

No.COFMOW/IR/S-101

Dated: 15.12.2011

Sub:- Uploading of modified Bid Document Part-I, December 2011.

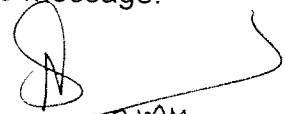
Certain conditions of existing Bid Document Part-I, 2009 have been modified/improved and accordingly comprehensive Bid Document Part-I, 2011 has been prepared. As per approval of CAO/COFMOW, this improved Bid Document Part-I shall be applicable for tenders due to open on or after 16.01.2012.

COS office had already issued tenders with current Bid Document Part-I, 2009, which are due to open on or after 16.01.2012. Since, tenderers quoting for tenders due on or after 16.01.2012 are required to comply latest Bid Document Part-I, December 2011, the same needs to be immediately uploaded on COFMOW's website with the following message:

"Certain conditions of existing Bid Document Part-I, 2009 has been modified/improved and comprehensive Bid Document Part-I, December 2011 has been prepared. All tenders due on or after 16.01.2012 will be governed by this latest Bid Document Part-I, December 2011. Tenderers who have already downloaded tenders to be opened on or after 16.01.2012 are required to download the latest Bid Document Part-I, December 2011 and quote accordingly. However, tenders due on or before 15.01.2012 will be governed by the existing Bid Document Part-I, 2009 only. Tenderers are required to quote accordingly."

The soft copy of revised/modified Bid Document Part-I, December 2011 is also being forwarded for uploading on website alongwith the above message.

DY.CME-IV


DY.CMM-I

INDIAN RAILWAY
CENTRAL ORGANISATION FOR
MODERNISATION OF WORKSHOPS

BID DOCUMENTS
PART - I

RAILWAY OFFICES COMPLEX,
TILAK BRIDGE, NEW DELHI-110002
INDIA
CABLE/GRAMS:COFMOW
FAX: 91-11-23370347
: 91-11-23378159

DEC. 2011

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INSTRUCTIONS TO TENDERERS

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SECTION-I
INSTRUCTIONS TO TENDERERS

0100. GENERAL INSTRUCTIONS

0101. On behalf of the President of India, the Controller of Stores, Central Organization for Modernization of Workshops, (COFMOW) New Delhi, INDIA (hereinafter referred to as the Purchaser), invites tenders from established and reliable manufacturers or their authorised agents for the supply as set forth in the “Schedule of Requirements”.

0102 All offers in the prescribed format should be submitted before the time and date fixed for the receipt of offers as set forth in the tender papers. Offers received after the stipulated time and date, shall be summarily rejected.

0103. All information in the offer must be in English or Hindi. Information in any other language must be accompanied by its authenticated translation in English, failure to comply with this may render the offer liable to be rejected. In the event of any discrepancy between an offer in a language other than English and its English translation, the English translation will prevail.

0104. All correspondence related to the tender should be made only with the Controller of Stores, COFMOW.

0105. Submission of offer received by FAX :

(i.) Offer received by FAX may be considered in case of procurement of items through proprietary article certificate & single tender only subject to the firm submitting post confirmation copy on their letter head duly signed by the authorized person as per the tender conditions within ten working days for indigenous suppliers and twenty one days for foreign suppliers against global tenders, from the date of opening.

(ii.) However, for other type of tenders i.e for Bulletin, Limited and Advertised/open/Global Tenders etc., offers received through FAX and found in the tender box at the time of opening of Tenders and complete in all respects and duly signed by the authorized signatory should be treated as in time offer subject to the firm/firms submitting post confirmation copy duly signed by the authorized person as per the tender conditions within ten working days for indigenous suppliers and twenty one days for foreign suppliers against global tenders, from the date of opening.

(iii.) All other offers received by FAX not covered in Para (i) & (ii) above shall be deemed as unresponsive in case the confirmation copy is not received within the time stipulated in Para (ii) above.

(iv.) No purchase order shall be issued against the FAX offers without receipt of the confirmation copy of the same.

(v.) It shall be the sole responsibility of tenderer to ensure that the offers submitted by FAX are dropped in appropriate tender box in sealed cover/covers and within the prescribed time and date. The Railways shall not be responsible in any way for any delay in dropping the FAX offers in the appropriate tender box

0106 The commercial conditions indicated in “Special Conditions of Tender”, wherever required, will supersede the corresponding conditions given in Bid Document Part-I. “Special condition of Tender” will be included separately with the tender documents i.e. Bid Document Part-I & II. Even after this , if there is any ambiguity in respect of commercial conditions between Bid Document Part-I and Part-II, Bid Document Part-I will prevail.

0107 In case of open tenders/Local tenders, bidders are required to quote their prices in Indian Rupees only.

0200. SPECIFICATIONS

0201. Specifications indicated in Section III of Bid Documents Part-II may be obtained on payment from the following:

(i) **Indian Railway Standard Specifications from**

(a) The Controller of Publications, Civil Lines, Delhi -110054, INDIA

(b) Office of the High Commissioner for India, Publication Branch,
India House, Aldwych, London-WC

(ii) **Indian Standards Specifications from**

The Director General, Bureau of Indian Standards,
ManakBhawan, 9 Bahadur Shah Zafar Marg, New Delhi-110001, INDIA

(iii) **Particular Specifications, Drawings and details from**

Director General,
Research, Designs and Standards Organization, Manak Nagar,
Lucknow- 226 011, INDIA.

0300. COMPLIANCE WITH TECHNICAL SPECIFICATIONS

0301. The equipments offered should be in accordance with the stipulated drawings and specifications in “Schedule of Requirements”. Details of variations from the drawings and specifications, if any, should be clearly indicated and in such an event, a certificate from the users must be furnished to the effect that the product offered is an alternative acceptable to the users in the country of origin and in one or more other countries. The names of those foreign countries should also be indicated.

0302. The Purchaser may accept internationally accepted alternative specifications which ensure equal or higher quality than the specifications mentioned in the Technical Specification. However, the decision of the Purchaser in this regard shall be final. Two copies of the alternative specifications offered should be sent alongwith the offer. The Tenderer should also furnish ”Statement of Deviations” from tender specifications (Annexure 9) alongwith the offer.

0303. The tenderer shall indicate his compliance or otherwise against each clause and sub-clause of the technical specifications. The tenderer shall, for this purpose, enclose a separate statement of deviations (Annexure -9) indicating compliance or otherwise of each clause and sub-clause of specifications, which should invariably, be filled in and submitted alongwith the offer .Whenever the tenderer deviates from the provisions of a clause/sub-clause, he shall furnish his detailed justification for the same in the ‘Remarks’ column

0304. If the tenderer shall have any doubt as to the meaning of any portion or the conditions or of the specifications, drawings or plans, he shall (before submitting the tender) obtain written clarification from Purchaser.

0400. AGENTS AND SERVICE FACILITIES IN INDIA-AGENCY COMMISSION

0401. The foreign tenderer shall include in his offer the name of the person or the firm who will be acting as his representative/agent in India in respect of his offer. He shall also indicate the after sales service facilities which he or his representative/agent has in India. If the foreign tenderer has no representative in India, he shall indicate in his offer the after sales service facility he intends to provide.

0402. Foreign firms quoting direct against the enquiry and who want Indian Agents/Associates and/or servicing facilities in India should indicate in their offer the name of their Indian Agents/Associates or the representatives they have for servicing in India. They should quote net FOB/CFR price, exclusive of the amount of remuneration or commission provided for the Indian Agents/Associates. It should be understood that the Purchaser will indemnify the supplier against payment of such commission to the Indian Agents/Associates in rupees in India in respect of a contract arising out of invitation to tender, where the Indian Agents/Associates remuneration/or commission covers a part of the price against the tender.

0403. Tenderers or foreign firms should furnish following particulars. Offers which do not comply are liable to be ignored. They are also required to complete the Check-List as per Annexure-15

- (i) The name and address of the local agent.
- (ii) The amount of remuneration for the agent included in the offer.
- (iii) The precise relationship between the foreign manufacturer/principals and their Indian Agents/Associates.
- (iv) The mutual interest which the manufacturer/principal and the Indian Agents/Associates have in the business of each other.
- (v) Any payment which the Agent/Associate received in India or abroad from the manufacturer/principal whether as a commission for the contract or as a general retainer fee.
- (vi) Indian Agent's Income-tax Permanent Account Number.
- (vii) All services to be rendered by the Agent/Associate whether of general nature or in relation to the particular contract and the facilities/infrastructure available with them for the same.
- (viii) Past performance.

0404. In the case of indigenous offer, the tenderer is not entitled to any agency commission. In the case of foreign offers, the agency commission payable by the tenderer to his Indian Agents shall be indicated in the space provided in the offer form in foreign currency. However, agency commission finally payable to the tenderer's agents in India

under the contract will be converted to Indian Rupees at the T.T. buying rate of exchange ruling on date of placement of Order and shall not be subject to any further exchange variation. The agency commission shall be paid in non-convertible Indian Rupees only after successful commissioning of the machines.

0405 (i) The amount of Agency Commission payable to the Indian Agent will not be more than what is specified in the Agency agreement between the tenderer (i.e. the foreign principal) and the India Agent. A certified photocopy of the Agency Commission agreement must be submitted along with the offer.

ii) The Indian agent will be required to submit a certificate, along with their Agency Commission bill, confirming that the amount claimed as Agency commission in the bill has been spent/will be spent strictly to render services to the foreign principal, i.e. M/s.....(i.e the contractor) in terms of agency agreement. The purchaser or their authorized agencies and/or any other authority of Govt. of India shall have rights to examine the books of the Indian Agent and defect or misrepresentation in respect of the afore indicated confirmation coming to light during such examinations will make the foreign principal(i.e. the contractor) and their Indian Agent liable to be banned/suspended from having business dealing with Indian Railways, following laid down procedure of such banning/suspension of business dealings.

0406 Manufacturer or their sole selling agents may note that an agent can represent only one firm in a tender and any manufacturer cannot submit more than one offer against a tender through different sole selling agents or one directly and other offers through sole selling agents. In such a situation all the offers will be rejected.

0407 The agent is official representative of manufacturer/principal/tenderer. Accordingly, manufacturer/principal/tenderer shall be fully responsible for the conduct of their appointed agent. This may please be noted.

0500. QUALIFYING REQUIREMENTS OF TENDERERS

0501. The tenderer shall provide satisfactory evidence acceptable to the Purchaser to show that —

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

0502. For purposes of clause-0501, the tenderers should additionally submit :—

- (a) a performance statement as in Annexure-1, giving a list of major supplies of same/similar equipments effected in last 5 years of the items offered by him, giving

details of the Purchaser's name and address, order no. and date and the quantity supplied and whether the supply was made within the delivery schedule. The period of 5 years shall be reckoned from the date of opening of tender.

b) A statement indicating details of equipment employed and quality control measures adopted by the manufacturer as in Annexure-2.

0503. In addition to the above, further information regarding his capacity, capability, if required by the Purchaser, shall be promptly furnished by the tenderer and he would offer all facilities to representative of Purchaser for assessing capacity, capability by actual visit to his works/office.

0504. Tenderer not submitting the requisite information may note that his offer is liable to be ignored.

0600. EARNEST MONEY/BID GUARANTEE

0601. Earnest Money/Bid Guarantee for amount as stipulated in the "Bid Invitation" or an equivalent amount in the currency of the country of the tenderer shall accompany each tender. The Earnest Money/Bid Guarantee shall be in any one of the following alternative forms subject to the approval of the Purchaser:

(a) A crossed Bank Draft in favour of the Financial Advisor & Chief Accounts Officer, Central Organization for Modernization of Workshops, Railway Offices Complex, Tilak Bridge, New Delhi -110 002, INDIA, from a Nationalised Indian Bank or Scheduled Commercial Bank in India, in the case of indigenous offers or a reputable commercial Bank of the tenderer's country in the case of foreign offers. For Bank drafts, the validity period of the same should be kept at least 225 days by the tenderer.

Earnest money should be any one of these forms viz. Deposit Receipt, Pay orders, Demand Drafts, Guarantee Bonds issued by Nationalised or Scheduled Commercial Banks, Bonds of Indian Railways Finance Corporation and KRCL Bonds (bonds acceptable in the name of tenderer only). Pay Orders/Demand Drafts should be made in favour of FA&CAO/ COFMOW. For avoidance of doubt, scheduled bank shall mean a bank as defined under Section 2 (e) of the Reserve Bank of India Act 1934. It shall be ensured that the complete particulars of the Banks' (issuing bank guarantee) mailing address including telephone no., fax no. and E-mail ID are invariably indicated on the bid bonds.

(b) An irrevocable Bank Guarantee of any Nationalised Indian Bank or reputable commercial bank of the tenderer's country in favour of the Purchaser in the form attached (Annexure-3).

(c) The EMD should be valid for 45 days beyond validity of the bid.

(d) Indian Agent can pay Bid Guarantee, if authorized by the bidder, in manner other than Bank Guarantee and bonds of IRFC and KRCL. In case of Bank Guarantee, the "applicant" for issue of Bank Guarantee shall be the "bidder".

0602. The Earnest Money/Bid Guarantee shall remain deposited with the Purchaser for the period of 225 days from the date of opening of Tenders. If the validity of the offer is extended, the Earnest Money Deposit/Bank Guarantee duly extended shall also be furnished failing which the offer after the expiry of the aforesaid period shall not be considered by the Purchaser

0603 No interest will be payable by the Purchaser on the Earnest Money/Bid Guarantee.

0604. The Earnest Money/Bid Guarantee deposited is liable to be forfeited if the tenderer withdraws or amends, impairs or derogates from the tender in any respect within the period of validity of his offer.

0605. The Earnest Money of the successful tenderer will be returned after the Contract Performance Guarantee as required (clause-0700 of the General Conditions of Contract) is furnished.

0606. If the successful tenderer fails to furnish a Contract Performance Guarantee as specified in clause 0700 of the General Conditions of Contract, then the Earnest Money shall be liable to be forfeited by the Purchaser.

0607 The Earnest Money of all unsuccessful tenderers will be returned by the Purchaser.

0608. Any tender not accompanied by Earnest Money in one of the approved forms given in clause 0601 shall be summarily rejected.

0609. The Small Scale Industries units registered under NSIC are exempted from depositing the Earnest Money subject to submission of necessary proof of being registered for the item/items tendered for.

0700. SUBMISSION OF OFFERS

0701. All offers shall be either type-written or written neatly in indelible ink and should be submitted in 2 copies marked as “ORIGINAL” and “DUPLICATE” and must be hard / spiral bound.

0702. Any individual(s) signing the tender or other documents connected therewith should specify whether he is signing —

- (i) as sole proprietor of the concern or as attorney of the sole proprietor;
- (ii) as a partner or partners of the firm ;
- (iii) as a Director, Manager or Secretary in the case of a limited company duly authorised by a resolution passed by the Board of Directors or in pursuance of the authority conferred by Memorandum of Association.

0703 In the case of a firm not registered under the Indian Partnership Act, all the partners or the attorney duly authorised by all of them should sign the tender and all other connected documents:

The original power of attorney or other documents empowering the individual or individuals to sign, should be furnished to the Purchaser for verification, if required.

0704. All prices and other information like discounts etc. having a bearing on the price shall be written both in figures and words in the prescribed offer form. In case of any discrepancy in rates quoted in words and figures, the rates quoted in words shall be considered.

0705. Offer in the prescribed form should be addressed to the President of India through the Controller of Stores, Central Organization for Modernization of Workshops, Railway Offices Complex, Tilak Bridge, New Delhi -110 002, INDIA, and submitted in double envelope in 2 complete sets marked original and duplicate. The outer envelope should indicate the Tender No. and due date of its opening and should also indicate the tenderer's complete address. The inner envelope containing the offer should be sealed and marked "OFFER FOR TENDER NO.....OPENING DATE..... TIME.....HRS.....".

The inner envelope should be placed in outer envelope and both the envelopes should be addressed to the Controller of Stores, Central Organization for Modernization of Workshops, Railway Offices Complex, Tilak Bridge, New Delhi-110002, INDIA. Offers sent by post should be sent by Registered Post, Acknowledgement Due, addressed to the Controller of Stores, Central Organization for Modernization of Workshops, Railway Offices Complex, Tilak Bridge, New Delhi -110 002, INDIA. Apart from the offer to be submitted as detailed above, no copy of the offer should be sent to other offices either at New Delhi or elsewhere.

