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ANNEXURE-A

INDIAN RAILWAYS STANDARD CONDITIONS OF CONTRACT, 2025

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1. General:

1.1 Tenets of Interpretation:

Unless where the context requires otherwise, throughout the Contract:

(a) The heading of these conditions shall not affect the interpretation or construction thereof.

(b) Words in the singular include the plural and vice-versa.

(c) Words importing the masculine gender shall be taken to include other genders.

(d) Words importing person shall include any company or association or body of individuals, whether incorporated or not.

(e) Any reference to any legislation, Government Policies or Orders shall be deemed to include all amendments to such instruments.

(f) 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.

(g) Severability: If any provision or condition of this Contract is prohibited or rendered invalid or unenforceable, such prohibition, invalidity or unenforceability shall not affect the validity or enforceability of any other provisions and conditions of this Contract.

1.2 Definitions:

Unless the context requires otherwise, the following definitions shall apply in the Contract: (The main preferred term is within the inverted comma. Alternative equivalent terms used in certain contexts, if any, are listed in the brackets. Text within brackets is not considered for sort-order of terms)

(a) "Acceptance of Tender" means the letter of memorandum communicating to the Contractor the acceptance of his tender and includes an advance acceptance or letter of acceptance (LOA) of his tender.

(b) "Agent" is a person employed to act for another or represent another (called the "Principal") in dealings with a third person. In the context of public procurement, an Agent is a representative participating in the Tender Process or Execution of a Contract for and on behalf of his Principal.

(c) "Authorized e-procurement portal" is the web-based portal, being used by the Parties for exchanging online documents during the course of the formation of Contract and thereafter till its completion.

(d) "Consignee" means:

(i) Where the Goods are required by the Contract to be dispatched by rail, road, air or steamer, the person specified in the Contract to whom they are to be delivered at the destination;

(ii) Where the Goods are required by the Contract to be delivered to a person

as an interim Consignee for the purpose of dispatch to another person, such other persons; or

(iii) In any other case, the person to whom the Goods are required by the Contract to be delivered in the manner therein specified.

(e) "Contract" ('Purchase Order' or 'Supply Order' or 'Rate Contract' or 'Running Contract' or 'Letter of Acceptance') means a formal legal agreement in writing for supply of Goods, the subject matter of Procurement, entered into between the Purchaser and the Contractor on mutually acceptable terms and conditions and which are in compliance with all the relevant provisions of the laws of India; "Contract" includes the invitation to tender, instructions to tenderers, tender, acceptance of tender, Standard Conditions of Contract, Special Conditions of Contract, particulars and the other conditions specified in the acceptance of tender. Contract includes a repeat order which has been accepted or acted upon by the Contractor.

(f) "Contractor" ('Supplier' or 'Firm' or 'Vendor' or 'Manufacturer' or 'Successful Bidder') means the person with whom the Contract is entered into for supply and shall be deemed to include the Contractor's successors (approved by the Purchaser), agents, Sub-Contractor, representatives, heirs, executors and administrators as the case may be unless excluded by the terms of the Contract.

(g) "Dispute" includes all or any of the commercial disputes arising out of this Contract, as defined in The Commercial Courts Act, 2015.

(h) "Drawing" means the drawing or drawings stipulated in or annexed to the Specifications or the Tender Document or Contract.

(i) "Goods" ('Stores' or Item(s) or 'Material(s)' in certain context) includes all articles, material, commodity, livestock, medicines, furniture, fixtures, raw material, consumables, spare parts, instruments, machinery, equipment, industrial plant, vehicles, aircrafts, ships, railway rolling stock, assemblies, sub-assemblies, accessories, Modules or a set of Modules, Knocked Down Unit (KDU), a group of machines comprising an integrated production process or such other categories of Goods or intangible products like technology transfer, licenses, Computer Software (with licence), Information Technology Systems, patents or other intellectual properties (but excludes books, publications, periodicals, etc., for a library), procured or otherwise acquired by a Purchaser. The term "Goods" also includes works and services which are incidental or consequential to the supply of such Goods, such as transportation, insurance, installation, commissioning, training, and maintenance.

