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Government of India
Ministry of Railways
East Central Railway

INSTRUCTIONS TO TENDERERS
AND
GENERAL CONDITIONS OF TENDERS
FOR SUPPLY CONTRACTS
(FOR INDIGENOUS TENDERS)

(v. 3.0 issued on – 06.03.2024)

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(www.ecr.indianrailways.gov.in)

(**Supersedes:** ECR INTEGRATED BID DOCUMENTS
FOR STORES e-TENDER Version v.2.1 issued on 21.08.2020)

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1.0 GENERAL INSTRUCTIONS

1.1 On behalf of the President of India, the Principal Chief Materials Manager, East Central Railway, Hajipur, Bihar, India (hereinafter referred to as the Purchaser), invites electronic tenders for the supply as set forth in the Notice Inviting Tender (NIT) and tender document uploaded on the Indian Railways E Procurement System website (www.ireps.gov.in), herein after referred to as IREPS website. The tenders are invited in terms of 'IRS Conditions of Contract (Latest version)', 'Instructions to Tenderers and General Conditions of Tender for Supply Contract', and 'Special Conditions of Contract' uploaded on the IREPS website, and other conditions incorporated in the tender documents.

1.2 Electronic tender document consists of:-

a) NIT and Tender Document
b) Latest version of IRS conditions of contract
c) Instructions to Tenderers and General Conditions of Tender
d) Special Conditions of Contract
e) All the documents attached with tender document
f) Drawing /Specification uploaded if any.

1.3 Deleted.

1.4 Registration of Vendors on IREPS website: The vendors will have to get themselves registered on IREPS website (www.ireps.gov.in). Detailed instructions regarding registration processes are available in 'Users Manual for Vendors' which can be accessed through Learning Center link available on the Home page of IREPS website (www.ireps.gov.in).

1.5 The vendors will have to submit their offer on IREPS website only (www.ireps.gov.in) through their Login-ID. Detailed instructions are available in 'Users Manual for Vendors' which can be accessed through Learning Center link available on the Home page of IREPS website (www.ireps.gov.in).

1.6 Manual offers delivered by post/fax or in person, or offers sent by e-mail or telex shall not be accepted against electronic tenders, even if such offers are received in time. All such offers shall be considered as invalid offers and shall be rejected summarily, without any consideration.

1.7 The digital signature of the tenderer on submission of offer in IREPS will be considered as confirmation that the tenderer has read, understood and accepted all the conditions laid down in the documents referred to in Para 1.2 above, unless special deviation is quoted by the tenderer in the Deviation Tab of their offer.

1.8 Deleted.

1.9 The stores offered should be in accordance with stipulated drawings and specifications and as detailed in the tender document.

1.10 The details of deviations, if any, from tender specification and other conditions should be clearly indicated in the Technical Deviation and Commercial Deviation templates provided on 'Deviations Tab' only. Tenderers may note that conditions deviating from the tender conditions/ description/specifications may render the offer liable to be ignored.

1.11 Tenderers are required to quote in the same rate unit (i.e. Number, set etc.) as given in the tender schedule. Any deviation in this aspect shall render the offer unresponsive and shall be summarily rejected.

1.12 Currency of Offer: The price should be quoted only in Indian Rupees. The offers submitted in other currencies shall not be considered.

1.13 Validity of Offer: The offer shall be kept valid for acceptance as mentioned in the NIT header of the tender document. In case the tenderer stipulates validity lesser than that mentioned in the NIT header the offer is liable to be treated as unresponsive and ignored.

1.14 Tenderers are advised to follow the instructions given by the IREPS website while submitting their online offer. Detailed instructions are available in 'Users Manual for Vendors' which can be accessed through Learning Center link available on the Home page of IREPS website (www.ireps.gov.in).

1.15 Should a tenderer have a relative employed in Gazetted capacity in the Stores Department of the East Central Railway, or in the case of a partnership firm or company incorporated under the Indian Company Law, a partner or a relative of the partner employed in Gazetted capacity in Stores Department of East Central Railway, the authority inviting tenders shall be informed of the fact by the tenderer at the time of submission of tenders, failing which the tender may be rejected, or if such fact subsequently comes to light the contract may be rescinded.

1.16 Railways have started making online payments through NEFT system for quick money transfer to the tenderers account as per the Bank/account details provided by tenderer while registering themselves or updated thereafter on IREPS website.

2.0 QUALIFYING REQUIREMENTS OF TENDERERS

2.1 The tenderer shall clearly indicate in their offer whether he/she is registered with PCMM/East Central Railway for supplying the quoted item, and if so, he/she must mention his registration number along with monetary limit, if any, during bid submission in IREPS. In case the tenderer is approved by RCF/CLW/BLW/ICF/RDSO/CORE/MCF etc., status of approval will be verified from Vendor directory as available on UVAM portal only.

2.2 If the tenderer is not registered with East Central Railway or is not an approved source for the tendered item of RDSO/BLW/CLW/ICF/RCF/CORE/DMW/MCF etc, the tenderer shall provide a satisfactory evidence acceptable to the Purchaser by attaching scanned copies of such documents in PDF format in requisite Tab during bid submission in IREPS to show that:

a) The tenderer is an established manufacturer, who regularly manufactures the items offered and has adequate technical knowledge and practical experience;
b) The tenderer has adequate financial stability and status to meet the obligations under the contract for which he is required to submit a copy of the report from a recognized bank or a financial institution;
c) The tenderer has adequate plant and manufacturing capacity to manufacture the items offered and supply within the delivery schedule offered by him;
d) The tenderer has established quality control system and organization to ensure that there is adequate quality control at all stages of the manufacturing process.

2.2.1 If the tenderer himself is not the manufacturer of the item offered by him, he/she must be duly authorized by the manufacturer of such item. Such tenderers must enclose with their offer a certificate of Tender Specific authorization from the manufacturer, as per Proforma given in ANNEXURE-4 of this document, to participate in the tender.

2.2.2 The OEM or their Indian Agents must comply with the following conditions, failing which their offer(s) will be ignored:

a) In a tender, either the Indian agent on behalf of the Principal/OEM or Principal/OEM itself can bid but both cannot bid simultaneously for the same item/product in the same tender.

b) If an agent/dealer submits bid on behalf of the Principal/OEM, the same agent/dealer shall not submit a bid on behalf of another Principal/OEM in same/parallel tender for the same item/product.

c) The Manufacturers Test Certificate and OEM Guarantee Certificate shall invariably be dispatched along with stores from OEM premises. The Stores should be in original Packing of OEM.

2.2.3 Inspection by nominated Third Party Inspection (TPI) agency at the manufacturer's premises and direct dispatch from the premises of the manufacturer after the material has been inspected and passed by nominated Third Party Inspection (TPI) agency.

2.3 For the purpose of Para 2.2 the tenderer should additionally attach:-

(a) A performance statement in the Performance Statement template on 'Performance Tab' by entering a list of major supplies effected in the recent past (at least for three preceding completed financial year and current year up to the date of tender opening), of the items offered by him, giving details of the purchaser's name and address, order No. and Date, quantity supplied and whether the supply was made within the delivery schedule. Alternatively tenderers can also create such performance statement in PDF format separately as per the format given in **ANNEXURE-2**, which can be attached in the 'Performance Tab'.

(b) A statement in PDF format indicating details of equipment, staff employed and quality control measures, as per the format given in **ANNEXURE-3** of this document, attached in the 'Docs' Tab.

2.4 Tenderer not furnishing the requisite information may note that their offer is liable to be ignored.

2.5 Procurement of items reserved to be procured from approved sources

2.5.1 Sources approved by Source Approving Authority (RDSO/BLW/CLW/ICF/CORE/RCF/MCF etc.):

(i) The Railway reserves the right to order bulk quantity on the approved sources, and the offers of unapproved sources may be considered only for developmental order of small quantity. The status of approval of tenderer shall be reckoned as on the date of tender opening and not thereafter, unless it is a case of downgrading/removal/suspension/banning. Minimum 80% of Net Procurable quantity shall be ordered on approved vendors.

(ii) (a) "If the tendering firm(s) has been placed as developmental source in vendor directory, then offers from these firms may be considered for developmental order upto maximum of 20% of the Net Procurable Qty."

(b) However, if the firm's approval is conditional and is linked with Prototype approval, Field Trials, Type Test etc., the firm's offer may be considered for Max. 5% of Net Procurable Quantity (in aggregate) unless otherwise specified in tender.

(iii) Even if, the tendering firm(s) is not approved by Source Approving Authority, then such untried/unapproved vendors must submit their credential details i.e. Machinery and plant, testing facilities, QAP, Technical Manpower, etc. as an attachment to their e-bid. Offers from these firms may be considered for developmental order up to a maximum of 5 % of the net procurable quantity about whom Railway is prima facie satisfied that they are capable of executing the order and only after confirmation of their capacities/capabilities by Source Approving Authority. Failure to furnish and attach such requisite credentials as mentioned above will make their offer liable to be ignored.

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

2.6 Procurement of items for which no approved vendor list has been issued:

In such cases, for being eligible for a regular order(s), the tenderer must have 'Relevant past performance' as defined in Para 2.6.1. Further, upto 20% of the NPQ may be ordered on new sources also, as developmental order(s), on the basis of 'capacity cum capability' of the source as defined in Para-2.6.2.

2.6.1 Relevant Past performance for Regular orders:

[A] Bulk Order: Bulk order will be placed on the manufacturer or its authorized agent having proven performance. The manufacturer firm must have satisfactorily executed at least of 20 percent of total tendered quantity upto date of tender opening against one single purchase order of Zonal Railways/ PUs/CORE for the tendered item/similar item*, placed during three preceding completed financial year and current financial year upto date of tender opening.

[B] The onus of submission of requisite documents in support of supply *{[i] Receipt Notes/Proof of acceptance of material by consignee OR [ii] Inspection Certificate with self declaration by the bidder that supply has been accepted by consignee. Furnishing of false declaration shall render termination of contract and further action as per terms and conditions of contract}* lies with the tenderer. In case the tenderers do not submit the requisite documents as detailed above along with their offer, the tender will be decided on the basis of their past supply performance of ECR, if any.

[C] In case tenderer participates as an authorized agent, then the performance as required above shall be that of Principal authorizing the agent. It may so happen that the agent has credentials of past supply for a different Principal but this will not be considered as performance for placing bulk order in case of change of Principal.

*Similar item may be defined by tender inviting authority as special condition of tender. If it is not mentioned in special condition then performance will be considered for tendered item only.

2.6.2 "Capacity-cum-Capability" for Developmental order:

For consideration of developmental orders upto 20% of NPQ, the tenderers must be able to demonstrate their Capacity-cum-Capability to manufacture the tendered item. For this purpose they should submit alongwith their offer, documented past performance reports of same or similar items of equivalent rating or equivalent performance parameters, details of M&P, testing facilities, QAP (if available), technical

manpower available with them, registration for same/similar item(s) with other Government agencies or PSUs etc. or any other details as may be warranted as per the technical specification and drawing. Such tenderers are to note that non-submission of such documents shall be taken as their not having any such past performance and/or capacity, and their offer shall be considered further as per extant rules and no back reference in this regard will be made to them.

2.7 Procurement of items reserved to be procured from MSEs

a) For items reserved to be procured from Micro & Small Enterprises (MSEs), the MSE tenderers must enclose with their offer a copy of UDYAM Registration Certificate only. MSE benefits will not be admissible based on any other document.
b) Bulk order will be placed on MSEs having past performance for a minimum of 20 percent of total tendered quantity as per Para 2.6.1 [A] above. Other MSEs may be considered for Developmental Order for up to 20% of the Net Procurable Quantity.
c) Regarding submission of requisite documents in support of supply performance, Para 2.6.1 [B] above is also applicable.

2.8 Additional qualifying requirements for Imported Stores offered by Indian Agents in Indian Currency:

Any authorized dealer / agent/recognized industrial distributor quoting on behalf of their foreign principal in Indian Rupees shall have to comply with the following;
a) To quote with tender specific authorization from the foreign manufacturer.
b) While quoting on behalf of foreign principal, tenderers are required to furnish the principal's invoice/ Proforma invoice along with their quotation.
c) The tenderer shall have to undertake in the tender to comply with the following;
(i) Consent to furnish copy of customs out passed bill of entry for the goods, relevant to each consignment, Manufacturer's Test and Guarantee certificate issued by the manufacturer, Copy of Bill of Lading/AWB relevant to the consignment; Copy of commercial invoice of the foreign manufacturer/principals relevant to each consignment.
(ii) Current and valid authorization/dealership certificate of foreign manufacturer/principal.
(iii) Compliance of sea/air worthy packing condition in manufacturer's original packing with manufacturer's tamper proof seal and compliance of the Packing condition as laid down in IRS Conditions of Contract Para 1800. Failure to comply with any of the aforesaid conditions as referred above will make the offer liable to be rejected.
d) The tenderer has to indicate the following while submitting the offer;
(i) The precise relationship between the foreign manufacturer/principal and their agents/associates.
(ii) The mutual interest which the manufacturer/principal and the Indian agent/associates have in business of each other is to be indicated.
(iii) Indian agent's Permanent Account Number is to be indicated.
(iv) Any additional expenditure incurred on account of Tax and Exchange Rate variation during pendency of the Contract will be on contractor's account.
e) For bearings manufactured in foreign countries:
Visual inspection by TPI inside India after receipt is acceptable with import documents and original manufacturer's test and Warranty/ Guarantee certificate. Firm should consent to deposit security money as per IRS conditions for due execution of the contract if asked to do so. This is irrespective of the fact whether the firm is registered with this Railway or not.

3.0 BENEFITS/PREFERENTIAL TREATMENT TO MICRO & SMALL ENTERPRISES (MSEs)

(a) (I) MSEs participating in the tender as stipulated at Para (b) below, will be exempted from payment of Earnest Money.

(II) In tenders, participating MSEs, as per Para (b) below, quoting a price within price band of L-1 + 15% shall be allowed to supply a portion of the requirement by bringing down their price to L-1 price in a situation where L-1 price is from someone other than MSE and such MSEs can together be ordered up to 25% value out of the net procurable quantity.

(b) (I) MSEs, who are interested in availing themselves of these benefits, will enclose with their offer a copy of UDYAM Registration Certificate only. MSE benefits will not be admissible based on any other document.

(II) Further, as per Rly. Bd.'s letter Dtd. 03.11.22, in case of an upward change in terms of investment in plant and machinery or equipment or turnover or both, and consequent re-classification, an enterprise shall continue to avail of all non-tax benefits of the category (micro or small or medium) it was in before the re-classification, for a period of three years from the date of such upward change. All MSEs shall be eligible for benefits of public procurement policy irrespective of product category under which MSEs are registered.

However, traders/dealers/agents will not be eligible for such benefits.

4.0 TENDER DOCUMENT COST

4.1 For tender documents downloaded by bidders from IREPS website, no tender document cost is required to be submitted.

5.0 EARNEST MONEY DEPOSIT (EMD)

5.1 Tenderers are required to deposit Earnest Money through online mode only through IREPS portal for the amount as mentioned in the NIT. Any other mode of submission is not acceptable and in such cases, it will be considered that the offer is without EMD. Tenderers not submitting Earnest Money should clearly indicate in their offer the reasons for the same, and failure to do so will be taken as unwillingness on their part to deposit the Earnest Money.

5.2 Tenderer not falling in the exempted categories mentioned in the subsequent para shall remit the Earnest Money online only through Payment Gateway Facility available on the IREPS portal. Earnest money shall be accepted via online payment gateway as available on IREPS portal. No other mode of submission of Earnest money is acceptable.

5.2.1 Amount of EMD (rounded off to nearest higher Rs. 10 (ten)) to be taken in tenders, wherever applicable shall be as under:

a) EMD will be @ 2% of the estimated tender value for tender cases valuing up to Rs. 50 Cr. subject to maximum of Rs. 20 lakh.
b) EMD will be Rs. 50 lakh for tenders valuing above Rs. 50 Cr.

5.3. (i) Exemption from Submission of Earnest Money: The under noted categories of tenderers need not deposit Earnest Money:-

a. Firms registered with MSE as specified in para-3(b) above.
b. Tender cases of value upto and including Rs. 25 lakh unless otherwise specifically mentioned in the tender.
c. Other Railways and Government departments.
d. Indian Ordinance factories.
e. PSUs owned by Ministry of Railways and PSUs for the group of items that are manufactured by them.
f. Vendors registered with Railways for the trade group of the item tendered in any zonal railways.
g. Vendors appearing on the approved vendor lists of RDSO/PUs/CORE, subject to approval status being valid on the date of tender closing.
h. Vendors registered with Railways for supply of medicine, medical equipments and consumables shall be exempted from submission of EMD for these items.
i. In tenders issued against PAC, OEM in whose favour PAC has been issued shall be exempted from submitting EMD. KVIC and ACASH shall be exempted from EMD for items supplied by them.

(ii) However EMD is not exempted- If the tenderer participating in the tender is a trader/Dealer.

(iii) If a tenderer directly participating in the tender stipulating in IREPS that the order be placed on their authorized dealer, EMD exemption will be applicable as per status of the tenderer and not as per the status of their authorized dealer.

5.4 The tenderers falling under any of the above listed exempted categories and claiming exemption will have to follow the steps as available in the IREPS website and attach the requisite documents qualifying them for exemption.

5.5 (i) All vendors exempted from submitting EMD, as per Para 5.3 above, irrespective of type of tender, i.e. single, limited or open, shall be required to sign a bid securing declaration as following at the time of submission of online offer:

"**I/We certify that my/our offer is eligible for exemption from submission of bid security/ Earnest Money Deposit, in terms of the tender conditions. In case my/our claim to exemption from submission of bid security/ Earnest Money Deposit is not found valid as per terms of the tender, I/we understand and accept that Railways has unquestionable right to summarily reject my bid and my offer shall not be considered for ordering. Further, I/we hereby understand and accept that if I/we withdraw or modify my/ our bids during the period of validity, or if I/ we are awarded the contract and on being called upon to submit the performance security/ Security Deposit, fail to submit the performance security/ Security Deposit before the deadline defined in the request for bid document/ Notice Inviting Tender, I/ we shall be debarred from exemption of submitting Bid Security/ Earnest Money Deposit and performance security/Security Deposit for a period of 6 (six) months, from the date I/ we are declared disqualified from exemption from submission of EMD/SD, for all tenders for procurement of goods issued by any unit of Indian Railways published during this period.**"

(ii) In case the tenderer if found to have given wrong declaration, the case may be taken up by Railway authority for disqualification as per extant procedure and in such cases, there shall be no exemption to such bidders from submitting EMD and SD for all tenders published during the period of time they are so disqualified as per the declaration signed by them.

This Para shall not be applicable for Govt. Departments/ordnance factories/ other Railway/ Railway PSUs/KVIC/ACASH and matter shall be taken up with them departmentally/administratively.

5.6 Offer of the tenderer who do not submit Earnest Money, and are also not exempted from submission of Earnest Money shall be summarily rejected.

5.7 The purchaser reserves the right to forfeit the Earnest Money Deposit if the tenderer withdraws or revises his offer within the validity period or fails to deposit Security Money in terms of Clause 6.0 of this document.

5.8 No interest shall be payable by the purchaser on the Earnest Money. EMD of unsuccessful bidders and tenderers shall be released immediately after finalization of the tender.

6.0 SECURITY DEPOSIT (SD)

6.1 The successful tenderers shall, within 21 days after written notice of acceptance of tender has been posted to him, deposit Security Deposit for a sum equal to

(a) 5% of contract value subject to maximum of Rs. 50 lakh for contracts above Rs. 25 lakh and up to Rs. 50 Crores.

(b) Rs. 1 Cr or as fixed by Railway authorities in tender document for contract value above Rs 50 Crore, as security for satisfactory fulfillment of the contract unless otherwise SD waival is specifically mentioned in tender/LOA.

6.2 The Security money can be deposited in any of the following forms:

6.2.1 Deposit receipts, Pay orders, Demand Drafts, Guarantee Bonds issued by Nationalized or Scheduled Commercial Banks, Bonds of Indian Railway Finance Corporation and KRCL Bonds, Government Securities and depositreceipts in the post office saving banks. The Guarantee Bonds/Bank Guarantee should be submitted in the prescribed form as per **ANNEXURE-5.**

6.2.2 Payment of Security money in the form of pay order/demand draft shall be made in favor of PFA, East Central Railway payable at Hajipur, Bihar.

6.2.3 Security deposit shall remain valid for a minimum period of 60 days beyond the date of completion of all contractual obligations of supplier.

6.3 The Security Deposit (SD) shall be taken from all vendors for contracts above Rs.25 lakh subject to following exemptions**:**

a. The store contract cases of value upto Rs. 25 lakh
b. Other Railways and Government departments.
c. Indian Ordinance factories.
d. PSUs owned by Ministry of Railways and PSUs for the group of items that are manufactured by them.
e. In tenders issued against PAC, OEM in whose favour PAC has been issued shall be exempted from submitting SD. KVIC and ACASH shall be exempted from SD for items supplied by them.
f. Vendors registered with Railways for the trade group of the item tendered in any zonal railways shall be exempted from SD for orders valued upto their monitory limit of registration.
g. Vendors appearing on the approved vendor lists of RDSO/PUs/CORE, subject to approval status being valid on the date of tender closing.
h. Vendors registered with Railways for supply of medicine, medical equipments and consumables shall be exempted from submission from SD for these items.

Note: Apart from claiming damages from vendors, in case of failure to comply with the contractual obligations, Railways shall record poor performance of the vendors for taking suitable penal action as per extant instructions.

6.3.1 However SD is not exempted- If the tenderer participating in the tender is a trader/dealer/agent.

6.3.2 If a tenderer directly participates in the tender stipulating in IREPS that the order be placed on any other authorized dealer, they should enclose consent of the authorized dealer along with the offer. In such cases, Security Deposit shall be taken for contract value above Rs. 25 Lakhs from the dealer and not from the Principal tenderer.

6.4 Tenderers submitting Security Money in the form of Bank Guarantee (BG) should ensure the following, to avoid rejection/return of the BG:

1. The Bank Guarantee should be executed on non-judicial stamp paper of appropriate value as applicable at the place where the bank guarantee is executed.

2. The non judicial stamp paper used for executing the Bank Guarantee should have been purchased in the name of executants Bank.

3. The Bank Guarantee should be duly attested by notary public along with notarial stamps of appropriate value affixed thereon.

4. Every page of Bank Guarantee should be signed by the authority executing it and the Bank Guarantee should be duly numbered.

5. All corrections/alterations, if any, made in the Bank Guarantee should be duly attested by the executants Bank and the notary public as well.

6. The Bank Guarantee should be in the prescribed format **(ANNEXURE – 5)** and completely in the typed form.

6.5 The refund of security deposit becomes due when the contract is satisfactorily completed in accordance with terms & conditions of the contract. Purchaser's decision in this regard shall be final and binding on the supplier.

6.6 If the contractor, having been called upon by the Purchaser to furnish security deposit, fails to make and to maintain a security deposit within the specified period, it shall be lawful for the Purchaser to recover from the Contractor the amount of such security deposit by deducting the amount from the pending bills of the contractor under the contract or any other contract with the purchaser or the Government or any person contracting through the Purchaser or otherwise however, or

6.7 No claim shall lie against the Purchaser in respect of interest on cash deposits or Government Securities or depreciation thereof. No interest shall be payable upon the Bid Security and Security Deposit.

6.8 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 fulfillment or performance in all respects 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 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.

6.9 Wherever SD has been exempted, for any reason, and the supplier fails to supply goods as per conditions of contract, as amended from time to time, Purchaser shall have right to levy damages from the supplier for failing to comply with the contractual conditions, not by way of penalty, an amount equal to SD amount, as would have been applicable if the contract was with a non-exempted vendor. These damages shall be treated as recoveries outstanding against the vendor and dealt with accordingly.

7.0 SUBMISSION OF OFFERS

7.1 Procedure for submission of electronic offers

7.1.1 The tenderers should visit IREPS website at the address www.ireps.gov.in and submit online offers after logging into the website using their login ID, Password and Digital Signature. Detailed instructions are available in 'Users Manual for Vendors' which can be accessed through Learning Center link available on the Home page of IREPS website (www.ireps.gov.in).

7.1.2 Deleted.

7.1.3 Deleted.

7.1.4 Deleted.

7.1.5 **Revised bids:** Vendors can submit a revised commercial offer ("Financial Rate Page for Supply'' form) any time before the stipulated closing date and time and in such case the last revised offer submitted at a later time and date shall be considered as the offer, superseding all the previously submitted offers for that item/items of the tender.

7.1.6 **Alternative bids**: The vendors are also allowed to submit alternative offer (fordifferent make, specification, slab discount etc.)

7.1.7 **Late Offers**: The Indian Railway E-procurement application software doesnot permit vendors to submit their offers after the designated tender closing date and time.

7.1.8 The tenders are uploaded in IREPS website well in advance of closing time to give sufficient time to the vendors to participate in the tender. Vendors are advised in their own interest to submit their offers well in advance before the tender closing time. East Central Railway shall not be responsible for non-participation of vendors due to any technical problems such as network connectivity etc. on the tender opening day.

8.0 GOODS & SERVICES TAX (GST)

(i) The bidders should ensure that they are GST compliant and their quoted tax structure/rates are as per GST law.

(ii) The bidders are required to indicate the rate of GST applicable for the tendered item in their bids separately in the 'Financial Offer Tab' provided in the IREPS System.

(iii) The bidders while submitting their bids will be deemed to have given following declaration:
"We hereby declare that in quoting the above price, we have taken into account the full effect of Input Tax Credit available under GST. We further agree to pass on any financial gain/benefit as may become available in future in respect of all the input tax credit on the date of supply by way of reduction in price and advise the purchaser accordingly. We also undertake that we are aware of the provisions of section 171 of the CGST Act and consequences thereof if we fail to comply with the same. b) We shall file GSTR-1 and GSTR-3B for transaction with Railways in due time preferably every month so that ITC benefit can be availed by Railway."

(iv) In case the successful tenderer is not liable to be registered under CGST/IGST/ UTGST/SGST Act, the railway shall deduct the applicable GST from his/their bills under reverse charge mechanism (RCM) and deposit the same to the concerned Authority.

(v) The offers shall be evaluated based on the GST rate as quoted by each bidder and same will be used for determining the inter se ranking. While submitting offer, it shall be the responsibility of the bidder to ensure that they quote correct GST rate and HSN code bidders should invariably indicate GSTIN Number and HSN code of the offered stores duly enclosing the documentary evidence.

(vi) Purchaser shall not be responsible for any misclassification of HSN number or incorrect GST rate if quoted by the bidder.

(vii) Wherever the successful bidder invoices the goods at GST rate or HSN number which is different from that incorporated in the purchase order; payment shall be made as per GST rate which is lower of the GST rate incorporated in the purchase order or billed.

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

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

(x) Tenders in which procuring authority has pre disclosed the HSN code, Firms are suppose to quote GST rate applicable to HSN code mentioned in the tender. Firms who quote different rate (not applicable to HSN code mentioned in tender), their offer will be liable to be rejected.

(xi) The GSTIN number of Railway for **Bihar** based consignee is **10AAAGM0289C1ZY**, **Jharkhand** based Consignee is **20AAAGM0289C1ZX, Uttar Pradesh** based Consignee is **09AAAGM0289C1ZH and Madhya Pradesh** based Consignee is **23AAAGM0289C1ZR**.

8.1 Statutory Variation Clause:

(a) Statutory Variation in taxes and duties, or fresh imposition of taxes and duties by State/ Central Governments in respect of the items stipulated in the contract (and not the raw materials thereof), within the original delivery period stipulated in the contract, or last unconditionally extended delivery period shall be to Railways' account. Only such variation shall be admissible which takes place after the submission of bid. No claim on account of statutory variation in respect of existing tax/duty will be

accepted unless the tenderer has clearly indicated in his offer the rate of tax/duty considered in his quoted rate. No claim on account of statutory variation shall be admissible on account of misclassification by the supplier/ contractor.

(b) Statutory Variation Clause is applicable on all statutory levies such as Duties, Taxes etc. during the Original Currency of Contract subject to production of documentary evidence.

(c) Statutory Variation Clause: This clause is applicable in all tenders except if it is denied explicitly in the Terms & Conditions of NIT.