0706. Offers shall be as per the Instructions to Tenderers and General Conditions of Contract given in the Bid Documents. However, the tenderer shall indicate his acceptance or otherwise against each clause and sub-clause of the Instructions to Tenderers and General Conditions of Contract. For this purpose, the tenderer shall enclose a separate statement (Annexure-08) indicating only the deviations from any clause or sub-clause of the Instructions to Tenderers and General Conditions of Contract, which he proposes with full justification for such deviations. The Purchaser, however, reserves the right to accept or reject these deviations and his decision thereon shall be final.

0707. Offers are required from the actual manufacturers of the stores or their authorized agents, who should submit a letter of authority from their Principals as in annexure-4. Offers from other agents, brokers and middlemen will not be accepted. One agent cannot represent two suppliers or quote on their behalf in a particular tender.

0708. Each page of the offer must be numbered consecutively, should bear the tender number and should be signed by the tenderer at the bottom. A reference to the total number of pages comprising the offer must be made at the top right hand corner of the first page.

0709. The tenderer should avoid ambiguity in his offer e.g. if his offer is to his standard sizes, lengths dimensions, he should specifically state them in details without

any ambiguity. Brief descriptions such as 'standard lengths' etc. should be avoided in the offer.

0800. LOCAL CONDITIONS

0801. It will be imperative on each tenderer to fully acquaint himself of all the local conditions and factors which would have any effect on the performance of the contract and cost of the stores. In his own interest, the foreign tenderer should familiarise himself with the Income Tax Act 1961, the Companies Act 1956, the Customs Act 1962 and related Laws in force in India. The Purchaser shall not entertain any request for clarifications from the tenderer regarding such local conditions. No request for the change of price, or time schedule of delivery of stores shall be entertained after the offer is accepted by the Purchaser.

0900. SOURCE OF FINANCING

Foreign Exchange required in case of import will be financed from free source or from a bilateral credit. In case of orders placed for financing from bilateral credit organisations necessary documentation & certain terms & conditions will be negotiated before placement of order.

1000. PRICE BASIS AND INDEMNITY

1001. Foreign tenderers shall quote his prices on the basis of FOB nearest port of shipment having facilities to handle the same, and also CFR price at the Indian Port of Entry indicated in the Schedule of Requirement.

1002. Under the CFR(also referred as C&F) price, the FOB price and the ocean freight charges shall be indicated separately.

1003. The terms FOB and CFR shall be as defined in the current edition of International Rules for the interpretation of the trade terms published by International Chamber of Commerce, Paris and commonly referred to as INCOTERMS.

1004. These prices should not include agency commission payable to Indian Agents which shall be exhibited as already indicated in clauses-0402 and 0403. The Indian Agent's commission shall be shown in foreign currency as a definite amount and not as a percentage.

1005. The prices should be stated only in one currency and should be either in the currency of the manufacturer's country or in U.S. Dollars or in any other currency widely used in International trade. However, if the goods offered are manufactured in more than one country; the tenderer may state portions of the bid price in the respective currency of the country of origin in which he wishes to be paid. The bid price shall be the total of such portions. Alternatively, tenderer may, at his option, state the entire bid price in U.S. Dollars or in any other currency widely used in international trade. The portion of the bid price relating to components of Indian origin to be incorporated in the plant and or installation of plant shall be invariably stated in Indian Rupees. Firms belonging to countries with which Government of India have Rupee Payment Agreements should quote the entire bid price in Indian Rupees.

1006. Apart from furnishing the quotations on the basis mentioned above, the tenderers are also required to quote on turnkey basis indicating the following items of cost:

A. Foreign Tenderers

- 1) F.O.B. Cost excluding agency commission.
- 2) Agency Commission
- 3) *Freight and Insurance Charges* : The insurance shall be arranged by the foreign supplier or his Indian Agent against the Open Insurance Cover taken by the Purchaser from the Indian Insurance Company.
- 4) Charges for clearance at the Indian Port including Custom Duty which will be paid in Indian Rupees and claimed from Purchasers at actuals.
- 5) Charges for despatch in Rs. for shipment of the machine from the Indian Port to the site and the supplier shall be entirely responsible for the receipt of the machine at the destination in good condition.
- 6) Charges in Rs. for making the foundation for the machine at site.
- 7) Charges in Rs. for installation and commissioning of the machine at site.

B. Indian Tenderers

Indian Tenderers are required to quote on “Free delivery at consignee’s site” basis. They shall furnish break up of prices as per prescribed format . They shall also quote charges for making the foundation for the machine at site. In case of quotation on turnkey basis delivery should be quoted indicating the final date of commissioning of the machine. The provisions of clause 1002(a) of the General Conditions of the Contract shall be applicable only for the period of delay to be counted after expiry of the time for commissioning of machine.

1007. Currency of Payment

The contract price will be normally paid in the currency or currencies in which the price is stated in the successful tender. However, Purchaser reserves the right to effect payment of equivalent amount in the currency or currencies of the country of origin of the goods in case the price is stated in other currencies. The equivalent amount will be calculated on the basis of rates of exchange prevalent on the date of payment.

1008. In the case of foreign offers, the Purchaser reserves the right to consider either F.O.B. or C&F quotations. In the event of an order being placed on C&F basis, the Purchaser will have the right to change over the contract to FOB basis, if considered necessary after giving one month’s notice to the Contractor.

1009. The prices quoted shall be firm and not subject to any variation. In the case of C&F delivery, ocean freight charges included must also be firm and no variation will be allowed on his account after the opening of tenders.

1010. The tenderers should quote their lowest possible prices. Quotations should be made only for quantity specified in the ‘Schedule of Requirements’.

1011 Tenderers submitting indigenous offers shall indicate the price FOR (Free on Rail) Destination station. The FOR destination price shall include all State and Central Taxes and Excise Duties leviable on the final finished supplies tendered for. In addition, a complete break-up showing the ex-factory price, excise duty, other levies, sales tax,

packing charges, forwarding charges, freight and insurance charges and other charges, if any, shall also be given. Purchaser reserves the right to place contract on the basis of FOR station of despatch or FOR destination station as considered fit by him.

1012. The price to be quoted by the tenderers should take into account the credit availed on inputs under the MODVAT Scheme introduced w.e.f. 1 st March, 1986 and further extended on more items from time to time.

1013. The tenderers who intend to quote on FOR destination station basis, while quoting for such of the goods as attract excise duty on advalorem basis will take note of Section 4(2) of the Central Excise and Salt Act, 1944 as amended and indicate the element of transportation and insurance, if any, included in their FOR destination rate.

1014 Higher Price for Earlier Delivery

It should be noted that if a contract is placed on a higher tender as a result of this invitation to tender, the preference to the lowest acceptable offer in consideration of offer of earlier delivery, the Contractor will be liable to pay to the Government the difference between the contract rate and that of the lowest acceptable tender on the basis of final price F.O.R. destination including all elements of freight, sales tax, local taxes, duties and other incidentals in case of failure to complete supplies in terms of such contract within the date of delivery specified in the tender and incorporated in the contract. This is in addition and without prejudice to other rights under the terms of contract.

1100. INSURANCE

1101. In the case of FOB and C&F offers, insurance shall be arranged by the Purchaser.

1102. In the case of indigenous offers, the purchaser shall not arrange for any transit insurance and the supplier will be responsible till the entire stores contracted for arrive in good condition in destination. Where the tenderer intends to insure the goods, he may arrange for it himself and pay insurance charges. Insurance charges should be indicated by the tenderers separately in their offer and same shall be paid on the submission of documentary evidence by the tenderers. The consignee will advise the tenderer within 45 (forty five) days of the arrival of goods and it shall be responsibility of the tenderer to lodge the necessary claim on the carrier and or insurer and pursue the same. The tenderer shall, however at his own cost replace/rectify the goods lost/damaged to the entire satisfaction of the consignee within 30 days from the date of receipt of intimation from the consignee, without waiting for the settlement of the claim.

1103. In case of Import of the machine, although the insurance shall be paid by the Purchaser, and loss or damage shall be made good by the Contractor free of cost, without waiting for the settlement of insurance claim. The payment after settlement of insurance claim shall be reimbursed by the Purchaser to the Contractor. It will be entirely the responsibility of the Contractor to make good loss/damage without waiting for settlement of insurance claim so that machine is commissioned within the time specified in the contract.

1200. EVALUATION OF THE OFFERS

1201. The tenders received will be evaluated by the Purchaser to ascertain the lowest acceptable tender in the interest of the Purchaser, as specified in the specifications and

tender documents. Evaluation criteria not mentioned herein but mentioned specifically in the technical specifications will be taken into consideration in the evaluation of offers.

1202. Purchaser will convert all Bid Prices expressed in the amounts in various currencies in the Bid price as payable, to the local currency of the Purchaser's country at the B.C. selling market exchange rate established by State Bank of India in the Purchaser's country for similar transactions; as on the date of price bid. Duties such as custom duty etc. prevailing on the date of price bid opening shall be considered for interse position of offers.

Also if a bidder (foreign/indigenous) requests for a variation in the payment terms stipulated in the General Conditions of Contract and if such variation is acceptable to the Purchaser, the same would be evaluated at an interest rate of 12% per annum for all earlier payments for the purpose of comparison with other tenders. However, no advances shall be given to the supplier.

1203. Generally, the quotations are required for delivery FOR destination indicating the breakup FOR station of despatch, freight & other levies. In case, the Purchaser agrees or opts for delivery FOR station of despatch, the supplier shall agree to book the goods freight pre-paid and recover the freight element through the bill. Where, however, the supplier does not agree in his quotation to book the goods freight pre-paid and claim freight element subsequently, the quotations shall be loaded with the additional freight element i.e. the surcharge payable, for comparative evaluation.

1204. The Purchaser reserves the option to give a purchase/price preference to the offer from Public Sector Units and/or from Small Scale/Cottage Industries Units, over those from other firms, in accordance with the policies of the Government from time to time. The price preference above cannot however be taken for granted and every endeavour need be made by them to bring down cost and achieve competitiveness.

1205. The offers received from indigenous tenderers should indicate clearly the rates of ED, CST/ST etc. as leviable on particular item. In case concessional duty or taxes are applicable, the tenderer should quote accordingly. However, if the tenderer states in his offer that ED, CST/ST etc. will be charged as prevailing at the time of supply, then while working out F.O.R. destination rates for comparison, the highest rate applicable will be loaded on the offer. Similarly, if concessional rate of ED, CST/ST or any other levy is applicable due to lower turnover, the highest applicable rate will be taken for the evaluation of F.O.R. destination rates unless the tenderer confirms in the offer that any increase in the ED, CST/ST or other levy due to increase in the turnover will be absorbed by the tenderer himself.

1206. The provision of concessional sales tax for interstate purchases of Government Departments against Form - D stands withdrawn by Govt. w.e.f. 1.4.2007 vide notification No.1/2007-CST-F.No. 34/135/2005-ST. The rate of sales tax on interstate sale to Government Departments shall be the same as rate of VAT/Sales tax applicable in the state of the selling dealer. Tenderers are, therefore, advised to clearly quote the rate of VAT/Sales Tax as leviable in the state of the selling dealer otherwise the highest rate of Sales Tax applicable will be loaded on the offer.

1207. **Criterion for evaluation of offers/deciding inter-se-position of offers:-** In case of multi items or in case of single/multi items with multi consignees, the inter-se-

position of the offer received shall be decided item-wise & consignee-wise and not based on the total value as a whole.

1208 Tenders will be evaluated on the basis of total cost at consignee's site arrived on the basis of price quoted as per price schedule chart enclosed with Bid document Part-II. In case of foreign offers (import), insurance charges shall be loaded as per Indian Railways Open Cover Policy only.

1300. SHIPPING ARRANGEMENT FOR FOREIGN CONTRACTS

1301. In the case of FOB/FAS contracts, shipping arrangements shall be made by the Ministry of Shipping & Transport (Chartering Wing), New Delhi, INDIA, in accordance with details given in Annexure-6 The Contractor shall give adequate, notice to the Forwarding Agents/Nominees about the readiness of the cargo from time to time and atleast six weeks' notice in advance of the required position for finalising the shipping arrangements. In the case of C&F contracts, the Contractor shall arrange shipment in accordance with the requirements of the Ministry of Shipping & Transport, New Delhi, INDIA, indicated in Annexure-5 (as applicable).

1400. PACKING

1401. The items tendered will have to undergo arduous transportation before reaching the destination and will have to be stored and handled in tropical climatic conditions (including monsoons) before they are put to actual use. It is, therefore, imperative that packing for every item is decided by taking into consideration, inter-alia, the above vital factors, so as to eliminate damage/deterioration of items in transit/transshipment/handling or during storage.

1402. The specifications of the packing proposed shall be indicated. The size and weight of each package shall also be indicated. As far as possible, the size of any package shall not exceed the maximum package dimensions indicated in Annexure-7.

1403. The packing advices should bring out the weight, dimensions and size of each bundle/ package. Where it is not possible to give weight of the bundles/packages, the Contractor must indicate the volume of the bundles/packages, the details of contents of each bundle/package, number of bundles/packages and total weight of the items supplied.

1500. IMPORT

1501. The foreign exchange needed for the import of the components and import licence, where necessary, should be arranged by the Tenderer themselves.

1502. The successful tenderer will have to apply to the proper Government Authority for grant of requisite import licences/foreign exchange for such items as requiring import, within 14 days of the advance letter of acceptance/telegram acceptance and the Purchaser will only render assistance, where necessary. However, Purchaser will have no responsibility whatsoever in this regard.

1600. ACCEPTANCE OF TENDER

1601. The Purchaser may accept a tender for a part or whole of the quantity offered, reject any tender without assigning any reason and may not accept the lowest or any tender.

1602. The Purchaser reserves the right to increase or decrease the quantity upto 30% of the quantity offered by the successful tenderers at the rates & other terms and condition offered by them. The tenderers are bound to accept the increase or decrease in the quantity under this clause at the time of placement of contract or during the currency of the contract. The quantity may be further increased/decreased at the mutual consent of the Purchaser and contractors. While operating this clause the quantity shall be rounded off to the nearest whole No. less than 0.5 shall be ignored and 0.5 or more shall be rounded off to the next whole number. If the tendered quantity is 1 No., Purchaser reserves the right to increase the quantity under this clause to 2 Nos.

1603. Acceptance of Tender will be communicated by either FAX/Letter direct to the bidder or through his authorized agents. In case where acceptance is intimated by FAX, the Letter of Acceptance of tender will be delivered by post to the contractor as soon as possible, but the FAX communication shall be deemed to conclude the contract.

1700 EFFECT AND VALIDITY OF OFFER

1701. The submission of any offer connected with these specifications and documents shall constitute an agreement that the tenderer shall have no cause of action or claim, against the Purchaser for rejection his offer. The Purchaser shall always be at liberty to reject or accept any offer or offers at his sole discretion and any such action will not be called into question and the tenderer shall have no claim in that regard against the Purchaser.

1702. The offer shall be kept valid for acceptance for a minimum period of 180 (one hundred and Eighty) calender days from the date set for opening of tenders.

1703. Offers shall be deemed to be under consideration immediately after they are opened and until such time the official intimation of award of contract is made by the Purchaser to the tenderer. While the offers are under consideration, tenderers and or their representatives or other interested parties are advised to refrain from contacting the Purchaser by any means. If necessary, the Purchaser will obtain clarifications on the offers by requesting for such information from any or all the tenderers, either in writing or through personal contacts, as may be considered necessary. Tenderers will not be permitted to change the substance of their offers after the offers have been opened.

1800. SPARE PARTS

1801. Where required, the tenderer should quote, apart from main equipment, separately for the mandatory spares as well as for recommended spares required for two years' operation. The rates for spares should be indicated both on FOB and C&F basis in the case of foreign offers and FOR destination in the case of indigenious offers with complete break up as per offer form. The Purchaser reserves the right to order any or all the spares as quoted in quantity considered reasonable by him at the prices quoted by the tenderer and on the terms and conditions quoted for the main equipment. The responsibility of the tenderer under the Warranty Clause will not be diluted in any way on this account.

