--

5) **Taxes and Duties:**

- (a) **Taxation Registrations:** Details have already been submitted in Annexe 1 to Appendix 1: Bid Form.
- (b) **Statutory Variations on inputs:**We understand that during the contract period for supply **NO** additional payment shall be payable to us towards any increase in prices of related ingredients/ components, such as raw material, electricity, transportation cost, labour, revision of applicable taxes on raw material, or for any other increase whatsoever.

- 6) **Incidental Services:** The Prices Quoted is inclusive of all incidental services
- 7) **Scope of Supply:** Cost break-up of the quoted cost, showing inter-alia costs (including taxes and duties thereon) of all the included incidental services inter-alia Testing, Packaging, Transportation, transit Insurance, etc. considered necessary to make the proposal self-contained and complete has been indicated in the above referenced Price Schedule Excel Sheet.)
- 8) **Transportation, Terms of Delivery and Delivery Schedule:** It is hereby confirmed that the prices quoted by us are based on mode of transport, terms of delivery and delivery schedule confirmed by us in Section VI – Schedule of Requirements.
- 9) **Terms and Mode of Payments:** It is hereby confirmed that the prices quoted by us are based on the terms and mode of payment as specified in the GCC and SCC. We have understood that if any deviation to terms and mode of payment is quoted by us in Appendix5: Confirmation/ Deviation from Terms and Conditions, our bid is liable to be rejected.
- 10) **Additional Financial Details:** Any financial detail left out in excel sheet or para above are as follows:

Dated.....

.....
 (Signature with date)

.....
 (Name and designation)

Duly authorized to sign Bid for and on behalf of.....

[name & address of the Bidder and seal of company]

DA: Agency/ Dealership Agreement form

Format 1: Contract Form

(Ref Clause 12.2.5 of ITB)
The President of India, through
Head of Procurement
Procuring Organisation
[Complete address of the Procuring Entity]

Contract No..... dated.....

To

Contractor [Write Name]
[Complete address of the Contractor]

Subject:

- Ref:** 1. This office' Notification of Award No..... dated
2. This office Tender Document No. Tend No./xxxx; Tender Title: GOODS, dated..... and subsequent Amendment No....., dated..... (If any). (Hereinafter referred as 'the Tender Document')
3. Your Tender No..... dated..... and subsequent communication(s)/ Revised Offer No..... dated (If any), exchanged between you and this office in connection with this tender. (Hereinafter referred as 'Your Offer')

Dear Sir/ Madam,

You are hereby informed that 'your bid' referred above read with subsequent letters mentioned above for the Stores specified in the Schedules annexed herewith have been accepted. This contract shall be governed by the terms and conditions as brought in this Contract Form and in the documents listed in clause below.

2. In addition to this Contract Form, the terms, and conditions, which are included in the documents mentioned under Reference no: 1, 2 and 3 above (including General and Special Conditions of Contract), shall also be deemed to form and be read and construed as part of this contract.

Note: The words, expressions, definitions, and abbreviations used in this contract shall have the same meanings as are respectively assigned to them in the General Condition of Contract of 'the Tender Document'.

(Signature, name and address of [Purchase Entity]'s authorized official)

For and on behalf of.....

Received and accepted this contract

(Signature, name, and address of the Contractor's executive duly authorized to sign on behalf of the Contractor)

For and on behalf of

(Name and address of the Contractor)

.....

(Seal of the Contractor)

Place: _____ Date:

Annexe 1 to Contract Form: Bank Guarantee Format for Performance Security

(Ref Clause 8.4 of ITB and clause 6.7of GCC)

To

The President of India, through

Head of Procurement

Procuring Organisation

[Complete address of the Procuring Entity]

Whereas..... (name and address of the Contractor) (hereinafter called "the Contractor") has undertaken, in pursuance of contract no date..... to supply (description of goods and services) (herein after called "the contract").

And Whereas it has been stipulated by you in said contract that the Contractor shall furnish you with a bank guarantee by a scheduled commercial bank recognized by you for the sum specified therein as security for compliance with its obligations in accordance with contract;

And Whereas we have agreed to give the Contractor such a bank guarantee.