(j) "Government" means the Central Government or a State Government, as the case may be.

(k) "Inspecting Officer" means the person or organisation specified in the Contract for the purpose of Inspection of Goods under the Contract and includes his authorised representative.

(l) "Inspection" means activities such as measuring, examining, testing, analysing, gauging one or more characteristics of the Goods and comparing the same with the specified requirement to determine conformity.

(m) "Intellectual Property Rights" (IPR) refers to the owner's rights against unauthorised possession/ exploitation by others of its tangible or intangible intellectual property. It includes rights to Patents, Copyrights, Trademarks, Industrial Designs, and Geographical Indications (GI).

(n) "Material" means anything used in the manufacture or fabrication of the Goods.

(o) "Particulars" include-

(i) Specifications;

(ii) Drawings;

(iii) Pattern bearing the seal and signature of the Inspecting Officer (hereinafter called the sealed pattern) which shall also include a certified copy thereof sealed by the Purchaser for the guidance of the Inspecting Officer;

(iv) Sample sealed by the Purchaser for guidance of the Inspecting Officer (hereinafter called the certified sample) which shall include a certified copy thereof sealed by the Purchaser for the guidance of the Inspecting Officer;

(v) Trade pattern, that is to say, a pattern, Goods conforming to which are obtainable in the open market and which denotes a standard of the Indian Standard Institute or other standardising authority or a general standard of the industry;

(vi) 'Proprietary mark' or 'brand' means the mark or brand of a product which is owned by an industrial firm;

(vii) Any other details governing the construction, manufacture or supply of Goods as may be prescribed by the Contract.

(p) "Parties": The parties to the Contract are the Contractor and the Purchaser, as defined in Clauses 1.2(f) and 1.2(r) herein respectively.

(q) "Purchase Officer" means the officer signing the acceptance of tender and includes any officer who has authority to execute the relevant Contract on behalf of the Purchaser.

(r) "Purchaser" means the President of India in the case of Goods ordered for the Indian Government Railways and includes his successors and assignees.

(s) "Scheduled Commercial Bank" means a bank listed in the Second Schedule of the Reserve Bank of India Act, 1934.

(t) "Security Deposit" ('Performance Security' or 'Performance Bond' or 'Performance Bank Guarantee' or other specified financial instruments) means a monetary guarantee to be furnished by the successful Bidder or Contractor in the form prescribed for the due performance of the Contract.

(u) "Signed" means ink signed or digitally signed with a valid Digital Signature Certificate as per IT Act 2000 (as amended). It also includes stamped, except in the case of an acceptance of tender or amendment thereof.

(v) "Site" means the place or location specified in the Contract at which any work (such as installation, commissioning etc.) is required to be executed by the Contractor under the Contract or any other place approved by the Purchaser for the purpose.

(w) "Sub-Contractor" means any person from whom the Contractor may source any material or fittings or incidental works or services (including deployment of contractual labour, if any) for the performance of the Contract. The term "Sub-Contract" shall indicate obligations of such a Sub-Contractor towards the Contractor.

(x) "Test" means such test as is prescribed by the particulars governing the construction, manufacture or supply of Goods as may be prescribed by the Contract 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. In case prove out of design before supply, including oscillation tests if required, is within the scope of supply of Contract, such activities are also included in "Test".

(y) "Unit" and "Quantity" means the unit and quantity specified in the Contract.

(z) "Warranty Security Deposit" means a monetary guarantee to be furnished by the contractor, if mandated in the contract, to ensure his performance of warranty obligations as per the Contract. The warranty security deposit can be prescribed to be in any acceptable form as for Security Deposit. This guarantee can be invoked by the Purchaser if the Contractor fails to fulfil contractual obligations during the warranty period.