1900. GENERAL

1901. The tenderers must ensure that the conditions laid down for submission of offers detailed in the preceding paras, are completely and correctly fulfilled. Tenders, which are not complete in all respects as stipulated above, may be summarily rejected. For tenderers' guidance in submitting complete offers, a Check List has been enclosed with the Bid Documents Part-II which must be filled in and furnished with the bid.

2000. LAST DATE OF RECEIPT OF THE TENDERS

2001. The offers complete in all respects should reach the Controller of Stores, Central Organisation for Modernisation of Workshops, Indian Railways, Railway Offices Complex, Tilak Bridge, New Delhi -110 002, INDIA, not later than 11.00 hrs. on the date specified in the "Bid Invitation".

2002. The tenders received shall be opened, in the presence of such of the tenderers or their representatives who may like to be present, at 11.30 hrs. on the date specified in the "Bid Invitation" and where practicable, the names of tenderers and the rates tendered by them will be read out.

2003. All tenderers or their representatives must bring with them an authority letter on the letterhead of the tenderer or their Indian agent (as the case may be) duly signed by competent authority to attend the tender opening failing which they will not be allowed to attend the opening of the tenders at COFMOW.

2100. CHECK LIST

2101. A Check List has been included at Annexure-14 of this document. This has been designed to help the tenderers in submitting complete offers include filling & submission of annexures as attached in Bid Document Part I. An incomplete offer is liable to be rejected.

The tenderers must fill this Check List & submit alongwith their offer in their own interest.

CONTROLLER OF STORES

Central Organisation for Modernisation of Workshops,
(COFMOW), Indian Railways,
Railway Offices Complex, Tilak Bridge,
New Delhi -110 002, INDIA

Telex : 31 -61461 MOW IN
Cable/Grams : COFMOW

SECTION - II

GENERAL CONDITIONS OF CONTRACT

0100. DEFINITIONS AND INTERPRETATION

In the contract, unless the context otherwise requires :

0101. “Contract” means the letter or memorandum communicating to the Contractor the acceptance of this tender and includes “Letter of Acceptance” of his tender;

0102. “Consignee” means where the stores are required by the acceptance of tender to be despatched 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 stores are required by the acceptance of tender to be delivered to a person as an interim consignee for the purpose of despatch to another person, such other persons; and in any other case the person to whom the stores are required by the acceptance of tender to be delivered in the manner therein specified ;

0103. “Interim consignee” means the servant of the Purchaser to whom the material is delivered for onward despatch to the consignee and does not include a carrier for the purpose of transmission of the stores to the consignee ;

0104. “Contract” means and includes Bid Invitation, Instructions to Tenderers, Tender, Acceptance of Tender, General Conditions of Contract, Schedule of Requirements, 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;

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 stores ;

0107. “Drawing” means the drawing or drawings specified in or annexed to the Specifications;

0108. “Government” means the Central Government or a State Government as the case may be;

0109. The “Inspecting Officer” means the person, or organisation specified in the contract for the purpose of inspection of stores of work under the contract and includes his/their authorized representative;

0110. “Material” means anything used in the manufacture or fabrication of the stores ;

0111 “Particulars” include —

(a) Specifications;

(b) drawings;

(c) “Proprietary mark” or “brand” means the mark or brand of a product which is owned by an industrial firm ;

(d) any other details governing the construction, manufacture or supply of stores as may be pre scribed by the contract;

0112. “Proving Test” means such test or tests as are prescribed by the specification(s) to be made by the Purchaser, or his nominee, after erection at site, before the plant is taken over by the Purchaser;

0113. “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;

0114. The “Purchaser” means the President of India acting through the Controller of Stores, Central Organization for Modernization of Workshops, Railway Offices Complex, Tilak Bridge, New Delhi -110 002, INDIA and includes his successors and assignees ;

0115. “Signed” includes stamped, except in the case of an acceptance of tender or any amendment thereof;

0116. “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;

0117. “Stores” means the goods specified in the contract which the Contractor has agreed to supply under the contract;

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. “Work” means all the work specified or set forth and required in and by the said specifications, drawings and “Schedule of Requirements”, hereto annexed or to be implied therefrom or incidental thereto, or to be hereafter specified or required in such explanatory instructions and drawings (being in conformity with the said original specification(s), drawing(s) and “Schedule of Requirements”) and also in such additional instructions and drawings not being in conformity as aforesaid, as shall from time to time, during the progress of the work hereby contracted for, be supplied by the Purchaser;

0120. The delivery of the stores shall be deemed to take place on delivery of the stores in accordance with the terms of the contract, after approval by the Inspecting Officer if so provided in the contract —

- (a) the consignee at his premises; or
- (b) where so provided, the interim consignee at his premises ; or
- (c) a carrier or other person named in the contract for the purpose of transmission to the consignee: or
- (d) the consignee at the destination station in case of contract stipulating for delivery of stores at destination station.

0121. “Writing” or “Written” includes matter either in whole or in part, in manuscript, typewritten, lithographed, cyclostyled, photographed or printed under or over signature or seal, as the case may be.

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 0114.

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 make or authorise the making of a purchase of the stores at the risk and cost of such person and hold such person liable to the Purchaser for all costs and damages arising from the cancellation of the contract including any loss which the Purchaser may sustain on account of such purchase. The provisions of clause 1000 shall apply to every such purchase as far as applicable.

0202. Address of the Contractor and notices and communications on behalf of the Purchaser:

(a) For all purposes of the contract, including arbitration thereunder, the address of the Contractor mentioned in the tender shall be the address 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 post or under certificate of posting or by ordinary post or by hand delivery at the option of such officer.

0300. QUOTATIONS OF RATES BY CONTRACTORS

0301. The price quoted by the Contractor shall not be higher than the controlled price fixed by law for the stores or where there is no controlled price, it shall not exceed the prices or contravene the norms for fixation of prices laid down by Government or where no such prices or norms have been fixed by the Government, it shall not exceed the price appearing in any agreement relating to price regulation by any industry in consultation with the Government. In any case, save for special reasons stated in the tender, the price quoted shall not be higher than the lowest price charged by the Contractor for stores of

the same nature, class or description to a Private Purchaser, domestic or foreign as well as Purchaser Governments.

0302. A) FOR DOMESTIC BIDDERS/TENDERS

In the event of any question, dispute or difference arising under these Conditions or any Special Conditions of Contract or 'Instructions to Tenderers' or in connection with this contract (except as to any matters the decision of which is specifically provided for by these Conditions or 'Instructions to Tenderers' or the Special Conditions) the same shall be referred to the sole arbitration of a Gazetted Railway Officer appointed to be the Arbitrator, by the Chief Administrative Officer, COFMOW, New Delhi, India. The Gazetted Railway Officer to be appointed as Arbitrator, however, will not be one of those who had an opportunity to deal with the matters to which the contract relates or who in the course of their duties as railway servants had expressed views on all or any-of the matters under dispute or difference. The award of the Arbitrator shall be final and binding on the parties to this contract.

(B) FOR FOREIGN BIDDERS/TENDERERS

In the event of any dispute or difference arising between the parties hereto relating to any matter arising out or connected with this agreement, such dispute or difference shall be referred to the Arbitral Tribunal. The Arbitral Tribunal shall consist of three Arbitrators one each to be appointed by the CAO/COFMOW/New Delhi/ India and the contractor. The arbitrators so appointed by CAO/COFMOW/New Delhi/India shall be a Gazetted Rly. Officer who did not have an opportunity to deal with the matters to which the contract relates or who in the course of their duties as Railway Servants had expressed views on all or any of the matters under dispute or difference. The third Arbitrator shall be chosen by the two Arbitrators so appointed by the parties, and shall act as presiding arbitrator. In case, the two appointed arbitrators fail to agree on the third arbitrator within 30 days from the date of their appointment, the appointment shall be made, upon request of a party, by the Chief Justice of India or any person or institution designated by him, which shall be final and binding on the parties. Subject as aforesaid, the Indian Arbitration Act, 1996 the rules there under and any statutory modifications or reenactment thereof, shall apply to the arbitration proceeding under this agreement. The venue of the arbitration in all cases shall be in India.

0400. PENALTY FOR DELAY IN COMMISSIONING

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

The time allowed for commissioning of machine by the Contractor or his agent shall be deemed to be the essence of the contract. In case of delay in commissioning of the machine on the part of Contractor, the Purchaser shall be entitled to recover and the Contractor shall be liable to pay liquidated damage at the rate of 2% of the total contract value for each and every month or part thereof for which commissioning is delayed.

Provided always that the entire amount of liquidated damages to be paid under the provision of this clause shall not exceed 10% of the total contract value. After expiry of 5 months period from the date of default i.e. from the date of commissioning provided in the contract, purchaser will be at liberty to invoke the PG bond submitted by the supplier.

Continuance of commissioning work after expiry of stipulated time will also not absolve the Contractor from the penalty as stated above.

The decision of the Purchaser, whether the delay in commissioning has taken place on account of reasons attributed to the Contractor shall be final.

0500. DRAWINGS/SPECIFICATIONS

0501. When tenderers are called for in accordance with the drawing/specification, the Contractor's tender to supply in accordance with such drawing specification shall be deemed to be an admission on his part that he had 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 be considered.

0502 The Contractor shall be responsible for and shall pay for any alternations 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 dimensions figuring upon a drawing differ from those obtained by scaling the drawing, the dimensions as figured upon the drawing shall be taken as correct.

0503. Any drawings, tracings or descriptions specified shall, unless otherwise directed, be furnished by the Contractor with the first consignment of the work to which they relate and no payment whatsoever will be made until such drawings, tracings or descriptions have been furnished to the satisfaction of the Purchaser.

0600. CONTRACT

0601. This contract is for the supply of the stores of the description, specifications and drawings, and in the quantities set forth in the contract on the date or dates specified therein. Unless otherwise specified, the stores shall be entirely brand new and of the best quality and workmanship to the satisfaction of the Inspecting Officer.

0602. The whole contract is to be executed in the most approved, substantial and workmanlike manner, to the entire satisfaction of the Purchaser or his nominee, who, both personally and by his sdeputies, shall have full power, at every stage of progress, to inspect the stores at such times as he may deem fit and to reject any of the stores, which he may disapprove, and his decision thereon, and on any question of the true intent and meaning of the specifications shall be final and conclusive.

0603. Any variation or amendment of the contract shall not be binding on the Purchaser unless and until the same is duly endorsed on the contract or incorporated in a formal instrument or in exchange of letters and signed by the parties.

0604. The Purchaser or his nominee may require such alteration to be made on the work, during its progress as he deems necessary. Should these alterations be such that either party to the contract considers an alteration in price justified, such alteration shall

not be carried out until amended prices have been submitted by the Contractor and accepted by the Purchaser. Should the Contractor proceed to manufacture such stores without obtaining the consent in writing of the Purchaser to an amended price, he shall be deemed to have agreed to supply the stores at such price as may be considered reasonable by the Purchaser.

0700. PERFORMANCE GUARANTEE BOND

0701. After Letter of Acceptance is issued by the Purchaser, the Contractor shall furnish a Performance Guarantee Bond in the proforma attached (Annexure-10) from a Nationalised Indian Bank within 30 days from the issue of the Letter of Acceptance by the Contractor for an amount equivalent to 10% of the value of the contract. In the case of foreign contracts, the Performance Guarantee Bond from a commercial bank of the Contractor's country can be accepted, only if the Bond is furnished after getting it duly counter-signed by the Reserve Bank of India/State Bank of India, New Delhi or by any Nationalised Indian Bank. The expenses to be incurred for the counter signature shall be borne by the Contractor. Guarantee Bonds should be any one of these forms viz. Deposit Receipt, Pay orders, Demand Drafts, Guarantee Bonds issued by Nationalised or Scheduled Commercial Banks, Bonds of Indian Railways Finance Corporation and KRCL Bonds, Government Securities and a deposit in the Post Office Saving Bank. Pay Orders/Demand Drafts should be made in favour of FA&CAO/COFMOW.

0702. In case furnishing of an acceptable Performance Guarantee Bond is delayed by the Contractor beyond the period provided in clause 0701, and the bond is accepted by the Purchaser, liquidated damages, as provided in clause-1002 for the period of delay in submission of the bond, shall be levied. Alternatively, the Purchaser may declare the contract as at an end and enforce clause-1002.

0703. If the Contractor, having been called upon by the Purchaser to furnish Performance Guarantee Bond fails to furnish the same, it shall be lawful for the Purchaser :—

(a) to recover from the Contractor the amount of Performance Guarantee Bond by deducting the amount from the pending bills of the Contractor under any contract with the Purchaser or the Government or any person contracting through the Purchaser or otherwise howsoever, or

(b) to cancel the contract or any part thereof and to purchase or authorise the purchase of the stores at the risk and cost of the Contractor and in that event the provisions of clause 1002 shall apply as far as applicable.

0704. On the performance and completion of the contract in all respects the Performance Guarantee Bond will be returned to the Contractor without any interest.

0705. The Purchaser shall be entitled and it shall be lawful on his part to forfeit the amount of the Performance Guarantee Bond 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 respects of the contract under reference or any other contract with the Purchaser or any part thereof to the satisfaction of the Purchaser and the Purchaser shall also be entitled to deduct from the amount of the Performance Guarantee Bond 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 maintain the amount of the Performance Guarantee Bond at its original limit by furnishing fresh Bank Guarantee of additional amount, 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.

0706. The Performance Guarantee Bond shall remain in full force and effect during the period that would be taken for satisfactory performance and fulfillment in all respects of the contract i.e. till satisfactory commissioning of the machine(s) at consignee's works, and shall in the first instance be valid upto twelve months after the date of last shipment delivery of the goods contracted to be purchased provided that before the expiry of the date of validity of the Performance Guarantee Bond, the Contractor on being called upon by the Purchaser from time to time, shall obtain from the Guarantor Bank, extension of time for validity thereof for a period of six months, on each occasion. The extension or extensions aforesaid, executed on non judicial stamp paper of appropriate value must reach the Purchaser atleast thirty days before the date of expiry of the Performance Guarantee Bond on each occasion.

0707. As and when an amendment is issued to the contract, the Contractor shall, within fifteen days of the receipt of such an amendment furnish to the Purchaser an amendment to the Performance Guarantee Bond rendering the same valid for the contract as amended and upto twelve months beyond the extended delivery date.

0708. The Performance Guarantee Bond and or any amendment thereto shall be executed on a stamped paper of requisite money value in accordance with the laws of the country in which the same is/are executed by the party competent to do so. The Performance Guarantee Bonds executed in India shall also be got endorsed by the Collector under section 32 of the Indian Stamp Act, 1899 for adequacy of the Stamp Duty, by the Contractor.

0709. In the contract financed under KFW Loan, the Performance Guarantee bond shall be furnished as per Annexure-13

0710. i)The Bank Guarantee to be submitted by the contractor/supplier under this clause, shall be sent directly by the issuing bank to the concerned Railway authority under Registered Post AD.

ii) In exceptional cases, when the BGs are submitted by the contractors/suppliers etc. through themselves (and not directly by the issuing bank under Registered Post AD), the BG issuing Bank Branch immediately should send by Registered Post AD an unstamped duplicate copy of the Bank Guarantee directly to the Railways with a covering letter to enable Railway's to compare with the original BGs and to confirm that the submitted BG is in order.

0800. DELIVERY

0801 . The Contractor shall as may be required by the Purchaser either deliver free or f.o.r., f.o.b. or c.i.f . at the place/places detailed in the contract, the quantities of the stores detailed therein and the stores shall be delivered or despatched not later than the dates specified in the contract. The delivery will not be deemed to be complete until and unless

the stores are inspected and accepted by the Inspecting Officer as provided in the contract.

0802. Notwithstanding any inspection and approval by the Inspecting Officer on the Contractor's premises, property in the stores shall not pass on to the Purchaser until the stores have been received, inspected and accepted by the consignee.

0803. **In the case of indigenous supplies**, the Purchaser shall not be liable to render assistance to the Contractor in securing or to arrange for or provide transport to the Contractor, notwithstanding that transport of the stores, is controlled by or under the orders of the Government.

0804. **In the case of foreign contracts :—**

(a) The stores shall be delivered by the Contractor free on board such vessels in such port or ports named in the quotation, as the Purchaser or his nominee may require.

(b) Such number of inspection certificates, advice notices, packing accounts and invoices, as may be required by the Purchaser or his nominee, shall be furnished by the Contractor at his own cost.