9.0 OPENING OF ELECTRONIC TENDERS

9.1 The tender shall be opened electronically by railway official(s), authorized to do so by East Central Railway, by logging on the IREPS website with their Login ID and Password, by authenticating themselves through their Digital Signature Certificate, as well as applying secure decryption key of East Central Railway for decryption of electronic offers.

9.2 The tender shall normally be opened on the stipulated closing date, after the stipulated opening time. In case the closing date falls on a holiday, the tender shall be opened on the next working day. However, due to unavoidable reasons, the tender may not be opened on the stipulated closing date, and may be opened on a later date. However, no revision or modification of the offer shall be allowed after the closing date and time, even if there is any delay in the tender opening.

9.3 Immediately after the opening of tender, financial and Techno-commercial tabulation statements are generated by the IREPS module. Vendors who have submitted valid offers against electronic tenders against 'Open' and 'Special Limited' tenders are not required to come to East Central Railway office to witness the tender opening process and know the offer details, as they will be able to access the tabulation statements and bids, immediately after tender opening, by visiting the IREPS website and logging in with their Login ID, Password and Digital Signature.

9.4 **e-Reverse Auction Tenders (e-RA):** For e-RA tenders, the conditions as per **ANNEXURE-1** will be applicable.

10.0 EVALUATION OF OFFERS

10.1 The commercial offer details shall be submitted by vendors using 'Financial Offer Tab' form having separate entry box for each element of rate. The vendors must fill in basic rate and other rate components such GST, unconditional discount on basic rate, if any, packing charges on basic rate, forwarding charges, freight charges, other charges, if any, in the boxes provided in the 'Financial Offer Tab' form. The all inclusive rate per unit shall be calculated automatically considering all the elements of rate components, as filled by vendor before submitting the offer, and will be displayed before vendor submits his digitally signed electronic offers. Tenderers should check all rate entries before submission and before digitally signing their electronic offers. Tenderers are therefore advised to check and revise any or all the entries in the Financial Offer Tab before the same is digitally signed and submitted.

All offers will be evaluated after taking into account the all inclusive destination rate per unit, which will also be displayed to the vendor before submission of his electronic offer.

10.2 Tenderers should quote financial terms and conditions in the nominated fields of 'Financial Offer Tab' only. Any financial terms and conditions mentioned in the fields other than the nominated fields will be ignored and will not be considered for purpose of evaluation of offer to determine the inter-se ranking of

the offer. Tenderers are advised not to quote any terms and conditions having financial bearing in any other template of bidding Process except the 'Financial Offer Tab'. Similarly, any financial terms and conditions enclosed as attachments or received through post will be ignored and not considered for purpose of evaluation of offer to determine the inter-se ranking of the offers. However, Railways at their own discretion may avail the benefit of such conditions while placing purchase order, if the offer is considered for placement of order.

Nothing extra shall be payable over and above the all inclusive rate shown in the financial offer, except on account of Price Variation clause, and Statutory Variation, if applicable. Digital Signature of the tenderer on final bid submission shall be construed as confirmation that the tenderer has read and accepted this condition.

10.3 The tenderers shall quote specific freight charges in the relevant field of 'Financial Offer Tab'. Ambiguous remarks like 'freight extra at actuals', 'freight shall be charged extra', 'Railway freight shall be charged extra' etc., mentioned in the 'PVC and remarks' field or elsewhere in the electronic offer or attachments shall not be considered for evaluation, and may render the offer liable to be ignored. However, freight charges shall not be payable if the offer is considered.

10.4 Rates quoted by the tenderers with discounts, if any, linked to quantity will be considered for determining inter-se position of the offers, provided it is submitted by the Tenderer as an Alternate bids. Discounts with conditions attached to early payment, early Receipt Notes etc. will be ignored for calculating inter-se position. However, Railways may avail the discounts linked to early payment, early Receipt notes etc. if otherwise firm's offer is found to be acceptable.

10.5 The tenders will be evaluated by the Purchaser on free delivery to destination basis, to ascertain the best and lowest acceptable tender, as specified in the specifications and tender documents. Wherever more than one consignee/item is involved, unless specified otherwise in the tender document, tender would be evaluated and inter-se ranking of the tenderer would be made for each item and/or each consignee separately.

10.6 The inter-se ranking shall be determined by considering the taxes & duties applicable as quoted by the tenderer and the inter-se ranking arrived at in such manner shall be taken as final.

In case of reduction in taxes, the same will be paid as per rate thereof prevailing on the date of supply.

Statutory variation in taxes shall be allowed only where the tenderers have specifically sought such statutory variation in their offer(s).

10.7 Claim for any tax not stipulated in the quotation will not be admitted at any stage on any ground whatsoever.

11.0 ACCEPTANCE OF TENDER

11.1 The purchaser may accept a tender for a part or whole of the quantity offered, reject any tender without assigning any reason and may not accept the lowest or any offer.

12.0 DELIVERY SCHEDULE

12.1 The tenderers should quote the delivery period/delivery schedule carefully, because the time and date for the delivery of stores shall be the essence of the contract and delivery must be completed not later

than the date and time so specified. The attention of the tenderers is invited to clauses 0700, 0701 and 0702 of the IRS Conditions of Contract, which shall govern the contract.

12.2 The delivery period and delivery schedule as per East Central Railway's requirement are indicated in the respective fields in the electronic tender. Tenderers are advised to adhere to the delivery period/delivery schedule stipulated in the tender, as deviation from the same may render their offer liable to be ignored. Tenderers should invariably quote firm delivery period in their quotation. If the quoted delivery period spreads over several months, the date of commencement, monthly rate of delivery and the date of completion of delivery must be indicated clearly.

12.3 In the case of "ex-stock" offers, the despatch of stores is to be effected within 7 days of the receipt of purchase order. Wherever the stores are subject to inspection by Third Party Inspection (TPI) agency etc. before despatch, extra time of 3 weeks will be allowed to cover time in inspection.

12.4 In case of delivery by Rail, the date on which stores are placed on Rail (i.e. RR/PWB date) will be date of delivery for FOR place of despatch. In case of local delivery, the date of delivery to consignee will be taken as date of delivery. For outstation dispatches, if sent by lorry, the date of receipt of material by consignee will be taken as date of delivery.

12.5 No transit time shall be allowed beyond the delivery date stipulated in the contract.

12.6 Time Preference Clause: It should be noted that if a contract is placed on a higher tenderer as a result of invitation of tender, in preference to the lower acceptable offer, in consideration of offer of earlier delivery, the contractor will be liable to pay to the Purchaser the difference between the contract rate and of the lowest acceptable offer on the basis of final price F.O.R destination including all elements of freight, GST and other incidentals in case of failure to complete supplies in terms of such contract within the date of delivery specified in tender and incorporated in the contract. This is in addition and without prejudice to other rights available to the purchaser under the terms of contract.

13.0 DELIVERY TERMS

13.1 The purchaser will prefer free delivery by road at consignee's end.

13.2 Tenderers are required to clearly indicate the freight charges in the relevant field in the 'Financial Offer Tab'. The freight charges to be paid shall in no case exceed the freight charges quoted by the tenderer in the relevant field in the 'Financial Offer Tab'.

13.3 In case an offer is submitted on 'FOR-Station of despatch' basis, 'FOR- Ex-Works' basis or 'FOR- Ex-Godown basis' and 'Nil' freight charges are quoted by the tenderer in the relevant field on the 'Financial Offer Tab', the supplier shall agree to despatch the stores by rail/road on free delivery to consignee. No freight charges shall be payable in such cases.

13.4 The purchaser will not pay separately for transit insurance and supplier will be responsible till the entire stores contracted for are received by the consignee in good condition at destination.

14.0 LIQUIDATED DAMAGES AND GENERAL DAMAGES

14.1 Liquidated Damages and General Damages will be applicable as per Clause 0700, 0701 and 0702 of IRS Conditions of Contract.

14.2 **Failure and Termination –**

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

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

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

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

15.0 RISK PURCHASE

15.1 This clause stands deleted.

16.0 INSPECTION

16.1 The inspection of stores at manufacturer's premises before dispatch will be conducted by an agency nominated by the purchaser viz. Third Party Inspection (TPI) Agency or the representative of consignee. Final inspection of stores will be done by the consignee on receipt at destination. Detailed instructions regarding Third Party Inspection (TPI) Agency is available at **ANNEXURE-10.**

16.2 Tenderers are required to confirm acceptance of the Inspection Clause mentioned in the tender document, and non-acceptance of the same shall render the offer liable to be ignored.

16.3 Traders/ authorized agents are required to offer material for inspection at manufacturer's premises only.

16.4 In case the firm fails to offer the material for inspection against inspection call issued to the inspecting agency or if the material have to be reinspected due to rejection of the material at firms premises by the inspecting agency or due to non despatch of material within validity of Inspection Certificate, then the charges as per terms and conditions of Third Party Inspection (TPI) Agency will be paid by the supplier to the inspection agency.

16.5 **Requirement of BIS Certification for raw Materials:**
If the specification of material used to manufacture the tendered item comes under the mandatory certification of BIS,(the details of mandatory certification are indicated on the Bureau of Indian

standards(BIS) website-www.bis.org.in under “Product Certification” _ Mandatory Certification” the firm will ensure the purchase of material from the sources which are having BIS License and with ISI mark. The necessary related documents will be required to be submitted by the firm if the same is asked for by inspecting agency or any third party. The firm will produce the trail of documents and test certificates to show that the said item has been sourced from BIS license and with ISI mark. This will be applicable to individual item and/ or a part in the assembly/ Fabricated item. ISI stamp should be demonstrated by the vendor/supplier/ Contractor on the item or its salvage, which should be available in vendor’s Premises.

17.0 ADVICE OF DESPATACH OF STORES

17.1 The supplier should ensure that Railway receipts/PWB under which the material is booked to a Railway consignee are prepared in the favour of ‘consignee’ and not ‘self’, failing which they will be required to take the delivery themselves anddeliver the consignment to the consignee. When suppliers submit the original RR/PWB along with other documents to paying authority for claiming advance payment, a photocopy of RR/PWB should be sent simultaneously to consignee.

17.2 All dispatch documents i.e. RR/PWB, Challan, Inspection certificate etc. should be sent to the consignee.

17.3 The Contractor shall, three calendar months before the termination of the contract or at such intervals as may be specified in the contract, submit a report to the Purchaser stating the total quantity of goods delivered or dispatched under the contract.

18.0 PAYMENT TERMS

18.1 The standard payment terms subject to recoveries, if any, under the IRS conditions of Contract are as under:-

a. 95% payment against inspection certificate and proof of despatch/delivery to consignee and balance 5% after receipt and acceptance of the goods.

b. 100% payment against receipt and acceptance of material by the consignee after inspection and acceptance at destination.

For contracts valued up to Rs.50.0 Lakh, payment terms as per (b) above only will be accepted.

Part Payment: It is applicable in all the orders if value of PO is more than Rs.10 Lakhs. However, Purchase officers at their discretion may allow the same for lower value contracts also.

18.2 In case of despatch by rail, unqualified Railway Receipt/Parcel Way Bill will be taken as the proof of despatch. In case of despatch by other means such as road transport, receipted challan signed by the Gazetted Officer at consignee’s end will be taken as proof of delivery for the purpose of para 18.1.a. above.

18.3 Tenderers are advised to accept the standard payment terms incorporated in the tender, as deviation from the same shall render the offer liable to be ignored.

18.4 In deserving cases, East Central Railway, at their sole discretion may accept deviation from the standard payment terms, as per existing guidelines/ instructions.

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

18.6 Payment of bills having WPI based PVC based formula shall be as follows- (1)100% payment subject to production of Price Variation by the Firm as per the PVC formula mentioned in the concerned Purchase Order, taking proper price indices (not provisional). (2) 90% payment, if Price Variation not submitted by the Firm along with submission of bill. The balance 10% payment is to be made on submission of Supplementary bill by the Firm along with PV. Negative Price Variation (if applicable) will be deducted from concerned Supplementary bill during payment by Bill Paying Authority.

19.0 MODE AND PROCEDURE OF STORES BILL PAYMENT

a) Payment of the bills of suppliers will be done through ELECTRONIC FUND TRANSFERS only like NEFT, RTGS etc. For this, firms will submit their Bills online in IREPS. Firms must ensure that they submit Tax Invoice, complete in all respects. Firms will also ensure that their Account Details in IREPS System remains updated all the time, as payment of bills will be done in that Account only.

Separate Mandate Form/NEFT Bank Mandate Form giving Bank Account details is not required now during the submission of bills.

b) To ensure that bills are submitted correctly and paid expeditiously, the checklist given at **ANNEXURE-6** may be referred by the firms.

20.0 SAMPLES, DRAWINGS & SPECIFICATIONS

20.1 **SAMPLES**

20.1.1 The offers should strictly conform to the specified description and drawing/specification in schedule of requirements and no samples need be submitted unless so mentioned in tender form. When samples are required, the same must strictly conform to description, drawing/specification as mentioned in the tender documents. Samples submitted will be considered as supplemental and not in supersession to any specification mentioned and such samples will only be considered in relation to those points which are not defined in the specification. The onus of drawing attention to any particular item in which a tenderer wishes his samples to supersede or vary from the tender description/specification lies on tenderer. In the absence of specific acceptance in writing to any variation, the purchaser shall be entitled to reject any claim for acceptance of supply embodying such variation.

When samples are called for, they should be marked, sealed and labeled so as to correspond with the item of the tender. They should be sent "Freight Paid" to the same address as per the tender, and arrangements should be made to see that they arrive by the opening time and date of the tender; otherwise the offer will be summarily rejected.

Samples submitted by the tenderer which are of the value of Rs. 500/-or less will not be returned to them. For samples valuing above Rs. 500/-the tenderer must state on the tender form if he requires the

return of unaccepted samples failing which they will be retained by the purchaser. Unaccepted samples will be returned to firms on application who may arrange collection of the same from PCMM Office.

Firms with whom orders are placed should refrain from sending advance samples unless called for and should make supplies strictly as per tenders or orders placed with them.

20.1.2 Wherever the tenders have been invited as per approved sample, tenderers may contact purchaser/consignee for accessing approved sample.

20.2 **DRAWINGS & SPECIFICATIONS**

20.2.1 Where the tenders have been invited as per IRS/RDSO drawings or specifications, the tenderer shall obtain such drawings or specifications from RDSO (Research Designs and Standards Organization, Manak Nagar,Lucknow-226011) on payment of the cost of drawings/specifications, or download from the /drawing source approving authority website well in advance of the closing date. Similarly, where the tender has been invited as per drawings or specifications issued by ICF (Integral Coach Factory, Perambur, Chennai, Tamilnadu)/RCF (Rail Coach Factory, Kapurthala, Punjab)/CLW (Chittaranjan Loco Works, Chittaranjan, West Bengal)/BLW (Banaras Locomotive Works, Varanasi, Uttar Pradesh)/CORE (Central Organization for Railway Electrification, Allahabad, Uttar Pradesh), the tenderer shall obtain such drawings/specifications from therespective issuing authorities, on payment of cost of the drawing/specificationor download from the /drawing source approving authority website Where the tender has been invited as per BIS specifications or any other standards, it shall be the responsibility of the tenderer to arrange such documents from the respective issuing authority. East Central Railway shall provide no assistance to the vendorsin this regard, and shall not be responsible for non-participation of vendors on account of delay in arranging such drawings/specifications.

20.2.2 Where the tenders have been invited as per East Central Railway's drawings or specifications, scanned copies of such drawings/specification shall normally be attached with the electronic tender. However, where it is notpossible to do so, the drawings/specifications can be seen/ obtained from the Office of the Principal Chief Materials Manager, East Central Railway, Hajipur- 844101, during office hours, on any working day before the closing date and time of the tender.

20.2.3 If any tenderer happen to quote with their own Drawing No / Part No / Specification, then, they shall have to, necessarily, submit all the requisite documents and information in support of their offer being to be in conformity with the tender Drawing / Specification. Furthermore, copies of such drawings / specifications /catalogue are also to be uploaded along with the offer, failing which the offer will be liable to be rejected.

21.0 PRICE VARIATION CLAUSE

21.1 Unless otherwise specified in Tender Schedule, Tenderers are advised to quote firm prices only. Offers of Tenderers quoting with PVC in such cases shall be summarily rejected.

21.2 However, wherever considered desirable by the purchaser, a Price Variation Clause may be incorporated in the Tender Schedule itself. In all such cases, where PVC formula and PVC base date/base rate has been incorporated in tender, the Tenderers are advised to submit their offers as per the PVC formula and Base Date/Base Rate incorporated in the tender document and offers received with fixed prices or with a different Price Variation formula or different base date/base rate shall be summarily rejected.

21.3 Tenderers who quote with PVC as stated in Para 21.2 above on account of escalation in price of raw materials may please note that such escalation claims will be subject to verification by the PFA with reference to the records that may be called for from them. Successful Tenderers will be required to produce complete records for verification/examination of their claims under price escalation before acceptance of such claim. If the tenderers fail to establish their claim by producing satisfactory records before the PFA/ECR, their claim will be disallowed and/or proportionately/suitably reduced.

22.0 PRICE/PURCHASE PREFERENCE

Purchase Preference will be given to MSEs as per details specified in Clause-3.0 'BENEFITS/PREFERENTIAL TREATMENT TO MICRO & SMALL ENTERPRISES (MSEs)' of this document.

23.0 CARTEL FORMATION:

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

(b) Whenever tender is floated with purchase restriction from sources approved by nominated authorities and there exists a suspected cartel situation by approved sources or the rates available from approved source/sources are adjudged unreasonably high, despite fair efforts as permissible, the purchaser reserves the right to place orders on firms outside the approved vendors list, without any restrictions.

(c) Firms are required to quote for a quantity not less than 50% of the total tendered quantity for consideration of eligibility for regular ordering, and quantity not less than 10% of the total tendered quantity for consideration of eligibility for developmental ordering, as per the eligibility requirement of the tender. Offers for quantity less than 50% of total tendered quantity from vendors eligible for regular ordering and offers for quantity less than 10% of total tendered quantity from vendors eligible for developmental ordering will be considered unresponsive and will be summarily rejected. This condition will not be applicable if part quantity bidding is permitted in NIT. This however will be without any prejudice to Railway's right to distribute the tendered quantity & place order on one or more firms

(d) Firms who quote in cartel be warned that their names are likely to be deleted from list of approved sources.

24.0 OPTION CLAUSE:

24.1 Unless otherwise specified in the tender document, the purchaser shall be entitled to increase the order quantity by (+) 30% anytime within the delivery period (including extended delivery period). The increase in quantity with respect to the tender quantity can be done even at the time of ordering and the tenderer shall be bound to accept the quantity so ordered on the basis of his original offer. As per extant instruction, operation of the option clause can be made any time within contractual delivery period giving reasonable time to the firm to supply the enhanced quantity. It may be noted that for invocation of the option clause, validity of the contract will be considered upto the contractual delivery period even though the supplies have been completed in advance.

24.2 In a contract that provides for quantity option clause, in case delivery period is extended either for the full ordered quantity or a part quantity which remained unsupplied on the date expiry of the original

delivery period, then during the extended delivery period also, quantity variations can be made on the total ordered quantities.

24.3 Tenderers may please note that option clause is mandatory for Contracts valuing above Rs.1.5 Crores and where item is of continuing nature. However, Railway reserves the right to put the option clause in the lower value contracts also.

25.0 SPLITTING OF TENDERED QUANTITY

25.1 Case of no prior decision to split the order

(A) Normally full order shall be placed on L-1 firm. However, if it is discovered that the quantity to be ordered is more than what L-1 alone is capable of supplying and there was no prior decision to split the quantities, then the quantity being finally ordered will be distributed among the other tenderers in a manner that will be fair, transparent and equitable. The manner of splitting will take specific note of the following parameters-

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

(B) In the absence of any differentiation on the above parameters, the manner of splitting will be based on the stipulation given in Para 25.2.1 below.

25.2 Case of pre-decided split ordering

25.2.1 Wherever pre-decided split ordering is mentioned in the tender document in advance to have more than one source of supply on account of delivery requirement in tender, past performance and capability of bidders, quantity under procurement and vital/safety nature of items, provisions under 25.2.1(a) to Para 25.4 shall be applicable.

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

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

Price Difference Between L1 AndL2	**Quantity distribution ratio between L-1 and L-2**
UPTO 3%	60:40
MORE THAN 3% AND UPTO 5%	65:35
MORE THAN 5%	At least 65% on the L1 tenderer. For the quantity to be ordered onthe L-2 tenderer, the purchaser shall decide.

In the phrase 'differential rates quoted by the tenderers', the quoted rate would mean

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

(ii) When price negotiation has been called for, the reference L-1 rate for assessment of ratio will be the original rate of L-1 firm (suitable for bulk quantity)- say firm "A" –as obtained at the time of tender opening.

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

25.2.2 However, in exceptional circumstances Railway reserve the right not to split the order quantity in cases of pre decided splitting.

25.3 For cases where the Rlys/PUs had entered the into ToT/JV agreements the following shall be applicable.

"As the Rly has entered into TOT/JV agreement with ……. no. of firms, they reserve the right to place orders on all such TOT/JV agreementpartners. However for ratio/proportion of quantity distributionamong such agreement partners, conditions as detailed in Para 25.2.1(b) shall apply with the exception that the aspect of 'per-se reasonability' will not be applicable."

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

26.0 FALL CLAUSE

It stands deleted. If it is to be incorporated, the same should be done by specifically putting a clause in the Terms and conditions of tender document.

27.0 REJECTION OF MATERIAL

27.1 Materials peculiar to railways such as parts and fittings of rolling stock except raw materials, which have been rejected during inspection and which could not be rectified are required to be defaced by the inspecting authority to avoid recycling of such rejected materials, and to avoid ultimate failures of assets. All such rejected materials peculiar to railways should be mechanically defaced to prevent sale to railways again.

27.2 **Handling of Rejection cases by Consignees:**

27.2.1 **A. Pre-inspected material rejected by consignee at the time of receipt**

(i) Incase of rejection of pre-inspected goods at consignee end, the material rejection advice/ rejection memo should be sent by consignee to all concerned i.e. Firm, Purchaser, Pre-inspecting agency, paying authority as per contract etc. without fail.

(ii) **Financial recovery:** Incase payment has been made to the firm for thematerial, the concerned paying authority as per contract should note the rejection advice details in the recovery register for effecting recovery of payments made, as the case may be.

(iii) Joint Inspection is mandatory. Joint inspection of rejected material will be held with pre-inspecting agency and firm. In case of failure of either of the two parties to associate with joint inspection should be held by the consignee with whichever of the two parties comes for joint inspection. Irrespective of whether the party (ies) attends joint inspection or not, the modality of joint inspection etc will have to be completed within 21 days of communication of rejection advice to the supplier (inline with IRS conditions of Contract clause 703). For imported material, the time limit will be 45 days.

(iv) Firm may be permitted to collect the rejected goods only after the firm has deposited the payments already made by Railway (if any) to the firm or equivalent amount has been recovered for this purpose.

(v) Incase of replacement supply against the rejected goods, the same should be pre-inspected by same pre-inspecting agency which passed the material earlier. In line with IRS conditions of Contract clause 703, no inspection charges will be paid by Railway to the inspection agency for the replacement supply.

(vi) However incase of component level rejection in an pre-inspected item (which is an assembly), the replacement supply of the component can be accepted based on firm's internal inspection certificate and final inspection by consignee.

B. Handling of Warranty Rejection

Materials are rejected under warranty in the following situations:

(A) Material rejected was issued to the user (shop/shed etc) from its attached Stores Depot or attached User Depot (both Stock & Non-stock).

(B) Material rejected was received from a PU or a Stores Depot or a User Depot which is not the attached depot of the end user including that received directly through centralized procurement (both Stock & Non-stock).

(C) Material was rejected in the field and was fitted at some other Workshop/Shed/Depot. Material either received or fitted through Supply Contract, Works Contract or Service Contract or any other type of contracts (both Stock & Non-stock).

(D) Failure of components of Rolling Stocks received from Railway PUs/ PSUs/ Workshops/ Private Manufacturers.

The Detailed Methodology of handling these rejections will be as given at **ANNEXURE- 9** on the subject- **'Handling of Warranty Rejections'**.

28.0 MARKING OF STORE

28.1 Contractor/Manufacturer must inscribe/ engrave/ screen-print/ emboss vendor's name/identification marks as well as month and year of manufacture on item supplied to East Central Railway. The location of these identification marks should be such that they do not affect the functional utility and structural stability of the components/materials, and also do not get obliterated on wear and tear. For very small items where marking on individual item is not possible, the vendor will arrange to print Vendor's name/identification marks as well as month and year of manufacture on standard packing, after obtaining specific approval from the purchaser in each case. The decision of the purchaser on whether such approval is to be granted or not shall be final and binding.

28.2 IRS Conditions of Contract Para 1302: Marking of Goods is also applicable.

29.0 Public Procurement (Preference to Make in India):

The Public Procurement (Preference to Make in India) Order, 2017 -Revision dated 04.06.20 issued by Ministry of Commerce and Industry, Department of Industrial Policy and Promotion, Government of India shall be applicable,

29.1 **LOCAL CONTENT**: 'Local content' means the amount of value added in India which shall, unless otherwise prescribed by the Nodal Ministry, be the total value of the item procured (excluding net domestic indirect taxes) minus the value of imported content in the item (including all customs duties) as a proportion of the total value, in percent.

(a) 'Class-I local supplier' means a supplier or service provider, whose goods, services or works offered for procurement meets the minimum local content as prescribed for 'Class-I local supplier' under this order. Generally, the local content to categorize a supplier as 'Class-I local supplier' is minimum 50%.

(b) 'Class-II local supplier' means a supplier or service provider, whose goods, services or works offered for procurement meets the minimum local content as prescribed for 'Class-II local supplier' but less than that prescribed for 'Class-I local supplier' under this order. For 'Class-II local supplier', the local content requirement is minimum 20%.

(d) Non-Local supplier means a supplier or service provider, whose goods, services or works offered for procurement has local content less than that prescribed for 'Class-II local supplier' under this order.

(e) Margin of Purchase Preference: The margin of Purchase preference shall be 20%. 'Margin of purchase preference' means the maximum extent to which the price quoted by a Class-I Local Supplier may be above the L1 for the purpose of purchase preference

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

29.2 **Verification of local content:**

a. 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.

b. In case of procurement for a value in excess of Rs.10 crores, the local supplier shall be required to provide a certificate from the statutory auditor or cost auditor of the company (in the case of companies) or from a practicing cost accountant or practicing chartered accountant (in respect of suppliers other than companies) giving the percentage of local content.

c. False declarations will be in breach of the Code of Integrity under Rule 175(1)(i)(h) of the General Financial Rules for which a bidder or its successors can be debarred for up to two years as per Rule 151 (iii) of the General Financial Rules along with such other actions as may be permissible under law.

d. A supplier who has been debarred by any procuring entity for violation of this Order shall not be eligible for preference under this Order for procurement by any other procuring entity for the duration of the debarment.

e. Debarment of bidders:
In respect of procuring entities other than the one which has carried out the debarment, the debarment takes effect prospectively from the date of uploading on CPPP so that ongoing procurements are not disrupted.

f. Reciprocity Clause:
Entities of countries which have been identified by the Nodal Ministry/Department as not allowing Indian companies to participate in their Government procurement for any item related to that Ministry/Department shall not be allowed to participate in Government procurement in India for all items related to that nodal Ministry/Department, except for the list of items published by the Ministry/Department permitting their participation.

The term 'Entity' of a country shall have the same meaning as under the FDI Policy of DPIIT as amended from time to time.

29.3 <u>Requirement of Purchase Preference:</u>

Subject to the provisions of this Order and to any specific instructions issued by the Nodal Ministry or in pursuance of this order, purchase preference shall be given to 'Class-I local supplier' in all procurements undertaken by procuring entities in the manner specified hereunder:

a) In procurement of all goods, services or works in respect of which the Nodal Ministry/Department has communicated that there is sufficient local capacity and local competition, only 'Class-I local supplier', as defined under the Order, shall be eligible to bid irrespective of purchase value.

b) Only 'Class-I local supplier' and 'Class-II local supplier', as defined under the order, shall be eligible to bid in procurements undertaken by procuring entities, except when global tender enquiry has been issued. In global tender enquiries, 'Non-local suppliers' shall also be eligible to bid along with 'Class-I local suppliers' and Class-II local suppliers'.

c) In the procurements of goods or works, which are covered by Sub Para 29.3 (b) above and which are divisible in nature, the 'Class-I local supplier' shall get purchase preference over 'Class-II local supplier' as well as 'non-local supplier', as per following procedure:

(i) Among all qualified bids, the lowest bid will be termed as L1. If L1 is 'Class-I local supplier', the contract for full quantity will be awarded to L1.