(aa) "Writing" or "Written" includes matter either in whole or in part, in manuscript, type-written, lithographed, cyclostyled, photographed or printed under or over signature or seal or digitally signed document in electronic form, as the case may be.

(bb) "Year" shall mean calendar year (unless reference to financial year is clear from the context). "Week" shall mean a period of 7 days, "Month", a period of 30 days.

2. Contract:

2.1 Contract Documents and their Precedence:

The following conditions and documents in indicated order of precedence (higher to lower) shall be considered an integral part of the Contract, irrespective of whether these are not appended/ referred to in it. Any generic reference to 'Contract' shall imply reference to all these documents as well:

(a) Valid and authorized Amendments issued to the Contract;

(b) Contract Document (Purchase Order) and the Letter of Acceptance (LOA);

(c) Tender Documents;

(d) Special Tender conditions;

(e) Technical Specifications as given in tender documents;

(f) Drawings;

(g) IRS Conditions of Contract;

(h) General Tender Conditions/ Instructions to tenderers; and

(i) Contractor's bid.

2.2 Scope of Supply:

(a) This Contract is for the supply of the Goods of the description, specifications and drawings and in the quantities outlined in the Contract on the date or dates specified therein.

(b) Unless otherwise specified, the Goods shall be entirely brand new and of the best quality and workmanship to the satisfaction of the Inspecting Officer. The Goods shall further be in all respects acceptable to the Inspecting Officer.

(c) If so stipulated, the Contractor shall be required to perform specified incidental Works/ Services (e.g., Installation, Commissioning, Operator's Training etc. in case of Supply of Capital Goods/ Machinery & Plant) as an integral part of the Goods in the Contract.

2.3 Modifications/ Amendments to Contract:

(a) Purchaser may amend the Contract, on written request (including request made through authorized e-procurement portal) from the Contractor or otherwise, by making alterations and modifications within the scope of the Contract, by a written order.

(b) Any request for variation or amendment of the Contract shall not be binding on the Purchaser unless and until the same is duly endorsed on the Contract incorporated in a formal instrument or in exchange of letters and signed by the Purchaser.

(c) The communication by Purchaser may be through authorized e-procurement portal, if the said portal provides for the functionalities to make desired communication between the Parties.

2.4 Authority of person signing on behalf of the Contractor:

(a) A person signing the tender or any other document in respect of the Contract on behalf of the Contractor, without disclosing his authority to do so, shall be deemed to warrant that he has authority to bind the Contractor.

(b) If it is discovered at any time that the person, so signing has no authority to do so, the Purchaser may, without prejudice to any other right or remedy, terminate the Contract and hold such person and/ or the Contractor liable to the Purchaser for all costs and damages arising from such remedies, including

termination of the Contract.

(c) The provisions of Clause 13 and Clause 20 shall also apply while evaluating the liability of the person at default.

2.5 Address of the Contractor for sending communications on behalf of the Purchaser:

(a) For all purposes of the Contract, including any dispute resolution thereunder, the address and e-mail of the Contractor mentioned in the tender shall be the address and e-mail to which all communications addressed to the Contractor shall be sent, unless the Contractor has notified change by a separate letter containing no other communication and sent by registered post acknowledgement due to the Purchaser or through mode of communication permitted for modification/ amendment of the Contract.

(b) The Contractor shall be solely responsible for the consequence of an omission to notify a change of address in the manner aforesaid.

(c) Any communication or notice on behalf of the Purchaser in relation to the Contract may be issued to the Contractor by the Purchase Officer and all such communications and notices may be served on the Contractor either by registered post with acknowledgement due or by speed post or under certificate of posting or by ordinary post or by hand delivery or through online mode at the option of such officer.

(d) The communication by Purchaser through online mode may be made either through email or authorized e-procurement portal of the Purchaser, if the said portal provides for the functionalities to make desired communication between the Parties.