(c) Freight for the conveyance of the stores or any part thereof will be engaged by the Purchaser or his nominee, who will give, due notice to the Contractor when and on board, what vessels they or such part therefore, are to be delivered. Should the stores, or any part thereof, be not delivered within 7 days of the receipt of such notice by the Contractor, the Contractor will be liable for all payments and expenses that the Purchaser may incur, or be put to, by reason of such non-delivery including dead and extra freight, demurrage of vessels and any other charges incurred by the Purchaser whatsoever.

0900. NOTIFICATION OF DELIVERY

Notification of delivery or despatch in regard to each and every instalment shall be made to the Purchaser, Consignee and Port Consignee (if applicable) 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 and date of the acceptance of tender and date of despatch of the stores. All packages, 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 stores on arrival at destination. The copy of Railway Receipt/Consignment Note or Bill of Lading with other shipping documents, if any, shall be forwarded to the consignee and or the port consignee named in the contract, as applicable, by registered post immediately on the despatch of stores. 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 copy of the Railway Receipt, Consignment Note or Bill of Lading and other shipping documents.

1000. 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 stores shall be deemed to be the essence of the contract and delivery must be completed not later than the date(s) so specified or extended:

1001. **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.

1002. Failure and Termination

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

(a) recover from the Contractor as agreed liquidated damages and not by way of penalty a sum equivalent to 2 per cent of the price of any stores (including elements of taxes, duties, freight etc.) which the Contractor has failed to deliver within the period fixed for delivery in the contract or as extended for each month or part of a month during which the delivery of such stores may be in arrears where delivery thereof is accepted after expiry of the aforesaid period subject to max. of 10%; or

(b) cancel the contract or a portion thereof and if so desired purchase or authorise the purchase of the stores not so delivered or others of a similar description (where stores exactly complying with particulars are not, in the opinion of the Purchaser, which shall, be final, readily procurable) at the risk and cost of the Contractor. It shall, however, be in the discretion of the Purchaser to obtain or not the Performance Guarantee Bond from the firm/firms on whom the contract is placed at the risk and expense of the defaulting firm.

Where action is taken under sub-clause (b) above, the Contractor shall be liable for any loss which the Purchaser may sustain on that account provided the purchase, or, if there is an agreement to purchase, such agreement is made, in case of failure to deliver the stores within the period fixed for such delivery in the contract or as extended within nine months from the date of such failure and in case of repudiation of the contract before the expiry of the aforesaid period of delivery, within nine months from the date of cancellation of the contract. The Contractor shall not be entitled to any gain on such purchase and the manner and method of such purchase shall be in the entire discretion of the Purchaser. It shall not be necessary for the Purchaser to serve a notice of such purchase on the Contractor.

1003. Extension of Time for Delivery

If such failure as in the aforesaid clause 1002 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 circumstances 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 2100 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.

1004. Consequence of Rejection

If on the stores being rejected by the Inspecting Officer or Interim Consignee or Consignees 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 stores forthwith but in any event not later than a period Of 21 days from the date of rejection and the Contractor shall bear all cost of such replacement including freight, if any, on such replacing and replaced stores but without being entitled to any extra payment on that or any other account; or
- (ii) purchase or authorize the purchase of quantity of the stores rejected or others of a similar description (when stores exactly complying with particulars are not in the opinion of the Purchaser, which shall be final, readily available) without notice to the Contractor at his risk and cost and without affecting the Contractor's liability as regards the supply of any further installments due under the contract; or
- (iii) cancel the contract and purchase or authorise the purchase of the stores or others of a similar description (when stores exactly complying with particulars are not, in the opinion of the Purchaser, which shall be final, readily available) at the risk and cost of the Contractor. In the event of action being taken under sub-clause (ii) above or under this sub-clause, the provisions of clause 1002 above will apply as far as applicable.
- (iv) where under the contract the price payable is fixed F.O.B. port of export or F.O.R. despatching station, the Contractor shall, if the stores are rejected at destination by the consignee, be liable, in addition to his other liabilities, including refund of price recoverable in respect of the stores so rejected, to reimburse to the Purchaser the freight and all other expenses incurred by the Purchaser in this regard.

1005 Penalty for delays in supplies during delivery period:

In case of failure on the part of supplier to arrange supplies as per the delivery schedule/installments fixed in advance, save force majeure conditions or delays attributable to Purchaser, the purchaser reserves the right to levy liquidated damages, which shall be levied as per para 1002 (a) above, for the delayed quantity which have remained unsupplied for that period. This will be applicable both in indigenous and foreign contracts.

1100. FORCE MAJEURE

1101. In the event of any unforeseen event directly interfering with the supply of stores arising during the currency of the contract, such as war, hostilities, acts of the public enemy, civil commotion, sabotage, fires, floods, explosions, epidemics, quarantine restrictions, strikes, lockouts, or acts of God, the Contractor shall, within a week from the commencement thereof, notify the same in writing to the Purchaser with reasonable evidence thereof. If the force majeure condition(s) mentioned above be in force for a period of 90 days or more at any time, the Purchaser 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 Contractor in writing. In case of such termination, no damages shall be claimed by either party against the other, save and except those which had occurred under any other clause of this contract prior to such termination.

1200. ACCEPTANCE OF STORES DESPATCHED AFTER THE EXPIRY OF DELIVERY PERIOD

1201. In cases where only a portion of the stores 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 stores tendered for inspection during the delivery period because of the reason that adequate notice for inspection in accordance with clause 1501 was not given by the Contractor, the Purchaser reserves the right to cancel the order for the balance quantity, at the risk and expense of the Contractor without any further reference to him. If the stores tendered for inspection during or at the fag end of the delivery period are not found acceptable after carrying out the inspection, Purchaser is entitled to cancel the contract in respect of the same at the risk and expense of the Contractor. If, however, the stores tendered for inspection are found acceptable, the Purchaser may grant an extension of the delivery period subject to the following conditions :—

(a) The Purchaser has the right to recover from the Contractor the liquidated damages on the stores, which the Contractor has failed to deliver within the period fixed for delivery.

(b) That no increase in price on account of any statutory increase in or fresh imposition of Customs Duty, Excise Duty, Sales Tax, Freight Charges or on any account of any other tax or duty leviable in respect of the stores specified in the contract, which takes place after the date of delivery period stipulated in the said Acceptance of Tender, shall be admissible on such of the said stores as are delivered after said date.

(c) That notwithstanding any stipulation in the contract for increase in price on any other ground, no such increase which takes place after the delivery date stipulated in the contract shall be admissible on such of the said stores as are delivered after the said date.

(d) But nevertheless the Purchaser shall be entitled to the benefit of any decrease in price on account of reduction in or remission of Customs Duty, Excise Duty, Sales Tax or on account of any other ground which takes place after the expiry of the delivery date stipulated in the contract. The Contractor shall allow the said benefit in his bills or in the absence thereof shall certify that no decrease in price on account of any of these factors has taken place.

1202. The Contractor shall not despatch the stores till such time an extension in terms of clause 1201 (a) to (d) above is granted by the Purchaser and accepted by the Contractor. If the stores 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 stores shall be deemed to be subject to the conditions (a) to (d) mentioned in clause 1201 above.

1203. 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 (a) to (d) mentioned in clause 1201 above.

1300. SHIPMENT OF STORES BEYOND THE STIPULATED DELIVERY PERIOD FOR F.O.B. CONTRACT

1301. In the event of the Contractor failing to ship the stores duly inspected and passed within the stipulated delivery, the Purchaser is entitled to cancel the contract in respect of the same at the risk and cost of the Contractor or invoke the clauses providing other

remedies such as liquidated damages as provided in the contract. However, if he so chooses, the Purchaser may grant an extension of the delivery period subject to :—

(a) The Purchaser recovering from the contractor liquidated damages as stipulated in the conditions of contract for the stores, which the Contractor has failed to ship within the period fixed for delivery after the inspection and passing of the stores.

(b) The Purchaser retaining the right to recover from the Contractor any extra expenditure which might have been incurred by the Purchaser on account of additional bank charges payable for extension/amendment of the Letter of Credit, the increase in Custom Duty and Freight Charges directly relatable to the delay in shipping of the stores, etc.

(c) That any additional expenditure incurred by the purchaser or custom duty, freight charges as also extra cost which may arise on account of variation in exchange rate during the extended delivery schedule shall be borne by the Contractor.

1302. The Contractor shall not despatch the stores till such time an extension in terms of the above is granted by the Purchaser. If the stores are despatched by the Contractor before an extension letter as aforesaid is issued by the Purchaser, the supply of the stores shall be deemed to be subject to conditions set above.

1400. PROGRESS REPORTS

1401. The Contractor shall, from time-to-time, render such reports concerning the progress of the contract and/or supply of the stores in such form as may be required by the Purchaser.

1402. 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.

1500. INSPECTION BY INSPECTING OFFICER

1501. When Inspection during manufacture or before delivery or despatch is required, notice in writing shall be sent by the Contractor to the Inspecting Officer when the stores or material to be supplied are ready for inspection and test, and no stores shall be delivered or despatched until the Inspecting Officer has certified in writing that such stores have been inspected and approved by him. At least four weeks' notice must be given to the Inspecting Officer to enable him to arrange the necessary inspection. The examination of stores 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.

1502. 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/stores etc. is also to be done, notice 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/stores etc. as deemed essential.

1503. Marking of Stores

The Contractor shall, if so required, at his own expense, mark all the approved stores with a recognized Government or Purchaser's mark. The stores which cannot be so marked shall, if so required by the Inspecting Officer, be packed at the Contractor's expense in suitable packages or cases, each of which shall be sealed and marked with such mark.

1504. Facilities for Test and Examination

The Contractor shall, at his own expense afford to the Inspecting Officer all reasonable facilities and such accommodation as may be necessary for satisfying himself, that the stores 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 stores 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.

1505. 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 be made 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 stores 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 but 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 and examination, shall be final.

1506. Delivery of Stores for Test

The Contractor shall provide and deliver free of charge, at such places as the Inspecting Officer may nominate, such materials as he may require for test by chemical analysis or independent testing machines.

1507. Liability for Costs of Special or Independent Test

The cost of any special or independent tests to be carried out by the Inspecting Officer at a place other than the Contractor's premises, will be defrayed by the Purchaser unless it is stated in the specification that it is to be paid by the Contractor. However, in the event of rejection of stores or any part thereof by the Inspecting Officer in the consequence of the sample thereof which is removed to the laboratory or other places of test, being found on test, to-be not in conformity with the Contract, or, in the event of the failure of the Contractor for any reason to deliver the stores 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 person for similar work.

1508. Method of Testing

The Inspecting Officer shall have the right to put all the stores or materials forming part of the same or any part thereof to such tests as he may think fit and proper. The Contractor shall not be entitled to object on any ground whatsoever to the method of testing adopted by the Inspecting Officer.

1509. The Contractor shall satisfy the Inspector that adequate provision has been made :-

- (i) to carry out his instructions fully, and with promptitude ;
- (ii) to ensure that parts required to be inspected before use are not used before inspections; and
- (iii) to prevent rejected parts being used in error. Where, parts rejected by the Inspector have been rectified or altered, such parts shall be segregated for separate inspection and approval before being used in the work.

1510. Powers of Inspecting Officer

The Inspecting Officer shall have the power: —

- (i) before any stores or part thereof are submitted for inspection to certify that they cannot be in accordance with the contract owing to the adoption of any unsatisfactory method of manufacture ;
- (ii) to reject any stores submitted as not being in accordance with the particulars ;
- (iii) to reject the whole of the installment 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) to mark the rejected stores with a rejection mark, so that they may be easily identified if re-submitted for inspection.

The Inspecting Officer's decision as regards the rejection shall be final and binding on the Contractor.

1511. Inspection Certificates

On the stores being found acceptable by the Inspecting Officer, he shall furnish the Contractor with necessary copies of the Inspection certificates duly completed for being attached to the Contractor's bill in support thereof.

1512. Certification of Inspection and Approval in Case of Foreign Contracts

- (i) No Stores will be considered ready for delivery until the Purchaser or the Inspecting Officer nominated by him shall have certified in writing that they have been inspected and approved by him.
- (ii) It shall be the responsibility of the contractor to ensure that only such goods as have been duly inspected and approved by the Inspecting Authority, are offered for arranging shipment to the Government of India's Forwarding Agents and to furnish to them a certificate as under: —

“Certified that the goods offered for arranging shipment have been duly inspected and approved by the prescribed authority in accordance with the terms of the contract and a copy of the Inspection Certificate issued in this regard is enclosed.”

1600. PACKING AND MARKING

1601. Packing

The Contractor shall pack at his own cost the stores sufficiently and properly for transit by rail/road, air and/or sea as provided in the contract so as to ensure their being free from loss or damage on arrival at their destination. He shall decide the packing for the stores by taking into account the fact that the stores will have to undergo arduous transportation before reaching the destination and will have to be stored and handled in tropical climatic conditions (Including Monsoons) before being put to actual use.

1602. Unless otherwise provided in the contract, all containers (including packing cases, boxes, tins, drums and wrappings) in which the stores are supplied by the Contractor, shall be considered as non-returnable and their cost as having been included in the contract price.

1603. Each package shall contain a packing note specifying the name & address of the Contractor, the number and date of the acceptance of tender and the designation of the Purchase Officer issuing the supply orders, the description of the stores and the quantity contained therein.

1604. Marking

The marking of all goods supplied shall comply with the requirement of the Indian Acts relating to merchandise marks or any amendment thereof and of the rules made thereunder. The following marking of the materials is required :—

(a) The following particulars should be stenciled with indelible paint on all the materials/packages :—

- (i) Contract No.
- (ii) Specification No.
- (iii) Item No.
- (iv) Port consignee (wherever applicable)
- (v) Abbreviated Consignee marks.

(b) In addition to the marking as specified above, distinguishing colour marks should be given so as to distinguish the ultimate consignees in India.

1605. Inspection of Packing/Marking

The inspection officer may reject the stores, if the stores are not packed and/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 stores by the inspecting officer shall be final and binding on the contract.

1700. FREIGHT

The stores shall be despatched at public tariff rates. In the case of F.O.R. station of despatch contract, the stores shall be booked by the most economical route and or at the 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. Where alternative routes exist the Purchaser shall, if called upon to do so, indicate the most economical route available or name the authority whose advice in the matter shall be taken and acted upon. If any advice of any such authority is sought his decision or advice in the matter shall be final and binding on the Contractors for indigenous supplies.

a) In case where the consignees are more (say more than 4 or so,) tenderers are required to quote for the FOR station of dispatch prices with an average freight for all consignees, which will be added to FOR station of dispatch price to get FOR destination prices.

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

1701. In respect of road deliveries where Octroi duty and State Entry Tax are applicable, and where the State Government Authorities/Municipal/ Local authorities do not provide/accept exemption certificates for the said duties/taxes shall be borne by the seller.

1800. PAYMENT TERMS

Payment terms should be followed strictly as per terms and conditions of Bid Documents.

1801. **Foreign Supplies:-** The standard payment terms subject to recoveries, if any, by way of Liquidated Damages as per clause 1002 will be as under :-

(a) 80% of the payment against irrevocable L.C, will be made on proof of inspection certificate and shipment documents within 30 days of receipt of shipping documents as specified. In case of C&F contract, this payment will be subject to furnishing of a Bank Guarantee in a form to be approved by the Purchaser, for the amount to safeguard the Purchaser against any loss. The guarantee will be operative from the date of shipment to the date of delivery at port in India.

(b) In case where despatch is permitted by road, 80% payment will be made against consignee's receipt and inspection note.

(c) i) Balance 20% payment will be made on furnishing a Bank Guarantee for an amount equal to 10% of the contract value, as per Annexure-11 fully indemnifying the Purchaser against all losses incurred by the Purchaser during the guarantee period stipulated in the Warranty Clause No. 3400 within 30 days of the receipt of Bill after successful completion of proving test in which the machine performance would have been demonstrated by the supplier or his agent after its commissioning at the consignee's premises. Where, however, the installation and commissioning of the machine is delayed or put off beyond 90 days of the receipt of goods at the ultimate destination due to express written instructions of the Purchaser/Consignee, the balance 20% payment shall be released to the supplier on his furnishing the necessary Bank Guarantee.

ii) The Bank Guarantee as mentioned above should be from a Nationalised Indian Bank. The Bank Guarantee from a Commercial Bank of the Contractor's country can be accepted only if the Guarantee is furnished after getting it countersigned by the Reserve Bank of India, State Bank of India, New Delhi or by any Nationalised Indian Bank. The expenses to be incurred for counter-signature shall be borne by the Contractor.

iii) The Bank Guarantee to be submitted by the contractor / supplier under this clause, shall be sent directly by the issuing bank to the concerned Railway authority under Registered Post AD.

iv) In exceptional cases, when the BGs are submitted by the contractors/suppliers etc. through themselves (and not directly by the issuing bank under Registered Post AD), the BG issuing Bank Branch immediately should send by Registered Post AD an unstamped duplicate copy of the Bank Guarantee directly to the Railways with a covering letter to enable Railway's to compare with the original BGs and to confirm that the submitted BG is in order.