(ii) If L1 bid is not a 'Class-I local supplier', 50% of the order quantity shall be awarded to L1. Therefore, the lowest bidder among the 'Class-I local supplier' will 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 L1 price. In case such lowest eligible 'Class-I local supplier' fails to match the L1 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 L1 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 supplier', then such balance quantity may also be ordered on the L1 bidder.

(c) In the procurements of goods or works, which are covered by Sub Para 29.3 (b) above and which are not divisible in nature and in procurement of services where the bid is evaluated on price alone, the 'Class-I local supplier' shall get purchase preference over 'Class-II local supplier' as well as 'non-local supplier', as per following procedure:
i. Among all qualified bids, the lowest bid will be termed as L1. If L1 is 'Class-I local supplier', the contract will be awarded to L1.

ii. If L1 is not 'Class-I local supplier', the lowest bidder among the 'Class-I local supplier', will be invited to match the L1 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 L1 price.

iii. In case such lowest eligible 'Class-I local supplier' fails to match the L1 price, the 'Class-I local supplier' with the next higher bid within the margin of purchase preference shall be invited to match the L1 price and so on and contract shall be awarded accordingly. In case none of the 'Class-I local supplier' within the margin of purchase preference matches the L1 price; the contract may be awarded to the L1 bidder.

(d) 'Class-II local supplier' will not get purchase preference in any procurement undertaken by procuring entities.

(e) Applicability in tenders where contract is to be awarded to multiple bidders- In tenders where contract is awarded to multiple bidders subject to matching of L 1 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.

(i) 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 suppliers, who would be awarded the contract, should be all and only 'Class-I Local suppliers'.

(ii) In other cases, 'Class II local suppliers' and 'Non local suppliers' may also participate in the bidding process along with 'Class I Local suppliers' as per provisions of this Order.

(ii) (a) If 'Class I Local suppliers' qualify for award of contract for at least 50% of the tendered quantity in any tender, the contract may be awarded to all the qualified bidders as per award criteria stipulated in the bid documents. However, in case 'Class I Local suppliers' do not qualify for award of contract for at least 50% of the tendered quantity, 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 20% margin

of purchase preference of the highest quoted bidder considered for award of contract so as 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.

(ii) (b) First purchase preference has to be given to the lowest quoting 'Class-I local supplier' whose quoted rates fall within 20% margin of purchase preference, 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 supplier. If the lowest quoting 'Class –I local supplier', does not qualify for purchase preference because of aforesaid constraints or does not accept the offered quantity, an opportunity may be given to next higher 'Class-I local supplier', falling within 20% margin of purchase preference, and so on.

29.4 Exemption of small purchases:

Notwithstanding anything contained in paragraph 29.3, procurements where the estimated value to be procured is less than Rs.5 lakhs shall be exempted from this Order. However, it shall be ensured by procuring entities that procurement is not split for the purpose of avoiding the provisions of this Order.

29.5 In keeping with the public procurement (preference to Make in India) Order, 2017, as amended, wherever it has been found that there is sufficient local capacity and competition in supply of the tendered item of required quality and therefore public procurement of the item is restricted to Class-I local suppliers only and the vendors who do not qualify to be Class-I local suppliers should not quote in the tender as their offers shall not be considered for any ordering. In case any vendor who does not qualify to be a Class-I local supplier for the tendered item participates in the tender it does so at its own risk and cost and railways shall not be liable for any loss or damage caused to the vendor.

30.0 SPECIAL CONDITIONS OF TENDERS FOR MACHINERY & PLANT ITEMS:

i) Technical Compliance:

The tenderers should give para-wise comments on the technical specification to indicate whether the equipment offered meets the tender specifications. The offer should be accompanied with complete details of technical parameters.

ii) Authorization Letter:

In case, the tenderer is an agent of the manufacturer, they should clearly indicate the same and also enclose tender specific authorization certificate from the manufacturer to this effect and also mention the place where the equipment will be offered for pre-inspection before despatch.

iii) Validity

The offer should be kept valid for 120 days from the date of opening of the tender otherwise the offer is liable to be treated as unresponsive and ignored.

iv) After Sales Service

The tenderers should confirm that they will render quick after sales service during the warranty period of the machine and advise details of their after sales net-work/ office which will render the said service.

v) Commissioning & Proving Test:

a) The contractor shall arrange commissioning of the equipment at the consignee's premises. He shall carry out necessary proving test to demonstrate the performance of equipment, after its successful commissioning, to entire satisfaction of the consignee.

b) The Contractor or his agents shall commission the machine within stipulated time as shown in the contract. This time frame will be applicable from the date of intimation from the consignee in respect of readiness for commissioning of the machine in cases where the machine is to be installed by the consignee. The time schedule includes the time for installation in cases where installation is also to be undertaken by thecontractor.

c) The time allowed for commissioning of machine shall be deemed to be the essence of the contract. In case of delay in commissioning of the machine on the part of the contractor, the purchaser shall be entitled to recover and the Contractor shallbe liable to pay liquidated damages at the rate of 0.5% of the total contract value for each and every week or part thereof for which commissioning is delayed, provided always that the entire amount of liquidated damages to be paid under the provision of this clause shall not exceed 10% of the total contract value. Failure to install/ commission the machine within stipulated time afterintimation from the consignee will be taken asbreachofcontractandpurchaser will be at liberty to forfeit the Security Money furnished by the supplier without any prejudice to other rights under the contract.

d) Continuance of commissioning work after expiry of stipulated time will also constitute a default for the purpose of the clause (c) above.The decision of the Purchaser, whether the delay in commissioning has taken for reasons attributed to the Contractor, shall be final.

v) Training:

The contractor during commissioning and installation of the equipment will also train Railway staff free of cost in operation and maintenance of equipment supplied.

vi) Maintenance manual & Spare Parts:

Contractor is required to supply 2 copies of operation and maintenance manual and lists of spare parts along with equipment.

vii) WARRANTY:

(a) Warranty period for M&P will be 24(twenty four) months from the date of commissioning and proving out of M&P. A Maximum period of 2 (two) weeks will be allowed for attending and recertification of faults during the warranty period.

(b) Maximum down time during the warranty period will be 2%(two percent) for on line M&P and 10% (Ten percent) for off line M&P calculated on quarterly basis.

(c) A penalty of 0.5% (zero point five percent) per week of the contract value will be levied for delay in response time for attending and rectifications of faults beyond specified time during the warranty period as detailed above.

(d) Maximum penalty to be levied on account of warranty failure will be 10%(Ten percent) of the contract value calculated during whole of warrantee period and after that if there is any delay on the part of supplier, purchaser shall be entitled for encashment of WG Bonds. In such cases the bad performance of firm during the warranty period, the same should be recorded and circulated to all Railways. The same should be given due regard in deciding future orders on the firm and when evidence to the contrary is not available; the firm's offer may be even rejected.

ix) Payment terms:

(i) Payment to foreign supplier: Payment against foreign supplies shall be made through the Letter of Credit. All charges including the confirmation charges of L.C., levied by foreign Banks, shall be borne

by the supplier. The standard payment terms subject to recoveries if any, under the liquidated damages clause and general conditions of contract will be as under:

(a) 80% of the payment against irrevocable L.C. on proof of inspection certificate and shipping documents within 30 days of receipt of shipping documents as specified.

(b) Balance 20% payment within 90 days after installation/commissioning and proving out test of M&P subject to submission of bank guarantee for an amount of 10% of contract value, as warranty security valid beyond six months from the expiry of warranty period.

(ii) Payment against indigenous supply: The standard payment terms subject to recoveries if any, under the liquidated damages clause and general conditions of contract will be as under:-

(a) 80% of the payment on proof of inspection certificate and Rail/Road Challan to be made against documents as specified.

(b) Balance 20% payment after satisfactory installation/commissioning and proving test of M&P subject to submission of bank guarantee for an amount of 10% of contract value, as warranty security valid beyond six months from the expiry of warranty period.

x) Element of Freight for indigenous purchase-

(a) In case where the consignees are more (say more than four or so), tenderers are required to quote for the FOR station of dispatch prices with an average freight for all consignees, which will be added to FOR station for despatch price to get FOR destination prices.

(b) In case where the consignees are four or less, tenderers are required to quote FOR station of despatch price with actual freight for each individual consignee, which will be added to FOR station of despatch price to get FOR destination price for each individual consignee.

xi) **Timely commissioning of M&P-**

In the event of contractor's failure to have M&P commissioned by the time or times respectively specified in the letter of acceptance or contract, purchaser may withhold, deduct or recover from the contractor as penalty, a sum @ 2% (two percent) of the price of M&P which the contractor has failed to commission as aforesaid for each and every month (part of a month being treated as a full month) during which the M&P may not have been commissioned, subject to an upper limit of 10% (ten percent) of contract value.

xii) Annual Maintenance Contract-

(a) Tenderers are required to quote for post warranty Annual Maintenance for a period of five years after expiry of the warranty period of the M&P along with their offers.

(b) Tenderers are required to mention such AMC schedule of such Annual periodic maintenance along with offer giving the charges for AMC maintenance schedule and other details of items to be used in such preventive maintenance.

(c) The charges of Annual preventive maintenance schedule for five years alongwith the cost of items to be used in preventative maintenance schedule during these five years are payable to supplier and sum total of these charges would be included in the FOR destination price quoted for M&P for the purpose of comparative evaluation of offer.

(d) Tenderers are required to give the cost of essential spares and service charges for each items of work of repair of M&P outside preventive maintenance contract. These charges will not be included in the price of M&P for the purpose of comparative evaluation of offers.

(e) The terms & conditions of AMC must clearly specify the maximum down time and maximum response time.

(f) Tenderers, who are OEM, must give undertaking for supply of spare parts for a period of expected life of the machine/equipment. Other tenderers must submit undertaking from OEM for supply of spare parts for a period of expected life of the machinery/equipment.

xiii) Inspection: - As stipulated in Terms and condition of Tender Document.

xiv) **Packing of Stores:** Packing of Stores sufficiently and properly as to ensure stores being free from loss and damages in route as detailed in IRS conditions of contract are reproduced below:

(a) **Para 1501- Risk in the Stores:** The contractor shall perform the contract in all respects in accordance with the terms and conditions thereof. The stores and every constituent part thereof, whether in 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 the tender, until their delivery to a person specified in the contract as interim consignee for the purpose of dispatch to the consignee. The Contractor shall be responsible for all loss, destruction, damage or deterioration of or to the stores from any cause whatsoever while the stores after approval by the Inspecting Officer are awaiting dispatch or delivery or are in the course of transit from the Contractor to the consignee or, as the case may be interim consignee. The Contractor 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.

(b) Para 1801- Packing: The Contractor shall pack at his own cost the stores 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 on arrival at their destination.

(c) Para 1806- Packing: The Inspecting Officer may reject the stores if the stores are not packed and /or marked as aforesaid and in case where the packing material is separately prescribed, if such materials are not in accordance with the terms of the contract. Such rejection of the stores by the Inspecting Officer shall be final and binding on the Contractor.

31.0 INCLUSION OF MODE OF PAYMENT THROUGH LETTER OF CREDIT (LC) AS OPTION IN SUPPLY/WORKS CONTRACTS

1. Ministry of Railways that henceforth, all Tenders invited by Zonal Railways and Production Units, both for Supplies/ Works (including all service and maintenance contracts) having estimated value of Rs. 10 lakhs and above, shall include in tender conditions, an option for the supplier/contractor to take payment from Railways through a letter of credit (LC) arrangement. This would be subject to the following:-

(i) The bidder, at the time of bidding itself, shall exercise an option in writing, in favour of taking payment due against the said tender, through LC arrangement.

(ii) The option so exercised, shall be an integral part of the bidder's offer. Option once exercised shall be final and no change shall be permitted, thereafter, during the course of execution of contract.

(iii) The incidental cost towards issue of LC and operation thereof (LC operating charges, including bank charges for opening of LC) shall be borne by the supplier/ contractor.

(iv) The above arrangement should be made a part of the Tender conditions and Contract conditions.
(v) The LC will be a sight LC.

2. The Banker for Railways for the ensuing one year, for opening domestic letters of credit shall be State Bank of India through its branches. The arrangement would cover all such contracts finalized against tender issued in the said year and shall extend till final execution of these contracts.

3. The schedule of payment liability arising in the contract shall be established by the Railways based on the prescribed delivery schedule/stages of supply/ work, in consultation with supplier/contractor. The Railway's Banker should also be involved in the process to assess value of LC and terms and conditions of LC.

4. The LC condition of Railways shall inter-alia provide that Railways will issue a Document of Authorization (format enclosed as Ann 1) on claims preferred by supplier/ contractor, for completed Work/ Supply to enable them to claim the authorized amount from their Banker. The Document of Authorization will be issued against each Bill submitted for payment by supplier/ contractor, after exercising laid down checks as per Railways' Codes and Manuals, in executive and accounts branches. The accounts Officer responsible for passing the claim will issue the Document of Authorization. Issue of Document of Authorization will be captured in IPAS and IREPS to ensure that there is no duplicate payment against the said Bill and also to enable the supplier/ contractor to view status of the claim. The Letter of Credit signed between the bank and Railways should specifically mention that any excess/ wrong payment made by the bank and later detected by the Railways, will be recovered from the bank.

5. The Railways will ensure that Document of Authorization is generated well within the time prescribed in para (iv) Railway Board's letter no. 2017/AC II (CC)/37/16 dated 27.10.2017 (RBA No. 15/2017). Non issue of Document of Authorization must be communicated, with reasons thereof, to concerned supplier/ contractorelectronically as envisaged in para v of RBA 155/2017.

6. The supplier/ contractor will present the Document of Authorization to his/her Banker for necessary payments as per LC terms and condition. After release of payment to the supplier, the banker of the supplier/ contractor will send this Document to the Railways' Banker for release of payment to them (supplier's Banker). The Railway's Banker will reimburse, claim made by Banker of supplier/ contractor, against original Document of Authorization after verifying signatures of authorized signatory of Railways and Bill of Exchange issued by contactor / supplier.

7. The LC charges paid by the Railways for opening and operation of LC shall be charged to the relevant expenditure head:

Misc Advance (LC charges paid to bank)	Dr.
Misc. Adv. GST (IGST/CGST/SGST)	Dr.
Cheques & Bills	Cr.

The amount of GST paid shall be available for set off against output liability.

8. On issue of Document of Authorization, following accounting entries shall be made:-

Relevant Expenditure head	Dr.
Misc. Adv.	Cr.

(Clearance of LC charges paid to bank from LC operating charges collected from party
GST on incidental charges shall be paid by the party on reverse charge basis)

Sundry Other Earnings	Cr.

(Amount recovered over and above LC charges paid to Bank)

Demands Payable/ Misc Advance Cap.*	Cr.

(As the case may be as per letter of authorization - *Demands Payable for Revenue and Misc. Advance Cap for capital transaction)
An invoice shall be issued against party for collecting the incidental charges at the time of issue of Document of Authorization.

9. The reimbursement procedure in case of accredited banks selected as Railways' banker will be directly debiting the amount to the government account through scrolls. In case of non-accredited banks, the Accounts Officer concerned while authorizing a non-accredited bank to open LC will send copy of their letter to RBI/ Public Accounts Department/ Mumbai and after verification/ checks regarding authorization, RBI/ PAD will forward the papers to RBI/ CAS/ Nagpur with appropriate instructions for debiting Govt. account and make reimbursement to the paying bank on demand. After making the payment, the non-accredited bank authorized to open LC wil send documents and also Accounts Officer's letter in original to RBI/ CAS /Nagpur for debiting Govt. account and getting reimbursement. After making payment to the party, the paying bank will also send a copy of the scrolls/ documents to the PAO who issued the authorization for opening of LC. (Authority: Ministry of Finance's letter no. 1(13)(6)/2000/TA/338 DATED 17.06.2004 circulated vide Board's letter no. 2003/AC-II/9/3/Pt. dated 12.8.2004). A copy of the scroll will also be sent to Focal Point Branch of the bank for settlement and reporting as per extant system in vogue. The scroll should contain LCDA no. on scroll to facilitate reconciliation. Daily MIS thereof shall also be sent to CRIS.

10. On receipt of debit scrolls/ documents, the Accounts Office will conduct necessary checks and debit Demands Payable / Misc. Advance (Cap) by credit to suspense head 8660 PSB Suspense. This suspense will be cleared by the Accounts Officer on receipt of the clearance memo from CAS/Nagpur.

11. The Railways will get confirmation from their Banker once the payment is released to supplier's/ contractor's Banker. Acknowledgement will be placed in Purchase Order/ Contract file and Contractors Ledger and Works Register/ Purchase Suspense Ledger will be updated accordingly.

12. It is expected that Railways would see reduction in rates offered in works and supply contract. The impact of release of payment through LC should, therefore, be evaluated after a year and reported to Board for appraisal.

Format of Document of Authorization as an annexure is below.

Annexure

LC/DA No. …….
Dated: _____

Document of Authorization

1. It is certified that Work Job assigned in Contract No. ……dated

…… under Inland Letter of Credit No. ……dated

Or

Goods received/ Works order completed Stage – Phase 1/2/3/4/5.

2. The beneficiary of Letter of Credit M/s. ……. is entitled to receive payment aggregating INR …… Out of a total LC amount of INR …….. against the first/ second * commercial Invoice No. …….

dated ……. for INR raised against the above contract on the strength of this Certificate.

3. PAYMENTS ALREADY MADE :

1. Invoice No.
2. Invoice No.
   & so on
   Total

4. THIS PAYMENT:

5. LC BALANCE AFTER THIS PAYMENT :

Signature & Seal of Applicant

(Railway Authority)

31.1 Instructions for tenderers on LC mode of Payments

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

a) All Tenders invited by Zonal Railways and Production Units, having estimated value of Rs. 10 lakhs and above, shall have an option for the supplier/contractor to take payment from Railways through a letter of credit (LC) arrangement.
b) The LC will be a sight LC.
c) The bidder, at the time of bidding itself, shall exercise an option, in favour of taking payment due against the said tender, through LC arrangement. The option so exercised, shall be an integral part of the bidder's offer.
d) Option once exercised shall be final and no change shall be permitted, thereafter, during execution of contract.
e) The incidental cost @ 0.15% of LC value, towards issue of LC and operation thereof shall be borne by the supplier/contractor and shall be recovered from their bills.
f) State Bank of India through its branches shall be the Banker for Railways for opening domestic letters of credit for ensuing year. The arrangement would cover all such contracts finalized against tender issued during the said period and shall extend till final execution of these contracts.
g) The schedule of payment liability arising in the contract shall be established by the Railways based on the prescribed delivery schedule/stages of supply.
h) The acceptable, agreed upon document for payments to be released under the LC so opened, shall be a Document of Authorization.
i) The supplier/contractor shall submit their bills for completed supply to the bill processing authority mentioned in supply/contract agreement to issue Document of Authorization to enable supplier/contractor to claim the authorized amount from their Banker.
j) Accounts Officer responsible for passing the claim will issue the Document of Authorization.
k) The supplier/contractor shall take print out of the Document of Authorization available on IREPS portal and present his claim to his banker (advising bank) for necessary payments as per LC terms and condition. The claim shall comprise LC Document of Authorization, bill of exchange and Invoice.
l) The bank shall also recover any amount as may be advised by railway against the contractor/ supplier.

m) The Contractor/Vendor shall indemnify and save harmless the Railway from and against all losses, claims and demands of every nature and description brought or recovered against the Railways by reason of any act or omission of the Contractor/ Vendor, his agents or employees, in relation to the Letter of Credit (LC). All sums payable/ borne by Railways on this account shall be considered as reasonable compensation and paid by Contractor /Vendor.

32.0 SHARING LAND BORDER WITH INDIA CLAUSE:

Any bidder from a country which shares a land border with India will be eligible to bid in this tender only if the bidder is registered with the Competent Authority. Further, any bidder (including bidder from India) having specified Transfer of Technology (ToT) arrangement with an entity from a country which shares a land border with India, shall also require to be registered with the same competent authority.

32.1 "Bidder" (including the term 'tenderer', '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. "Bidder (or entity) from a country which shares a land border with India" for the purpose of this Order 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.

32.2 The beneficial owner for the purpose of 32.1 (d) above will 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.

(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)"Control" shall include the right to appoint majority of the directors or to control the management or policy decisions including by virtue of their shareholding or management rights or shareholders agreements or voting agreements;

(b) 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;

(c) 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;

(d) Where no natural person is identified under (a) or (b) or (c) above, the beneficial owner is the relevant natural person who holds the position of senior managing official;
(e)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.

32.3 An Agent is a person employed to do any act for another, or to represent another in dealings with third person.

32.4 The successful bidder shall not be allowed to sub-contract works to any contractor from a country which shares a land border with India unless such contractor is registered with the Competent Authority.

32.5 Bidders will submit the certificate for Compliance as per **ANNEXURE-8** of this document along-with their Bid/Offer.

32.6 The registration shall be valid at the time of submission of bid and at the time of acceptance of bid. Wherever applicable, evidence of valid registration by the Competent Authority shall be attached /uploaded along with the bid/offer.

32.7 If the bidder was validly registered at the time of acceptance / placement of order, registration shall not be a relevant consideration during contract execution

33.0 DELETED.

34.0 FORCE MAJEURE CLAUSE

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

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

In a Force Majeure situation arises, the supplier shall promptly notify the purchaser in writing of such conditions and the cause thereof within twenty-one days of occurrence of such event with reasonable evidence thereof. Unless otherwise directed by the purchaser in writing, the supplier shall continue to perform its obligations under the contract as far as reasonable practical, and shall seek all reasonable alternative means for performance not prevented by the Force Majeure event.

If the performance in whole or in part or any obligation under this contract is prevented or delayed by any reason of Force Majeure for a period exceeding sixty days, either party may at its option terminate the contract without any financial repercussion on either side.

There may be a Force Majeure situation affecting the purchase organization only. In such a situation the purchase organization is to take up with the supplier on similar lines as above for further necessary action.

ANNEXURE-1

GUIDELINES FOR ELECTRONIC REVERSE AUCTION

Conduct and reporting of reverse auction shall be as per following Paras:

1. Offers not complying with essential technical and commercial requirements of the tender shall be declared as ineligible for award of contract.

2. Technical and commercial evaluation of bids shall be done by a tender committee, as per extant guidelines, delegation and the estimated value of tender. Recommendations of tender committee shall be considered by tender accepting authority, as per existing guidelines.

3. (a) Financial bid: Financial bid shall comprise of final price offer obtained through reverse auction. Following conditions and procedure shall be followed in selection of bidders for conduct of reverse auction.

Selection of vendors for reverse auction for award of contract in bulk ordering in stores tenders:

Number of tenders qualified for award of contract/bulk order	Number of tenderers to be selected for reverse auction	Remarks
<3	Nil *	The bids disallowed from participating in the reverse auction shall be the highest bidder(s) in the tabulation of initial price offer. In case the highest bidders quote the same rate, the initial price offer received last, as per time log of IREPS, shall be removed first, on the principle of last in first out, by IREPS system itself.
3 to 6	3	
More than 6	50% of vendors qualified for bulk order/award of contract (rounded off to next higher integer).	

NOTE:

(I) *If the number of tenderers qualified for bulk order/award of contract is less than 3, RA shall not be done and tender may be decided on the basis of initial price offer(s).

(II) In case of stores tender selection of vendors for Reverse Auction for developmental ordering : Offers qualified for Developmental order with initial price offer lower than the highest initial price offer of a vendor qualified for Bulk Order and selected for Reverse Auction after elimination, shall be allowed to participate in RA.

(III) MSE criteria: All MSEs (Micro and Small Enterprises) found Qualified for Bulk /Developmental Orders/Award of Contract but could not be selected for Revere Auction as per criteria

stipulated in Para 3(a) and 3 (a) Note (ii) above, but are within the range of 15% of lowest initial price offer of the bidder qualified for bulk order shall be permitted to participate in the Reverse Auction, irrespective of their inter-se ranking on the basis of initial Price Offer. Such MSEs shall be over and above the number of vendors selected for Reverse Auction, as per in Para 3(a) and 3 (a) Note (ii) above. In case of Stores tenders, lowest initial price bid shall mean lowest initial price bid of vendor qualified for bulk order. However, in case of all the bidders qualifying for bulk as well as for Developmental order (before applying elimination criteria) are within MSE Category, this clause shall not apply.

(IV) Make in India criteria: All bidders eligible for benefits under Public Procurement (Preference to make in India) Order-2017, found qualified for Bulk /Developmental Order/Award of Contract and are within the specified range of price preference under the Make in India Policy, of lowest initial Price Offer of the vendor qualified for bulk order shall be permitted to participate in the Reverse Auction, irrespective of their inter-se ranking on the basis of initial price offer. Such bidders shall be over and above the number of vendors selected for Reverse Auction as per in para 3(a) and 3 (a) Note (ii) above. However, if all the bids qualified for bulk order as well as for Developmental order (before applying elimination criteria) also qualify under "Make in India Order, 2017" criteria, this clause shall not apply.

3 (b) During reverse auction process, bidders shall not be allowed to bid a rate higher than the lowest initial price offer.

4. Reverse Auction among bidders categorized as Qualified for Developmental Order and Qualified for Bulk Order shall be conducted concurrently on IREPS/Suitable Platform in Stores tenders. Qualified Bidders shall be able to see both the auction screens i.e. auction screen of Reverse Auction amongst bidders qualified for bulk order and auction screen of reverse auction amongst bidders qualified for developmental order. However bidders shall only be permitted to bid on the respective screens relevant to them as per their qualification. Purchaser shall not be permitted to see any of the auction screens. Purchaser should only be intimated on website about the status of reverse auction i.e. when the auction will start/ had started, whether the auction is live or whether the auction has closed.

5. After obtaining the final price offers through Reverse Auction, the lowest bid of only those bidders who had participated in the Reverse Auction shall be tabulated and considered for ordering. The offers of the bidders which were eliminated from Reverse Auction in terms of Para 3(a) above shall be tabulated separately and shall not be considered for any ordering. All the relevant policies of Government of India at the relevant time shall be applicable.

6. (a) Two packet single stage system of tendering through e-R.A will be followed normally for all tenders above Rs. 5 Crore.

(b) MSME criteria of considering offers from MSEs quoting within L-1 + 15% for 25% of NPQ is to be followed for all goods and services tenders. Details are given in GCC.
(c) Make in India preference order is to be followed for all goods, services and works tenders wherever applicable as per guidelines. Details are given in GCC.

(d) Withdrawal of L-1 offer: In case of withdrawal of offer of L-1 bidder, the tender need not necessarily be discharged in case of tenders for procurement of goods and services.

7. Procedure for conduct and Reporting of R.A.

(i) Convener of the tender committee shall fix the following on case to case basis, depending upon the nature of item/work/service and complexity of case on hand. These shall be indicated in the tender for e-RA itself.

(a) Initial e-RA period: this shall be the initial time interval for e-RA, e-RA shall be open for this duration.

(b) Auto extension period: in case any offer is received in the time period equal to auto extension period before close of initial e-Ra period, the e-Ra shall be extended for time equal to auto extension period from the time of last bid. There shall be no upper limit on number of auto extensions. When no offer is received in the last auto extension period, e-RA shall close.

(c) Minimum decrement in percentage of value of the last successful bid.

(ii) Date and time for start of e-RA shall be communicated to qualified tenderers by the convener after evaluation of the technical bids.

(iii) After submission of initial price bid, tenderers will not be allowed to revise the taxes and other levies.

(iv) During auction period, identities of the participating tenderers will be kept hidden.

(v) Minimum admissible bid value will be last bid value minus minimum decrement as specified by the tendering authority before starting of reverse auction. Starting point for reverse auction shall be the lowest initial price bid of the tenderer eligible for award of contract.