2.6 Delivery of Goods: Place of Delivery of Goods

The delivery of the Goods shall be deemed to take place on delivery of the Goods, in accordance with the terms and conditions of the Contract, to:

(a) The Consignee at his premises; or

(b) Where so provided, the interim Consignee at his premises; or

(c) A person named in the Contract for transmission to the Consignee; or

(d) The consignee at the destination station in case of contract stipulating for delivery of goods at destination station.

2.7 Laws governing the Contract:

(a) This Contract, its meaning and interpretation, and the relation between the Parties shall be governed by the Laws of India for the time being in force.

(b) Irrespective of the place of delivery, or the place of performance or the place of payments under the Contract, the Contract shall be deemed to have been made at the place from which the acceptance of tender has been issued.

(c) Jurisdiction of courts —The Courts of the place from where the acceptance of

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

(d) The marking of the Goods must comply with the requirements of the laws relating to merchandise marks for the time being in force in India.

(e) The Contractor's status shall be that of an independent Contractor and Primary Employer of staff deployed during the Contract by him or his Sub- Contractors or other associates. The Contractor, his employees, agents and Sub-Contractors performing under this Contract are not employees or agents of Purchaser or Government or their agencies/ enterprises, simply by execution of this Contract including services delivered under this Contract.

(f) **Obligations of the Contractor under Labour Codes and Rules:**

(i) The Contractor shall comply with the provisions of the Labour Codes, including: Code on Wages, 2019, Industrial Relations Code, 2020, Code on Social Security, 2020, Occupational Safety, Health and Working Conditions Code, 2020 and the rules made thereunder, as amended from time to time. The Contractor shall also indemnify the Purchaser against any claims arising under the aforementioned Labour Codes and the Rules made thereunder.

(ii) The Contractor shall obtain a valid licence under the aforesaid Labour codes and the Rules as modified from time-to-time before the commencement of the Contract and continue to have a valid licence until the completion of the Contract. Any failure to fulfil this requirement, the Purchaser shall treat it as a breach of Contract for default as per the Contract and avail any or all remedies thereunder.

(iii) In respect of all labour directly or indirectly employed in the Contract for the performance of the Contractor's part of the Contract, the Contractor shall comply with or cause to comply with the provisions of the aforesaid Labour codes and the Rules wherever applicable. The Contractor shall be solely responsible for submitting all the necessary returns under these Codes and the Rules.

(iv) The Contractor shall pay the wages as per the Code on Wages, 2019 (as amended) to their workers not below the rate of minimum wages, as notified by the State Government or Central Government, whichever is higher, through the bank transfer. Notwithstanding the Contract's provisions to the contrary, the Contractor shall cause to be paid the wages to labour directly or indirectly engaged on the Contract, including any engaged by his Sub-Contractors in connection with the said Contract as if he had immediately employed the labour. The Purchaser shall, without any commitments or being obliged to do, may at its discretion, monitor that such payments are being made.

(v) In every case in which, by virtue of the provisions of the aforesaid Labour codes and the Rules, the Purchaser is obliged to pay any amount of wages to a workman employed by the contractor or his Sub-Contractor in execution of

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

3. Award of the Contract

3.1 Examination of Drawing, Specifications and Patterns:

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

3.2 Mistakes in Drawing:

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

3.3 Quotation of rates by Contractors:

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

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

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

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

3.4 Security Deposit:

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

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

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

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

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

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

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

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

(d) Subject to above, the Purchaser shall release the Security Deposit, without any interest, to the Contractor upon the completion of all Contractual obligations relating to supply of Goods.

(e) Notwithstanding the above, the Purchaser shall be entitled to call for Warranty Security Deposit (in any form of financial instruments as permitted for Security Deposit) from the Contractor for due performance of warranty obligations under the Contract. In such an event, where Purchaser calls for Warranty Security Deposit, it shall be lawful for the Purchaser not to release/ refund the Security Deposit till the obligation of submitting Warranty Security Deposit in acceptable form is completed by the Contractor, or to encash the financial instrument for Security Deposit and adjust the amount so received towards Warranty Security Deposit. All conditions relating to Security Deposit including non-liability of payment of interest and conditions for forfeiture shall also apply for Warranty Security Deposit. Security Deposit shall be released/ refunded on receipt of acceptable Warranty Security Deposit.