(d) Payment of agency commission, if any, will be made to the Indian Agent within 30 days of the receipt of bill after successful completion of the proving test in which machine performance would have been demonstrated by the supplier or his agent after its commissioning at the consignee's premises.

(e) For special purpose machine being procured for the first time or for other developmental/trial order the payment term will be 80% on completion of performance trials at the firm's premises and receipt of machine at consignee's end in good condition, 10% on successful commissioning of machine at the consignee's premises and balance 10% on successful completion of the warranty period. For procurement of such M&P item for production units, a representative of the concerned production unit will also be included as a joint inspection authority.

1802. **Indigenous Supplies**

The standard payment terms subject to recoveries, if any, by way of Liquidated Damages as per clause 1002 will be as under:

(a) 80% payment will be made on receipt of the material duly pre inspected and receipted at site by the consignee in good condition.

(b) i) Balance 20% payment will be made on furnishing a Bank Guarantee for an amount equal to 10% of the contract value, as per Annexure-11 fully indemnifying the Purchaser against all losses incurred by the Purchaser during the guarantee period stipulated in the Warranty Clause No. 3400 within 30 days of the receipt of Bill after successful completion of proving test in which the machine performance would have been demonstrated by the supplier or his agent after its commissioning at the consignee's premises. Where, however, the installation and commissioning of the machine is delayed or put off beyond 90 days of the receipt of the goods at the ultimate destination due to express written instructions of the Purchaser/Consignee, the balance 20% payment shall be released to the supplier on his furnishing the necessary Bank Guarantee.

ii) The Bank Guarantee as mentioned above should be from a Nationalised Indian Bank.

iii) The Bank Guarantee to be submitted by the contractor / supplier under this clause, shall be sent directly by the issuing bank to the concerned Railway authority under Registered Post AD.

iv) In exceptional cases, when the BGs are submitted by the contractors/suppliers etc. through themselves (and not directly by the issuing bank under Registered Post AD), the BG issuing Bank Branch immediately should send by Registered Post AD an unstamped duplicate copy of the Bank Guarantee directly to the Railways with a covering letter to enable Railway's to compare with the original BGs and to confirm that the submitted BG is in order.

(c) For special purpose machine being procured for the first time or for other developmental/trial order the payment term will be 80% on completion of performance trials at the firm's premises and receipt of machine at consignee's end in good condition, 10% on successful commissioning of machine at the consignee's premises and balance 10% on successful completion of the warranty period. For procurement of such M&P item for production units, a representative of the concerned production unit will also be included as a joint inspection authority.

1900. PAYMENT PROCEDURE

1901. Payment for indigenous suppliers will be made in Indian Rupees against bills preferred by the Contractor. Any payment in the foreign exchange that the Contractor may have to make for imported components forming part of the tender will be arranged by him direct.

1902. Payments against foreign contractors will be arranged through normal banking channels except where payment through letter of credit has been stipulated in the contract. In the case of payment through the letter of credit, all charges levied by the foreign bank(s) shall be borne by the Contractor.

1903. Format as per Annexure-12 may invariably be used for submission of bills.

1904. 1) Tenderer to give consent in a mandate form for receipt of payment through EFT(Electronic Fund Transfer).

2) Tenderers to provide the details of Bank A/c in line with RBI guidelines for the same. These details will include Bank name, Branch name & Address, Account type, Bank A/c No. and Bank & Branch Code as appearing on MICR cheque issued by bank.

3) Tenderer to attach certificate from their bank certifying the correctness of all above mentioned information (as mentioned in para (II) above).

4) In case of non payment through EFT or where EFT facility is not available, payment will be released through cheque.

2000. WITHHOLDING AND LIEN IN RESPECT OF SUMS CLAIMED

2001. 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 amount of Performance Guarantee Bond and any other Guarantee furnished by the Contractor and

for the purpose aforesaid, the Purchaser shall be entitled to encash the Performance Guarantee Bond etc. and also have a lien over the amount of the Performance Guarantee Bond etc. pending finalisation or adjudication of any such claim. In the event of the said amount being insufficient to cover the claimed amount or amounts or if no Performance Guarantee Bond etc. 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 finalization 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 3103 hereinafter provided, as the case may be, and that the Contractor will have no claim for interest or damages whatsoever on any account in respect of such withholding or retention under the lien referred to supra and duly notified as such to the Contractor.

2002. For the purpose of clause 2001, 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.

2003. **Lien in respect of Claims in other Contracts-**Any sum of money due and payable to the Contractor (including the amount of Performance Guarantee Bond any other Guarantee) under the contract may be withheld 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 or under any other contract made by the Contractor with the Purchaser or Government.

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 in the same contract or any other contracts 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 3103 hereinafter provided, as the case may be, and that the Contractor shall have no claim for interest or damages whatsoever on this account or any other ground in respect of any sum of money withheld or retained under this clause and duly notified as such to the Contractor.

2004. In addition to this other remedies under the law and these conditions, the Purchaser shall have a lien on each machine in respect of which the 90% has been paid to secure payment of this amount and recovery of any sum due from the Contractor, should the machine(s) not be successfully commissioned with the time specified as per clause Installation, Commissioning & Proving Tests in Section-III forming the Technical Specifications in Bid Documents Part-II.

2100. RESPONSIBILITY OF THE CONTRACTOR FOR EXECUTING THE CONTRACT

2101. **Risk in the Stores** : - The Contractor shall perform the contract in all respects in accordance with the terms and conditions thereof. The stores and every constituent part thereof, whether in the possession or control of the Contractor, his agents or servants or a carrier, or in the joint possession of the Contractor, his agents or servants and the Purchaser, his agents or servants, shall remain in every respect at the risk of the Contractor, until their actual delivery to the consignee at the stipulated place or destination or, where so provided in the acceptance of 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 stores from any cause whatsoever while the stores after approval by the Inspecting Officer are awaiting despatch or delivery or are in the course of transit from the Contractor to the consignee or the interim consignee as the case may be. The Contractor shall alone be entitled and responsible to make claims against a Railway Administration or any 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.

2102. **Consignee's Right of Rejection** — Notwithstanding any approval which the inspecting Officer may have given in respect of the stores or any materials or other particulars or the work or workmanship involved in the performance of the contract (whether with or without any test carried out by the Contractor or the Inspecting Officer or under the direction of the Inspecting Officer) and notwithstanding delivery of the stores where so provided to the interim consignee, it shall be lawful for the consignee, on behalf of the Purchaser, to reject the stores or any part, portion of consignment thereof within 90 days after expiry of the stipulated time provided in the contract for the commissioning of the machine or in case the commissioning is completed after the stipulated time, after commissioning of the machine at the place or destination specified in the contract if such stores or part, portion of 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. The rejection advice issued by consignee may be in the standard format as per Store Code Vol-I, para 764.

2103. Provided that where, under the terms of the contract, the stores are required to be delivered to an interim consignee for the purpose of despatch to the consignee, the stores shall be at the 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 stores 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.

2104. The provisions contained in clause 2800 relating to the removal of stores rejected by the Inspecting Officer shall, mutatis mutandis apply to stores rejected by the consignee as herein provided.

2105. The Contractor shall refund any advance/part payment received by him in respect of the rejected stores within 21 days of the receipt of intimation from the consignee about the rejection of the stores. In default, the Purchaser may take steps against Contractor for recovery of such price. This is strictly without prejudice and in addition to the rights provided in clause 1004.

2106. **Subletting and Assignment** — The Contractor shall not sublet (otherwise than that which may be customary in the trade concerned), transfer, assign or otherwise part with directly or indirectly to any person or persons, whatever is in this contract, or any part thereof without the previous written permission of the Purchaser or his nominee.

In the event of the Contractor's failure to obtain such permission, the Purchaser shall be entitled to cancel the contract and to purchase the stores elsewhere on the Contractor's account and risk and the Contractor shall be liable for any loss or damage which the Purchaser may sustain in consequence or arising out of such purchase.

2107. **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. In the event of the Contractor's failure to be comply with this requirement, it shall be lawful for the Purchaser to cancel the contract and purchase or authorise the purchase of the stores at the risk and cost of the Contractor and in that event the provisions of clause 1002 as far as applicable shall apply.

(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 shall be final and binding on the Contractor.

2200. RESPONSIBILITY FOR COMPLETENESS

2201. Any fittings or accessories which may not be specifically mentioned in the specifications but which are usual or necessary, are to be provided by the Contractor without extra charge, and the plant must be complete in all details.

2202. The work shall be performed at the place or places specified in the contract or at such other place or places as may be approved by the Purchaser.

2203. In all cases where the contract provides for tests on site, the Purchaser, except where otherwise specified, shall provide, free of charge, such labour, materials, fuels, stores, apparatus and instruments as may be required from time to time and as may reasonably be demanded, efficiently to carry out such tests of the plants, materials or workmanship etc. in accordance with the contract.

2204. In the case of contracts requiring electricity, for the completion of the work and for test on site, such electricity, when available, shall be supplied free to the Contractor at the pressure of the ordinary supply. Unless otherwise specified, the Purchaser will supply free of charge to the Contractor: —

- (a) unskilled labour;
- (b) timber, stores and lifting tackle necessary for the erection of the plant and all consumable stores including fuel and lubricating oils required during erection, setting to work and testing of the plant.

The Contractor shall provide : —

- (i) skilled labour;
- (ii) tools and any other equipment which may be necessary.

2300. 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, model 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 therefor may not be made in the specification or drawings. The Contractor shall also pay for Dock and Harbour dues, port's rates, export taxes and other fees' or charges, if any, levied because of exportation.

2400. INDEMNITY

2401. The prices stated are to include all rights (if any) of patent, registered design or trade mark and the Contractor shall at all times indemnify the Purchaser against all claims which may be made in respect of the stores for infringement of any right protected by patent, registration of designs or trade mark; provided always that in the event of any claim in respect of alleged breach of a patent, registered designs or trade mark being made against the Purchaser, 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 there from.

2500. RISK OF LOSS OR DAMAGE TO GOVERNMENT OR PURCHASER'S PROPERTY

2501. 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 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.

2502. 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 or the concerned authority 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.

2503. The Contractor shall return all such property and shall be responsible for the full value thereof to be assessed by the Purchaser/loaning authority 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.

2504. 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 effected by way of additional precaution and shall not prejudice the liability of the Contractor as aforesaid.

2550 Safety Measures

2551 The Contractor should take all precautionary measures in order to ensure the protection of his own personnel moving about or working on the railway premises, and should conform to the rules and regulations of the Railway.

2552 The Contractor should abide by all railway regulations in force from time to time and ensure that the same are followed by his representatives, agents or sub-contractor or workmen.

2553 The Contractor should ensure that unauthorised, careless or inadvertent operation of installed equipment which may result in accident to staff and/or damage to equipment does not occur.

2554 The Contractor should indemnify and keep the Purchaser indemnified and harmless against all actions, suits, claims, demands costs charges or expenses arising in connection with any accident, death or injury, sustained by any person or persons within the railway premises and any loss or damage to railway property sustained due to the acts or omissions of the Contractor irrespective of whether such liability arises under the workman's compensation act or the fatal accidents act or any other statute in force from time to time.

2600. CUSTOMS DRAWBACK

If, by reason of a customs notification published after the placing of the contract, the stores to be supplied shall become, on exportation, subject to customs drawback in respect of duty paid on them or on the materials used in their manufacture, the Contractor shall recover the amount of the drawback and the contract price of the stores shall be reduced by the amount so recovered.

2700. BOOK EXAMINATION CLAUSE

The Purchaser shall have the right for "Book Examination" as follows :—

2701. The Contractor shall whenever called upon and requiring to produce or cause to be produced or examination by any Govt. 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 wise 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 or 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 and it shall be binding on the Contractor.

2702. The Contractor shall, if the authorised Government Officer so required (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 the power to examine all the relevant books of such Sub-Contractor or any subsidiary or allied firm or company which shall be open to his inspection as mentioned in clause 2701.

2703. 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.

2704. Where a contract provides for book examination clause, 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 2701 above. In the event of Contractor's or his agencies failure to do so, the contract price would be reduced and determined according to the best judgement of the Purchaser which would be final and binding on the Contractor and his agencies.

2800. REMOVAL OF REJECTED STORES

2801. On rejection of any stores submitted for inspection at a place other than the premises of the Contractor, such stores shall be removed by the Contractor at his own cost subject as herein after stipulated, within 21 days of the date of intimation of such rejection. If the concerned communication is addressed and posted to the Contractor at the address mentioned in the contract, it will be deemed to have been served on him at the time when such communication would in the course of ordinary post reach the Contractor, provided that where the price or part thereof has been paid, the consignee is entitled without prejudice to his other rights to retain the rejected stores till the price paid for such stores is refunded by the Contractor save that such retention shall not in any circumstances be deemed to be acceptance of the stores or waiver of rejection thereof.

2802. All rejected stores shall in any event and circumstances remain and always be at the risk of the Contractor immediately on such rejection. If such stores are not removed by the Contractor within the periods aforementioned, the Inspecting Officer may remove the rejected stores and either return the same to the Contractor at his risk and cost by such mode of transport as the Purchaser or Inspecting Officer may decide, or dispose of such

stores at the Contractor's risk and on his account and retain such portion of the proceeds, if any, from such disposal as may be 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 handling and storage charges on the rejected stores after the expiry of the time-limit mentioned above.

2803. The stores that have been despatched by rail and rejected after arrival at destination may be taken back by the Contractor either at the station where they were rejected or at the station from which they were sent, after refunding the price paid for such stores and other charges refundable as a consequence of such rejection. If the contract is placed for delivery F.O.R. station of despatch, the Contractor shall pay the carriage charges on the rejected consignment at public tariff rates from the station of despatch to the station where they are rejected. If the Contractor elects to take back the goods at the station from which they were despatched, the goods shall in addition, be booked back to him freight to-pay at public tariff rates and at Contractor's risk. The Contractor shall be liable to reimburse packing and incidental costs and charges incurred in such return of rejected stores in addition to other charges refundable as a consequence of rejection. The goods shall remain the property of the Contractor unless and until accepted by the Purchaser after inspection.

2900. CORRUPT PRACTICES

2901. 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 forbearing to do or having done or forborne 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 or the Prevention of Corruption Act, 1947 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 to recover from the Contractor the amount of any loss arising from such cancellation in accordance with the provisions of clause 1002.

2902. Any dispute or difference in respect of either the interpretation, effect or application of the above clause or of the amount recoverable there under by the Purchaser from the Contractor, shall be decided by the Purchaser, whose decision thereon shall be final and binding on the Contractor.

3000. INSOLVENCY AND BREACH OF CONTRACT

3001. 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 the Contractor shall be liable to pay to the Purchaser any extra expenditure he is thereby put to and the Contractor shall, under no circumstances, be entitled to any gain on re-purchase.

3100. LAWS GOVERNING THE CONTRACT

3101. This contract shall be governed by the Laws of India for the time being in force.

3102. Irrespective of the place of delivery and the place of payment under the contract, the contract shall be deemed to have been made at the place in India from where the acceptance of tender has been issued.

3103. 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.

3104. Compliance with provisions of Contract Labour (Regulation and Abolition) Act, 1970 — For Indigenous Supplies : —

(1) The Contractor shall comply with the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 and the Contract Labour (Regulation and Abolition) Central Rules, 1971, as modified from time-to-time, wherever applicable and shall also indemnify the Purchaser from and against any claims under the aforesaid Act and the Rules.

(2) The Contractor shall obtain a valid licence under the aforesaid Act as modified from time-to-time before the commencement of the contract and continue to have a valid licence until the completion of the contract. Any failure to fulfil this requirement shall attract the penal provisions of the contract arising out of the resultant non-execution of the contract.