(vi) After close of the RA, tabulation of last (minimum) bids received from all the tenderers will be generated and made visible to railways and participating tenders.

(vii) Railway users can also view the bidding history in chronological order.

(viii) Bidders not be allowed to withdraw their last offer.

(ix) L-1 will be defined as the lowest bid obtained after the closure of RA session for goods, works and services tenders.

ANNEXURE-2

PROFORMA FOR PERFORMANCE STATEMENT

(FOR A PERIOD OF THREE PRECEDING COMPLETED FINANCIAL YEAR AND CURRENT FINANCIAL YEAR UPTO DATE OF TENDER OPENING)

(Please submit details year-wise)

Tender No.		Date of opening	
Name of Firm		Time	

Sr.	Order Placed by	Order No.	Description of stores	Quantity ordered	Quantity actually supplied	Delivery completion date	Have the stores been satisfactorily supplied and any adverse comment from Purchaser/user

Copies of qualifying Purchase Orders and execution documents like R Notes/Inspection Certificates/Receipted Challan(in case of Non-stock items) etc. should be attached by the tenderer.

Signature and seal of the manufacturer/Tenderer

ANNEXURE-3

PROFORMA FOR EQUIPMENT AND QUALITY CONTROL

Tender No.		Date of opening	
Name of Firm		Time	

Note: All details required only for the items tendered.

1. Name & full address of the firm.
2. Telephone & FAX No. office/factory/Works.
3. E-Mail address.
4. Location of the manufacturing factory.
5. Details of industrial license. Wherever required as per statutory regulations.
6. Details of plant & machinery erected and functioning in each Deptt. (Monographs & description pamphlets be supplied if available.)
7. Details of the process of manufacture in the factory in brief.
8. Details & stocks of raw materials held.
9. Production capacity of item(s) quoted for with the existing plant & Machinery.

9.1 Normal

9.2 Maximum

10. Details of arrangement for quality control of products such as laboratory testing equipment etc.
11. Details of staff

11.1 Details of technical supervisory staff-in-charge of production & quality control

11.2 Skilled labour employed

11.3 Unskilled labour employed

11.4 Maximum No. of workers (skilled & unskilled) employed on any day during the 18 months preceding the date of application.

12. Whether stores are tested to any standard specification, if so copies of original test certificates should be submitted in triplicate.
13. Are you registered with the Directorate General of supplies & Disposals, New Delhi? If so, furnish full particulars of registration, period of currency etc.
14. Are you a small scale unit, registered with the National Small Industries Corporation ltd.? If so, furnish full particulars of registration, currency period etc.

Signature and seal of the manufacturer/Tenderer

ANNEXURE-4

PROFORMA FOR TENDER SPECIFIC AUTHORIZATION FROM MANUFACTURERS

Authorization Letter No……

Dated……

To,

The President of India,

Acting through the Principal Chief Materials Manager,

East Central Railway

Hajipur, Bihar - 844101

Dear Sir,

Subject:- PCMM/ECR/HJP Tender No.....Due on ……

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

No company/firm or individual other than M/s.....is authorized to represent us in regard to this business against this Specific tender.

Yours faithfully,

Signature and seal

(NAME)……

For & on behalf of M/s. .....

(Name of Manufacturers)

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

ANNEXURE-5

PROFORMA FOR BANK GUARANTEE TOWARDS SECURITY DEPOSIT (SD)

To,
The President of India,
Acting through Principal Financial Advisor,
East Central Railway
Hajipur, Bihar – 844101

GUARANTEE BOND

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

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

3. We undertake to pay to the Government any money so demanded notwithstanding any dispute or disputes raised by the Contractor(s)/Supplier(s) in any suit or proceeding pending before any Court or tribunal relating thereto our liability under this present being absolute and unequivocal. The payment so made by us under this Bond shall be a valid discharge of our liability for payment there under and the Contractor(s)/ Supplier(s) shall have no claim against us for making such payment.

4. We ---------- ---------- (Indicate name of the bank) further agree that the Guarantee herein contained shall remain in full force and effect during the period that would be taken for the performance of the said Agreement and that it shall continue to be enforceable till all the dues of the Government under or by virtue of the said Agreement have been fully paid and its claims satisfied or discharged or till ---------- (DR Office/Department) Ministry of ---------- certifies that the terms and conditions of the said Agreement has been fully and properly carried out by the said Contractor(s) and accordingly discharges this Guarantee. Unless a demand or claim under this guarantee is made on us in writing on or before the ----------we shall be discharged from all liability under this Guarantee thereafter.

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

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

7. We ---------- (indicate name of bank) lastly undertake not to revoke this Guarantee during its currency except with the previous consent of the Government in writing. Date the ---------- day of ----------.

For ……(Bank's name)
(Bank's common seal)

ANNEXURE-6

CHECK LIST FOR SUBMITTING THE ONLINE BILLS FOR PAYMENT

1. R/Note should be checked to ensure that the particulars of PO's, I/C, MA's etc. mentioned there are correct. If any discrepancies are found, the firm should contact the consignee officer to get it corrected by issue of Alteration Memo. Such Alteration Memo should also be submitted along with the Bill.

2. In view of Rly. Bd.'s Circular No. 2008/RS(G)/777/1 dt. 10.01.2019, the relationship between the purchaser and consignee, for supply of goods on Indian Railways, does not make purchaser as the 'Third Person' under section 10(1)(B) of the IGST Act.
   Hence, the following should be noted and ensured:
   (i) GSTR1 to be filled according to Tax Invoice data in time with proper Rly. GSTIN i.e. Consignee's GSTIN only.
   (ii) ***Example: For supply of goods in Dhanbad division, GSTIN of JHARKHAND to be used even if procurement is done by East Central Railway Headquarter, Hajipur, Bihar.***

3. Following documents needs to be submitted along with the Bills:
   a) ITC Declaration,
   b) Aggregate Turnover Declaration to be uploaded in IREPS. However, for GEM bills, it is to be submitted in every case.
   c) Declaration of HSN Code and GST Rates. If there is any change of GST applicable, the corresponding Amendment of PO should also be enclosed.
   d) If the Bill submitted before due date of GSTR1 filing, then a declaration towards commitment to timely filing of GSTR1 is required by mentioning P.O No., Invoice No., Firm's GSTIN, Rly. GSTIN, Nature of Tax (IGST or CGST and SGST), Tax Amount etc.
   e) Guarantee/Warrantee Certificate, Freight payment Documents [if Freight charges applicable], R.R Documents [if F.O.R conditions applicable] should be uploaded along with Bill.

4. The following are also to be ensured:
   a) The system does not permit passing of two Bills with same Invoice number even if these pertain to different Zonal Railways. Please ensure to have unique Invoice number for each Invoice.
   b) Bill data, Tax Invoice/e-Invoice data & GSTR1 data (such as Tax Invoice No., Taxable Amount, IGST or CGST and SGST Amount) should be identical.
   c) Bill Qty. should be equal to full Invoice Qty.

5. Bill for release of SD or release of BG/FDR is entertained only after full payment against the corresponding PO is made. Such bills should be accompanied with No Claim Declaration by the Firm.

ANNEXURE-7

PROFORMA FOR WARRANTY GUARANTEE BOND

To,
The President of India,
Acting through Principal Financial Advisor,
East Central Railway
Hajipur, Bihar – 844101

Sub: Guarantee No. --------- for ---------- (Amount) Covering Machine(s) Serial No. ------- supplied to (Consignee/s) ----------.

Ref: Contract No. ---------- dated -------placed on M/ s. ----------

1 WHEREAS M/s. ---------- one of our constituents, hereinafter called the "Sellers" have agreed to sell to you (hereinafter referred to as the "Government") ----Nos. of ---------- (give description) as per contract No. ---------- dated --------(hereinafter called "the said contract").

2 AND WHEREAS according to the terms of said contract, it has been stipulated that payment of 10 per cent of the value of the stores would be made, provided that the Sellers furnish to the Purchaser a Bank Guarantee from a recognized Bank, acceptable to the Purchaser for 10 per cent of the value of the said contract, valid for a period covering in full the Guarantee Period as per the Warranty clause of the said conditions of the contract, being the conditions attached to and forming part of the said contract.

3 AND WHEREAS the Sellers have approached us to give the said Bank Guarantee on their behalf in your favour for an amount representing 10 percent of the value of the contract which you have agreed to accept.

4 That in consideration of the promises and at the request, of the said Sellers, we hereby irrevocably undertake and guarantee to pay to the Government of India or at such other place as may be determined by you forthwith on demand and without any demur, any sum up to a maximum amount of ---------- (Rs.----------) representing 10 per cent of the value of the Stores dispatched under the said contract in case the Sellers make default in paying the said sum or make any default in the performance observance or discharge of the guarantee contained in the said contract.

5 We agree that the decision of the Government whether any default has occurred or has been committed by the Sellers in the performance, observance or discharge of the guarantee aforesaid shall be, conclusive and binding on us.

6 Government shall be at liberty, from time to time, to grant or allow extension of time or give other indulgence to the said Sellers or to modify the terms and conditions of the contract with the said Sellers without affecting or impairing this guarantee or our liability hereunder.

7 We undertake to pay to the Government any money so demanded notwithstanding any dispute or disputes raised by the Sellers in any suit or proceeding pending before any Court or Tribunal relating thereto our liability under this present being absolute and unequivocal. The payment so made by us under this bond shall be a valid discharge to our liability for payment there under and the Sellers shall have no claim against us for making such payment.

8 This Bank guarantee comes in to force when the balance ten percent of the value of the stores shipped per Vessel ---------- vide Bill of Lading No. ---------- dated ---------- or R/ R No. ---------- dated ---------- (in the case of indigenous contracts) under the said contract, has been paid and will remain in full force and effect up to ---------- i.e. for --- --- months counted from the date of placing the stores in services, and shall continue to be enforceable for further six months i.e. up to ---------- (date), hereinafter called the said date.

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

10 That no claim under this guarantee shall be entertained by us unless the same has been preferred by the Government within the said date.

Date ---------- Signature ----------

Place ---------- Printed Name ----------

Witness ---------- ----------

Read and Accepted.

Signature of Tenderer ----------
(Designation)
(Banks common Seal)

ANNEXURE-8

LAND BORDER SHARING POLICY

Certificate from Bidder for compliance
(To be uploaded/attached along with the Bid/Offer)

I have read the clause/Para regarding restrictions on procurement from a bidder of a country which shares a land border with India or bidder who has a specified Transfer of Technology (T.O.T) arrangement with an entity from a country which shares a land border with India and on sub-contracting to contractors from such countries.

A. I certify that M/s…… (Name of Bidder) is neither from such a country nor have a specified Transfer of Technology (T.O.T) arrangement with such an entity from a country which shares a land border with India and will not sub-contract any work to a contractor from such countries unless such contractor is registered with the Competent Authority. I also certify that M/s…… will not offer any products/services of entity from such countries unless such entity is registered with the Competent Authority.

OR

B. I certify that M/s…….. (Name of Bidder) is from such a country or have a specified Transfer of Technology (T.O.T) arrangement with such an entity from a country which shares a land border with India and has been registered with the Competent Authority. I also certify that M/s…… has products/services of entity from such countries and these entity/entities are also registered with the Competent Authority. I also certify that M/s…….. has sub-contracted some work to a contractor from such countries and that such contractor is registered with the Competent Authority.

I hereby certify that M/s…… (Name of Bidder) fulfills all requirements in this regard and is eligible to be considered.

I hereby acknowledge that in the event of acceptance of my bid on above certificate and if the certificate is found to be false at any stage, the false certificate would be a ground for immediate termination of contract and further legal action in accordance with the Law.

(Signature & Name of Authorized person of the Bidder)
Name & address of the Bidders with Stamp

Note:

1. Bidders to give certificate for either A or B as per their status.
2. Where applicable, evidence of valid registration by the Competent Authority shall be attached/uploaded along with the bid/offer.
3. Bidders are advised to attach/upload the certificate duly signed by authorized person of the Bidder and duly stamped along with their Bid/Offer.

ANNEXURE-09

HANDLING OF WARRANTY REJECTIONS

Background

Consolidated instructions on handling of warranty rejections were issued vide Railway Board's letter no.2000/RS(G)/379/2 dated 07.08.2015 and 18-01-2018. These instructions primarily stipulate linking of warranty rejections to the concerned supplying stores depot and relevant purchase orders by the user and arrange for warranty replacements duly conducting joint inspections with pre-inspection agency and the firm.

Review of Warranty Management system indicated practical difficulties in efficient handling of several of warranty issues, centralized database, monitoring of warranty settlement, resultant deterrent actions and system improvements. The system of handling warranty rejections is largely manual and whatever computerization is there, it is on separate systems which are not fully equipped to handle warranty rejections end-to-end, and are not integrated. Also, the policy did not cater for many scenarios which are encountered while dealing with the warranty rejections e.g. warranty rejections of components of Rolling Stocks supplied by Private/Govt/Railway units, cases where PO/stores depot/User depot is not linked, epidemic failures, inefficient marking on the items for linking of items to vendor/purchase orders, warranty claims by users, communication of warranty period to end user ertc

Under this background, the consolidated policy instructions on warranty rejection handling including an Online Integrated Warranty Management System over IR, covering entire warranty management landscape to include all types of warranty failures, including epidemic failures, keeping in view practical field conditions for implementation are being issued in this circular. This circular supersedes earlier circulars on the subject.

1. Digitization of Warranty Management System

i. The entire Warranty Management System shall be digitized and made paperless.

ii. The existing maintenance Applications viz CMM, FMM, WISE, SLAM, PUs local system, etc. shall be integrated with UDM/ IMMS/IREPS for seamless transfer of required data. A provision shall be made on these platforms to facilitate end uses to register warranty complaints. Duplicate feeding on UDM is to be avoided. All systems dealing with warranty rejection of vendor and their response should have provision of uploading/attaching documents.

iii. Provision shall be made on IREPS for the vendors to input dispatch details such as batch number, serial number, major sub component of the item, date of manufacturing (in MM/YYYY), expiry date (wherever applicable), manufacturer's marking, make/Brand, etc. against the Purchase Orders for each consignee. These details would be passed to iMMS/UDM and reflected in DRR/R-Note/CRN generated on iMMS/UDM and for indicating the same while issuing the materials through Issue Notes. Inspecting Agencies shall also indicate these details explicitly in the Inspection Certificate. End Consignee receiving the material from the vendor will verify these details at the time of receipt of material and explicitly indicate the same in iMMS/UDM.

iv. Warranty period shall be captured in digital form as stated in Para 4 of this letter.

v. Centralized Recovery Register shall be digitized & maintained in IPAS and linked with iMMS/UDM for seamless both-ways data flow between these applications for recovery.

vi. The Warranty Rejections of vendors and their responses shall be linked with Unified Vendor Approval Module (UVAM). Cognizance of these warranty rejections of vendors shall be taken for reviewing the Approval of vendors by vendor approving authorities.

vii. Cognizance of these warranty rejections of vendors shall be taken by the procuring authorities in deciding the tender cases.

2. Materials are rejected under warranty in the following situations:

(A) Material rejected was issued to the user (shop/shed etc) from its attached Stores Depot or attached User Depot (both Stock & Non-stock).

(B) Material rejected was received from a PU or a Stores Depot or a User Depot which is not the attached depot of the end user including that received directly through centralized procurement (both Stock & Non-stock).

(C) Material was rejected in the field and was fitted at some other Workshop/Shed/Depot. Material either received or fitted through Supply Contract, Works Contract or Service Contract or any other type of contracts (both Stock & Non-stock).

(D) Failure of components of Rolling Stocks received from Railway PUs/ PSUs/ Workshops/ Private Manufacturers

The Methodology of handling these rejections are dealt with below:

(A) For Warranty rejection in Shop/Shed etc where rejected material was issued from its attached Stores Depot or attached User Depot (both Stock and Non-stock items)-

i. In case the material was accounted for in Stores Depot in iMMS after receipt from vendor, end-user shall register the warranty complaints with reasons and other details, as required, on the

systems like CMM/FMM/WISE/SLAM/MU etc. available with them & electronically transfer such data to UDM through integrated system or shall register the warranty complaints directly in UDM (as convenient and practical for the end- user) and issue "Advice Note" of returned stores on UDM with the approval of competent authority (Gazetted Officer) to return the rejected material to attached Stores Depot for issuing "Warranty Rejection Advice" (i.e. warranty claims lodging) by attached Stores Depot.

However, in case the material was accounted for in User Depot in UDM after receipt from the vendor, there is no need for issuing "Advice Note" & to return the rejected material to attached Stores Depot.

"Warranty Rejection Advice" (i.e. warranty claims lodging) shall be issued to the firm with the approval of gazetted officer of the end consignee of attached Stores Depot/ User Depot (depending upon where rejected material was accounted for after receipt from vendor) on iMMS/UDM after getting the warranty rejected material from end-user.

Before, issuing the "Warranty Rejection Advice", the concerned user of iMMS/UDM & gazetted officer shall satisfy himself about the availability of the rejected material, correctness of PO (Purchase Order) and applicability of warranty period and ensure that other details including reason(s) for warranty rejection are genuine as per specification, drawing and terms and conditions of the Contract. This should be decided within 15 days.

ii. Rejected material shall be taken out from the ledger of Stock-Holder in iMMS/UDM (as the case may be). The "Warranty Rejection Advice" shall be issued on iMMS/UDM by attached Stores Depot/ User Depot to all concerned i.e. firm, purchaser, pre-inspecting agency, vendor approving agency, paying authority etc. as per the contract- without fail.

iii. In the Warranty Rejection Advice, the vendor shall be called upon for replacement of rejected stores or for deposition of equivalent amount of rejected material, within a period of 60 days from the date of Warranty Rejection Advice. Date of issue of Warranty Rejection Advice by gazetted officer to be taken as date of Warranty Rejection Advice.

iv. It shall be ensured that initiation of warranty complaint by user and issue of Warranty Rejection Advice in UDM/iMMS is not delayed by concerned officials/officers and warranty rejection advice should be issued within 15 days of detection of warranty complaint. However, if the warranty complaint is detected within warranty period, the "Warranty Rejection Advice" must be issued within warranty period.

On issue of "Warranty Rejection Advice", the "Warranty Rejection Register" should automatically get updated.

v. On getting 'warranty rejection advice', inspection agency shall take suitable action for any system improvements required to improve inspection process. Recovery of inspection charges from the concerned inspecting agency for the rejected item(s) shall be made by any bill paying authority across IR only in case of epidemic failures after holding joint inspection when it is established that such rejection has taken place due to failure attributable to the inspection agency as per its role under the purchase order. in such cases, after joint inspection, 'inspection charges recovery advice' shall be issued by officer issuing 'warranty rejection advice'. Claim for recovery of inspection charges against the concerned 3rd party inspecting agency (like RITES etc) shall automatically get noted into 'centralized recovery

register' maintained in IPAS on the basis of 'inspection charges recovery advice', which shall specifically mentioned the name of inspecting agency and rate of inspection charges on pro-rata basis for the quantity rejected. After recovery of inspection charges by any bill paying authority, 'centralized recovery register' w.r.t. recovery of inspection charges to be automatically updated in IPAS to that extent so as to avoid multiple recoveries of inspection charges by different railways and communicate the recovered amount to iMMS/UDM.

vi. Deleted.

vii. Firm shall be allowed to collect the rejected materials only after deposition of payments already made by Railway (if any) to them or after recovery of equivalent amount by Accounts or against replacement quantity. Rejected material should be suitably defaced before handing-over to the firm to avoid re-use and necessary provision about digital capturing in respective modules may be done.

viii. Warranty Quantity Replacement-

a. Replacement of rejected quantity shall be made to the end consignee at the Stores Depot/User Depot which received the original supply from the firm.

b. The warranty quantity replacement will be supplied and accounted for in iMMS through R/Note & RO if "Warranty Rejection Advice" has been issued through iMMS. However, where "Warranty Rejection Advice" has been issued through UDM, the warranty quantity replacement will be supplied and accounted for in UDM through CRN. R-Note/CRN should be clearly marked as "Warranty Replacement CRN/R-Note, Not for Payment".

c. Item/equipment supplied against a particular warranty claim should be used to close that warranty claim only. Any alternate use of the material can be done only with the written consent of the firm.

ix. Replaced/rectified material shall have warranty for the replaced/rectified goods till the original warranty period plus the time from the warranty rejection advice to material replacement/rectification. Record for the same shall be maintained by the system.

x. Vendor would be permitted to lift the rejected material (subject to clause 2 (A) (vii) above) 'free of cost' within the period mentioned in Para 2 (A) (iii) above (i.e. 60 days from the date of warranty rejection advice). After this time, ground rent shall be applicable.

In cases where firm fails to lift the warranty rejected material within the time period mentioned in Para 3203 of IRS conditions of contract (i.e. 3 months from the date of issue of warranty rejection advice by the gazetted officer), at the expiry of the period, no claim whatsoever shall lie against the purchaser in respect of the said goods, which may be disposed of by the purchaser in such manner as he thinks fit. Without prejudice to the generality of the foregoing, all the provisions in the Indian Railways Standard Conditions of Contract relating to the 'rejection of goods' and 'failure' and 'termination' add and Clause 3100-02 shall apply. However, in case the material under warranty rejection is not lying in railway premises but is running online or being actively used by railways, this clause shall not be applicable.

xi. In case disposal/closure/settlement of the warranty rejection advice is not done by firm within the period of 60 days, recovery advice of equivalent amount of rejected

material for which warranty claim has not been disposed/closed/settled shall be automatically sent from iMMS/UDM (depending upon from where warranty rejection advice has been issued) to IPAS and the 'centralized recovery register' of IPAS shall be automatically updated for recovery. Any bill paying authority across IR shall recover the amount mentioned in 'centralized recovery register' from firm's bill(s), if any. Paying authorities should not delay the recovery and ensure recovery expeditiously. Even if the payable amount against a bill are not enough for the full recovery against a warranty claim, the paying authority should proceed with partial recovery to the extent of payable amount against that bill and balance recovery amount will remain in the 'centralized recovery register' for further recoveries from other bill(s).

After recovery, the 'centralized recovery register' should be automatically updated immediately to avoid multiple recoveries by different railways and communicate the recovered amount to iMMS/UDM.

xii. (a) Generally, there should not be any cases where warranty rejection is not disposed/settled/closed by the vendor within a period of 60 days. R-Note/CRN should be promptly issued in such cases within 60 days period only. Even if warranty is closed/disposed/settled at the gag end of 60 days period, efforts should be made to issue R-Note/CRN within 60 days period only so that no recovery is done.

(b) Once recovery has been made by accounts or the recovery amount has been deposited by vendor, replacement/rectification/re-inspection of the warranty rejected quantity should not be allowed after period of 60 days from date of issue of warranty rejection advice. While receiving fresh replacement supplies/allowing re-inspection/rectification by vendor against warranty rejection advice after the period of 60 days, user in iMMS/UDM must ensure that these activities are allowed only to the extant the claim amount has not been recovered by railways. Once recovery of the warranty claim amount is made in IPAS/deposition by the firm, user will not be allowed to initiate process of receipt of fresh replacement supplies/re-inspection/rectification to the extent recovery of the warranty claim amount has been completed in IPAS/deposited by firm against warranty rejection advice.

(c) However, cases where due to extreme urgency affecting out-turn, operation etc it is in railways' own interest to allow replacement/rectification/re-inspection after a period of 60 days from issue of warranty rejection advice, it may be permitted with the approval of SAG level officer of the officer issuing warranty rejection advice. In such cases 'recovery refund letter' should be issued by minimum JA grade officer of the office issuing warranty rejection advice to the extent permission is granted and warranty rejection is disposed/settled/closed by the vendor. However, ground rent as per clause 2 (A) (ix) above shall be applicable in such cases also.

(d) 'Recovery refund letter' shall also be issued by minimum JA grade officer of the office issuing warranty rejection advice in the following cases:-

i. If warranty is closed/disposed/settled within 60 days period and R-Note/CRN is issued after 60 days period

ii. Amount deposited by vendor before recovery but details of such deposit entered by user after recovery;

iii. Warranty rejection advice withdrawn altogether after recovery; and

iv. In other instances like court/arbitration judgement/order, etc after recovery.

v. Cases where, inspite of issue of warranty rejection advice, the item under warranty rejection has been actively running online or being actively used by railways due to practical considerations. However, firm should be advised to close the warranty as early as possible. In the normal course, such situations should not arise and should be exception only.

(e) The vendor may submit his supplementary bill on the basis of 'recovery refund letter' to the concerned paying authority which has deducted the refundable amount online or offline depending upon the case whether the ill against which recovery has been made was submitted online or offline.

(f) IPAS shall pass on information of such refunds against recovery refund order and warranty rejection advice to iMMS/UDM so that this information can be made available to all stakeholders. Necessary checks and balances should be provided in IPAS to ensure that vendor is not refunded a recovery amount more than recovery amount or the amount mentioned in recovery refund order.

(g) However, if the recovery amount has been transferred by recovering railway to the railway issuing warranty rejection advice, such information shall be passed on to all stakeholders by IPAS including to the vendor also to claim his refund. In such cases supplementary bill shall be submitted to the railway where amount has been transferred.

xiii. **Inspection of Replacement Supply-** In line with IRS Conditions of Contract clause 0703, Vendor shall bear all cost of such replacement including freight, cost of inspection and inspection charges to inspecting agency, if any, on such replacing and replaced stores but without being entitled to any extra payment on that or any other account.

The replacement supply shall normally be inspected by the same inspection agency which inspected and passed the original supply. However, inspection clause for replacement of quantity rejected under warranty can be changed from 3rd Party Inspection (RITES/RDSO etc.) to Consignee Inspection with the approval of minimum JA grade level officer of the office issuing Warranty Rejection Advice, duly considering practicability of the case due to low quantity/value, criticality of the item, quality issues involved etc.

xiv. (a) Warranty rejection advice (claim) withdrawal:

In case claim issued for incorrect quantity/value or issued on some other vendor incorrectly or when warranty is not admissible due to any reason, warranty rejection claim shall be withdrawn and 'warranty rejection advice (claim) withdrawal letter' by minimum JA grade officer of the office issuing warranty rejection advice, shall be issued for withdrawal of warranty claim.

(b) The status of lodged warranty claims due to failures not admissible as warranty claim due to any reason must be reviewed by zonal railways (JAG level officer as per Para 6 (i) regularly for early resolution and withdrawal.

(c) Zonal Railways/Pus shall nominate a SAG level officer from each of the concerned user departments to regularly monitor the status of pending warranty claims, timely closure of warranty claims in cases where user has already confirmed the closure and disputed warranty rejection cases and ensure that these disputes are decided timely.

(B) For Warranty rejection in Shop/Shed etc of the material received from a PU or a Stores Depot or User Depot which is not the attached Depot of the end user including that received directly through centralized procurement (both Stock and Non-stock items)-

i. In such cases it may not be convenient for the end user to either return the material or communicate to the Stores Depot/User Depot (where the accountal of supply received from vendor was originally made). Thus, in all such cases, the warranty rejected material shall be kept in safe custody of the end user. End User shall register the warranty complaints with reasons and other details, as required, on the system like CMM/FMM/WISE/SLAM/MU etc. available with them and electronically transfer such data to UDM through integrated system or shall register the warranty rejections directly in UDM (as convenient and practical for the end-user). "Warranty Rejection Advice" (i.e. warranty claims lodging) shall be issued to the firm with the approval of gazetted officer of the end user on UDM after linking with PO, R/Note/CRN/Accountal Details.

Before, issuing the "Warranty Rejection Advice", the concerned user of UDM & gazetted officer shall satisfy himself about the availability of the rejected material, correctness of PO and applicability of warranty period and ensure that other details including reason(s) of warranty rejection are genuine as per specification, drawing and terms and conditions of the Contract

ii. The "Warranty Rejection Advice" shall be issued on UDM by End User to all concerned i.e. firm, purchaser, pre-inspecting agency (if known), vendor approving agency, paying authority etc without fail.

iii. Warranty Quantity Replacement-

a. Replacement of rejected quantity shall be made at the end of end user.

b. The warranty quantity replacement will be supplied and accounted for in UDM through CRN. The CRN should be clearly marked as "Warranty Replacement CRN, Not for Payment".

iv. Other provision shall be as per sub-Para (iii) to (xiv) of Para 2(A) above, except Para (viii) of 2(A)

(C) For Warranty rejections in the field where material rejected was fitted at some other Workshop/Shed/Depot- Material either received or fitted through Supply Contract or Works Contract or Service Contract (both Stock and Non-stock items)-

i. In such cases it may not be convenient for the end user to either return the material or communicate to the Stores Depot/User Depot (where the accountal of supply received from vendor was originally made) or to the concerned Workshop where items were fitted.

ii. Such case shall also be dealt as per Para 2(B) above.