Now Therefore we hereby affirm that we are guarantors and responsible to you, on behalf of the Contractor, up to total of(amount of the guarantee in words and figures), and we undertake to pay you, upon your first written demand declaring the Contractor to be in default under the contract and without cavil or argument, any sum or sums within the limits of (amount of guarantee) as aforesaid, without your needing to prove or to show grounds or reasons for your demand or the sum specified therein.

We hereby waive the necessity of your demanding the said debt from the Contractor before presenting us with demand.

We further agree that no change or addition to or other modification of the terms of the contract to be performed thereunder or of any of the contract documents which may be made between you and the Contractor shall in any way release us from any liability under this guarantee and we hereby waive notice of any such change, addition, or modification.

This guarantee shall be valid until theday of20.....

Our.....branch at.....*(Name & Address of the*(branch) is liable to pay the guaranteed amount depending on the filing of claim and any part thereof under this Bank Guarantee only and only if you serve upon us at our* branch a written claim or demand and received by us at our* branch on or before Dt..... otherwise, bank shall be discharged of all liabilities under this guarantee thereafter.

(Signature of the authorized officer of the Bank)

.....

.....

Name and designation of the officer

.....

Seal, name & address of the Bank and address of Branch

*Preferably at the headquarters of the authority competent to sanction the expenditure for purchase of goods or at the concerned district headquarters or the state headquarters.

Annexe 2 to Contract Form: NEFT Mandate Form

(Ref Clause 13.3 of ITB)

(On the Letterhead of the Bidder/ Contractor or the Bank)

(Along with supporting documents, if any)

Contractor's Name _____

[Address and Contact Details]

Contractor's Reference No. _____ Date.....

Contract Ref No. _____ dated _____

To

The President of India, through

Head of Procurement

Procuring Organisation

[Complete address of the Procuring Entity]

Dear Sir/ Madam

Sub: NEFT payments

With reference to the above-mentioned contract awarded to us by you, we hereby give our consent to accept the related payments of our claims/ bills on you through Cheques or Internet based online E-Payment systems at your sole discretion. Our Bank account details are as under:

1.	Name of City	
2.	Bank Code No.	
3.	Branch Code No.	
4.	Bank's Name	
5.	Branch Address	
6.	Branch Telephone/ Fax No.	
7.	the Contractor's Account No.	
8.	Type of Account	
9.	IFSC code for NEFT	
10.	IFSC code for RTGS	
11.	MICR Code No.	
12.	the Contractor's name as per Account	
13.	PAN number	
14.	Email ID	
15.	Mobile/ Telephone Number	
16.	Address	
<p>In Lieu of Bank Certificate to be obtained as under, please attach a bank cancelled cheque or photocopy of a cheque or front page of your bank passbook issued by your bank for verification of the above particulars. Also attached self-attested copy of PAN card.</p>		

I hereby declare that the particulars given above are correct and complete. If the transaction is delayed or not effected at all for reasons of incomplete or incorrect information, I shall not hold the user institution responsible. I have read the option intimation letter and agree to discharge responsibility expected of me as a participant under the scheme.

Date.....

.....

(Signature with date)

.....

(Name and designation)

[name & address of the Bidder and seal of company]

Certified that the above particulars are correct as per our record.

Stamp and Signature of authorized official of the bank

Annexe 3 to Contract Form: No Claim Certificate

(Refer Clause 15.3 of GCC)
(On company letterhead)

Contractor's Name _____

[Address and Contact Details]

Contractor's Reference No. _____ Date.....

To

The President of India, through

Head of Procurement

Procuring Organisation

[Complete address of the Procuring Entity]

No Claim Certificate

Sub: Contract Agreement no. ----- dated -----for the supply of -----

We have received the sum of Rs. (Rupees _____ only) in full and final settlement of all the payments due to us for the supply of _____ un

der the abovementioned contract agreement, between us and the Procuring Entity. We here by unconditionally and without any reservation whatsoever, certify that with this payment, we shall have no claim whatsoever, of any description, on any account, against the Procuring Entity, against aforesaid contract agreement executed by us. We further declare unequivocally, that with this payment, we have received all the amounts payable to us, and have no dispute of any description whatsoever, regarding the amounts worked out as payable to us and received by us, and that we shall continue to be bound by the terms and conditions of the contract agreement, as regards performance of the contract.