(3) The Contractor shall pay to labour employed by him directly or through Sub-Contractors the wages as per provisions of the aforesaid Act and the Rules wherever applicable. The Contractor, shall notwithstanding the provisions of the contract to the

contrary, cause to be paid the wages to labour indirectly engaged on the contract including any engaged by his Sub-Contractors in connection with the said contract, as if the labour had been immediately employed by him.

(4) In respect of all labour directly or indirectly employed in the contract for performance of the Contractor's part of the contract, the Contractor shall comply with or cause to be complied with the provisions of the aforesaid Act and the Rule; wherever applicable.

(5) In every case in which, by virtue of the provisions of the aforesaid Act or 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 Act and the Rules or to incur any expenditure on account of the contingent liability of the Purchaser due to the Contractor's failure to fulfil his statutory obligations under the aforesaid Act or the Rules, the Purchaser will 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 section 20, sub-section (2) and section 21, sub-section(4) of the aforesaid Act, the Purchaser shall be at liberty to recover such amount or part thereof by deducting it from the amount of the Performance Guarantee Bond 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 sub-section (1) of section 20 and sub-section (4.) of section 21 of the aforesaid Act except on the written request of the Contractor and upon his giving to the Purchaser full security for all costs for which the 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.

3200. ARBITRATION

3201. A) FOR DOMESTIC BIDDERS/TENDERS

In the event of any question, dispute or difference arising under these Conditions or any Special Conditions of Contract or 'Instructions to Tenderers' or in connection with this contract (except as to any matters the decision of which is specifically provided for by these Conditions or 'Instructions to Tenderers' or the Special Conditions) the same shall be referred to the sole arbitration of a Gazetted Railway Officer appointed to be the Arbitrator, by the Chief Administrative Officer, COFMOW, New Delhi, India. The Gazetted Railway Officer to be appointed as Arbitrator, however, will not be one of those who had an opportunity to deal with the matters to which the contract relates or who in the course of their duties as railway servants had expressed views on all or any-of the matters under dispute or difference. The award of the Arbitrator shall be final and binding on the parties to this contract.

(B) FOR FOREIGN BIDDERS/TENDERERS

In the event of any dispute or difference arising between the parties hereto relating to any matter arising out or connected with this agreement, such dispute or difference shall be referred to the Arbitral Tribunal. The Arbitral Tribunal shall consist of three Arbitrators one each to be appointed by the CAO/COFMOW/New Delhi/ India and the contractor. The arbitrators so appointed by CAO/COFMOW/New Delhi/India shall be a Gazetted

Rly. Officer who did not have an opportunity to deal with the matters to which the contract relates or who in the course of their duties as Railway Servants had expressed views on all or any of the matters under dispute or difference. The third Arbitrator shall be chosen by the two Arbitrators so appointed by the parties, and shall act as presiding arbitrator. In case, the two appointed arbitrators fail to agree on the third arbitrator within 30 days from the date of their appointment, the appointment shall be made, upon request of a party, by the Chief Justice of India or any person or institution designated by him, which shall be final and binding on the parties. Subject as aforesaid, the Indian Arbitration Act, 1996 the rules there under and any statutory modifications or reenactment thereof, shall apply to the arbitration proceeding under this agreement. The venue of the arbitration in all cases shall be in India.

3202. In the event of the Arbitrator dying, neglecting or refusing to act or resigning or being unable to act for any reason, or his award being set aside by the court for any reason, it shall be lawful for the authority appointing the Arbitrator to appoint another Arbitrator in place of the outgoing Arbitrator in the manner aforesaid.

3203. It is further a term of this contract that no person other than the person appointed by the authority as aforesaid should act as Arbitrator and that if for any reason that is not possible, the matter is not to be referred to arbitration at all.

3204. The Arbitrator may from time-to-time with the consent of all the parties to the contract enlarge the time for making the award.

3205. Upon every and any such reference, the assessment of the cost incidental to the reference and award respectively shall be in the discretion of the Arbitrator.

3206. Subject as aforesaid, the Arbitration Act, 1996 and the rules there under and any statutory modifications thereof for the time being in force shall be deemed to apply to the arbitration proceedings under this clause.

3207. The venue of arbitration shall be the place from which the Acceptance of Tender is issued or such other place as the Arbitrator at his discretion may determine.

3208. In this clause the authority to appoint the Arbitrator includes, if there be no such authority, the officer who is for the time being discharging the functions of that authority, whether in addition to other functions or otherwise.

3300. SECRECY

3301. The Contractor shall take all reasonable steps necessary to ensure that all persons employed in any work in connection with the contract, have full knowledge of the Official Secrets Act and any regulations framed thereunder.

3302. Any information obtained in the course of the execution of the contract by the Contractor,; his servants or agents or any person so employed, as to any matter whatsoever, which would or might be directly or indirectly, of use to any enemy of India, must be treated secret and shall not at any time be communicated to any person.

3303. Any breach of the aforesaid conditions shall entitle the Purchaser to cancel the contract and to purchase or authorise the purchase of the stores at the risk and cost of the Contractor in accordance with the clause-1002 of the General Conditions of Contract, In the event of such cancellation, the stores or parts manufactured in the execution of the

contract shall be taken by the Purchaser at such price as he considers fair and reasonable and the decision of the Purchaser as to such price shall be final and binding on the Contractor.

3400. WARRANTY

3401. The Contractor shall warrant that everything to be furnished hereunder shall be free from defects and faults in design, material, workmanship and manufacture and shall be of the highest grade and consistent with the established and generally accepted standards for goods of the type ordered and in full conformity, with the contract specifications and samples if any and shall if operatable, operate properly.

3402. This warranty shall survive inspection of, payment for and acceptance of the goods and shall expire after 24 months from the date of commissioning and proving test of machine at ultimate destination in India, Any approval of acceptance by purchaser of the Stores or of the material incorporated here in shall not in any way limits the contractor's liability.

3403. The contractor's liability in respect of any complaints defects and or claims shall be limited to the furnishing and installation of replacement parts free of any charge or the repair or defective parts only to the extent that such replacement or repairs are attributable to or arise from faulty workmanship or material or design in the manufacture of the stores, provided that the defects are brought to the notice of Contractor with in 3 (Three) months of their being first discovered during the guarantee period of 3 (Three) months from the date of expiry of warranty period or at the option of the Purchaser to the payment of the value, expenditure and damage as hereafter mentioned.

3404. The contractor shall, if required, replace or repair the goods or such portion thereof as is rejected by the Purchaser free of cost at the ultimate destination or at the option of the purchaser, the contractor shall pay to the purchaser value thereof at the contract price or in the absence of such price at price decided by the Purchaser, and such other expenditure and damages as may arise by reason of the breach of the condition herein specified.

3405. All replacement and repairs that the purchaser shall call upon the contractor to deliver or perform under this warranty shall be delivered and performed by the contractor within 2 (Two) weeks, promptly and satisfactorily. The warranty period will be extended by the number of days the machine remains under breakdown during the warranty period, the warranty period for such part(s) replaced and/or repaired and parts immediately connected there to shall extend to a period of 24 months from the date of such replacement and/or repair. This will mean effective the warranty period will go upto 48 months for replaced/repared parts and Bank Guarantee can be released only after that.

3406. If the Contractor so desires, the replaced parts can be taken over by him or his representative in India for disposal as he deems fit at the time of replacement of goods/parts. No claim whatsoever shall be lie on the Purchaser for the replaced parts thereafter.

3407. The warranty herein contained shall not apply to any material which shall have been repaired or altered by the Purchaser, or on his behalf in any way without the consent

of the Contractor, so as to effect the strength, performance or reliability or to any defects to any part due to misuse, negligence or accident,

3408. The decision of the Purchaser in regard to Contractor's liability and the amount, if any, payable under this warranty)' shall be final and conclusive.

3409 The warranty period in the offer shall survive for a period of 24 months from the date of commissioning of machine. If the offer is found with less than 24 months or ambiguous/uncertain on warranty conditions, the tender shall be summarily rejected.

3500. SERVICING AND WAREHOUSING FACILITIES

3501. The tenderer will clearly spell out in the offer the facilities available with him or his agent for providing adequate after-sales service in India during warranty period. The tenderer will also indicate the sendee organisation located at various places in India and the availability of trained staff, maintenance spares etc. at different centres in the country. In the case of imported machines, presence of qualified service engineering personnel with the supplier or his agent will be essential and the bidder should certify in the offer that such service team will be available.

3502. All spares required for the maintenance of these machines should be made available to various consignees for ware-houses in India for a period of two years from the date of delivery of the machine at ultimate destination.

3503. After the warranty period, the manufacturer or his agent shall agree to provide service supports for trouble shooting and obtaining spare parts. The manufacturer shall be obliged to provide spare parts required by the Purchasers for a period of 15 (Fifteen) years from the date of delivery of the machine at the ultimate destination to safeguard against obsolescence,

3504. The following information must be furnished by the Tenderer/Manufacturer regarding facilities for after sale sendee available in India.

(i) Whether similar type of machines have been sold earlier by the manufacturer through the agents in India, if so the machine model number and details of the customers to whom the machines were sold should be furnished.

(ii) Whether any trained engineers are available in India either with the firm or with their agents to attend to after sale problems of;

(a) Control equipment

(b) Machine and

(c) Location where these engineers are available in India.

(iii) If reply to (ii) above is in negative, the nature of after sale sendee proposed to be provided by the manufacturer during the warranty period and later. The number of service engineers and their location may also be specified;

(jv) What inventory of spare parts for the control equipment and the machine will be maintained by the manufactures directly or with their agents in india for the warranty period requirement. The location of proposed warehouse for maintaining the inventory

and the approximate value of such inventory may also please be indicated, alongwith the list of such spares.

(v) Whether repairable parts assemblies like printed circuit boards will be repaired in india or sent to the manufacturer aboard during the warranty period and the modalities for the same,

3600. OPERATION AND INSTRUCTION MANUALS & SERVICE TROUBLE SHOOTING GUIDES

3601. The supplier shall furnish per machine ordered 4 copies each of the relevant operating manual, maintenance manual, instruction for both electrical and mechanical equipments, trouble shooting guide, spareparts catalogue with price list, detailed wiring diagram, hydraulic circuit diagram, Lubrication diagram with schedule of lubrication and lubricants to be used. In case of imported machines equivalent indigenously available brands of lubricants hydraulic oils should be indicated. All technical documents will be in Hindi or English languages,

3602. In addition, 3 copies each of the above mentioned literature shall be supplied to the Chief Mechanical Engineer, COFMOW. All the drawings/diagrams shall be reproducible tracing film.

3603. Dimensions Specifications for rubber spare parts and electronic spare parts should be given,

3700. Turn-Key contracts

3701. The supplier shall arrange certification by a RCC Consultant, who should be a Chartered Engineer registered with the Institution of Engineers that:-

- a) The design of the machine foundation &
- b) Construction of the foundation.

is in accordance with the latest version of the relevant part of the Indian Standard for Code of Practice for design & construction of machine foundation as specified in IS:2974.

The original certificate issued by the consultant for certification of both the design & construction of the foundation and a copy of his registration certificate from the Institution of Engineers shall be submitted by the supplier to the consignee.

3702. The supplier shall stand a warranty for the foundation for a period of 2 years from the date of commissioning of the machine. He shall arrange to rectify any defects (e.g. sinking or cracking) occurring during the warranty period in the foundation. He shall also be responsible for uprooting and reinstalling the machine if so required for carrying out the repairs to the foundation. The warranty period would be extendable by the time period for which the machine remains out of commission due to the defect in the foundation or a period of one year, whichever is more.

3703. The supplier shall deposit with the consignee an Indemnity Bond equivalent to the cost of the foundation to cover the warranty period as specified above.

3704. The payment for the construction of the foundation and installation & Commissioning of the machine would be released only after submission of:

- a) Certificates as required vide Para-I above and
- b) Indemnity Bond as required vide Para-3 above.

has been certified by the consignee. This certification shall be done while issuing the PTC for the machine,

3705. A joint inspection by the firm and the consignee of the foundation shall precede the release of the Indemnity Bond at the end of the warranty period for the foundation.

3706. Detailed specifications of the quantity and quality of the material etc. of the turnkey work is to be specified by the firm alongwith the offer so that these can be incorporated in the contract to ensure right quality as well as quality of the material etc.

3800.a) Tenderers are required to quote for post warranty Annual Maintenance for a period of 5 years after expiry of the warranty period of the M&P alongwith their offers.

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

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

SECTION III

ANNEXURE - 1

(Please see clause 0502(a)
of 'Instructions to Tenderers')

COMMERCIAL DETAILS & PAST PERFORMANCE

Tender No.....Date of Opening.....

A. COMMERCIAL DETAILS

- (i) Is the firm a small scale unit registered with NSIC ?
If so, a copy of the registration certificate should be enclosed.
- (ii) Name and address of the Banker.
A copy of the Banker's report should be enclosed.
- (iii) Last 3 years turn over.
(Documentary evidence should be enclosed)
- (iv) A copy of current valid ITCC should be enclosed.

B. PAST PERFORMANCE

Details of orders for the major supplies of same/similar equipments
executed during the past five years should be furnished in the following format.

| S.No. | Full address of purchaser | Order No and date | Description of stores | Qty. | Value of order | Date of delivery | Remarks |
|-------|------------------------------|----------------------|--------------------------|------|-------------------|---------------------|---------|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |

Signature :.....
Name :.....
Designation :.....

Note: A certificate from the purchaser should preferably be enclosed to indicate
that the contract was satisfactorily performed.

ANNEXURE - 2

Please see clause 0502(b)
of 'Instructions to Tenderers'

**PROFORMA FOR EQUIPMENT AND QUALITY CONTROL
EMPLOYED BY THE MANUFACTURER**

Tender No. Date of Opening
.....

1. NAME OF THE FIRM
2. LOCATION
 - i) Head Office
 - ii) Works/Factory
- 2.2 Telephone No.(with STD code)
 - i) Head Office
 - ii) Works/Factory
- 2.3 Telegraphic address & Telax/fax
 - i) Head Office
 - ii) Works/Factory
3. DESCRIPTION OF FACTORY/WORKS
 - i) Total Land area (in Sq. meters)
 - ii) Total covered area(in Sq. meters)
 - iii) Different Sub-units(with details of covered/uncovered area, etc.)
 - iv) Special features, if any:
4. NO. OF PERSONNEL EMPLOYED(CATEGORY-WISE)
 - i) Managerial*
 - ii) Supervisory*
 - iii) Skilled artisans
 - iv) Unskilled

* The qualification may also be indicated.
5. GENERAL INFORMATION- TECHNICAL
 - 5.1 Description of different departments in the Factory/Works and function of each department, along with an organisational chart
 - 5.2 Detailed description of machinery and plant in each department (make and year of procurement/commissioning to be provided. For special type of equipment copy of pamphlets/writeups to be furnished so as to supplement the description).
 - 5.3 Details of raw-materials held in stock(state whether imported/indigenous).
 - 5.4 Production capacity of the quoted items
 - i) Per month

- ii) Per year
- 5.5 List of other items, which the firm regularly manufactures and corresponding production capacity.
- 6. DESIGN CAPABILITY
- 6.1 Details of Qualified Personnel(indicating qualification and experience)
- 6.2 Other facilities available.
- 7. MANUFACTURING PROCESS
- 7.1 Level of in-house facilities
- 7.2 Important items of work done by outside vendors.
- 7.3 Brief details of manufacturing process relevant to the items quoted.
- 8. QUALITY ASSURANCE
- 8.1 Is the firm certified for ISO 9000 or equivalent ?
If so, please give certification details.

If firm is certified for ISO 9000 or equivalent, no further information on para 8 is required to be filled in.
- 8.1.1 If no, does the firm contemplate to obtain ISO 9000 certification ?
What steps have been taken by the firm in that direction ?
- 8.2 Does the factory have an established Quality Assurance Programme ?
If yes, please enclose a copy of the write-up.
if not, what plans are there if any for setting it up ?
- 8.3 Details of Quality Assurance Organisation. Names of key personnel, their qualification, designations and position in overall management structure(explain with organisation chart, if neccessary).
- 8.4 Quality control testing facilities and laboratory equipment available.
- 8.5 Availability of gauges(please give details)
- 8.6 Calibration of laboratary/test equipment/gauges, indicated in para 8.4 and 8.5 above.
 - i) How is calibration done ?
 - ii) Frequency of calibration.
 - iii) System to ensure that calibration of above equipments does not fall overdue.
 - iv) Action taken if such calibration has fallen overdue.
- 8.7 Source of procurement of raw-materials, important bought-outs, and steps taken to ensure their quality.
- 8.8 Details of inspection/checks done on material during various stages of the above manufacturing process.
- 8.9 Have acceptable values for the parameters inspected during above stage checks have laid down ? if yes, the action

taken if value of the parameter inspected does not meet the desired laid-down value.