(D) Warranty rejections of Rolling Stocks received from Railway PUs/PSUs/Workshops/Private Manufacturers and their components -

i. Rolling Stocks are manufactured by following agencies:

SN	Type of Rolling Stocks	Manufactured by
1	Wagons	Private Manufacturers, Railway PSU, Railway Workshop
2	Coaches	Railway PUs/PSUs/Private Manufacturers
3	Locomotives	
4	Train-Sets	
5	MEMU, DEMU, EMU etc.	

ii. Manufacturing Units of Rolling Stocks should provide the following details of all components/sub-assemblies used/fitted in that rolling stock to inspecting agency as well as consignee railway/end user. Inspecting agency, during inspection of Rolling Stock shall ensure digital capture/entry of this data into the respective digital platform.

a. Rolling Stock Number
b. Name of the Rolling Stock supplier
c. Contract number & Date against which Rolling stock supplied to Railway
d. Contact details of Rolling Stock Supplier
e. Name and address of component manufacturer and/or supplier.
f. Date of manufacture of component (MM/YYYY).
g. Inspecting agency for the component.
h. Inspection details of component
i. Warranty of component in months.
j. Vendor Approving agency of the component.
k. Batch/Product Marking, serial number etc of component.
l. Any further details to facilitate complete identification of the supplier of component by end user

iii. For individual components, all Rolling Stock Manufacturers/Suppliers shall be responsible to honour the warranty claims on the basis of warranty period of individual components instead of the entire rolling stock.

iv. The warranty settlement will be processed as per procedure as under

a. Rolling stock is supplied by a private manufacturer or Railway/other PSUs-

Warranty claim shall be lodged against Rolling Stock supplier.

This shall be same case as 2(B) above except that in case of items appearing in the approved vendor list of vendor approving agencies, information about such cases shall also be shared with vendor approving agencies.

Rolling Stock Supplier shall be the interface between Railway and component supplier. He has to organize the complete warranty settlement. Any action by the component supplier shall be at the specific direction and authority of Rolling Stock supplier.

b. **Rolling stock supplied by Railway PUs, Workshop-**

In all such cases, the warranty rejected material shall be kept in safe custody of the end user. End User shall register the warranty rejections with reasons of rejection and other details, as required, on the system like CMM/FMM/WISE/SLAM/MU etc. available with them & transfer such data to UDM or shall register the warranty rejections directly in UDM (as convenient and practical for the end- user).

The concerned Railway PU or Workshop shall replace the rejected component within 60 days from warranty rejection registration date at the end of concerned end User registering the warranty rejection either as a fresh supply by Railway PU/workshop or get it replaced/rectified through the component manufacturer/supplier whose supplies have been rejected.

Simultaneously, the Railway PU/Workshop shall raise the warranty claim by issuing "Warranty Rejection Advice" on UDM on concerned component manufacturer/supplier separately from their end as per the process detailed in Para 2(B) above.

3. Rectification of the rejected stores-

i. In case the vendor requests for rectification/repair of rejected stores in terms of Para 2, rectification/repair to be permitted in exceptional circumstances and only if the item can be effectively rectified/repaired at the user end and with specific prior approval of the officer next in hierarchy (minimum JA grade officer) to the gazetted officer issuing Warranty Rejection Advice. At the option of the Depot Officer/ officer of end-user (depending upon who has issued the "Warranty Rejection Advice"), rectification/repair of rejected stores by the firm shall be permitted within railway premises only.

ii. If firm requests to rectify/repair the rejected stores at its own premises, same shall be allowed only if the item has unique traceability to ensure that the rejected item cannot be supplied to any other consignee/user and if supplied, it can be traced. For taking out the rejected quantity for rectification/repair, equivalent value of rejected item shall be deposited by the firm.

iii. However, the rectification activity shall have to be completed within timelines given in sub-Para iii of case 2(A) from the date of issue of "Warranty Rejection Advice." After this, process for recovery shall be initiated.

4. Linking the rejected stores with PO, R/note, warranty period etc –

i. Marking of stores has been mandated as per Clauses 1103, 1302, and 2704 of IRS Condition of Contract, which must be ensured.

ii. Specification/drawing of the item should include conditions for marking of the item for establishing unique traceability of the item, accountability and performance monitoring of the item/supplier. Marking should be with manufacturer's name, lot/batch number, serial number, month and year of manufacture (in MM/YY format). If possible, Railways' purchase order number and date, consignee code, suppliers' IREPS vendor code and warranty period in number of months may also be included to have complete traceability. Drawing/specification must specifically indicate the types of acceptable marking mechanism/method. Marking method selection should be based on factors like item function, item geometry, type of surface, item size, operating environment, age/ life, criticality, cost, etc. Marking method prescribed in the drawing/specification should be good enough to ensure that unique traceability is possible for the lifecycle of the product and if not possible, at least up to the warranty period of the item.

iii. Direct Part Marking (DPM) for items shall be done based upon the criticality/cost/feasibility to have DPM of the item. The criticality/cost/feasibility shall be decided by the concerned Railway Board Directorates depending upon the nature of the item or/and its end use. This scheme will help in pin-pointing the responsibility, shall improve traceability, accountability and performance monitoring of the item and that of the supplier. Part Marking should be part of specification and should at least indicate manufacturer's name, lot/batch/item No., month, and year of manufacture in MM/YY format. If possible, Purchase Order number and date, consignee code, IREPS vendor code and warranty period in number of months may also be included. It shall be responsibility of the firm to develop a unique coding scheme/mechanism for ensuring traceability of its product. The firm shall intimate the same to the purchaser at the time of supply. In case it is not possible to have these details as part marking on the item, alternate marking scheme and its implementation may be decided by the concerned Directorates.

iv. Onus of marking and traceability as per purchase order shall be on vendor

v. The record of fitment of item shall be captured digitally on UDM and/or other applications / Maintenance Modules like CMM/FMM/SLAM/WISE/MU etc.

vi. Capturing Warranty Period digitally in unambiguous terms:

   a. In terms of RB letter No. 78/RS(G)/777/1 dated 07/05/2004:

      (i) Warranty Clause specified in the tenders should normally be same as that in IRS conditions of contract.

      (ii) Wherever it is considered necessary to have Warranty Clause in technical specifications at variance with Warranty Clause in IRS conditions of contract, then technical department, while submitting the indents, and while providing the specifications, will advise clearly about applicable Warranty Clause for procurement to avoid problems at post contract stage.

      (iii) While procuring the material, it should be ensured that the applicable Warranty Clause is specified in tender documents clearly and in unambiguous terms.

   b. Warranty clause if at variance with IRS conditions of contract shall be a specific clause in the tender/PO and shall supersede warranty clause of IRS conditions of contract.

Else it should be mentioned in tender conditions that warranty as per IRS conditions of contract is applicable. Both should never be included in the tender.

c. A field of Warranty period for the item under procurement may also be indicated on IREPS while floating tender for the same

d. Data of warranty period should be captured in digital form in terms of number of months and should get reflected in tender, contract, Inspection Certificate and R/Note in digital form and should be known to the end-user.

e. During inspection/receipt of the item, inspecting Agency and material accepting authority shall ensure marking as per purchase order.

vii. While issuing the stores, "Issue Note" should be linked with warranty period in months, RO number, PO number/date and Depot Code as well, so that supply details and exact warranty period is known to consignee/end user.

viii. IMMS and UDM systems should be able to provide the complete supply details i.e. PO No./ Date, Vendor Name, Challan No./Date, warranty period etc. for the consignment to be rejected.

ix. Online provision shall be made for entering the complete details of item as per Para 1 (iii) above by the vendor at the time of dispatch and that should be captured on iMMS/UDM while accepting the material.

5. All efforts should be made to link the warranty rejected item with P.O. However, if it is not possible to link the PO, warranty period mentioned in drawing/specification shall be taken into consideration or if not mentioned therein, it shall be as per IRS conditions of Contract. In such cases the warranty period shall be applicable from the end of month next to manufacturing month mentioned on material (assuming that stores are supplied after inspection after 30/45 days from the actual date of manufacture).

The Warranty settlement in such cases shall be as per para 2(B) above, except following-

a. As PO details shall not be available, details of PO, R Note, CRN etc may not be included in Warranty Rejection Advice and other communications.

b. The value of rejected materials shall be decided on the basis of rate of component as per latest PO available.

c. If Inspecting Agency of the rejected store is not known, warranty rejection advice shall not be sent to inspecting agency and para 2(A)(v) shall not be applicable.

d. If Inspecting Agency of the rejected store is not known, the inspecting agency for the replacement supplies shall generally be as per the inspection policy followed for normal procurement or as per Para 2 (A-xiii) above.

6. Authority to adjudicate the disputed warranty cases and authority to decide appeal-

i. For all warranty rejection cases, the controlling officer of minimum JAG level of the office issuing 'Warranty Rejection Advice" shall be adjudicating the disputed cases. His decision shall be binding on all the parties.

ii. All the disputes, legal matters, etc. arising out of warranty claim shall be handled directly by the office issuing the "Warranty Rejection Advice".

7. Handling Epidemic Failures-

Any recurring/large scale rejections from a particular lot will lead to epidemic failure.

i. Whenever the quantity rejected anytime during the warranty period exceeds 5% of the total supplied lot against a particular contract, it will be considered as Epidemic Failure. However, in case of failures related to items which are extremely critical from safety consideration (like critical components or sub-parts of air brake system, wheel discs, axles, propulsion system etc.), RDSO/PU may pre-define a lower percentage for considering the occurrence of epidemic failure. This condition should be declared in the tender document for procurement of such items.

ii. Same steps as mentioned at para 2, as applicable, to be followed. However, instead of rejecting only defected quantity, entire lot should be rejected. Even if some quantity of such lot has been used/fitted, the same may also be identified and called back from service, to the extent possible, by the concerned technical department for issuing warranty rejection.

iii. Joint Inspection shall be conducted as per extant provisions.

iv. In case warranty rejection is established in joint inspection, the vendor shall replace entire lot (as available, refer point ii above) duly inspected by inspecting agency as per contract on his own expenses.

v. Replacement supply should be inspected by the same agency which has previously inspected the supplies.

vi. Epidemic failure is essentially considered as very poor quality performance and should be reflected on the performance of vendor/Inspecting agency accordingly.

vii. Concerned Inspection /Quality monitoring/Vendor approving agencies should conduct root cause/failure analysis of the failure and QAP of vendor shall have to be re-validated. They should also suggest improvement in inspection methodology/Quality Assurance Plan to avoid failures.

8. In case the vendor disputes the Warranty Rejection as per Warranty Rejection Advice, representation from vendor should be sent through IREPS system to the officer issuing Warranty Rejection Advice within 7 days from the issue of Warranty Rejection Advice. In such case a joint inspection shall be organised by the officer issuing Warranty Rejection Advice for the grounds of warranty rejections mentioned in the Warranty Rejection Advice.

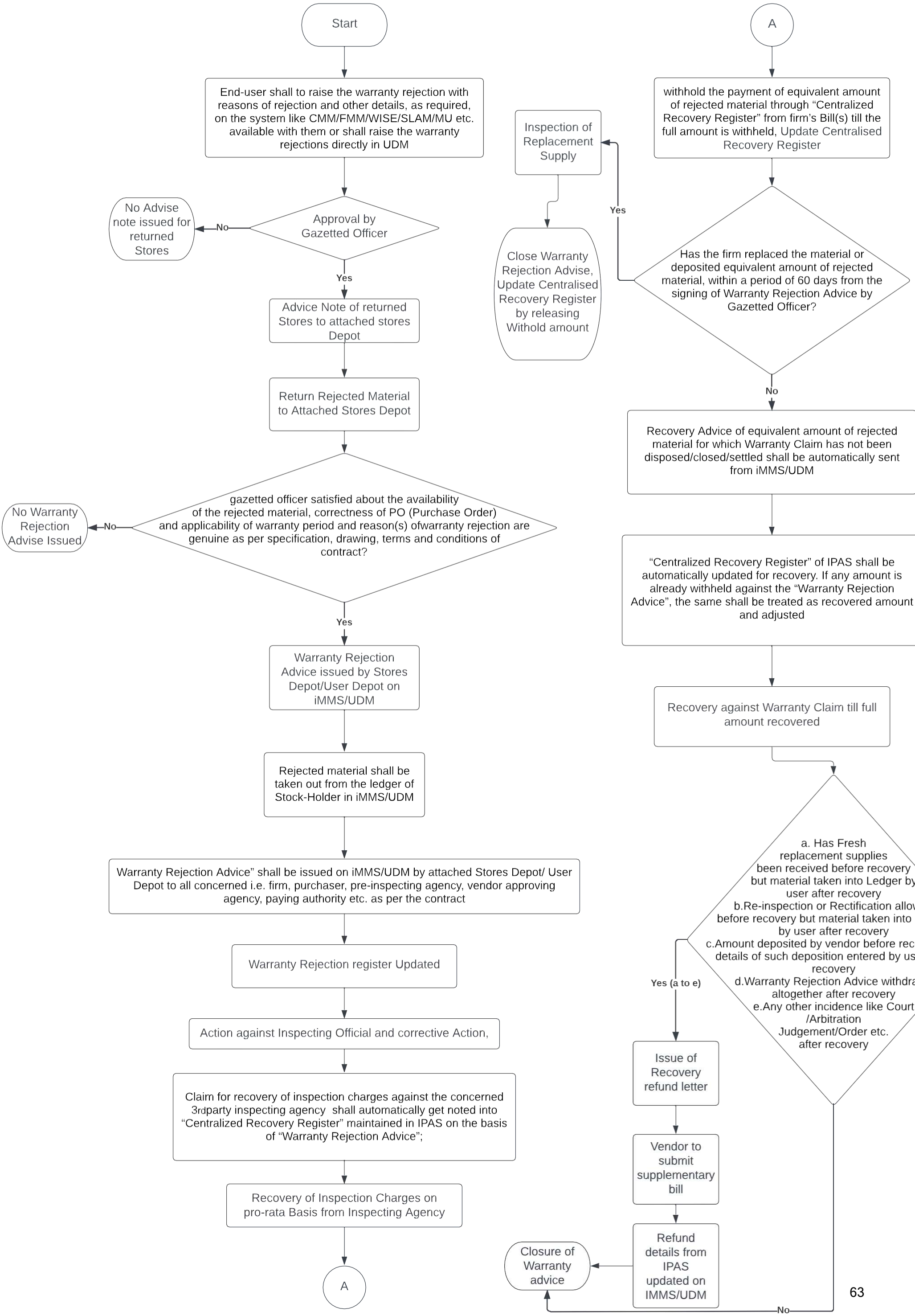
9. In all cases of warranty rejections where items are appearing in the approved vendor list of vendor approving agencies, information about such cases shall also be shared with vendor approving agency as per Para 1 (vi) above for performance monitoring and capability/capacity assessment/delisting/down gradation of the vendor and review of the design/specifications/STR if required. If required, based on merit of the case, Vendor approving agencies may take appropriate decision on suspension of inspection.

10. Data of the warranty rejections shall be analysed item-wise and vendor-wise by the Quality monitoring/vendor approving agency to identify the areas for improvements in systems, processes and design/specification.
11. The recovered amount from the vendor should be credited in the same allocation of the end use in which the item was originally procured.
12. Since complete process is being considered for digitisation, procurements (including Railway Board procurements) which are not being done through iMMS, should also be done through iMMS and Contracts issued through iMMS.

NOTE:

For ease of understanding, a sample flow chart for case 2(A) is enclosed. Other cases (Case 2(B) to 2(D)) involve only minor modifications of the same. In case of any difference between this circular paras and flow chart, the circular para shall prevail.

Flowchart for the processes (Case 2(A) of the circular) involved in Warranty policy: For Warranty rejection in Shop/Shed etc where rejected material was issued from its attachedStores Depot or attached User Depot (both Stock and Non-stock items)-
(OTHER CASES INVOLVE ONLY MINOR MODIFICATIONS)



ANNEXURE-10

OPERATIONALIZATION OF ENGAGEMENT OF THIRD-PARTY INSPECTION (TPI) AGENCIES

1. Background:

Western Railway was assigned the responsibility to empanel Third Party Inspection (TPI) Agencies for (i) inspection of materials procured by Indian Railways i.e. Product Inspection, and, (ii) Process Inspection.

Salient features and important provisions of the engagement are attached as **Annexure-A** for ready reference.

Western Railway has finalized Engagement of the TPI Agencies for a period of 3 years. LOAs have been issued to the following TPI Agencies:

- **Product Inspection:**
  - M/s Intertek India Private Limited for 40% of Product Inspection work
  - M/s RITES Limited for 30% of Product Inspection work
  - M/s Bureau Veritas India Private Limited for 20% of Product Inspection work, and,
  - M/s TUV India Private Limited for 10% of Product Inspection work
- **Process Inspection:**
  - M/s TUV India Private Limited for 40% of Process Inspection work
  - M/s Bureau Veritas India Private Limited for 30% of Process Inspection work
  - M/s RITES Limited for 20% of Process Inspection work
  - M/s Intertek India Private Limited for 10% of Process Inspection work

Copies of Contracts, when issued, shall be circulated to all stakeholders and will also be uploaded on Railway Board website.

2. In order to operationalise the engagement of TPI Agencies, instructions/guidelines herein under are issued in respect of Product Inspection for implementation with immediate effect. Detailed guidelines on process inspection shall be framed and circulated separately.

Western Railway is nominated as Nodal Agency for dealing with all issues related to

contract management and performance management of TPI Agencies. Accordingly, PCMM/WR is nominated to discharge all functions and responsibilities of "Authority" in the contract.

Western Railway shall also be responsible for the following:

- To circulate copies of contracts finalized with the third-party agencies for information to all stakeholders (Railway Board, Zonal Railways, PUs, other entities etc.) along with details of the Team Leader and the GM (QAs) of TPI Agencies.
- To organize familiarization sessions for all stakeholders (Railway Board, Zonal Railways, PUs, other entities etc.) to explain the scope and provisions of contract. Any clarifications regarding the operationalization of the Engagement of TPI Agency contract required by the field units shall also be provided by Western Railway. Any issues with policy implications shall be clarified in consultation with Railway Board.
- To develop and approve Inspection certificate (IC) and other formats as required for smooth operationalization of the contracts and achieve the objectives.
- Quality Improvement Suggestions received from TPI Agencies every month shall be referred by PCMM/WR to concerned technical departments of WR, who will be responsible for examining them. The technical department concerned shall, if required, consult and coordinate with relevant technical authorities (e.g. RDSO, Vendor approving agencies, other technical authorities, Technical Dte. of Railway Board) and decide to accept or reject the suggestions with the approval of concerned PHOD of Western Railway within 30 days. Suggestions accepted for implementation shall be circulated by Western Railway (concerned technical PHOD directly or through the concerned technical authority, as applicable) to Zonal Railways/PUs etc. for its effective and uniform implementation. The decision taken on Quality Improvement Suggestions shall be used for KPI scoring.
- Entering data for calculation of KPI scores in respect of 'Quality Improvements Suggestions', 'Quality of Action Taken Report' and 'Quality of Complaint Redressal System' in the input form in IREPS for auto calculation of monthly KPI Scores of the TPI Agencies.
- Enter data required in connection with damages and penalties in respect of fulfillment of condition precedent, substitution of key personnel, system uptime, and non-availability of key personnel etc. in the input form in IREPS to enable auto calculation of damages and penalties to be recovered from the TPI Agency.

All procuring entities (Railway Board, Zonal Railways, PUs, other entities etc.) shall be responsible for ensuring the following:

- All specification framing agencies and user departments shall provide detailed specifications, drawings, STR, QAP, Inspection & Test Plan, other instructions for inspections as required for carrying out the inspection diligently as per purchase order to the empanelled agencies for each item being procured so as to ensure that the empanelled TPI Agencies are able to execute the inspection as per our requirement.
- Legible drawings, specifications, Quality Assurance Plan (QAP), Inspection Test Plan (ITP) etc. as applicable should be attached with the Purchase Orders (PO), besides mentioning them correctly and comprehensively in the tender document and contract. Provided that drawings and specifications available in UVAM and/or publicly available on any other Railway website (e.g. RDSO, production Units, CORE etc.) are not necessarily required to be attached with the Purchase Orders, but shall be mentioned in the tender/purchase order after ensuring that the same are actually available on the website.
- Railway Board instructions issued under letter no. 2022/RS(G)/779/7/(3390005) dated 17.10.2022 regarding capturing of warranty details digitally should be scrupulously followed. All POs issued should specifically indicate warranty period in months accordingly. TPI Agencies shall invariably include warranty period, as incorporated in the Purchase Order, in the inspection acceptance certificates issued by them.
- Incorporate Stage Inspection along with number of stages and description of each stage, if so required, in the Purchase Order in the data fields CRIS is creating specifically for capturing this information. Incorporation of such requirement in any other data field or place in the Purchase Order will be ignored by the System.
- Promptly respond to and resolve any issues raised or information sought by TPI Agencies or vendors in respect of inspection against Purchase Orders placed by them. Attention is invited to following provision incorporated in the TPI contracts:

> *"In the event any issue related to inspection such as non- availability of drawings/specifications/tests or inspection test plan etc. requires clarifications or there is a disagreement between the TPI Agency and the Vendor, the TPI Agency shall refer such matters to the Procuring Entity. The Procuring Entity shall clarify the issue to the TPI Agency. In order to sort out the issue, the Procuring Entity as deemed necessary, may call meeting with TPI Agency, the user department representative and/or the Vendor. The clarification on the matter under reference shall be conveyed by the Procuring Entity to the TPI*

Agency and Vendor. The decision of the Procuring Entity shall be final and binding".

- Lodge grievances, if any, with the Team Leader of the TPI Agency concerned for any issues requiring redressal by the TPI Agencies and escalate any unresolved grievances beyond reasonable time to the officer nominated by Western Railway.

All procuring entities (Railway Board, Zonal Railways, PUs, other entities etc.) shall explicitly provide for the following through Special Conditions of tender/contract for information of vendors and other stakeholders:

- Recovery of inspection charges from Vendors in case of rejection, call cancellation, revalidation of inspection certificate/re-inspection etc.
- Charges to be recovered from the vendors as above shall be mentioned in the tender/contract for information of vendors
- Right of Railways to change the TPI Agency mentioned in Purchase Order through modification advice.

Special Conditions attached herewith (**Annexure-B**) may be adopted with suitable modifications.

Pre-inspection of material in Purchase Orders valuing less than Rs. 5 lakhs is governed by Railway Board letter No. 2000/RS(G)/379/2 dated 09-08-2006 (latest amended). The TPI agency contracts provides for pre-inspection of materials even if PO value is below 5 lakh. However, the inspection charges payable in such cases will be those applicable for PO valuing 5 Lakhs.

Therefore, PCMMs may evolve suitable process for utilizing this provision with due diligence in terms of Railway Board letter No. 2000/RS(G)/379/2 dated 09-08-2006 (latest amended).

3 Allocation of Work to TPI Agencies:

Allocation of inspection work to the empanelled TPI agencies shall be for Purchase Orders issued on IMMS platform. The allocation of inspecting agency among the empanelled TPI Agencies against a Purchase Order issued from IMMS shall be at the time of Purchase order numbering through IMMS and automated based on algorithm developed by CRIS. CRIS shall put in place suitable mechanism in algorithm on IMMS/IREPS to maintain proportions of quantum of work assigned slab-wise.

Since, the TPI Agencies may be meeting condition precedents for commencement of work on different dates, the distribution of work shall be done between the TPI Agencies, who have commenced the work on the date of such allocation**.**

Inspection in case of GeM Purchases: GeM portal is being utilized for procurement of common use items total value of which is very low compared to other Railway specific items being procured through IREPS. Third party inspection work of GeM contracts shall continue to be assigned to RITES as being assigned as of now. Total value of GeM contracts, inspection of which will be assigned to RITES shall also be counted while calculating total value of contracts assigned to the different TPI agencies slab-wise for maintaining the ratio of work distribution amongst the various TPI agencies.

Similarly, inspection work in case of Spot purchase orders, wherever required, may be allocated by the purchaser to any of empanelled inspecting agencies in IMMS/IREPS and the same shall also be counted while calculating total value of contracts assigned to the different TPI agencies slab-wise for maintaining the ratio of work distribution amongst the various TPI agencies.

There may be circumstances under which TPI agency auto assigned in a purchase order is required to be changed later on. Under such circumstances procuring entities may make such change through PO modification advice as per the existing policy on the subject duly recording the reasons thereof. CRIS will develop necessary provisions for auto-assignment to one of the remaining TPI Agencies and accounting for them in allocation of work slab-wise to the TPI Agencies.

4 **Modification in Digital Workflow to be made by CRIS:** CRIS shall make modification in the Railway Digital workflow, wherever required, to enable the following:

CRIS shall develop a suitable algorithm for automated allocation of inspecting agency among the empanelled TPI Agencies against a Purchase Order issued from IMMS. The purchaser (Railways/PUs/Railway Board etc.) shall be given a dropdown to choose Inspection by "TPI Agency" as an option at tender stage. However, flexibility to choose specific TPI Agency shall not be provided to the purchaser except in cases covered under clause 3.3 and 3.4 above. CRIS shall put in place suitable mechanism in algorithm on IMMS/IREPS to maintain proportions of quantum of work assigned slab-wise to TPI Agencies.

CRIS shall develop separate interface on IREPS for TPI Agencies and make provisions for enabling the following:

- Vendors to log inspection call and follow up on inspection for both stage and lot inspection
- Scheduling of inspection call by TPI agencies
- Withdrawal of inspection call by Vendors
- Call cancellation and related recoveries

- Vendors should be allowed to place one inspection call for multiple P.O. Serial Nos. However, the call scheduling and all subsequent processing shall be separate for each P.O. Serial Nos.
- TPI Agencies to access and manage calls placed, schedule inspection, assign inspectors for carrying out inspections.
- Issue of Inspection Acceptance/Rejection/Call cancellation/Interim stage inspection certificates along with facility to upload test reports and other documents enabling access thereof to Vendor, procuring entity and Authority.
- Capturing of data in respect to call withdrawal
- Inspection certificate shall capture stage/lot inspection, inspection start date and end date(IC issue date), call registration date, quantity offered, quantity passed, quantity rejected, quantity passed earlier(if any), quantity destroyed in testing (if any), IC validity, warranty period, PO value, value of inspected lot, consignee, procuring entity etc.
- Capturing online data and generating reports for KPI monitoring for following KPI parameters on monthly basis for each TPI Agencies:
    - Call attending response time (CART)
    - Inspection Response Time (IRT)
    - Joint Inspection Response (JIR)
    - Rejection of pre-inspected Goods
- Enabling provision to enter manual monitored KPI data to Western Railway for following KPI parameters-
    - Quality of action taken report (ATR)
    - Quality of suggestions for improvement
    - Quality of complaint redressal system
- Enabling provision to capture online data for delay in attending inspection calls in 7 days and automatically calculate penalty to be imposed on monthly basis for each TPI Agencies as per contract.
- Enabling provision to manually enter data required in connection with damages and penalties in respect of fulfillment of condition precedent, substitution of key personnel, system uptime and non-availability of key personnel in the input form in IREPS.
- Enable auto calculation of damages and penalties to be recovered from the TPI Agency as per provisions of contract based on system data and data manually entered by Western Railway.
- Rejection of material at consignee end after pre-dispatch inspection by issuing online rejection advice/memo and joint inspection proceedings.
- Online bill creation, its online validation and reconciliation with PO Data, call

cancellation & call withdrawal data, show pending recoveries, damages and penalties online, if any, against any TPI Agencies and online bill submission to paying Authority and bill payments fully digitizing the process in accordance with process finalized by Accounts Directorate of Railway Board.