(f) No claim shall lie against the Purchaser in respect of interest on cash deposits or Government Securities or depreciation thereof. No interest shall be payable upon the Security Deposit or Warranty Security Deposit or amounts payable to the Contractor under the Contract.

4. Responsibility of the Contractor for Executing the Contract:

4.1 Risk in the Goods:

(a) The Contractor shall perform the Contract in all respects in accordance with the terms and conditions thereof. The Goods and every constituent part thereof, whether in the possession or control of the Contractor, his agents or servants or a carrier, or in the joint possession of the Contractor, his agents or servants and the Purchaser, his agents or servants, shall remain in every respect at the risk of the Contractor, until their actual delivery to the Consignee at the stipulated place or destination or, where so provided in the acceptance of tender, until their delivery to a person specified in the Contract as interim Consignee for the purpose of dispatch to the Consignee.

(b) The Contractor shall be responsible for all loss, destruction, damage or deterioration of or to the Goods from any cause whatsoever while the Goods after approval by the Inspecting Officer are awaiting dispatch or delivery or are in the course of transit from the Contractor to the Consignee or interim Consignee, as the case may be.

(c) The Contractor shall alone be entitled and responsible to make claims against a Railway Administration or other carrier in respect of non-delivery, short delivery, mis-delivery, loss, destruction, damage or deterioration of the Goods entrusted to such carrier by the Contractor for transmission to the Consignee or the interim Consignee as the case may be.

4.2 Consignee's Right of Rejection:

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

(b) Provided that where, under the terms of the Contract the Goods are required to be delivered to an interim Consignee for the purpose of dispatch to the Consignee, the Goods shall be at the Purchaser's risk after their delivery to the interim Consignee, but nevertheless it shall be lawful for the Consignee on behalf of the Purchaser to reject the Goods or any part, portion of consignment thereof upon their actual delivery to him at the destination if they are not in all respects in conformity with the terms and conditions of Contract except where they have been damaged or have deteriorated in the course of transit or otherwise after their delivery to the interim Consignee.

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

(c) The provisions contained in Clause 11 relating to the removal of Goods rejected by the Inspecting Officer shall mutatis mutandis apply to Goods rejected by the Consignee as herein provided.

(d) Where under a Contract, the price payable is fixed on F.O.R. station of dispatch or Ex-Works basis, the Contractor shall, if the Goods are rejected at destination by the Consignee, be liable, in addition to his other liabilities, to reimburse to the Purchaser the freight paid by the Purchaser.

4.3 Sub-letting and Assignment:

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

(b) Sub-Contracting does not amount to Sub-letting or Assignment or Transfer.

(c) If the Contractor sub-lets or assigns or transfers the Contract or any part thereof without such permission, the Purchaser shall be entitled, and it shall be lawful on his part, to treat it as a breach of Contract and avail any or all remedies there under. The decision of the Purchaser in this regard shall be final and binding on the Contractor.

4.4 Changes in Constitution of the Contractor:

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

(a) A new partner shall not be introduced in the firm except with the prior consent in writing of the Purchaser, which shall be granted only upon execution of a written undertaking by the new partner to perform the Contract and accept all liabilities incurred by the firm under the Contract before the date of such undertaking.

(b) On the death or retirement of any partner of the Contractor firm before the complete performance of the Contract, the Purchaser may, at his option, terminate the Contract and in such case the Contractor shall have no claim whatsoever for any compensation against the Purchaser.

(c) If the Contract is not determined as provided in Sub-clause (b) above notwithstanding the retirement of a partner from the firm he shall continue to be liable under the Contract for acts of the firm until a copy of the public notice given by him under Section 32 of the Partnership Act,1932 has been sent by him to the Purchaser by registered post acknowledgement due.