8.10 System for documentation of the results of the above stage checks.

9. AFTER-SALES-SERVICE

9.1 Facilities available at works and branch offices.

9.2 Assessment of quality of service including response times.

Signature.....

Name.....

Designation.....

ANNEXURE - 3
(Please see clause - 0601(b)
of 'Instructions to Tenderers')

**PROFORMA OF BANK GUARANTEE FOR BID GUARANTEE
(ON BANK'S LETTER HEAD WITH ADHESIVE STAMP)**

Ref

Date

Bank Guarantee No

To,

THE PRESIDENT OF INDIA
acting through the Controller of Stores,
Central Organisation for Modernisation of Workshops,
New Delhi - 110 002.

Dear Sir,

In accordance with your invitation to tender No.....

M/s hereinafter called
the tenderer with the following Directors on their Board of Directors/partners of
the firm:

- | | |
|----|-----|
| 1. | 2. |
| 3. | 4. |
| 5. | 6. |
| 7. | 8. |
| 9. | 10. |

wish to participate in the said tender for the supply of

As a Bank Guarantee against Bid Guarantee for the sum of
..... (in words & figures) valid for (225) two hundred and
twenty five days from the date of opening of the tender viz
..... is required to be submitted by the tenderer as a
condition for the participation, this bank hereby guarantees and undertakes
during the above said period of (225)) two hundred and twenty five days to
immediately pay, on demand by the Controller of Stores or Financial Advisor &
Chief Accounts Officer, Central Organisation for Modernisation of Workshops,
Railway Offices Complex, Tilak Bridge, New Delhi - 110 002, INDIA in writing the
amount of (words & figures) to the said Controller of Stores or
Financial Advisor & Chief Accounts Officer, Central Organisation for
Modernisation of Workshops, Railway Offices Complex, Tilak Bridge, New Delhi -
110 002, INDIA, and without any reservation and recourse, if :-

(i) the tenderer after submitting his tender, modifies the rates or any of
the terms and conditions thereof, except with the previous written consent of the
purchaser ; or

(ii) the tenderer withdraws the said bid within 180 days after opening of bid ; or

(iii) the tenderer having not withdrawn the bid, fails to furnish the Contract Performance Guarantee within the period provided in the General Conditions of the Contract.

This guarantee shall be irrevocable and shall remain valid upto 4.00 P.M. on if further extension to this guarantee is required, the same shall be extended to such required periods on receiving instructions from M/S on whose behalf this guarantee is issued.

Date

Signature

Place

Printed Name

Witness:

1.

.....

(Designation)

.....

(Bank's Common Seal)

ANNEXURE - 4

(Please see clause 0707 of
'Instructions to Tenderers')

PROFORMA FOR AUTHORITY FROM MANUFACTURERES

No.....dated

To,

THE PRESIDENT OF INDIA
acting through the Controller of Stores,
Central Organisation for Modernisation of Workshops,
New Delhi - 110 002.

Dear Sir,

Sub:- Central Organisation for Modernisation of Workshop's Tender
No.....

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

No company/firm or individual other than M/s
..... are authorised to represent us in
regard to this business against this specific tender.

Your faithfully,

(Name)

for & on behalf of M/s

(Name of Manufactures)

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

(Please see clause 1301 of
'Instructions to tenderers')

**DETAILS OF SHIPPING ARRANGEMENTS FOR LINER CARGOES IN
RESPECT OF C&F CIF TURNKEY/F.O.R. CONTRACTS FOR IMPORTS**

1. (a) SHIPMENTS FROM PORTS OF U.K. INCLUDING NORTHERN IRELAND (ALSO EIRE), FROM THE NORTH CONTINENT OF EUROPE (GERMANY, HOLLAND, BELGIUM, FRANCE, NORWAY, SWEDEN, DENKARK, FINLAND AND PORTS ON THE CONTINENTAL SEABOARD OF THE MEDITERRANEAN (I.E. FRENCH AND WESTERN ITALINA PORTS), TO PORTS IN INDIA.

The Seller should arrange shipment of the goods by vessels belonging to the member Lines of the India-Pakistan-Bangladesh Conference. If the Seller finds that the space on the Conference Lines' vessels is not available for any specific shipment, he should take up with India-Pakistan-Bangladesh Conference, Conferity House, East Grinstead, Sussex (U.K.), for providing shipping space and also inform the Shipping Co-ordination Officer, Ministry of shipping & Transport, New Delhi (Cable: TRANSCHART, NEW DELHI; Telex: VAHAN ND -2312, 2448 & 3104).

The Sellers should arrange shipment through the Government of India's Forwarding agents, M/s Schenker & Co. 2000- Hamburg (Cable: SCHENKERCO HAMBURG) or obtain a certificate from them to the effect that shipment has been arranged in accordance with instructions of the Ministry of Shipping & Transport (TRANSCHART), New Delhi.

(b) SHIPMENTS FROM ADRIATIC PORTS OF EASTERN ITALY AND YUGOSLAVIA

The Seller should arrange shipment of the goods by vessels belonging to the following Indian Member lines;

1. The Shipping Corporation of India Ltd.
2. The Scindia Steam Navigation Co. Ltd.
3. Indian Steamship Co. Ltd.

For the purpose of ascertaining the availability of suitable Indian vessels and granting dispensation in the event of their non-availability, the Seller should give adequate notice about the readiness of each consignment from time to time at least six weeks in advance of the required position to M/s Schenker & Co. 2000 HAMBURG (Cable: SCHENKERCO HAMBURG) and also endorse a copy therof to the Shipping Co-ordination Officer, Ministry of Shipping & Transport, New Delhi (Cable: TRANSCHART, NEW DELHI; Telex: VAHAN ND -2312, 2448 & 3104).

The Seller should arrange shipment through the Government of India's Forwarding Agents, M/s Schenker & Co., HAMBURG (Cable: SCHENKERCO HAMBURG) or obtain certificate from them to the effect that shipment has been

arranged in accordance with the instructions of the Ministry of Shipping & Transport, (TRANSCHART), New Delhi.

(c) SHIPMENTS FROM POLAND & CZECHOSLOVAKIA

(i) IMPORTS FROM POLAND

Shipments under this contract would be made by the National flag lines of the two parties and vessels of third flag conference lines, in accordance with the agreement between the Govt. of the Republic of India and the Govt. of the Polish People's Republic regarding shipping co-operation dated 27.6.1960 as amended upto date.

(ii) IMPORTS FROM CZECHOSLOVAKIA

Goods under this contract would be shipped by the National flag lines of the two parties and vessels of the third flag conference lines, in accordance with the Agreement on co-operation in Shipping between India and Czechoslovakia signed on 3.11.1978 and ratified on 19.12.1979, as amended upto date.

Shipping arrangements should be made by the Sellers in consultation with the Resident Representative of the Indian shipping Lines in Gdynia, C/o Morska Agencja W. Gdyni, Gdyni, ul, Pulaskiego 8, P.O. Box 246; Gdynia (Poland) - Telex: MAG, PL. 054301, Tel: 207621), to whom details regarding contract number, nature of cargo, quantity, port of loading/discharging, name of Government consignee, expected date of readiness of each consignment etc., should be furnished at least six weeks in advance of the required position, with a copy thereof endorsed to the Shipping Co-ordination Officer, Ministry of Shipping & Transport (Chartering Wing), New Delhi (Cable: TRANSCHART, NEW DELHI; Telex: VAHAN ND-2312, 2448 & 3104.).

(d) SHIPMENTS FROM RUSSIA & OTHER MEMBER COUNTRIES OF C.I.S.

Shipment under this contract should be made in accordance with the Agreement between the Government of the Republic of India and the Government of the Russia & other member countries of C.I.S. on Merchant Shipping, by vessels of Indo-C.I.S. Shipping Service.

(e) SHIPMENT FROM JAPAN

The shipment of goods should be made by Indian vessels to the maximum extent possible subject to a minimum of 50%.

The Seller should arrange shipment of the goods in consultation with the Embassy of India in Japan, Tokyo, to whom details regarding contract number, nature of cargo, quantity, port of loading/discharge, name of the Govt. consignee, expected date of readiness of each consignment etc. should be furnished at least six weeks in advance of the required position.

Note: The copies of such contracts are to be endorsed both to the Attache (Commercial), Embassy of India in Japan, Tokyo, and the Shipping Co-ordination Officer, Ministry of Shipping & Transport, New Delhi.

(f) SHIPMENTS FROM AUSTRALIA, ALGERIA, BULGARIA, ROMANIA, EGYPT

The Seller shall arrange shipment of the goods by Indian flag vessels to the maximum extent possible subject to a minimum of 50%. For the purpose of ascertaining the availability of suitable Indian vessels, the Seller shall give adequate notice of not less than six weeks about the readiness of each consignment to the Shipping Corporation of India Ltd., SHIPPING HOUSE, 245, Madame Cama Road, Bombay-400 021 (CABLE: SHIPINDIA BOMBAY) and also endorse a copy thereof to the Shipping Coordination Officer, Ministry of Shipping & Transports, New Delhi (Cable: TRANSCHART, NEW DELHI; Telex: VAHAN ND-2312, 2448 & 3104).

(g) SHIPMENTS FROM PAKISTAN

The shipment of cargoes should be made by Indian vessels to the maximum extent possible subject to a minimum of 50%.

Shipping arrangements should be made by the Sellers in consultation with M/s Mogul Line Ltd. 16- Bank Street, Fort, Bombay-400 023 (Cable: MOGUL BOMBAY; Telex 011-4049 MOGUL), to whom details regarding contract number, nature of cargo, quantity, port of loading/discharging, name of Government consignee, expected date of readiness of each consignment etc. should be furnished atleast six weeks in advance of the required position with a copy thereof endorsed to the Shipping Co-ordination Officer, Ministry of Shipping & Transport(Chartering Wing), New Delhi (Cable : TRANSCHART, NEW DELHI ; Telex : VAHAN ND - 2312, 2448 & 3104)

(h) SHIPMENTS FROM U.S ATLANTIC & GULF PORTS

The Seller should arrange shipment of the goods by vessels belonging to the member lines of the India-Pakistan-Bangladesh-Ceylon and Burma Outward Fright Conference. If the Seller finds that the space on the Conference Lines vessels is not available for any specific shipment, he should take up with India-Pakistan-Bangladesh-Ceylon and Burma Outward Fright Conference, 19, Rector Street, New York N.Y 10006 U.S.A. for providing shipping space and also inform the Shipping Co-ordination Officer, Ministry of Shipping & Transport, New Delhi (Cable : TRANSCHART, NEW DELHI ; Telex : VAHAN ND - 2312, 2448 & 3104).

(i) SHIPMENTS FROM ST. LAWRENCE AND EASTERN CANADIAN PORTS

The Seller should arrange shipment of the goods by vessels belonging to the following shipping lines :-

- (1) The Shipping Corporation of India Ltd.
- (2) The Scindia Steam Navigation Co. Ltd.

If the Seller finds that the space in vessels of these Lines is not available for any particular consignment, he should inform the Shipping Co-ordination Officer, Ministry of Shipping & Transport, New Delhi (Cable : TRANSCHART, NEW DELHI ; Telex : VAHAN ND - 2312, 2448 & 3104) immediately so that

dispensation from the shipping lines concerned to use alternative lifting may be sought.

(j) SHIPMENTS FROM WEST COAST PORTS OF U.S.A., CANADA AND OTHER AREAS NOT SPECIFICALLY MENTIONED ABOVE

The Seller should arrange shipment of the goods by Indian vessels to the maximum extent possible subject to a minimum of 50%. For the purpose of ascertaining the availability of suitable Indian vessel and granting dispensation in the event of their non-availability, the Seller should furnish the details regarding contract number, nature of cargo, quantity, port of loading/discharge, name of the Govt. consignee and expected date of readiness of each consignment etc. to the Shipping Co-ordination Officer, Ministry of Shipping & Transport, New Delhi (Cable : TRANSCART, NEW DELHI : Telex : VAHANND - 2312, 2448 & 3104) atleast six weeks in advance of the required position.

2. BILLS OF LADING

(i) C.I.F./C&F TURNKEY SHIPMENTS

The Bills of lading should be drawn to indicate "Shipper" and "Consignee" as under :-

SHIPPER : The C.I.F./C&F/TURNKEY SUPPLIERS concerned.

CONSIGNEE : As per Consignee's particulars in the contract (The name and address of the "Port Consignee" and "Ultimate Consignee" both should be indicated).

(ii) F.O.R. SHIPMENTS

The bills of Lading should be drawn to indicate "Shipper" and "Consignee" as under :-

SHIPPER : The F.O.R. suppliers concerned.

CONSIGNEE : Suppliers' Indian Agents on order.

Note:-

1. Moreover the name of the "Purchaser" and "Ultimate Consignee" should appear in the body of the Bills of Lading as the "Notify Part" or as a remark.
2. Two non-negotiable copies of the Bills of Lading indicating the freight amount and discount, if any allowed, should be forwarded to the Shipping Co-ordination Officer, Ministry of Shipping and Transport (Chartering Wing), New Delhi after the Shipment of each consignment is effected.
3. The seller should avoid the use of over-aged vessels for the shipment of the goods under the contract and if so used, the cost of additional insurance, if any, shall be borne by the Seller.

ANNEXURE - 6

(Please see clause - 1301 of
'Instruction to Tenderers')

DETAILS OF SHIPPING ARRANGEMENTS FOR LINER CARGOES IN RESPECT OF F.O.B./F.A.S CONTRACTS FOR IMPORTS

1. Shipping arrangements will be made by the Ministry of Shipping and Transport (Chartering Wing), New Delhi (Cable : TRANSCHART, NEW DELHI : Telex : VAHANND - 2312, 2448 & 3104) through their respective Forwarding Agents/Nominees as mentioned below, to whom adequate notice about the readiness of cargo for shipment should be given by the Sellers from time to time at least six weeks in advance of the required position for finalising the shipping arrangements

| Area | Forwarding Agents/Nominees |
|--|--|
| (a) U.K. including Northern Ireland (also Eire), the North Continent of Europe (Germany, Holland Belgium, France, Norway, Sweden, Finland and Denmark) and Ports on the Continental Sea Board of the Mediterranean, (i.e. French and Western Italian ports) and also Adriatic Ports. | M/s Schenker Deutschland AG Bel den Muehren 5 20457 Hamburg Germany Telephone No. +49 40 36135-351 Fax No : +49 40 36135-509 E-mail- kay.buedinger@schenker.com |
| (b) U.S.A and Canada | M/s OPT, Overseas Project, Transport Inc., 46, Sellers Street, Kearny, N.J. 07032,USA Tel : 201/998-7771 Tel : 573-3586 Fax : 201/998-783 |
| (c) Japan | The First Secretary (Commercial) Embassy of India, Tokyo, Japan, (Cable : INDEMBASSY TOKYO) Telex : INDEMBASSY J 24850, Telephone : 262 - 2391 |
| (d) Australia, Algeria, Bulgaria, Romania, Czechoslovakia, Egypt. | The Shipping Corporation of India Ltd., 'Shipping House' 229/232 Madame Cama Road, Bombay - 400021 (Cable : SHIP INDIA BOMBAY) Telex : 31-2209 SCID IN Telephone : 232666, 232785. |
| (e) Russia & other member countries of C.I.S. | The Secretaries, Indo-C.I.S. Shipping Service, C/o The Shipping Corporation of India Ltd., 'Shipping House' 245, Madame Cama Road, Bombay - 400021. (Cable : SHIP INDIA BOMBAY FOR SOVIND SHIP) Telex : 31-2209 SCID IN Telephone : 232666 |
| (f) Poland | The Secretaries, Indo-Polish Shipping Service, C/o The Shipping Corporation of India Ltd., 'Shipping House' 245, Madame Cama Road, Bombay - 400021. (Cable : SHIP INDIA BOMBAY FOR INDOPOL) Telex : 31-2209 SCID IN Telephone : 232666 |
| (g) Pakistan | The Mogul-Line Ltd., 16, Bank Street, Fort Bombay - 400023 (Cable : MOGUL BOMBAY) Telex : 011-4049 (MOGUL) Telephone : 252785 |

(h) Other areas not specifically mentioned above

The Shipping Co-ordination Officer,
Ministry of Shipping and Transport,
(Chartering Wing), New Delhi.
(Cable : TRANSCHART, NEW DELHI)
Telex : VAHAN ND 2312,2448 & 3104

2. **BILLS OF LADING**

The Bills of Lading should be drawn to indicate 'Shipper' and 'Consignee' as under :-

SHIPPER : The Government of India.