CRIS shall, when the interface on IREPS for TPI Agencies developed and fully functional, communicate the readiness of the system for operationalising the contract to Western Railway.

Provision to be made by CRIS to allocate/assign inspection agency automatically while generating PO as per quantum of work assigned to TPI Agencies slab-wise. Provision also needs to be made to allow change of TPI Agencies through PO modification and accounting for same in allocation of work slab-wise to the TPI Agencies, as stipulated in para 3.5 above.

Provision for factoring in the allocation of inspection work assigned to RITES in POs placed on GeM/spot purchase etc.

Provision for enabling procuring entities to specifically select and specify Stage Inspection in Purchase order, wherever required.

Provision to be made for entering/capturing warranty period in tender/Purchase Order.

Provision to enable purchase officers, consignees and suppliers to get real time inspection status in IMMS/IREPS/UDM, access to IC and linked documents.

Online system will also be required to enable:

- Automatic recovery in CRR against vendors for recovery of various inspection charges as stipulated in paras above and its monitoring.
- Workflow management of joint inspections.
- Database and workflow for handling quality improvement suggestions given by TPI agencies

Implementation of scheme as per para 5 below for order valuing more than Rs 500 Cr Transitional Changes as per para 6 below.

5 High Value Inspections:

The engagement of TPI Agencies provides for inspection fee for product inspection for PO values up to Rs. 500 Cr. only. For purchase orders above Rs 500 Cr, following provision is incorporated in the tender/LOA:

"3.3.3.4 For Purchase Orders valuing more than Rs. 500 Cr., which shall mainly arise from some new project or Railway Board tender, the Procurement Entity shall obtain separate financial bids from empanelled TPI Agencies. In such cases, the TPI Agency shall be required to submit their competitive financial

bid provided that the quoted inspection charges shall not exceed the inspection charges finalized for PO Value slab of Rs 100 Cr to Rs 500 Cr against this RFQ-cum-RFP. ***The value of any orders so placed shall not be counted as a part of the Purchase Order placed against this Work***."

Accordingly, as per the terms of tender/LOA of empanelled TPI agencies, for purchase orders valuing more than Rs 500 Cr, purchase orders shall be issued mentioning inspection agency as "TPI agency." Parallelly or Immediately after issue of purchase orders, competitive financial bids/quotations for fixing the inspection fee shall be obtained from above empanelled TPI agencies clearly mentioning details of items to be inspected, value of individual purchase orders and total value of all the purchase orders in the tender case which are above Rs 500 cr. TPI agencies shall be asked to submit their competitive financial bids/quotation for all the purchase orders in total (single inspection fee as percentage of purchase order value - separate rate of inspection for each purchase order is not to be called). In such cases, TPI agencies shall be required to submit their competitive bids/quotation such that the quoted inspection rate shall not exceed the inspection charges finalized for value slab of Rs 100 cr. to Rs 500 cr. in contract finalized by Western Railway on these agencies. The lowest suitable TPI agency so finalized shall be the inspection agency in all the purchase orders above Rs 500 cr. in the tender case under consideration and a modification shall be done in purchase order for amending the inspection agency from "TPI agency" to "the agency so decided through bidding." e.g. "RITES".

5.2.1 Purchase orders valuing below 500 cr. in the tender case, however, shall be issued with inspection by TPI agency through auto allotment as per the normal scheme.

6 Transitional provisions

Complete system of procurement is digitised. Large number of activities and reports depend on capturing of online data. Therefore, it is decided that "Remarks" column in the purchase order shall not be used for any terms and condition which is to be captured in data form. Any change in terms and condition will also not be mentioned in the "Remarks" column. Any change in the terms and conditions shall be done through Modification Advice only i.e. in the form of "Existing" and "Revised".

For readiness of implementation of the new scheme of inspection through empanelled TPI agencies, following scheme shall be followed:

i. All tenders, other than cases where consignee or DRDO inspection is to be done, shall now be issued with inspection clause as "TPI Agency".

ii. All third party inspection agencies presently listed in IMMS/IREPS like RDSO, CLW, RITES, Textile Committee etc. shall be disabled in IMMS/IREPS at the stage

of preparation and issue of tender. Selection of inspection agency while preparing the tender shall be restricted to following:

a. Consignee
b. TPI Agency
c. DRDO

iii. For tenders already issued with inspection clause as consignee, DRDO, other third party inspection agencies like RDSO, CLW, RITES, Textile Committee etc. will continue to be dealt as per the tender conditions and purchase orders issued accordingly.

iv. For tenders already issued with inspection clause as per the present system for other than consignee/DRDO, inspection clause may be amended from RDSO, CLW, RITES, and Textile Committee etc. to "TPI Agency". However, this shall be at the discretion of purchaser.

v. For tenders issued or amended as per the new scheme (refer para ii and iv above), till the time contracts of above empanelled TPI agencies are made operational through IREPS for auto allotment of TPI agency for each purchase order(or as per para 5 above), facility of selecting inspection agency (e.g. RDSO, RITES, CLW, Textile Committee, etc.) at the Purchase Order preparation stage shall be kept open for selection of appropriate inspection agency in the IREPS/IMMS system as per existing working. Once contracts of empanelled TPI agenciesare made operational, these options shall be disabled for selection by purchaser and inspection agency shall be auto allocated as per the logic built in IREPS at the time of numbering of each purchase order except for purchase orders valuing more than Rs 500 cr. for which the scheme is mentioned above.

vi. In cases where Stage Inspection is required to be done, during the manufacturing process of the Goods, it shall mandatorily and clearly be specified by the Procuring Entity in the tender/ Purchase Order along with number of stages and captured by IMMS & IREPS as data. It should be captured for stock items in Item master once an item is marked for stage inspection and at demand stage for non-stock items. In case it is left out in purchase order, facility for necessary modification shall be provided by CRIS

7 To ensure that the Engagement of TPI Agencies contracts is operationalized in an effective manner, it is advised that all stakeholders must study these contracts in details to understand the provisions of the contracts and rights & liabilities of TPI agencies and Railway. Considering that this engagement is on a new concept, all stakeholders are also requested to highlight any policy gaps they notice for consideration of Railway Board.

This is issued with the approval of Competent Authority.

Annexure - A

Important provisions of the engagement are attached in the form of following Schedules:

Schedule A: Product Inspection

Schedule B: Process Inspection

Schedule C: Quality improvement suggestions

Schedule D: Payment to TPI Agencies

Schedule E: Rejection of Pre-inspected Goods

Schedule F: Key Performance Indicators

Schedule G: Payment Regimen

Schedule H: Damages and Penalties

Schedule -A: Product Inspection

1. The Authority through its Procuring Entities procures Goods from Vendors located throughout the country and in some cases abroad by placing Purchase Order. The Purchase Order contains detailed description, drawings, specifications, place of inspection, terms and conditions governing contract which may inter-alia include IRS conditions of contract, special conditions of contract. The Purchase Order also specifically mentions the name of the TPI Agency assigned the responsibility for inspection. Unless mentioned otherwise, the inspection by the TPI Agency in Purchase Order means Pre- dispatch Inspection. Vendor is required to offer the Goods for inspection to the TPI Agency in one or more lots, as the case may be, before dispatch. After the Goods have been inspected and accepted by the TPI Agency through issue of Inspection Acceptance Certificate, the Goods are finally dispatched to the consignee mentioned in the Purchase Order.
2. TPI Agency during the Engagement Period shall carry out the Work, as may be entrusted to them in accordance with provisions of this Agreement.
3. The activities to be carried out by the TPI Agency are described as below:

Preparation of Inspection Scheme

After registration of the inspection call, detailed description, drawings, specifications, quality assurance plan and standards, as applicable, and referred to therein shall be studied by the TPI Agency. Based on the study, an Inspection Scheme shall be prepared with the approval of the concerned GM(QA) of the TPI Agency. In cases, where the inspection test plan in whole or part is provided for in the detailed description, drawings, specifications, quality assurance plan or standards, the same shall be incorporated in the Inspection Scheme prepared by the TPI Agency. In cases where inspection test plan are deficient or not available in drawings and specifications, the Inspection Scheme may be prepared based on the inspection test plan of last pre-inspected supply successfully executed by Vendor or inspection test plan provided by the Procuring Entity. Further, in case of any difficulties, the matter shall be referred to the Procuring Entity for removal of difficulties process laid down in the Agreement.

The Inspection Scheme prepared by the TPI Agency shall include sampling plan, measurement/testing methodology, criteria for acceptance/rejection and such other information as may be necessary for conducting inspection.

After finalizing the Inspection Scheme, the TPI Agency shall prepare an inspection schedule. Normally the inspection shall be scheduled on a first come first serve basis. However, in case of urgency expressed by the Procuring Entity of the Authority, inspection against such calls may, to the extent reasonably feasible, be accorded overriding priority.

While preparing the Inspection Scheme and Inspection Schedule, the TPI Agency shall ensure that the date of physical visit for inspection is scheduled at a date not later than 7 (seven) calendar days from the date of Call Registration.

GM (QA) shall be accountable and responsible for correctness, reasonableness, robustness and adequacy of the Inspection Scheme.

Assignment of inspection duty

GM(QA) of the TPI Agency may undertake inspection himself personally on the inspection schedule allocated or may delegate the physical visit and inspection to the Authorized Inspector for carrying out the inspection. Assignment of Authorized Inspector shall be case specific. The TPI Agency shall ensure that the Authorized Inspector assigned by GM(QA) concerned for each inspection possess the qualification and experience as detailed in the agreement.

The details of inspection schedule, test plans, name & contact information of assigned Authorized Inspector and GM(QA) shall be made available to Vendor concerned and the concerned Procuring Entity through the online system.

Physical visit and inspection at Vendor's premises

Unless specifically mentioned in the Purchase Order to the contrary, the third-party inspections are to be carried out at Vendor/Manufacturer's premises.

The Authorized Inspector of TPI Agency shall physically visit the Vendor premises as per allocated inspection schedule to carry out necessary inspection as per Inspection Scheme prepared in terms of Para 3.1 above.

The Authorized Inspector shall draw samples and subject them to necessary tests/examinations/measurements as per Inspection Scheme.

Once samples have been drawn from a lot, the entire lot shall be sealed and marked with a unique identification hologram/seal/mark by the Authorized Inspector in order to ensure traceability of inspected Goods.

Normally, the Authorized Inspector shall carry out tests of Goods within the premise of the Vendor. However, if facilities for the tests are inadequate/not available within the Vendor premise, then the Authorized Inspector may have the relevant tests done at a suitable NABL accredited laboratory outside the Vendor premise. In case of disagreement between Vendor and the TPI Agency, matter shall be referred to the Procuring Entity, whose decision shall be final and binding in this behalf.

In case, the Authorized Inspector, on visit to Vendor premise, finds that Goods are not yet ready for inspection, the inspection call shall be cancelled duly notifying Vendor and the Procuring Entity by

issuance of Call Cancellation Certificate along with recording the observation through the online system.

Compilation of test/inspection results

Once results of all measurements/examinations/tests as per Inspection Scheme become available, the Authorised Inspector shall compile the report to arrive at the draft inspection outcome.

The final inspection outcome Acceptance or Rejection, as the case may be, shall be finalized with the approval of the GM (QA) concerned or his authorized representative, however, the responsibility of accuracy, adequacy, correctness, reliability and/or completeness of inspection outcome shall lie with GM (QA) concerned.

In case of Acceptance, the Goods shall be certified as accepted by issuing an Inspection Acceptance Certificate.

In case of Rejection, the Goods shall be certified as rejected by issuing an Inspection Rejection Certificate.

Reporting of inspection outcomes

TPI Agency shall report the outcomes of inspection in the form of Inspection Acceptance Certificate or Inspection Rejection Certificate or Call Cancellation Certificate to Vendor, Procuring Entity, Paying Authority and such others as the Authority may specify from time to time, along with inspection test plan and all measurement/examination/test/observation reports, as applicable, through online system, duly signed and authenticated digitally.

Inspection Acceptance Certificate shall have a validity of minimum 30 (thirty) days from the date of issue.

The certificates shall have the information as follows:

Inspection Acceptance Certificate -TPI Agency shall issue digitally signed Inspection Acceptance Certificate for Accepted Goods that should contain details like - unique certificate number and date, Purchase Order number with date and value, name of Vendor, date and place of inspection, offered instalment number, name of paying authority as per Purchase Order, item description, earlier inspection details with date against same Purchase Order, consignee name, Procuring Entity name, total order quantity, quantity offered now, quantity passed now, quantity still due, quantity consumed in testing if any, date of inspection call registration, date(s) of inspection, number of visits, pattern of sealing/stamping and location of seal/stamp/sticker, inspection outcomes with attached test reports, validity of Inspection Certificate, name of authorized signatory with seal/ stamp of TPIA etc.

Inspection Rejection Certificate -TPI Agency shall issue digitally signed Inspection Rejection Certificate for rejected Goods that should contain details like- unique certificate number and date,

Purchase Order number with date and value, name of Vendor, date and place of inspection, offered instalment number, name of paying authority as per Purchase Order, item description, earlier inspection details with date against same Purchase Order, consignee name, Procuring Entity name, total order quantity, quantity offered now, quantity passed now, quantity rejected now, quantity still due, date of inspection call registration, date(s) of inspection, number of visits, pattern of sealing/stamping and location of seal/stamp/sticker, rejection reasons with attached test reports, authorized signatory with seal/stamp of TPIA etc.

Call Cancellation Certificate -TPI Agency shall issue digitally signed Call Cancellation Certificate that should contain details like -Purchase Order number with date with value, Vendor name with address, date of inspection call registration, inspection date, observation recorded for call cancellation, authorized signatory with seal/ stamp of TPIA etc.

4. Facilities for test and examination

Normally, necessary testing facilities are to be provided by the Vendor at the Vendor's premises. The Authorized Inspector shall carry out measurement/examination/test/observation using the facilities available at the premises of the Vendor.

If facilities for the tests are inadequate/not available within the Vendor premise, then the Authorized Inspector may have the relevant tests done at a suitable NABL laboratory outside the Vendor premise. In such cases, the Authorized Inspector shall prepare a report containing observations of inadequacy/non- availability of testing facilities. This report shall be enclosed with the Inspection Acceptance Certificate or Inspection Rejection Certificate as the case may be.

5. **Cost of Testing**

Necessary materials, tools, labour, and assistance for any test/examination in connection with the inspection shall be provided by the Vendor at their own cost.

If facilities for the tests are inadequate/not available within the Vendor premise, then the Authorized Inspector may have the relevant tests done at a suitable laboratory outside the Vendor premise. In such cases, the cost of testing of the laboratory shall be borne by the Vendor by direct payment to the laboratory. The cost of transport of samples and any other incidental cost shall also be borne by the Vendor.

6. Stores expended in tests

6.1. In destructive testing, if any Goods are expended /consumed in testing and test results found satisfactory and Goods/any instalment thereof is accepted, the quantity of Goods

expended/consumed in testing will be deemed to have been accepted, taken delivery of and is to be indicated accordingly in the Inspection Acceptance Certificate issued by the TPI Agency.

7. Special Provisions for Stage Inspection

In cases where Stage Inspection is required to be done, during the manufacturing process of the Goods, it shall be clearly specified by the Procuring Entity in the Purchase Order.

In such cases, the Stage Inspection shall be undertaken by the TPI Agency and may involve two or more physical visits for inspection.

The Inspection Scheme and schedule of inspection shall be prepared with the approval of GM(QA) concerned accordingly.

Authorized Inspector shall in Stage Inspection ensure that the raw material/components inspected in earlier stages are marked/stamped in such a way that they can be traced to the subsequent stages including final inspection of Goods. The Stage Inspection may include inspection of raw materials, components or sub components at Vendor or Sub-Vendor premises as the case may be.

The details of inspection carried out and outcome thereof shall be preserved also in digital format by TPI Agency. However, the outcome of the inspection process will be communicated on completion of all stages of inspection.

The Inspection Acceptance Certificate or Inspection Rejection Certificate finally issued on completion of Stage Inspection shall invariably include the details and documents related to inspections carried out in all previous stages.

8. Joint Inspection

If Goods, pre-inspected by TPI Agency, gets rejected at consignee end after receipt by consignee or during warranty, as the case may be, the material rejection advice/rejection memo or warranty rejection advice/rejection memo respectively will be sent by consignee through online system to all concerned and a Joint Inspection shall be scheduled as per procedure laid down in the agreement.

9. D Delay in dispatch of pre-inspected Goods

If the Vendor fails to dispatch the Goods within the validity of Inspection Acceptance Certificate, the TPI Agency, on request of Vendor, may, based on merits of the case, decide to either re-validate the Inspection Acceptance Certificate or re-inspect the Goods against fresh inspection call to be placed by the Vendor. In such cases, re- validation certificate or new Inspection Acceptance Certificate issued on re-inspection shall clearly indicate the details of previous Inspection Acceptance Certificate.

Schedule B: Process Inspection

1. The Authority through its Procuring Entities may, at its sole discretion, decide to utilize services of the TPI Agency for Process Inspection.
2. The term Process Inspection shall mean any or all of the following:
   validation of quality of Goods through in-process inspections
   validation/verification of quality assurance plan,
   process audit, and,
   Goods inspection throughout or in a part of the production cycle
3. Procuring Entity, requiring Process Inspection shall communicate their intention of adopting Process Inspection methodology with relevant details such as detailed description of Goods, details of the Vendor and location, drawings, specifications, quality assurance plan, inspection test plan, work instructions etc., as applicable to the specific case. The Procuring Entity shall also communicate the approximate Man-days for which deployment of the Authorized Inspector is proposed.
4. The GM(QA) concerned of the TPI Agency, on examination of such communication may confirm, seek clarification or provide suggestions, if any, from the Procuring Entity within a period of 7 (seven) working days. The Procuring Entity after providing clarification and examining the suggestions shall issue a Process Inspection Order along with complete details including detailed description of Goods, details of the Vendor and location, drawings, specifications, standard technical requirements (STR), quality assurance plan, inspection test plan, work instructions, number of Authorized Inspectors with required skill sets and their respective deployment periods, as applicable to the specific case. The decision of the Procuring Entity shall be final.
5. A copy of the Process Inspection Order shall be provided to Vendor, TPI Agency, Paying Authority, Authority and such others, as the Authority may specify from time to time.
6. The GM(QA) concerned of the TPI Agency, on receipt of such a Process Inspection Order, shall nominate an Authorized Inspector(s) to undertake Process Inspection. Assignment of Authorized Inspector shall be case specific. The TPI Agency shall ensure that the Authorized Inspector assigned by GM(QA) concerned for each inspection possesses the qualification and experience as detailed in the Agreement.
7. **Physical visit and inspection at Vendor's premises**

   Unless specifically mentioned in the Purchase Order to the contrary, the third-party inspections are to be carried out at Vendor/Manufacturer's premises.

   The Authorized Inspector of TPI Agency shall physically visit the Vendor premises as per allocated inspection schedule to carry out necessary inspection as per Process Inspection Order prepared in terms of Para 5 above.

   The Authorized Inspector shall study, inspect, witness, observe and record findings as per Process Inspection Order. The scope may include study/inspection of the complete system, processes, machineries, tools, plants, raw materials, raw material sourcing, qualification of personnel, draw samples and subject them to necessary

tests/examinations/measurements, as may be specified in the Process Inspection Order. In cases where samples are drawn from a lot, the entire lot shall be sealed and marked with a unique identification hologram/seal/mark by the Authorized Inspector in order to ensure traceability of inspected Goods.

Normally, the Authorized Inspector shall carry out tests of Goods within the premise of the Vendor. However, if facilities for the tests are inadequate/not available within the Vendor premise, then the Authorized Inspector may have the relevant tests done at a suitable NABL accredited laboratory outside the Vendor premise. In case of disagreement between Vendor and the TPI Agency, matter shall be referred to the Procuring Entity, whose decision shall be final and binding in this behalf.

In case, the Authorized Inspector, on visit to Vendor premise, finds lack of readiness of Vendor for inspection as per Process Inspection Order, the inspection shall be cancelled duly notifying Vendor and the Procuring Entity along with recording the observation.

8. After completion of Process Inspection, inspection outcome shall be reported to the Vendor, Procuring Entity, Paying Authority, Authority and such others and in such form & format, as the Procuring Entity or the Authority may specify from time to time. Besides the inspection outcomes, the report shall invariably include actual Man-days utilised, attendance and call cancellation details, if any.
9. The details of various inspections carried out during the inspection process and outcomes thereof shall be preserved by the TPI Agency. However, the outcome of the Process Inspection shall be communicated on completion of the entire Process Inspection. The report submitted by the TPI Agency shall be reviewed by the Procuring Entity.
10. The Procuring Entity may either accept the report, call for data/clarifications or direct the TPI Agency to conduct further inspections by modifying the Process Inspection Order. Procuring Entity may call for such records, reports, raw data and clarifications as it may require to appreciate the report. In case of any disagreement between the Procuring Entity and the TPI Agency, the process specified in Agreement shall be invoked.
11. Acceptance of the report by Procuring Entity shall be communicated to the TPI Agency, paying authority, Authority and such others as the Authority may specify from time to time.
12. The provisions pertaining to Product Inspection as contained in para 4, 5 and 6 above to the extent applicable shall also apply in Process Inspection.

Schedule C: Quality improvement suggestions

1. The TPI Agency is expected to act as quality advisors to the Authority. Therefore, the TPI Agency may identify opportunities and make suggestions, if any, for improvement of quality to the Authority based on knowledge gained during the inspection.
2. Such suggestions shall be made in writing to the Procuring Entity and could include, but need not be limited to, suggestions for improvement/update in specification, standards, drawing, standard technical requirements (STR), Quality Assurance Plan, identification of items more suitable for Process Inspection.

Schedule D: PAYMENT TO THE TPI AGENCY

Except as may be otherwise agreed, the payments under this Agreement shall not exceed the agreement value specified herein (the "Agreement Value" or the "Contractual Value"). The Parties agree that the Agreement Value is Rs. ……. (Rupees .....).

Inspection charges and Payments

In consideration of the award of this Contract, the Authority shall pay to the TPI Agency inspection charges as brought out in this Clause, subject to and in accordance with the provisions of this Agreement.

1.2.2 The inspection charges for Product Inspection shall be payable on Monthly basis as per following table:

Sr No	Description	Charges
01	Inspection Acceptance/Rejection	**'X'/100** of total value of Goods inspected as per Purchase Order, where X is the percentage rate of the concerned PO Value slab for Product Inspection as per LOA and more specifically included in Annexure 7 of the Agreement, Provided that for inspection of Goods against PO Value less than Rs 5 (five) lakhs, the PO Value for the purpose of payment of Inspection charges shall be considered to be Rs 5 (five) lakhs For avoidance of doubt, it is clarified that total value of Goods inspected shall be calculated from total value of Purchase Order(including freight, packing, forwarding, taxes and duties)
02	Inspection Acceptance involving stage inspection	Inspection charge for Product Inspection involving Stage Inspection will be two times of charges mentioned in 01 above.
03	Call cancellation	50% of the Inspection charge as mentioned in 01 above, subject to a

		maximum of Rs 11000/-.
04	Inspection Certificate revalidation or re-inspection.	Rs. 5000/- for revalidation of Inspection Certificate. In case re-inspection is done afresh, full charges as per Sr. No 01 above.

Pursuant to Clause 7.2 above, the TPI Agency shall every month, on or before 7th day, submit a GST invoice for the Product Inspection undertaken during the previous month through an online system to the Authority.

The Product Inspection invoices prepared State wise shall be accompanied with Procuring Entity wise summary. The summary shall include details of the following:

a) Inspection Acceptance Certificate

b) Inspection Rejection Certificate

c) Call Cancellation Certificate

d) Re-validation of Inspection Acceptance Certificate

The inspection charges for Process Inspection shall be payable on monthly basis as per following table:

Sr No	Description	Charges
01	Process Inspection	Man-days deployed multiplied by Man-days rates for Process Inspection as per LOA and more specifically included in Annexure 7 of the Agreement.

1.2.6 Process Inspection invoices shall also be submitted on a monthly basis by the TPI Agency on or before 7th day of the month for the Process Inspections completed during the previous month through an online system or manually, till the time such online system is in place, to the Authority. The GST invoice shall be submitted along with Process Inspection Order, report submitted by TPI Agency and Acceptance of the report by Procuring Entity.

The Authority shall, in accordance with the provisions of this Agreement, and more specifically as defined in Annexure 4 of the agreement (Payment Regimen) make payment to the TPI Agency within 30(thirty) days from the receipt of invoice. Notwithstanding anything to the contrary contained herein, Authority shall be entitled to adjust, deduct, set- off any amount due and payable by the TPI Agency to the Authority in accordance with this Agreement, while making the payment to the TPI Agency against the monthly invoice.

The Authority shall be entitled to deduct any Taxes required to be deducted at source under Applicable Laws while making the payment to the TPI Agency.

It is expressly agreed by the Parties that all taxes and duties except GST shall be borne and paid by the TPI Agency. For avoidance of doubt, the Authority shall not be liable for reimbursement of any taxes and duties except GST.

GST shall be paid as applicable in accordance with Applicable Laws on submission of certified GST invoices.

Statutory Variation Clause

Statutory Variation in taxes and duties, or fresh imposition of taxes and duties by State/ Central Governments in respect of the items stipulated in the contract, during the engagement period stipulated in the contract, or last unconditionally extended Agreement period shall be to Authority's account. Only such variation shall be admissible which takes place after the submission of bid.

Reconciliation

a) Every quarter, balancing payment reflecting netting of amounts which are due and payable or damages or penalties or any other amounts recoverable which are not paid or recovered from Performance Security shall be calculated by the TPI Agency who shall deliver along with its invoice for such balancing payments the calculation and the statements to the Authority within 14(fourteen) days of end of each quarter of the accounting year. Such statements shall invariably have attachments with reasonably supporting evidence for all amounts claimed.

b) On receipt of the statement, the Authority shall either approve or require recalculation or amendments.

c) Non submission of reconciliation statements shall not bar the Authority from recovering any amounts due from the subsequent invoices of the TPI Agency or from the Performance Security, as the case may be.

Schedule E: Rejection of Pre-inspected Goods

1. Rejection of Goods pre-inspected by TPI Agency-

1.1 The Goods accepted during inspection by the TPI Agency are dispatched by the Vendor to the Consignee mentioned in the Purchase Order.

1.2 The Consignee, on receipt of pre-inspected Goods is empowered to conduct such inspection/test as he/she may deem necessary. The consignee may reject the pre-inspected Goods when:

1.2.1 The Consignee on visual inspection or on testing/measuring/examining finds that the Goods received do not conform to the required description/drawing/specification/standards as per Purchase Order.

1.2.2 The Goods received do not prima facie have the unique identification hologram/seal/mark as indicated in the Inspection Acceptance Certificate.

1.2.3 The Goods have been transferred to Consignee beyond the validity of Inspection Acceptance Certificate.

1.2.4 other terms and conditions of the Purchase Order have not been complied with.

1.3 The Goods supplied by Vendor and pre-inspected by TPI agency carry warranty as per Purchase Order. If the Goods, stored or put to use, are found to be non-conforming to the required description/drawing/specification/standards, or, fail within the warranty period, the consignee may reject the same.

1.4 If Goods, pre-inspected by TPI Agency, gets rejected at consignee end after receipt by consignee or during warranty, as the case may be, the material rejection advice/rejection memo or warranty rejection advice/rejection memo respectively will be sent by consignee through online system to all concerned i.e. Vendor, TPI Agency, Procuring Entity and Paying Authority and such others as the Authority may specify from time to time.

1.5 The consignee after or at the time of issue of rejection advice, at his discretion, may call for a Joint Inspection between consignee, Vendor and TPI Agency. Such Joint Inspection shall be conducted at a place as mentioned in the notice for Joint Inspection.

1.6 The TPI Agency shall, at their own cost, attend the Joint Inspection at place, date and time communicated by consignee. Irrespective of whether the Party(ies) attend the Joint Inspection or not, the modalities of Joint Inspection will be completed by the consignee within the time limit as may be prescribed from time to time. A Joint Inspection report shall be signed by the Party(ies) attending the Joint Inspection. Failure

to attend Joint Inspection shall not be an excuse to dispute the findings of Joint Inspection.

1.7 Irrespective of the outcome of Joint Inspection, the TPI Agency will not be entitled for any fee or charges, whatsoever, for attending such Joint Inspection.