(d) The decision of the Purchaser as to any matter or thing concerning or arising out of this sub-clause or on any question whether the Contractor or any partner of the Contractor firm has committed a breach of any of the conditions in this sub- clause contained shall be final and binding on the Contractor.

4.5 Assistance to the Contractor:

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

(b) However, if by reason of any such assistance as aforesaid, the Contractor obtains any materials at less than their market price or the cost of production of the

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

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

4.6 Charges for Work Necessary for Completion of the Contract:

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

4.7 Use of Raw Materials secured with Government Assistance:

(a) **Accountability of Government-Assisted Raw Materials**:

(i) Where any raw material is procured for the execution of a Contract with the assistance of the Government rendered in the form of permit, or licence or quota certificate/ essentiality certificate or release order issued by or on behalf of or under the authority of the Government or by an officer empowered in that behalf, or

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

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

(iv) Where raw material is arranged by the Government,

the Contractor—

(i) Shall hold such material as trustee for the Government,

(ii) Shall use such material economically and solely for the purpose of the Contract.

(iii) Shall not dispose of the same without the previous permission in writing of the Purchaser, and

(iv) Shall render due account of such material and return to the Government at such place as the Purchaser may direct all surplus or unserviceable material that may be left after the completion of the Contract or its termination for any reason whatsoever.

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

(b) Where the Contract is terminated due to any default on the part of the Contractor, the Contractor shall pay all transport charges incurred for returning any material up to such destination as may be determined by the Purchaser and the decision of the Purchaser in that behalf shall be final and binding on the Contractor.

(c) If the Contractor commits breach of any of the conditions in this clause specified, he shall, without prejudice to any other liability, penal or otherwise, be liable to account to the Government for all moneys, advantages or profits accruing from or which, in the usual course, would have accrued to him by reason of such breach.

(d) Where the Goods manufactured or fabricated by the Contractor out of the material arranged or procured by or on behalf of the Government are rejected, the Contractor shall, without prejudice to any other right or remedy of the Government, pay to the Government, on demand, the cost price or market value of all such materials whichever is greater.

4.8 Risk of Loss or Damage to Government or Purchaser's Property:

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

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

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

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

4.9 Confidentiality, Secrecy and Intellectual Property Rights (IPR):

(a) <u>Confidentiality:</u>

All documents, drawings, samples, data, associated correspondence or other information furnished by or on behalf of the Purchaser to the Contractor, in

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

(b) Secrecy:

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

(c) Intellectual Property Rights:

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

(d) Obligations of the Contractor:

(i) Without the Purchaser's prior written consent, the Contractor shall not use the information mentioned above except for the sole purpose of performing this Contract.

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

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

above clauses.

(iv) The obligation of the Contractor under sub-clauses above, however, shall not apply to information that:

(1) the Contractor needs to share with the institution(s) participating in the financing of the Contract;

(2) now or hereafter is or enters the public domain through no fault of Contractor;

(3) can be proven to have been possessed by the Contractor at the time of disclosure and which was not previously obtained, directly or indirectly, from the Purchaser; or

(4) otherwise lawfully becomes available to the Contractor from a third party that has no obligation of confidentiality.

(e) The above provisions shall not in any way modify any undertaking of confidentiality (or Secrecy — as the case maybe) given by the Contractor before the date of the Contract in respect of the Contract/ the Tender Document or any part thereof.

(f) The provisions of this clause shall survive the completion or termination of the Contract for any reason.

4.10 Indemnity for breach of Intellectual Property Rights (IPR):

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

(i) any design, data, drawing, specification, or other documents or Goods provided or designed by the Contractor for or on behalf of the Purchaser.

(ii) The sale by the Purchaser in any country of the products produced by the Goods supplied by the Contractor, and

(iii) The installation of the Goods by the Contractor or the use of the Goods by the Purchaser.

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

(i) other than for the purpose indicated by or to be reasonably inferred from the Contract

(ii) in association or combination with any other equipment, plant, or materials

not supplied by the Contractor.