Yours faithfully,

Signatures of contractor or

officer authorised to sign the contract documents

on behalf of the contractor

(company Seal)

Date: _____

Place: _____

Annexe 4 to Contract Form: Certification by Prospective Arbitrators

(Ref Clause 14.5.4 of GCC)

To

Head of Procuring Organisation

Procuring Organisation

[Complete address of the Procuring Entity]

Certification by Prospective Arbitrators

1. Name: _____

2. Contact Details: _____

3. I hereby certify that I have retired from *[Name of Organisation]*

w.e.f. _____ in _____ grade.

Or

I hereby certify that I am serving officer of *[Name of Organisation]* and am presently posted as _____ in _____ grade.

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

Or

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

5. I have no past or present relationship with or interest in any of the parties whether financial, business, professional or other kind, which is likely to give rise to justifiable doubts as to my independence or impartiality in terms of the Arbitration and Conciliation Act 1996 and its amendments in 2015 and 2019.

Or

I have past or present relationship with or interest in any of the parties whether financial, business, professional or other kind, which is likely to give rise to justifiable doubts as to my independence or impartiality in terms of the Arbitration and Conciliation Act 1996 and its amendments of 2015 and 2019. The details of such relationship or interest are as under:

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

Or

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

(Signature)

(Name & Designation)

Format2: Authorization For Attending Pre-bid Conference

(Refer Clause 8.10.2)

(on Company Official Letter Head)

Bidder's Name _____

[Address and Contact Details]

Bidder's Reference No. _____ Date.....

To

The President of India, through

Head of Procurement

Procuring Organisation

[Complete address of the Procuring Entity]

Ref: Tender Document No. Tend No./xxx; Tender Title: GOODS

Subject: Authorization for attending Pre-bid Conference on _____ (date).

Following persons are hereby authorized to attend the Pre-bid Conference for the tender mentioned above on behalf of _____ (Bidder) in order of preference given below.

Sr.	Name	Government Photo ID Type/ Number
I.		
II.		
Alternate Representative		

Note:

1. Maximum of two representatives (carrying valid Government photo IDs) will be permitted to attend the Pre-bid opening. Alternate representative will be permitted when regular representatives are not able to attend.
2. Permission for entry to the hall where pre-bid conference is conducted may be refused in case authorization as prescribed above is not submitted.

Signatures of bidder

or

Officer authorized to sign the bid

Documents on behalf of the bidder

[name & address of the Bidder and seal of company]

Exhibit 1: Price Schedule Sample

Only a sample for guidance, not to be filled/ uploaded. Actual Price Schedule (download BOQ Excel Sheet from the Portal and do not modify/replace and upload after filling the relevant columns (shown here in grey), else the bid is liable to be rejected

(ITEM-WISE BOQ - DOMESTIC TENDERS - RATES ARE TO BE GIVEN IN RUPEES (INR) ONLY)

Name of Work:		Procurement of GOODS											
Tender No:		Tend No./ xxxx											
Name of the Bidder/ Bidding Firm/ Company :													
NO.	TEXT	TEXT	NO.	TEXT	NO.	NO.	NO.	NO.	NO.	TEXT	NO.	NO.	TEXT
Sl. No.	Item Description	Item Code/ Make	Quantity	Units	Basic Rate in Fig in Bidders in Rs. P	Excise Duty Amount in INR Rs. P	GST Amount in INR Rs. P	Freight Charges (Unloading & Stacking) in Rs. P	Any Other Taxes in Rs. P	Any Other Duties/ Levies in Rs. P	Total Amount w/o Taxes Rs. P	Total Amount with Taxes Rs. P	Total Amount in Words
1	2	3	4	5	6	7	8	9	10	11	12	13	14
1	Schedule 1:												
1.01	aaaaaaaa	item1											
1.02	bbbbbbbb	item2											
											Total in Figures		
											Quoted Rate in Words		
2	Schedule 2:												
2.01	aaaaaaaa	item1											
2.02	bbbbbbbb	item2											
											Total in Figures		
											Quoted Rate in Words		
											Grand Total in Figures		
											Grand Quoted Rate in Words		

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**Procuring Organisation
Model Tender Document
Tender Reference Number: Tend No./xxxx
For Procurement of
GOODS**

Draft beta V04-3