1.8 In case of rejection of Goods on Joint Inspection, the TPI Agency shall not be entitled for inspection charges for the quantity of Goods rejected. The inspection charges, if and to the extent already paid, shall be recovered from the TPI Agency.

1.9 Moreover, in case of rejection of Goods on Joint Inspection, the replacement supply against the rejected lot of Goods shall be inspected by the same TPI Agency, which inspected and passed the original supply. In such cases, GM(QA) shall conduct a root cause analysis and take suitable punitive, corrective and preventive actions to fix responsibility of failure and avoid recurrence. Action Taken Report (ATR) shall be submitted to the Authority along with a relevant periodical report not later than 30 days from the date of finalization of Joint Inspection outcome. Authority, if not satisfied by the actions taken by the TPI Agency, may not accept the ATR and direct TPI Agency to take such actions as it may deem fit including but not limited to disciplinary action against Authorized Inspector, replacement of Authorized Inspector, replacement of GM(QA). Such directions shall be binding on the TPI Agency.

1.10 In case of rejection on account of validity of Inspection Acceptance Certificate, the valid Inspection Acceptance Certificate for the Goods shall be required, either through revalidation of IC or fresh inspection in terms of Para 9 of Schedule 1(A) of the Agreement.

1.11 The above provisions are applicable for Product Inspections. For Process Inspections, provisions contained in above para 1.1, 1.2, 1.3, 1.4, 1.5, 1.6 and 1.7 shall be applicable except when Process Inspection is carried out for validation/verification of quality assurance plan and/or process audit.

Schedule F: Key Performance Indicators

1. The KPIs for Product Inspection shall be monitored on monthly basis through the report submitted in terms of clause 4.14.2 of this Agreement. The identified Key Performance Indicators and their maximum score shall be as under**:**

S N	Parameter	Maximum Score
1	Call Attending Response Time	2000
2	Inspection Response Time	4000
3	Joint Inspection Response	1000
4	Rejection of pre-inspected Goods	1000
5	Quality of Action Taken Report (ATR)	1000
6	Quality of suggestions for improvement	500
7	Quality of complaint redressal system	500
	Total score	10000

2. Details of Key Performance Indicators (KPI)

Call Attending Response Time (CART):

The duration from Call Registration Date to the date of physical visit of Authorized Inspector to Vendor's premises is defined as Call Attending Response Time.

This shall be calculated as percentage of number of inspections with CART less than or equal to 7 calendar days to total number of inspections conducted during the period, final score will be calculated by multiplying this percentage with weightage assigned to this indicator.

CART shall be measured from online system generated data

2.2.**Inspection Response Time (IRT):**

The duration from the date of Call Registration to the date of issue of Inspection Acceptance Certificate or Inspection Rejection Certificate is defined as Inspection Response Time.

This shall be calculated as the percentage of the number of inspections with IRT less than or equal to 21 calendar days to the total number of inspections conducted during the period, final score will be calculated by multiplying this percentage with weightage assigned to this indicator.

IRT shall be measured from online system generated data.

Joint Inspection Response (JIR):

The TPI Agency shall attend the Joint Inspection at place, date and time as communicated by consignee in Rejection Advice or Warranty Rejection Advice. It is desired that the percentage of attending the Joint Inspection should be maximum.

This shall be calculated as the percentage of the number of Joint Inspections attended to the total number of Joint Inspections scheduled/conducted, final score will be calculated by multiplying this percentage with weightage assigned to this indicator.

JIR shall be self-certified by TPI Agency based on actual Joint Inspection attended against Joint Inspection advice received.

Rejection of Pre-inspected Goods

It is desired that Goods rejection at consignee end after receipt by consignee or during warranty should be minimum. It is measured as the total number of rejections of pre-inspected Goods during the period.

This KPI shall be calculated as follows-

Final score=1000 – 1000 x (percentage of rejections during Joint Inspection during the month divided by average number of monthly inspection carried out over preceding 3 (three) months). Minimum score shall be zero while maximum score shall be 1000.

Provided that in the first three months, the percentage shall be calculated based on inspections carried out till the end of preceding month.

By way of illustration, if rejection during a particular month are 3 numbers and average number of monthly inspections carried out by TPI Agency in preceding 3(three) months is 2000, then the score shall be {1000 – 1000*((3/2000)*100)} i.e. 850.

Rejection of Pre-inspected Goods shall be measured from online system generated data or self-certification by the TPI Agency if the data from online system is not available.

Quality of Action Taken Report (ATR):

Performance shall be measured by actual ATR received and accepted without requiring the Authority to issue directions to TPI Agency during the period.

This KPI shall be calculated as follows-

Final score=1000- 200 x number of ATR requiring Authority to issue direction under Annexure A4 of the agreement. Minimum score shall be zero while maximum score shall be 1000.

Quality Suggestions for improvement

The TPI Agency is expected to act as quality advisors and suggest for improvement in specification, standards, drawing, Quality Assurance Plan, identification of items more suitable for Process Inspection.

This KPI shall be calculated as follows-

Final score=250 x number of accepted suggestions during the period (for improvement in specification, standards, drawing, Quality Assurance Plan, identification of items more suitable for Process Inspection etc.), Maximum score shall be limited to 500.

Performance shall be measured by the actual number of accepted Quality Suggestions for improvements by the Authority.

Quality of complaint redressal system-

The TPI Agency is expected to have an online complaint redressal mechanism on their Online System. The complaint shall be redressed at the shortest possible time with optimal satisfaction to the complainant.

This KPI shall be calculated as follows-

Final score=500-100 x complaints escalated to the Authority where the TPI Agency is found to be non-conforming to the relevant provisions. Minimum score shall be zero while maximum score shall be 500.

This shall be measured by the actual number of complaints received to Authority.

Schedule G: Payment Regimen

1. All payments shall be made to TPI Agency through online mode only; no cash payment will be made by Authority. Payment shall be made in TPI Agency's authorised bank registered with the Authority.

2. All payments shall be made to TPI Agency in Indian currency (Rs.) only.

3. TPI Agency shall raise their GST invoices prepared State wise for Product Inspection on monthly basis on or before 7th of every month for inspections (Acceptance/Rejection/call- cancellation/re-validation of Acceptance Certificate/ Stage Inspection) carried out in the previous month (i.e. cases where relevant certificate has been issued during the month).

4. Along with invoices for Product Inspection, the TPI Agency shall submit Procuring Entity wise summary of inspections carried out with inspection outcome (acceptance/rejection/call cancellation/re-validation of Acceptance Certificate/ Stage Inspection). The summary shall contain details like-Purchase Order number and date, Purchase Order Value, inspection certificate date, inspection charges, Procuring Entity etc.

5. For Process Inspections, separate GST invoices for each case shall be raised by TPI Agency as specified in clause 7.2.6 of the Agreement.

6. Payment for all inspections carried out by TPI Agency throughout Indian Railway shall be made by the Authority through a single window on monthly basis irrespective of payments/recoveries that may be due from the Vendor

7. The TPI Agency shall submit to the Authority the reports and documents specified in the clause 4.8 of the Agreement along with monthly GST invoices. Team Leader shall, along with the invoices, submit a declaration certifying that the Authorized Inspectors, who have been assigned the inspection responsibilities, possess the qualification and experience specified in para 3.4.1 of Schedule 1(A) of the agreement.

8. TPI Agency to follow following steps for payment-

    a. TPI Agency to submit GST invoices and other relevant documents like-report of inspection summary, GST mandate document, turnover declaration certificate, original invoice copy, etc. or any other documents asked by Authority for payment.

b. Once the module of online invoice submission and payment system is developed by the Authority, its procedure will be communicated to the TPI Agency from time to time.

c. After receiving original invoice manually/online, Authority will check/verify invoice details, recover any pending dues/penalties from Invoice, and finally release the payment within 30 days.

Schedule H: Damages and Penalties

TPI Agency shall perform the Work as defined in Scope of Work in Schedule I of the Agreement. Any failure will result in imposition of penalties. Penalty shall be imposed in following instances-

1. In the event that (i) the TPI Agency does not procure fulfillment of any or all of the Conditions Precedent set forth in Clause 2.2 within a period of 45 (forty five) days from the date of this Agreement, and (ii) the delay has not occurred due to Force Majeure, the TPI Agency shall pay to the Authority, Damages in an amount calculated at the rate of 0.1% (zero point one percent) of the Performance Security for each day's delay until the fulfillment of such Conditions Precedent, subject to a maximum of 10% (ten percent) of the Performance Security.

2. TPI Agency shall set up sufficient infrastructure and deploy adequate manpower to fulfill obligations in this Agreement. Inspection calls placed by Vendors (Product Inspection) shall be attended within 7 calendar days from the call registration date, failing which a penalty of Rs 1000/- per inspection call will be levied for each day of delay. Provided that the upper ceiling of such penalty shall be Rs 5000/- or 10% of inspection charges payable, whichever is higher.

3. The Online System of TPI Agency shall be robust, secure and updated to handle above online work. If the uptime of the online system is found to be less than 99% in any month or the system remains unavailable for more than 24 hours, a penalty of Rs-50000 (fifty thousand) per instance shall be levied. In case of repeated failures, the Authority shall have the right to terminate the contract.

4. If Goods, pre-inspected by TPI Agency, gets rejected at consignee end after receipt by consignee or during warranty, recovery of inspection charges from TPI Agency shall be made by Authority on a pro-rata basis.

5. Penalty shall be levied on TPI Agency if overall score of Key Performance Indicators falls below 7000(seven thousand) i.e. 70 % (seventy percent). The amount of penalty shall be one percentage of invoice value for each percentage drop from 70 %, subject to a maximum penalty of 10% of total invoice value for the corresponding month. The Authority shall have the right to terminate the Agreement, if overall score of Key Performance Indicators falls below 5000(five thousand) i.e. 50 % (fifty percent) in any month or remains below 7000(seven thousand) i.e. 70 %(seventy percent) continuously for three months.

6. In case of substitution. for first substitution of each position, a penalty of Rs 100000/-(one hundred thousand) shall be imposed. For any subsequent substitutions, the penalty shall be doubled for each substitution. For avoidance of doubt, it is clarified by way of example that when a GM(QA) whose CV was submitted is replaced, penalty shall be Rs 100000/-(one hundred thousand), further when this replacement is replaced the penalty

shall be Rs 200000/-(two hundred thousand) and replacement of such replacement will attract a penalty of Rs 400000/-(four hundred thousand) and so on.

7. Non availability of any Key Personnel for a continuous period of more than 7(seven) days, if permitted by the Authority, shall attract a penalty of Rs 10,000/- (ten thousand) per day per position beyond 7(seven) days. Provided that this penalty shall not be levied if during the period of non-availability, an equal or better qualified Personnel is deployed with prior approval of the Authority. However, approval for such temporary substitutions shall be granted, only in exceptional circumstances at sole discretion of the Authority, and shall be limited to a maximum of 15(fifteen) days. Temporary substitution beyond 15(fifteen) days shall be treated regular substitution under Clause 5.3.2 and shall attract penalty accordingly.

Annexure-B

Special Conditions to be incorporated in tender as special condition for inspection-

1. Attention of Tenderers /Bidders is invited to IRS conditions of contracts, which are the governing conditions of contract. Particular attention is invited to IRS conditions 0701, 1301 (a), 1301 (b) and 1301 (c), 1302 to 1309, 3400 to 3402.
2. In terms of IRS conditions of contract, following specific provisions shall apply in cases of supply of pre-inspected goods through empanelled TPI agencies:

   Unless otherwise stated in the tender schedule, goods procured are required to be pre-inspected before dispatch by the Third Party Inspection (TPI) Agency appointed by Railways at its sole discretion. The TPI Agency appointed shall be indicated in the Purchase Order. It is agreed that Railway's right to appoint TPI Agency of its choice is absolute. Railway also reserves the right to change the TPI Agency at any time through issue of modification advice against the Purchase Order.

   Online inspection call shall be placed by the Supplier on IREPS after the Goods are ready for inspection.

   In Purchase Orders requiring Stage Inspection, Suppliers shall place online inspection call for a particular stage after achieving readiness required at that stage duly mentioning the stage number. The Inspection for a particular stage shall be initiated only after Inspection has been carried out for all the previous stages, as may be applicable.

   The Third Party Inspection Agency appointed by Railways shall examine the online inspection call and may, within 48 hrs (excluding national holidays), seek additional information, if any, from the Supplier. The Supplier shall within one calendar day (excluding Sundays and national holidays) furnish the required information/documents to the TPI Agency to enable them to register inspection call. In case of incomplete information even after providing opportunity to Supplier to furnish information, the call shall not be registered and Supplier shall be advised of observations through the online system to address the observations and place fresh inspection call. The inspection call may also be rejected by TPI Agency if sufficient time for carrying out the inspection and release of IC before end of delivery period is not available.

   Supplier shall be allowed to withdraw inspection call placed, without any cost, before the inspection call has been registered by the Third-Party Inspection Agency. Once the inspection has been scheduled by the TPI Agency, withdrawal of inspection call shall not be permitted.

   Inspection fee/charges will be paid directly by Railways to Third Party Inspection Agencies. However, charges/expenses specifically provided for in IRS Conditions of Contract, particularly in Para 1304, 1305, 1306 and 1400 of IRS conditions of contract, shall be borne by the Supplier.

Inspection charges paid or due to be paid by Railways to the TPI Agency shall be recovered from Suppliers in following cases:

In case of rejection of Goods during the pre-despatch inspection (including stage inspection rejection) by Third Party Inspecting Agency, the charges recovered shall be equal to inspection charges payable to inspecting agency as specified in Para 2.8.4 below.

When the Authorized Inspector of Third-Party Inspection Agency, on visit to Supplier premises for inspection, finds that Goods offered are not yet ready for inspection, Inspection call shall be cancelled by Authorized inspector by issuing call cancellation certificate. Similarly, in case of Stage Inspection, when the Authorized Inspector of Third Party Inspection Agency, on visit to Supplier premises for inspection, finds that readiness for Stage Inspection to be conducted has not been achieved, Inspection call shall be cancelled by Authorized inspector by issuing call cancellation certificate for Stage Inspection. The Call Cancellation Charges shall be recovered from Supplier as specified in para 2.8.4 below.

Inspection Certificate revalidation or re-inspection: If the Supplier fails to deliver the pre-inspected Goods as per the terms of the purchase order within the validity period of Inspection Acceptance Certificate, the TPI Agency, on request of Supplier, may, based on the merits of the case, decide to either re-validate the Inspection Acceptance Certificate or re-inspect the Goods against fresh inspection call to be placed by the Supplier. Decision of the TPI agency in this respect shall be binding on the supplier. In such cases, the revalidation or re-inspection charges (as applicable) to be recovered from Supplier shall be as specified in para 2.8.4 below.

To summarize, following charges shall be recovered from Supplier

Situation	**Charges to be recovered from Supplier (plus GST extra)**
At the time of physical visit call is cancelled due to: Goods are not ready for inspection OR Goods, raw materials, components or sub components, as the case may be, are not yet ready for inspection, in cases involving Stage inspection (Call Cancellation through issue of Call Cancellation Certificate)	Y/2, subject to a maximum of Rs 11000/-

Goods, raw materials, components or sub components, as the case may be, rejected in Stage Inspection excluding the final Stage,incases involving stage inspection	Y
Goods rejected in final Stage, in cases involving stage inspection	2Y
Goods rejected in inspection, in cases without stage inspection	Y
Inspection Certificate revalidation or re- inspection	Scenario-1: Rs. 5000 or full inspection charges, whichever is lower for revalidation of inspection certificate. Scnerio-2: In case re-inspection is done afresh, inspection charges to be recovered from Vendor shall be "Y".

Where, Y = X/100 of total value of Goods inspected as per Purchase Order, Where X is the percentage inspection charges of the concerned PO Value slab for Product Inspection.

3. Applicable inspection charges in percentage of PO value and slab-wise is as under for information of Suppliers:

PO Value Slab	**Inspection charges (X)**
From Rs. 5 lakhs upto 1 Cr	0.5220 % + GST extra
Above Rs. 1 Cr up to 25 Cr	0.116% +GST extra
Above Rs. 25 Cr up to 100 Cr	0.053 % +GST extra
Above Rs. 100 Cr up to 500 Cr	0.035 % + GST extra

Note-1:Purchase Order Value for the purpose of calculating the inspection charges shall mean total value of Goods ordered specifically indicated in the Purchase Order as total order value, and includes freight, packing, forwarding, taxes and duties etc. used in arriving at total order value but excludes any components or items not included specifically in calculation of total order value. The inspection charges shall be calculated using Value of Goods Inspected based percentage charges and GST applicable on inspection charges for the corresponding PO Value Slab. For avoidance of doubt and as an illustration, if the PO Value for 100 Nos of Item A is Rs. 50 Lakhs and a lot consisting of 25 nos. is offered for inspection. The inspection charges for the lot being inspected shall be = (0.5220/100)x(25/100)x50,00,000 = Rs. 6525 only+ GST Extra.

Note-2: For inspection of Goods by Third Party Inspection Agency where Purchase Order value is below Rs. 5 lakh, the inspection charges in such cases will be those applicable for PO valuing Rs. 5 Lakhs.

NOTE 3: For inspection of Goods by Third Party Inspection Agency where Purchase Order value is above Rs 500 Cr, the inspection charges in such cases will be fixed separately by the purchaser subject to maximum of 0.035 % + GST extra.

4. When pre-inspected Goods get rejected at consignee end joint inspection will be held as per procedure below. Moreover, in case of rejection of Goods on Joint Inspection, the replacement supply against the rejected lot of Goods shall normally be inspected by the same Third Party Inspection Agency, which inspected and passed the original supply, unless purchaser under special circumstances decides to get the lot inspected by some other inspection agency/consignee and decision of purchaser in this respect shall be binding on supplier.

5. Procedure for Joint Inspection:

(i) If Goods, pre-inspected by TPI Agency, gets rejected at consignee end after receipt by consignee, the material rejection advice/rejection memo will be sent by consignee through online system to all concerned i.e. Vendor, TPI Agency, Procuring Entity and Paying Authority and to such others as required.

(ii) Before rejected goods are returned to the supplier, the consignee after or at the time of issue of rejection advice, at his discretion, shall call for a Joint Inspection between consignee, Vendor and TPI Agency. Such Joint Inspection shall be conducted at a place as mentioned in the notice for Joint Inspection.

(iii) The joint inspection is to be carried out by the consignee with the representatives of the inspecting agency

(iv) In case where either the firm or the representative of inspecting authority do not turn up for Joint Inspection, Joint Inspection shall be done with whosoever of the two is available. In case neither firm nor inspection agency attend, consignees' decision to accept or reject such goods shall be final and binding.

(v) A Joint Inspection report shall be signed by the Party (ies) attending the Joint Inspection. Failure to attend Joint Inspection shall not be an excuse to dispute the findings of Joint Inspection.

(vi) Irrespective of the outcome of Joint Inspection, the TPI Agency will not be entitled for any fee or charges, whatsoever, for attending such Joint Inspection. In case of rejection of Goods on Joint Inspection, the TPI Agency shall not be entitled for inspection charges for the quantity of Goods rejected. The inspection charges, if and to the extent already paid, shall be recovered from the TPI Agency.

VERSION 1.0



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

INDIAN RAILWAYS

STANDARD CONDITIONS OF CONTRACT

2022

(REVISED SEPTEMBER 2022)

VERSION 1.0



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

INDIAN RAILWAYS STANDARD CONDITIONS OF CONTRACT

0100 Definitions and Interpretations

0101 In the Contract, unless the context otherwise requires;

0102 "Acceptance of Tender" means the letter of memorandum communicating to the Contractor the acceptance of his tender and includes an advance acceptance or letter of acceptance of his tender;

0102A "Agent" is a person employed to do any act for another or represent another in dealings with a third person. In the context of public procurement, an Agent is a representative participating in the Tender Process or Execution of a Contract for and on behalf of its principals.

0102B "Authorized e-procurement portal" is a web-based portal, being used by the Parties for exchanging online documents during the course of the formation of contract.

0103 "Consignee" means where the goods are required by the acceptance of tender to be dispatched by rail, road, air or steamer, the person specified in the Acceptance of Tender to whom they are to be delivered at the destination ; Where the Goods are required by the acceptance of tender to be delivered to a person as an interim consignee for the purpose of dispatch to another person, such other persons; and in any other case the person to whom the goods are required by the acceptance of tender to be delivered in the manner therein specified ;

0104 "Contract" means and includes the invitation to tender, instructions to tenderers, tender, acceptance of tender, Standard Conditions of Contract, Special Conditions of Contract, particulars and the other conditions specified in the acceptance of tender and includes a repeat order which has been accepted or acted upon by the contractor and a formal agreement if executed;

0105 The "Contractor" means the person, firm or company with whom the order for the supply is placed and shall be deemed to include the contractor's successors (approved by the Purchaser), representatives, heirs, executors and administrators as the case may be, unless excluded by the terms of the contract. The words "Contractor" and "Supplier" shall be used interchangeably;

0106 "The Sub-contractor" means any person, firm or company from whom the Contractor may obtain any material or fittings to be used in the supply or manufacture of the goods;

0106A "Year" shall mean calendar year (unless reference to financial year is clear from the context). "Week" shall mean a period of 7 days, "Month", a period of 30 days

0107 "Drawing" means the drawing or drawings specified in or annexed to the Schedule or Specifications;

0107A "Goods" (including the terms 'Stores', 'Material(s)' in specific contexts) includes all articles, material, commodity, livestock, medicines, furniture, fixtures, raw material, consumables, spare parts, instruments, machinery, equipment, industrial plant, vehicles, aircrafts, ships, railway rolling stock assemblies, sub-assemblies, accessories, Modules or a set of Modules, Knocked Down Unit (KDU), a group of machines comprising an integrated production process or such other categories of goods or intangible, products like technology transfer, licenses, Computer Software (with licence), Information Technology Systems, patents or other intellectual properties (but excludes books, publications, periodicals, etc., for a library) under specific context), procured or otherwise acquired by a Purchaser. Any reference to Goods shall be deemed to include specific small work or some services that are incidental or consequential to the supply of such goods such as transportation, insurance, installation, commissioning, training and maintenance.

0108 "Government" means the Central Government or a State Government, as the case may be;

0109 "The Inspecting Officer" means the person specified in the contract for the purpose of Inspection of goods or work under the contract and includes his authorised representative;

0109A "Intellectual Property Rights" (IPR) means the rights of the intellectual property owner concerning a tangible or intangible possession/ exploitation of such property by others. It includes rights to Patents, Copyrights, Trademarks, Industrial Designs, Geographical indications (GI).

0110 "Material" means anything used in the manufacture or fabrication of the goods;

0111 "Particulars" include-

(a) Specifications;

(b) Drawings;

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

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

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

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

(g) Any other details governing the construction, manufacture or supply of goods as may be prescribed by the contract;

0112 "Purchase Officer" means the officer signing the acceptance of tender and includes any officer who has authority to execute the relevant contract on behalf of the Purchaser;

0113 "The Purchaser" means the President of India in the case of goods ordered for the Indian Government Railways and includes his successors and assignees;

0114 Signed" means ink signed or Digitally signed with a valid Digital Signature Certificate as per IT Act 2000 (as amended from time to time). It also includes stamped, except in the case of an acceptance of tender or amendment thereof.

0115 "Site" means the place specified in the contract at which any work is required to be executed by the contractor under the contract or any other place approved by the Purchaser for the purpose;

0116 Deleted

0117 "Supply Order" means an order for supply of goods and includes an order for performance of service;

0118 "Test" means such test as is prescribed by the particulars or considered necessary by the Inspecting Officer whether performed or made by the Inspecting Officer or any agency acting under the direction of the Inspecting Officer;

0119 "Unit" and "Quantity" means the unit and quantity specified in the contract;

0120 "Writing" or "Written" includes matter either in whole or in part, in manuscript, type-written, lithographed, cyclostyled, photographed or printed under or over signature or seal or digitally signed document in electronic form, as the case may be;

0121 The delivery of the goods shall be deemed to take place on delivery of the goods, accompanied with the inspection certificate and any other requisite documents and in accordance with the terms and conditions of the contract, after approval by the Inspecting Officer if so, provided in the contract, to: —

(a) The consignee at his premises; or

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

(c) A carrier or other person named in the contract for the purpose of transmission to the consignee, or

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

0122 Words in the singular include the plural and vice versa;

0123 Words importing the masculine gender shall be taken to include the feminine gender and words importing persons shall include any company or association or body of individuals, whether incorporated or not;

0124 The heading of these conditions shall not affect the interpretation or construction thereof;

0125 Terms and expression not herein defined shall have the meanings assigned to them in the Indian Sale of Goods Act,1930 (as amended), or the Indian Contract Act, 1872 (as amended) or the General Clauses Act, 1897 (as amended) as the case may be.

0200 Parties

The parties to the contract are the Contractor and the Purchaser, as defined in Clauses 0105 and 0113.

0201 Authority of person signing the Contract on behalf of the Contractor

A person signing the tender or any other document in respect of the Contract on behalf of the Contractor without disclosing his authority to do so shall be deemed to warrant that he has authority to bind the Contractor. If it is discovered at any time that the person so signing has no authority to do so, the

Purchaser may, without prejudice to any other right or remedy of the Purchaser, cancel the contract and hold such person liable to the Purchaser for all costs and damages arising from the cancellation of the contract. The provisions of Clause 0702(b) shall apply for calculating the liability of the person at default.

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

(a) For all purposes of the contract, including arbitration thereunder, the address & e-mail of the Contractor mentioned in the tender shall be the address & e-mail to which all communications addressed to the Contractor shall be sent, unless the Contractor has notified change by a separate letter containing no other communication and sent by registered post acknowledgement due to the Purchaser. The Contractor shall be solely responsible for the consequence of an omission to notify a change of address in the manner aforesaid.

(b) Any communication or notice on behalf of the Purchaser in relation to the contract may be issued to the Contractor by the Purchase Officer and all such communications and notices may be served on the Contractor either by registered posts or under certificate of posting or by ordinary post or by hand delivery or through online mode at the option of such officer. The communication through online mode may be made either through email or authorized e-procurement portalof the purchaser, if the said portal provides for the functionalities to make desired communication between the Parties.

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

(b)If the price quoted is higher than the controlled price, the Contractor will specifically mention this fact in his tender giving reasons for quoting higher price (s). If he fails to do so or makes any mis-statement, it shall be lawful for the Purchaser, (i) to revise the price at any stage so as to bring it in conformity with the Sub-clause (a) above or (ii) to terminate the contract and apply provisions as per clause 702(b) and 0702(c) on such termination.

0400 Contract:

0401 This contract is for the supply of the goods of the description, specifications and drawings, and in the quantities set forth in the contract on the date or dates specified therein. Unless otherwise specified, the goods shall be entirely brand new and of the best quality and workmanship to the satisfaction of the Inspecting Officer. The goods shall further be in all respects acceptable to the Inspecting Officer.

0402 Any request for variation or amendment of the contract shall not be binding on the Purchaser unless and until the same is duly endorsed on the contract incorporated in a formal instrument or in exchange of letters and signed by the purchaser.

0403 Severability:

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

0404 Contract Documents and their Precedence:

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

(a) Valid and authorized Amendments issued to the contract.
(b) The contract document, The Letter of Award (LoA)
(c) Special Tender conditions
(d) Technical Specifications as given in tender documents
(e) Drawings
(f) IRS Conditions of contract
(g) General Tender Conditions/ instructions to tenderers
(h) Contractor's bid

0500 Security Deposit.

0501 Unless otherwise agreed between the Purchaser and the contractor or otherwise mentioned in the tender document, the contractor shall, within 21 days of posting of written notice of acceptance of the offer to the contractor, deposit with the Railway concerned (in cash or the equivalent in Government Securities or approved Banker's Guarantee Bond or any other approved form as stipulated in the tender document) a sum as stipulated in the tender document, towards Security Deposit.

Unless otherwise specified in the tender document, Security Deposit should remain valid for a minimum period of 60 days beyond the date of completion of all the contractual obligations of the supplier, including warranty obligations.