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

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

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

(f) The Contractor shall not be liable for payment of any royalty, licence fee or other expenses in respect of or for making use of patents or designs with respect to which he is according to the terms of the Contract, to be treated as an agent of the Government for the purpose of making use of patent or trade mark for fulfilment of the Contract.

4.11 Packing:

(a) The Contractor shall pack at his own cost the Goods sufficiently and properly for transit by rail/road, air and/or sea as provided in the Contract so as to ensure their being free from loss or damage or adverse impact on quality on arrival at their destination.

(b) Unless otherwise provided in the Contract, all containers (including packing cases, boxes, tins, drums and wrappings) in which the Goods are supplied by the Contractor, shall be considered as non-returnable and their cost as having been included in the Contract price.

(c) If the Contract provides that the containers shall be returnable, they must be marked 'returnable' and they will be returned to the Contractor as per terms of the Contract.

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

(e) Each bale or package delivered under the Contract shall be marked by the Contractor at his own expense. Such marking shall be distinct (all previous irrelevant marking being carefully obliterated) and shall clearly indicate the

description and quantity of the Goods, the name and address of the Consignee, the gross weight of the package and the name of the Contractor with a distinctive number or mark sufficient for the purpose of identification. All markings shall be carried out with such material as may be found satisfactory by the Inspecting Officer as regards quickness of drying, fastness and indelibility.

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

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

4.12 Freight:

If as per Contract conditions, freight is to be borne by the Purchaser at actual, the goods shall be booked by the most economical route or most economical tariff available at the time of dispatch as the case may be. Failure to do so will render the Contractor liable for any avoidable expenditure caused to the Purchaser.

5. Samples:

5.1 Advance Sample:

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

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

(c) In the event of the failure of the Contractor to deliver the advance sample by the date specified in the Contract or any other date to which the time may be extended as aforesaid by the Purchaser or of the rejection of the sample, the Purchaser shall be entitled to terminate the Contract and take further action as per the provisions of Clause 13.

(d) Unless otherwise provided in the Contract, all samples required for test shall be supplied by the Contractor free of cost. Where sample, which is supplied free, is rejected after examination and test, the Contractor shall arrange for collection of the same or whatever remains of the sample, after examination and test within three months of the date of such rejection.

(e) Where under the Contract, the Contractor is required to submit an advance

sample, any expenses incurred by the Contractor on or in connection with the production of Goods in bulk, before the sample has been approved unconditionally, shall be borne by the Contractor and he shall not claim any compensation in the event of such sample being found unacceptable by the Inspecting Officer.

(f) Where the Contract does not require any advance sample to be approved, the Contractor may before proceed with bulk manufacture or delivery of the Goods, if he so desires, submit to the Inspecting Officer for inspection a sample of the Goods in which case a quantity not less than one percent (1%) of the total quantity to be supplied unless otherwise authorized by the Inspecting Officer shall be submitted. The Contractor shall not, however, be entitled to be shown any consideration or give any extension of time or claim to be exonerated from completing the delivery within the stipulated period only on the ground of delay in the approval of any such sample.

(g) If under the Contract, the supplies are governed by a sealed pattern, the Contractor shall be bound to examine such pattern before preparing a sample or manufacturing the Goods in bulk as the case may be.

(h) If the Contractor submits a sample whether with, before or after the tender, the same shall not govern the standard of supply except when it has been specifically stated so in the acceptance of tender.

(i) Marking: Samples submitted shall be clearly labelled with the Contractor's name and address and the Contract number.

(j) The rejection of the sample by the Inspecting Authority or Inspecting Officer or Consignee shall be final and binding on the Contractor.

5.2 Loan of Sample:

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

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

6. Inspection:

6.1 Pre-dispatch Inspection of Goods:

(a) When inspection during manufacture or before delivery or dispatch is required, notice through the online portal of the Purchaser/ inspecting agency, if available,