CONSIGNEE : "As per consignee's particulars in the contract. (The name and address of the 'Port Consignee' and 'Ultimate Consignee' should both be indicated.)

3. Two non-negotiable copies of the Bills of Lading indicating the freight amount and discount, if any allowed, should be forwarded to the Shipping Co-ordination Officer, Ministry of Shipping and Transport(Chartering Wing), Parivahan Bhawan, New Delhi after the Shipment of each consignment is effected.

4. The Seller should avoid the use of over-aged vessels for the shipment of the goods under the contract and if so used, the cost of additional insurance, if any, shall be borne by the Seller.

ANNEXURE - 7

(Please see clause - 1402 of
'Instruction to Tenderers')

MAXIMUM PACKAGE DIMENSIONS

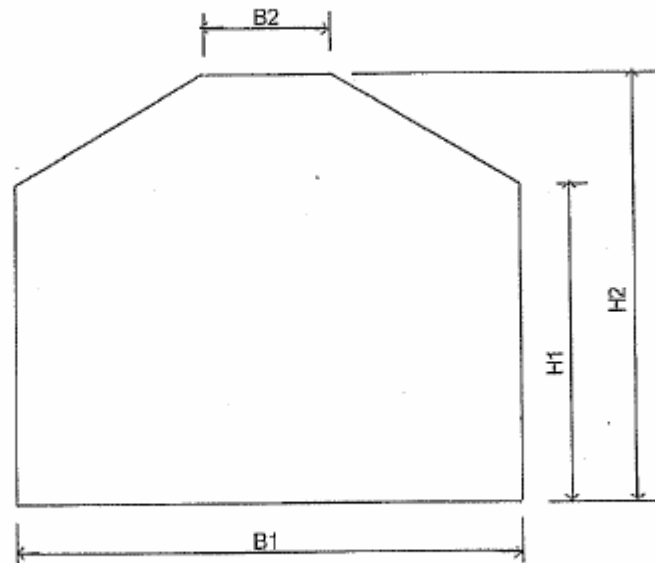


FIG. SECTION OF PACKAGE

FIG. SECTION OF PACKAGE

| For destination inStation on | Max. length of package in meters | Max. width in metres | | Max.height metres | |
|---------------------------------|--|-------------------------|-----|----------------------|-----|
| | | B1 | B2 | H1 | H2 |
| Broad Gauge (B.G.) | (a) General purpose 4-wheeler wagons - 5.5 meters | | | | |
| 1676 mm Gauge | | 2.7 | 0.6 | 2.0 | 2.5 |
| | (b)General purpose Bogie wagons - 10.0 meters | | | | |
| Metre Gauge (M.G.) | Same as above | 2.1 | 0.6 | 2.0 | 2.5 |
| 1000 mm Gauge | | | | | |

ANNEXURE - 8

(Please see clause - 0706 of
'Instructions to Tenderers')

**PROFORMA FOR STATEMENT OF DEVIATIONS
FROM TENDER CONDITIONS**

The following are the particulars of deviations from the requirements of the
Instructions to Tenderers and General Conditions of Contract :-

| CLAUSE | DEVIATION | REMARKS (Including Justification) |
|---------------|------------------|---|
|---------------|------------------|---|

.....
Signature and seal of
the Manufacturer/Tenderer.

NOTE:Where there is no deviation, the statement should be returned duly signed
with an endorsement indicating "No Deviations".

ANNEXURE - 9

(Please see clause - 0302 & 0303 of
'Instructions to Tenderers')

**PROFORMA FOR STATEMENT OF DEVIATIONS
FROM TECHNICAL SPECIFICATIONS**

The following are the particulars of deviations from the requirements of the
Technical Specification :-

| CLAUSE | DEVIATION | REMARKS (Including Justification) |
|---------------|------------------|---|
|---------------|------------------|---|

.....
Signature and seal of
the Manufacturer/Tenderer.

NOTE:Where there is no deviation, the statement should be returned duly signed
with an endorsement indicating "No Deviations".

ANNEXURE - 10

(Please see clause - 0700 of
'General Conditions of Contract')

**PROFORMA OF BANK GUARANTEE FOR CONTRACT PERFORMANCE
GUARANTEE BOND**

Ref..... Date.....
Bank Guarantee No.....

To

THE PRESIDENT OF INDIA,
acting through the Controller of Stores,
Central Organisation for Modernisation of Workshops,
Railway Offices Complex, Tilak Bridge,
New Delhi - 110 002

1. Against contract vide Letter of Acceptance No..... dated..... covering supply of(hereinafter called the said 'contract') entered into between the President of India and (hereinafter called the 'contractor'), this is to certify that at the request of the Contractor we, Bank Ltd., are holding in trust in favour of the President of India, the amount of (write the sum here in words) to indemnify and keep indemnified the President of India (Govt. of India) against any loss or damage that may be caused or likely to be caused to or suffered by the President of India (Govt. of India) by reason of any breach by the contractor of any of the terms and conditions of the said contract and/or the performance thereof. We agree that the decision of the President of India (Govt. of India), whether any breach of any of the terms and conditions of the said contract and/or in the performance thereof has been committed by the contractor and the amount of loss or damage that has been caused or suffered by the President of India (Govt. of India) shall be final and binding on us and the amount of the said loss or damage shall be paid by us forth with on demand and without demur to the President of India (Govt. of India).

2. We.....Bank Ltd., further agree that the guarantee herein contained shall remain in full force and effect during the period that would be taken for satisfactory performance and fulfilment in all respects of the said contract by the contractor i.e. till..... (Viz the date upto 12 months after the date of last shipment/delivery of the goods ordered) hereinafter called the 'said date' and that if any claim accrues or arises against us,..... Bank Ltd., by virtue of this guarantee before the said date, the same shall be enforceable against us,..... Bank Ltd., notwithstanding the fact that the same is enforced within six months after the said date. Payment under this letter of guarantee shall be made promptly upon our receipt of notice to that effect from the President of India (Govt. of India).

3. It is fully understood that this guarantee is effective from the date of the said contract and that we,..... Bank Ltd., undertake not to revoke this guarantee during its currency without the consent in writing of the President of India (Govt. of India).

4. We,..... bank Ltd., further agree that the President of India (Govt. of India) shall have the fullest liberty, without affecting in any manner our obligations hereunder to vary any of the terms and conditions of the said contract or to extend time of performance by the contractor from time to time or to postpone for any time or from time to time any of the powers exercisable by the President of India (Govt. of India) against the said Contractor and to forbear or enforce any of the terms and conditions relating to the said contract and we,..... Bank Ltd., shall not be released from our liability under this guarantee by reason of any such variation or extension being granted to the said Contractor or for any forbearance and or omission on the part of the President of India or any indulgence by President of India to the said Contractor or by any other matter or thing what-so-ever, which, under the law relating to sureties, would, but for this provision have the effect of so releasing us from our liability under this guarantee.

5. We.....Bank Ltd., further agree that the guarantee herein contained shall not be affected by any change in the constitution of the said Contractor.

Date.....

Signature.....

Place.....

Printed Name.....

Witness.....

.....

(Designation)

.....

(Bank's Common Seal)

Note for the issuing bank :

a) The original Bank Guarantee should be sent to the beneficiary directly under Registered Post AD.

b) In exceptional cases, where the Bank Guarantee is handed over by the Bank to the Customer for any genuine reasons, the Bank branch should immediately send by Registered Post AD an unstamped duplicate copy of the Bank Guarantee directly to the beneficiary with a covering letter requesting beneficiary to compare this copy of the Bank Guarantee with the original received from the Bank's customer i.e from the Contractor/Supplier.

c) At times, the Banks may receive letters from beneficiaries requiring Bank's confirmation for having issued the Bank Guarantee. The Bank branches must immediately send the confirmation letter under Registered Post to the concerned Railway Authorities (Beneficiaries) promptly without fail.

**PROFORMA OF BANK GUARANTEE FOR 10% CONTRACT VALUE
TOWARDS WARRANTY GUARANTEE**

To

THE PRESIDENT OF INDIA,
acting through the Controller of Stores,
Central Organisation for Modernisation of Workshops,
Railway Offices Complex, Tilak Bridge,
New Delhi - 110 002

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

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

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

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

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

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

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

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

This bank guarantee comes into force when the balance 10% of the value of the stores, shipped per vessel..... vide Bill of Lading No..... dated..... or RR No..... dated.....(in case of indigenous contracts) under the said contract, has been paid and will remain in full force and effect upto..... i.e., for..... months counted from the date of placing the stores in service, and, shall continue to be enforceable for further six months i.e. upto.....(date), hereinafter called the said date.

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

| | |
|--------------|------------------------|
| Date..... | Signature..... |
| Place..... | Printed Name..... |
| Witness..... | (Designation) |

.....
(Bank's Common Seal)

Note for the issuing bank :

- a) The original Bank Guarantee should be sent to the beneficiary directly under Registered Post AD.

b) In exceptional cases, where the Bank Guarantee is handed over by the Bank to the Customer for any genuine reasons, the Bank branch should immediately send by Registered Post AD an unstamped duplicate copy of the Bank Guarantee directly to the beneficiary with a covering letter requesting beneficiary to compare this copy of the Bank Guarantee with the original received from the Bank's customer i.e from the Contractor/Supplier.

c) At times, the Banks may receive letters from beneficiaries requiring Bank's confirmation for having issued the Bank Guarantee. The Bank branches must immediately send the confirmation letter under Registered Post to the concerned Railway Authorities (Beneficiaries) promptly without fail.

ANNEXURE - 12

(Please see clause - 1903 of
'General Conditions of Contract')

**PROFORMA OF FORMAT UNDER WHICH BILLS FOR STORES
SUPPLIED IS TO BE USED**

Name and Address of the Firm.....

Bill No.....Dated.....

Purchase order.....No.....Dated.....

Name and address of the consignee.....

| S.No | Authority for purchase | Description of Stores | Number or quantity | Rate Rs. P. | Price per Rs. P. | Amount |
|------|---------------------------|--------------------------|-----------------------|----------------|------------------------|--------|
|------|---------------------------|--------------------------|-----------------------|----------------|------------------------|--------|

Total

1. C.S.T./Sales Tax Amount
 2. Freight (if applicable)
 3. Excise Duty (if applicable)
 4. Packing and Forwarding charges (if applicable)
 5. Others (Please specify)
 6. PVC Amount (with calculation sheet enclosed)
 7. (-) deduction/Discount
 8. Net amount payable
(in words Rs.)
- Despatch detail RR No. other proof of despatch.....
Dated.....(enclosed)
Inspection Certificate No.....Dated.....(enclosed)
Income Tax Clearance Certificate No.....Dated.....(enclosed)
Modvet Certificate No.....(enclosed)
Excise Duty Gate pass.....(enclosed)
Place and Date
Received Rs.....(Rupees).....

Revenue
Stamp

Signature and stamp of
Supplier

**STANDARD FORM OF A PERFORMANCE BOND
LETTER BY THE GUARANTOR TO THE PURCHASER**

On you concluded with Messrs.....("Contractor")
a contract for.....(project, subject matter
of contract) at a price of

According to the provisions of the contract the Contractor is obliged to
provide a performance Bond in the order of..... percent of
the contract price.

We the undersigned.....(bank, insurance
company), waiving all objections and defences under the aforementioned
contract, hereby irrevocably and independently guarantee to pay on your first
written demand any amount up to a total of
.....
.....
(in words).....
against your written declaration that the Contractor has failed to perform the
aforementioned contract.

In the event of any claim under this guarantee, payment shall be effected
to Kreditanstalt for Wiederaufbau (account No. 50409100 with the Deutsche
Bundesbank, Frankfurt/Main), for account of the Purchaser.

This guarantee shall expire not later than by which date we
must have received any claims by registered letter, telgram, telex, or telefax.

It is understood that you will return this guarantee to us on expiry or after
settlement of the total amount to be claimed hereunder.

.....
Place, Date

.....
Guarantor

IMPORTANT NOTICE

(A) The following check list is intended to help the tenderers in submitting offer which are complete. An incomplete offer is liable to be rejected. Tenderers are advised to go through the list carefully and take necessary action.

(B) Tenderers are also required to submit copy of the check list, duly marked, alongwith their offer.

CHECK LIST FOR SUBMISSION OF OFFERS

- | | | |
|-----|--|--|
| 1. | Have you submitted a complete offer ? It should consist of following: | |
| (a) | Quotation in prescribed Proforma-Annexure 1 or 2, as applicable, of Bid Documents Part- I | Submitted/Not Submitted |
| (b) | Letter of Authority if required- Annexure - 6 of Bid Documents Part - I | Submitted/Not Submitted |
| (c) | Bid Guarantee if required - Annexure - 5 of Bid Documents Part - I | Submitted/Not Submitted |
| (d) | Statement of Deviations from Tender Conditions- Annexure - 10 of Bid Documents Part - I | Submitted/Not Submitted |
| (e) | Statement of Deviations from Tech. Spec. - Annexure - 11 of Bid Documents Part - I | Submitted/Not Submitted |
| (f) | Annexures to Technical Specifications Bid Documents Part - II, duly filled in. | Submitted/Not Submitted |
| 2. | Have you submitted other supporting documents to establish your eligibility ? It may consist of the followings: | |
| (a) | Bankers Report - Para 0501(b) of 'Instructions to Tenderers' Bid Documents Part - I | Submitted/Not Submitted |
| (b) | Commercial Details and Performance Statement - Annexure - 3 Bid Documents Part - I | Submitted/Not Submitted |
| (c) | Statement of Equipment & Quality Control- Annexure - 4 Bid Documents Part - I | Submitted/Not Submitted |
| (d) | Clause wise comments on Technical Specifications, Clause 0303 'Instructions to Tenderers' Bid Documents Part - I (Not to be submitted in case of tender for EOT Cranes & Wheel Lathes) | Submitted/Not Submitted |
| (e) | Any other document asked by the purchaser as per the tender | Submitted/Not Submitted if submitted, specify the Documents OR |
| | Any other document which the tenderer considers relevant | |
| (g) | Have you quoted the prices in the words as well as in figures | Quoted/Not Quoted |
| 3. | If you are a foreign firm have you submitted the detailed particulars of your agent and agency agreement - clause 0403 of 'Instructions to Tenderers' Bid Documents Part - I. | Submitted/Not Submitted |

.....
Signature & Seal of the
Manufacturer/Tenderer

ANNEXURE-15
CHECK LIST FOR FOREIGN TENDERERS

- (i) Have you submitted the authorization letter authorizing your agent to quote on this tender? Yes/No
- (ii) Have you indicated the complete name and address of the agents and details of the services to be rendered by the agents? Yes/No
- (iii) Is the agent going to render after sale service? Yes/No
- (iv) In case the answer to (ii) is yes, confirm that the agent has necessary infrastructure and competent staff to render the same. Yes/No
- (v) Have you submitted a copy of your agreement with your Indian agents? Yes/No
- (vi) Manufacturer or their sole selling agents may note that an agent can represent only one firm in a tender and any manufacturer cannot submit two offers against a tender through different sole selling agents or one directly and one through sole selling agent. In such a situation both the offers will be rejected. Yes/No
- (vii) Have you indicated your Indian Agent's Income Tax permanent Account number ? Yes/No
- (viii) Are you aware that any payment against the contract, if placed, to your Indian agent directly by you in currency other than in Indian rupees is against the Indian Laws? Yes/No
- (ix) Are you aware that failure to disclose the full amount of remuneration/agency commission payable to your Indian agents shall render the contract void ? Yes/No