0502 If the Contractor, having been called upon by the Purchaser to furnish security deposit, fails to make a security deposit within the specified period, it shall be lawful for the Purchaser to cancel the Letter of Award and to recover from the Contractor the amount of such security deposit by deducting the amount from the pending bills of the Contractor under any other contract with the Purchaser or the Government or any person contracting through the Purchaser or otherwise howsoever, duly adjusting the Earnest Money deposit, if any, made by the contractor.

0502A If the contractor during the currency of the Contract fails to maintain the requisite security deposit, it shall be lawful for the purchaser at its discretion

(a) to terminate the Contract for Default besides availing any or all contractual remedies provided for breaches/ default, or

(b) without terminating the Contract:

(i) to recover from the Contractor the amount of such security deposit by deducting the amount from the pending bills of the Contractor under the contract or any other contract with the Purchaser or the Government or any person contracting through the Purchaser or otherwise howsoever, or

(ii) treat it as a breach of contract and avail any or all contractual remedies provided for breaches/ default.

0502B In the event of any amendment issued to the contract, the contractor shall furnish suitably amended value and validity of the Performance Security deposit in terms of the amended contract within fourteen days of issue of the amendment.

0503 No claim shall lie against the Purchaser in respect of interest on cash deposits or Government Securities or depreciation thereof. No interest shall be payable upon the Bid Security and Security Deposit or amounts payable to the Contractor under the Contract.

0504 The Purchaser shall be entitled and it shall be lawful on his part to forfeit the said security deposit in whole or in part in the event of any default, failure or neglect on the part of the Contractor in the fulfilment or performance in all respect of the contract under reference or any other contract with the Purchaser or any part thereof to the satisfaction of the Purchaser andthe Purchaser shall also be entitled to deduct from the said deposits any loss or damage which the Purchaser may suffer or be put by reason of or due to any act or other default, recoverable by the Purchaser from the Contractor in respect of the contract under reference or any other contract and in either of the events aforesaid to call upon the Contractor to maintain the said security deposit at its original limit by making further deposits, provided further that

the Purchaser shall be entitled to recover any such claim from any sum then
due or which at any time thereafter may become due to the Contractor under this or any other contracts with the Purchaser.

0505 Subject to the above, the purchaser shall release the security deposit without any interest to the contractor on completing all contractual obligations, including the warranty obligations, if any. Alternatively, for the duration of Warranty obligations, upon the contractor submitting a suitable separate Warranty Security deposit, the original Performance Guarantee Security shall be released mutatis mutandis.

0600 Delivery

0601 The Contractor shall as may be required by the Purchaser either deliver free or FOR or CIF or as per the delivery terms provided in the contract at the place/places detailed in the contract, the quantities of the goods detailed therein and the goods shall be delivered or despatched not later than the dates specified in the contract. The delivery will not be deemed to be complete until and unless the goods are inspected and accepted by the Inspecting Officer as provided in the contract.

0602 The Purchaser shall not be liable to render assistance to the Contractor in securing or to arrange for or provide transport to the Contractor unless it is so specifically stated in the contract, notwithstanding that transport of the goods, is controlled by or under the orders of the Government.

0603 Notwithstanding any inspection and approval by the Inspecting Officer on the Contractor's premises, property in the goods shall not pass on to the Purchaser until the goods have been received, inspected and accepted by the consignee.

0604 No goods shall be deliverable to the consignee's depots on Sundays and public holidays or beyond normal office hours without the written permission of the consignee.

0605 Perishable Goods:

For Goods with a limited shelf life, the contractor shall ensure that at least 75% (or any other percentage stipulated in the contract) of shelf life remains balance on delivery date. The Purchaser reserves its rights to reject expired or products with less than such specified shelf life.

0700 Time for and Date of Delivery; the Essence of the Contract -The time for and the date specified in the contract or as extended for the delivery of the goods shall be deemed to be of the essence of the contract and delivery must be completed not later than the date(s) so specified or extended.

0701 Progressing of Deliveries -

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

0702 Failure and Termination -

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

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

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

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

0703 Consequence of Rejection -

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

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

on that or any other account, or

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

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

0800 Extension of Time for Delivery

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

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

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

(b) Denial clause as under:

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

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

after the said date.

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

0900 Examination of Drawing, Specifications and Patterns

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

1000 Mistakes in Drawing.

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

1100 Samples.

1101 Advance Sample

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

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

1102 Unless otherwise provided in the contract, all samples required for test shall be supplied by the Contractor free of cost. Where sample, which is supplied free, is rejected after examination and test, the contractor shall arrange for collection of the same or whatever remains of the sample, after examination and test within three months of the date of such rejection.

1103 Marking –

Samples submitted shall be clearly labelled with the Contractor's name and address and the acceptance of tender number.

1104 If the Contractor submits a sample whether with, before or after the tender, the same shall not govern the standard of supply except when it has been specifically stated so in the acceptance of tender.

1105 Where under the contract, the Contractor is required to submit an advance sample, any expenses incurred by the Contractor on or in connection with the production of goods in bulk, before the sample has been approved unconditionally, shall be borne by the Contractor and he shall not claim any compensation in the event of such sample being found unacceptable by the Inspecting Officer.

1106 The rejection of the sample by the Inspecting Authority or Inspecting Officer or Consignee shall be final and binding on the Contractor.

1107 Where the contract does not require any advance sample to be approved, the Contractor may before proceed with bulk manufacture or delivery of the goods, if he so desires, submit to the Inspecting Officer for inspection a sample of the goods in which case a quantity not less than one per cent of the total quantity to be supplied unless otherwise authorized by the Inspecting Officer shall be submitted. The Contractor shall not, however, be entitled to be shown any consideration or give any extension of time or claim to be exonerated from completing the delivery within the stipulated period only on the ground of delay in the approval of any such sample.

1108 If under the contract, the supplies are governed by a sealed pattern, the Contractor shall be bound to examine such pattern before preparing a sample or manufacturing the goods in bulk as the case may be.

1109 Loan of Sample –

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

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

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

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

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

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

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

1300 Inspection by Inspecting Officer.

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

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

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

1302 Marking of Goods —

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

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

1303 Facilities for test and Examination —

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

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

1304 Cost of Test—

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

1305 Delivery of Goods for Test—

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

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

1307 Method of Testing —

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

1308 Goods Expended in Test—

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

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

1309 Powers of Inspecting Officer -

The Inspecting Officer shall have the power: —

i. before any goods or part thereof are submitted for inspection, to certify that they cannot be inspected in accordance with the contract owing to the adoption of any unsatisfactory method of manufacture.

ii. to reject any goods submitted as not being in accordance with the particulars.

iii. to reject the whole of the instalment tendered for inspection, if after inspection of such portion thereof as he may in his discretion think fit, he is satisfied that the same is unsatisfactory.

iv. the Inspecting Officer's decision as regards the rejection shall be final and binding on the Contractor.

1400 Charges for Work Necessary for Completion of the Contract —

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

1500 Responsibility of the Contractor for Executing the Contract

1501 Risk in the Goods —

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

The Contractor shall be responsible for all loss, destruction, damage or deterioration of or to the goods from any cause whatsoever while the goods after approval by the Inspecting Officer are awaiting despatch or delivery or are in the course of

transit from the Contractor to the consignee or, as the case may be, interim consignee. The Contractor shall alone be entitled and responsible to make claims against a Railway Administration or other carrier in respect of non-delivery, short delivery, misdelivery, loss, destruction, damage or deterioration of the goods entrusted to such carrier by the Contractor for transmission to the consignee or the interim consignee as the case may be.

1502 Consignees Right of Rejection —

Notwithstanding any approval which the Inspecting Officer may have given in respect of the goods or any materials or other particulars or the work or workmanship involved in the performance of the contract (whether with or without any test carried out by the Contractor or the Inspecting Officer or under the direction of the Inspecting Officer) and not withstanding delivery of the goods where so provided to the interim consignee, it shall be lawful for the consignee, on behalf of the Purchaser, to reject the goods or any part, portion or consignment thereof within a reasonable time after actual delivery thereof to him at the place or destination specified in the contract if such goods or part, portion or consignment thereof is not in all respects in conformity with the terms and conditions of the contract whether on account of any loss, deterioration or damage before despatch or delivery or during transit or otherwise howsoever.
Note — In respect of materials pre-inspected at the firm's premises the consignee will issue rejection advice within 90 days from the date of actual receipt of the goods by consignee and all the related documents from the contractor, required to be verified by the consignee on receipt of goods as per contract, before acceptance of the material. The time limit of 90 days specified above, is only for the initial acceptance of the material by consignee and without prejudice to the right of the purchaser or consignee on Purchaser’s behalf, to reject the material as per Warranty/ Guarantee clause 3200 within the period specified therein.

1503 Provided that where, under the terms of the contract the goods are required to be delivered to an interim consignee for the purpose of despatch to the consignee, the goods shall be at the Purchaser's risk after their delivery to the interim consignee, but nevertheless it shall be lawful for the consignee on behalf of the Purchaser to reject the goods or any part, portion of consignment thereof upon their actual delivery to him at the destination if they are not in all respects in conformity with the terms and conditions of contract except where they have been damaged or have deteriorated in the course of transit or otherwise after their delivery to the interim consignee.

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

provided.

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

1506A Changes in a Firm —

(a) Where the Contractor is a partnership firm, a new partner shall not be introduced in the firm except with the previous consent in writing of the Purchaser, which may be granted only upon execution of a written undertaking by the new partner to perform the contract and accept all liabilities incurred by the firm under the contract prior to the date of such undertaking.

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

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

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

1506B Obligation to Maintain Eligibility and Qualifications

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

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

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

1507 Assistance to the Contractor —

(a) The Contractor shall be solely responsible to procure any material or obtain any import or other licence or permit required for the fulfilment of the contract and the grant by the Purchaser or any other authority of a quota certificate or permit required under any law for distribution or acquisition of iron and steel or any other commodity or any other form of assistance in the procurement of the material aforesaid or any attempt to render assistance in the matter aforesaid, shall not be construed as a representation on the part of the Purchaser that the material covered by such licence or permit or quota certificate is available or constitute any promise, undertaking or assurance on the part of the Purchaser regarding the procurement of the same or effect any variation in the rights and liabilities of the parties under the contract. But, if by reason of any such assistance as aforesaid, the Contractor obtains any materials at less than their market price or the cost of production of the goods is lowered the price of the goods payable under the contract shall be reduced proportionately, and the extent of such reduction shall be determined by the Purchaser whose decision shall be final and binding on the Contractor.

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

1600 Use of Raw Materials secured with Government Assistance

1601 (a) Where any raw material is procured for the execution of a

contract with the assistance of the Government rendered in the form of permit, or licence or quota certificate/essentiality certificate or release order issued by or on behalf of or under the authority of the Government or by an officer empowered in that behalf, or

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

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

(d)Where raw material is arranged by the Government, the Contractor—

i. shall hold such material as trustee for the Government,

ii. Shall use such material economically and solely for the purpose of the contract.

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

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

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

1602 Where the contract is terminated due to any default on the part of the Contractor, the Contractor shall pay all transport charges incurred for returning any material up to such destination as may be determined by the Purchaser and the decision of the Purchaser in that behalf shall be final and binding on the Contractor.

1603 If the Contractor commits breach of any of the conditions in this clause specified, he shall, without prejudice to any other liability, penal or otherwise, be liable to account to the Government for all moneys, advantages or profits accruing from or which, in the usual course, would have accrued to him by reason of such breach.

1604 Where the goods manufactured or fabricated by the Contractor out of the material arranged or procured by or on behalf of the Government are rejected, the Contractor shall, without prejudice to any other right or remedy of the Government, pay to the Government, on demand, the cost price or market value of all

such materials whichever is greater.

1700 Indemnity

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

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

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

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

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

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

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

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

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

1703 Confidentiality, Secrecy and IPR Rights

(a) Confidentiality

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

(b) Secrecy

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

(c) IPR Rights

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

(d) Obligations of the contractor

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

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

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

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

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

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

1800 Packing.

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

1802 Unless otherwise, provided in the contract all containers

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

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

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

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

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

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

1900 Notification of Delivery

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

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

2000 Progress Reports.

2001 The Contractor shall from time-to-time, render such reports concerning the progress of the contract and/or supply of the goods in such form as may be required by the Purchaser.

2002 The submission, receipt and acceptance of such reports shall not prejudice the rights of the Purchaser under the contract, nor shall operate as an estoppel against Purchaser merely by reason of the fact that he has not taken notice of/or subjected to test any information contained in such report

2100 Freight.

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

2101 In respect of road deliveries where the Municipal/local authorities do not accept Octroi Duty Exemption Certificate, the Octroi Duty shall be borne by the Contractor.

2200 Removal of Rejected Goods

2201 On rejection of all goods submitted for inspection at a place other than the premises of the Contractor, such goods shall be removed by the Contractor at his own cost subject as hereinafter stipulated, within 21 days of the date of issue of intimation of such rejection by communication means detailed in clause 0202. The communication will be deemed to have been served on the contractor at the time when such communication would, in the course of ordinary communication, reach the contractor through the means of communication used.

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

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

2202 All rejected goods shall in any event and circumstances remain and always be at the risk of the Contractor immediately on such rejection. If such goods are not removed by the Contractor within the periods aforementioned, the Inspection Officer/Consignee may remove the rejected goods and either return the same to the contractor at his risk and cost by such mode of transport as the Purchaser or Inspecting Officer may decide, or dispose of such goods at the Contractor's risk and on his account and adjust such portion of the proceeds, if any from such disposal as may necessary to recover any expense incurred in connection with such disposals (or any price refundable as a consequence of such rejection). The Purchaser shall, in addition, be entitled to recover from the Contractor ground rent/demurrage charges on the rejected goods after the expiry of the time limit mentioned above. Disposal of rejected goods in aforesaid manner will not in any way exonerate contractor but still hold him liable to pay to the purchaser, the dues detailed under para 0703(iii) besides other dues as mentioned above and action can be taken by the Purchaser as per clause 2400, if contractor fails to pay the amount due to him.

2203 Deleted

2300 System of Payment

2301 Unless otherwise agreed upon between the parties, payment for delivery of the goods will be made on submission of bills in the prescribed form which may be obtained from the Purchase Officer or through online billing mode on e-procurement portal of the purchaser, as decided by the purchaser, in accordance with the instructions given in the Acceptance of Tender, by a cheque or demand draft or through online mode on a branch of the Reserve Bank of India or State Bank of India transacting government business or through e-payment to the registered bank account of the Contractor at the option of the purchaser.

2302 Payment for the goods or for each consignment thereof will be made to the Contractor on submission of bills accompanied by required document in accordance with the following procedure in

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

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

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

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

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

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

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

2304 Payment Against Time-Barred Claims

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

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

2400 Withholding and lien in respect of sums claimed.

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

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

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

2403 Lien in respect of Claims in other Contracts —

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

Purchaser or Government.

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

2500 Code of Integrity in Public Procurement; Misdemeanours and Penalties

2501 Corrupt Practices

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

2502 Code of Integrity

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

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

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

(b) "Fraudulent practice" - any omission or misrepresentation that may mislead or attempt to mislead so that financial or other benefits may be obtained or an obligation avoided. Such practices include a false declaration or false information for participation in a tender process or to secure a contract or in the execution of the contract;

(c) "Anti-competitive practice" - any collusion, bid-rigging or anti-competitive arrangement, or any other practice coming under the purview of the Competition Act, 2002, between two or more bidders, with or without the knowledge of the Purchaser, that may impair the transparency, fairness, and the progress of the Tender Process or to establish bid prices at artificial, non-competitive levels;

(d) "Coercive practice" - harming or threatening to harm persons or their property to influence their participation in the Tender Process or affect the execution of a contract;

(e) "Conflict of interest" –participation by a bidding firm or any of its affiliates who are either involved in the Consultancy Contract to which this procurement is linked; or if they are part of more than one bid in the procurement; or if their personnel have a relationship or financial or business transactions with any official of Purchaser who are directly or indirectly related to tender or execution process of contract; or improper use of information obtained by the (prospective) bidder from the Purchaser with an intent to gain unfair advantage in the Tender Process or for personal gain;

(f) "Obstructive practice" - materially impede Purchaser investigation into allegations of one or more of the above mentioned prohibited practices either by deliberately destroying, falsifying, altering; or by concealing of evidence material to the investigation; or by making false statements to investigators and/ or by coercive practices mentioned above, to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or by impeding the Purchaser's rights of audit or access to information;

2503 Obligations for Proactive Disclosures:

(a) Procuring authorities, bidders, suppliers, contractors, and consultants are obliged under this Code of Integrity to suo-moto proactively declare any conflict of interest (coming under the definition mentioned above - pre-existing or as and as soon as these arise at any stage) in any Tender Process or execution of the contract. Failure to do so shall amount to a violation of this code of integrity.

(b) Any bidder must declare, whether asked or not in a bid-document, any previous transgressions of such code of integrity during the last three years or of being under any category of debarment by the Central Government or by the Ministry/ Department of the Procuring Organisation from participation in Tender Processes. Failure to do so shall amount to a violation of this code of integrity.

2504 Misdemeanours

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

(a) commits any of the following misdemeanours:

i. violates the code of Integrity, if included in the Tender/ Contract;

ii. any other misdemeanour, e.g., supply of sub-standard quality of material/ services/ work or non-performance or abandonment of contract or failure to abide by 'Bid Securing Declaration'.

(b) commits any of the following misdemeanours:

i. has been convicted of an offence under the Prevention of Corruption Act, 1988(as amended from time to time)or

ii. the Indian Penal Code (as amended from time to time) or any other law for the time being in force for causing any loss of life or property or causing a threat to public health as part of the execution of a public procurement contract.

iii. is determined by the Government of India to have doubtful loyalty to the country or national security consideration.

iv. Employs a government servant, who has been

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

2505 Penalties for Misdemeanours

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

(a) if his bids are under consideration in any procurement

i. Enforcement of Bid Securing Declaration in lieu of forfeiture or encashment of Bid Security.

ii. calling off of any pre-contract negotiations, and;

iii. rejection and exclusion of Bidder from the Tender Process

(b) if a contract has already been awarded

i. Termination of Contract for Default and availing all remedies prescribed thereunder;

ii. Encashment and/ or Forfeiture of any contractual security or bond relating to the procurement;

iii. Recovery of payments including advance payments, if any, made by the Purchaser along with interest thereon at the prevailing rate (MIBID - Mumbai Interbank Bid Rate);

2506 Remedies in addition to the above:

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

(a) File information against Bidder or any of its successors, with the Competition Commission of India for further processing, in case of anti-competitive practices;

(b) Initiate proceedings in a court of law against Bidder or any of its successors, under the Prevention of Corruption Act, 1988 or the Indian Penal Code or any other law for

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

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

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

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

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

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

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

2600 Insolvency and Breach of Contract

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

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

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

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

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

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

2602 Force Majeure

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

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

2700 Laws governing the Contract

2701 This contract shall be governed by the Laws of India for the time being in force.

2702 Irrespective of the place of delivery, the place of performance or place of payment under the contract, the contract shall be deemed to have been made at the place from which the acceptance of tender has been issued.

2703 Jurisdiction of courts —The Courts of the place from where the acceptance of tender has been issued shall alone have jurisdiction to decide any dispute arising out of or in respect of the contract.

2704 Marking of goods —The marking of the goods must comply with the requirements of the laws relating to merchandise marks for the time being in force in India.

2705 Obligations of the contractor under Labour Codes and Rules

(a) The contractor shall comply with the provisions of the Labour Codes, which including Code on Wages, 2019, The Industrial Relations Code 2020, Code on the Social Security 2020, and The Occupational Safety, Health and Working Conditions 2020, and Draft Rules made thereunder, as modified from time-to-time, wherever applicable and shall also indemnify the Purchaser from and against any claims under the aforesaid Labour codes and the Rules.

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

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

(d)The Contractor shall pay the wages as per the Code on Wages to their workers not below the rate of minimum wages, as notified by the State Government or Central Government,

whichever is higher, through the bank transfer. Notwithstanding the contract's provisions to the contrary, the Contractor shall cause to be paid the wages to labour directly or indirectly engaged on the contract, including any engaged by his Sub-Contractors in connection with the said contract as if he had immediately employed the labour. The Purchaser shall, without any commitments or being obliged to do, may its discretion, monitor that such payments are being made.

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

2706 The contractor's status shall be that of an independent contractor and Primary Employer of staff deployed during the contract by him or his sub-contractors or other associates. The Contractor, its employees, agents, and subcontractors performing under this Contract are not employees or agents of the Procuring Organisation or Purchaser or Central or State Government or their agencies/ Enterprises, simply by execution of this contract including Services delivered under this Contract.

2800 Headings

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

2900 Settlement of Disputes

2901 Conciliation of disputes

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

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

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

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

The conciliation proceedings shall be terminated:

1) By the signing of the settlement agreement, on the date of agreement: or

2) By written declaration of the conciliator, after consultation with the parties, to the effect that further efforts at conciliation are no longer justified, on the date of declaration: or

3) By a written declaration of any party to the conciliator to the effect that the conciliation proceedings are terminated, on the date of declaration:

2902 Matters Finally Determined by the Railway: All disputes and differences of any kind whatsoever arising out of or in connection with the contract, whether during the currency of the contract or after its completion and whether before or after the determination of the contract, shall be referred by the contractor to the General Manager (for the purpose of para 2900 the term General Manager shall imply Additional General Managers of Zonal Railways , General Managers for Production Units, Additional Member (Railway Stores), Member of the Railway Board, Head of the Organisation in case of contracts entered into by other organizations under the Ministry of Railways) and the General manager shall, within 120 days after receipt of the representation, make and notify decisions on all matters referred to by the Contractor in writing. Provided that matters for which provision has been made in any Clause of the Special or General

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

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

2903 Demand for Arbitration:

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

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

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

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

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

(c) Respondent shall submit its defence statement and counter

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

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

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

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

2905 Appointment of Arbitrator

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

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

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

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

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

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

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

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

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

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

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

2905(c) i. If the contractor does not suggest his nominees for the arbitral tribunal within the prescribed timeframe, the General manager shall proceed for appointment of arbitral tribunal within 30 days of the expiry of such time provided to contractor.

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

(a) Fast Track procedure: Parties to the arbitration agreement, may, at any stage either before or at the time of appointment of the arbitral tribunal, agree in writing to have their dispute resolved by fast-track procedure specified in Section 29B of the

Arbitration & Conciliation Act, 1996, as amended.

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

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

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

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

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

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

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

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

Certification by persons under consideration to be nominated as Arbitrator.

1. Name
2. Contact Details:
3. I hereby certify that I have retired from Railways w.e.f. _____in_____grade.

Or

I hereby certify that I am serving Railway Officer and am presently posted as_____ in grade.

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

Or

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

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

Or

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

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

Or

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

2905(d) (i): The arbitral award shall state item wise, the sum and reasons upon which it is based. The analysis and reasons shall be detailed enough so that the award could be inferred there from.

(ii): A party may apply for corrections of any computational errors,

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

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

2906 In case of the Tribunal, comprising of three members, any ruling on award shall be made by a majority of members of Tribunal. In the absence of such a majority, the views of the Presiding Arbitrator shall prevail.

2907 Where the arbitral award is for the payment of money, no interest shall be payable on whole or any part of the money for any period till the date on which the award is made.

2908 (a): The cost of arbitration shall be borne by the respective parties. The cost shall inter-alia include fee of the arbitrator(s), as per the rates fixed by Railway Board from time to time and the fee shall be borne equally by both the parties. Further, the fee payable to the arbitrator(s) would be governed by the instructions issued on the subject by Railway Board from time to time irrespective of the fact whether the arbitrator(s) is/are appointed by the Railway Administration or by the court of law unless specifically directed by Hon'ble Court otherwise on the matter.

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

2909 The Micro, Small and Medium Enterprises Development (MSMED) Act, 2006 provides parties to a dispute (where one of the parties is a Micro or Small Enterprise) to make a reference to Micro and Small Enterprises Facilitation Council, if the dispute is in regard to any amount due under Section 17 of the MSMED Act, 2006. In case a Micro or Small] Enterprise, being a party to dispute, makes a reference under the provisions in MSMED Act 2006, the provisions of the MSMED Act 2006, shall prevail over conciliation and arbitration agreement as contained in the contract.

2910 Subject to the provisions of the aforesaid Arbitration and Conciliation Act 1996 (as amended from time to time) and the rules thereunder and relevant para of IRS Conditions of Contract and any statutory modifications thereof shall apply to the appointment of arbitrators and arbitration proceedings under this Clause.

3000 Repealed

3100 Inspection & Rejection

Where under a contract, the price payable is fixed on F.O.R. station of despatch basis, the Contractor shall, if the goods are rejected at destination by the consignee be liable in addition to his other liabilities, to reimburse to the Purchaser the freight paid by the Purchaser.

3101. Notification of Result of Inspection

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

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

3200 Warranty/Guarantee—

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

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

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

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

destination.

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

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

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

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

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

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

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

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

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

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

3400 Inspection at the Fag End of the Delivery Period—

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

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

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

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

latter

(ADDITIONAL) SPECIAL CONDITIONS

(Vide Para 417-S)

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

3600 Purpose of Contract and Parties to the Contract

3601 The parties to the contract, which shall be deemed to be a "Running Contract" and which is intended for the supply of the goods of the descriptions and approximately in the quantities set forth in the contract during the period specified therein, shall be the Contractor of the one part and the authorities named in the contract hereinafter called the Purchaser (which expression shall, where the context so admits or implies, be deemed to include his successors and assigns) of the other part. The quantities shown in the said Contract, are only approximate, and cannot be guaranteed.

3602 The Purchaser may authorise any officer (who shall hereinafter be called Direct Demanding Officer) at any time during the period of the contract, to place orders direct on the Contractor.

3603 Any variation of this contract shall not be binding on the Purchaser unless or until same is endorsed on the contract or incorporated in a formal instrument in exchange of letters and signed by the parties.

3700 Delivery.

3701 The Contractor shall as may be required by the Purchaser either deliver free or FOR or CIF at the place or places specified in the contract such quantities of the goods detailed in the said contract as may be ordered direct from the Contractor from time-to-time by the Purchaser or by the Direct Demanding Officer. The Contractor shall deliver or despatch the full quantity of the goods so ordered within the period specified in the said contract.

3800 Increase or Decrease of Quantities.

The purchaser shall be entitled to vary the approximate total quantities of each description of goods shown in the said contract up to 30 percent, in one or more instalments, any time within the last date of delivery period (including extended delivery period) by giving a reasonable notice in writing of such variation.

3900 Maintenance and Replacement of Stocks.

3901 To meet casual demands, the Contractor shall maintain at all time in stock (until 70 per cent of the requirements have been drawn), at the place(s) specified in the contract, the quantity/quantities mentioned therein. All demands should be complied with immediately they are received by the Contractor or within the period, if any, stipulated in individual orders. As soon as the Contractor is called upon to effect supplies, he shall take action to replenish the guaranteed stocks until such time as 70 percent of the total approximate requirement has been drawn and such replenishment shall be completed with the period specified in the contract, after the receipt by the Contractor of casual demands. Due notice will be given to the Contractor by the Direct Demanding Officers or by the Purchaser, if any additional quantities over and above 70 per cent of the total approximate requirements are required and Contractor shall then arrange stocks accordingly.

3902 The period for replenishment of stocks will be allowed only if the material is not in stock. If the material is in stock, this Provision will be inoperative even though the guaranteed stock quantity may have been supplied against the contract.

3903 As an alternative to Clause 3901 and 3902 above, at the option of the Purchaser, or Direct Demanding Officer, he may order more than one instalment of deliveries at a time by stipulating instalment wise start date and completion date of supply. Delivery period of all the instalments except the first one shall be deemed tentative/provisional till the start date of the corresponding instalment unless otherwise expressly communicated in main contract or any subsequent communication by the purchaser to the contractor. Purchaser, without prejudice to other provisions under the contract, reserves the right to make deferment in the aforementioned tentative/ provisional delivery period of any instalment, constituting the elements of start date and completion date of supply for that instalment. Unless mutually agreed by Parties, the maximum period of deferment for any instalment will be limited to six months.

4000 Reporting Progress of Contract.

The Contractor shall, three calendar months before the termination of the contract or at such intervals as may be specified in the contract, submit a report to the Purchaser stating the total quantity of goods delivered or despatched under the contract.

4100 Special conditions where they differ from Standard Conditions override the latter.