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<u>Circulation slip</u> dt. 06.10.2022.

Sub:- 2022/RS(G)/779/13(E 3402809) dt. 21.09.2022 regarding IRS conditions of contract

Please find the above letter for information and necessary action at your end.

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2937752/2022/O/o CMM ADMN/STORES/HQ/CCG/WR

आज़ादी का अमृत महोत्सव

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

Azadi Ka Amrit Mahotsav

No. 2022/RS(G)/779/13(E 3402809) **Dated: 21.09.2022**

The General Managers, All Indian Railways/PUs, NF(C), CORE
DG, RDSO/Lucknow, NAIR/Vadodara
PCAO, PLW/Patiala, COFMOW
CAO, WPO/Patna, RWP/ Bela

Sub: Revised Indian Railway Standard(IRS) Conditions of Contract-September 2022 Version 1.0

Please find attached herewith the Revised Indian Railway Standard(IRS) Conditions of Contract-September 2022 Version 1.0 for implementation in future procurements

This is issued with the concurrence of Finance Directorate of Railway Board.

DA: As above

(Chandan Kumar)
Director Railway Stores/IC
Railway Board

No. 2022/RS(G)/779/13(E 3402809) **Dated: 21.09.2022**

1. PFAs, All Indian Railways& Production Units.
2. The ADAI (Railways), New Delhi.
3. The Directors of Audit, All Indian Railways.

For Member Finance,
Railway Board

2937752/2022/O/o CMM ADMN/STORES/HQ/CCG/WR

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Sr. Prof. (Material Management), NAIR, Vadodara, ED (Stores), RDSO, Lucknow
Chief Commissioner, Railway Safety, Lucknow
Zonal Railway Training Institute, Sukadia Circle, Udaipur

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The Genl. Secy., AIRF, Room No. 248, & NFIR Room No. 256-C, Rail Bhavan
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Advisor/MR, EDPG/MR, OSD/MR& OSD/Co-ord/MR
All AMs, PEDs & Executive Directors of Railway Board.

E 3402809

2937752/2022/O/o CMM ADMN/STORES/HQ/CCG/WR

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)

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

आज़ादी का अमृत महोत्सव
Azadi Ka Amrit Mahotsav

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

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(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.