for carrying out the performance guarantee test by the Contractor shall not be more than the strength of normal operation recommended by the Contractor and accepted by the Purchaser.

31.3 During the performance test the plant, machinery and equipment will be operated by the Purchaser under the supervision of the Contractor. The Contractor shall provide adequate engineers/specialists and commissioning spares for smooth conducting of the performance guarantee test. Unless otherwise agreed to in the Contract, the Purchaser will provide necessary input material, skilled and unskilled labour, fuel, power, utilities and other relevant supplies.

31.4 Should the operation of the plant, machinery and equipment during the performance test be interrupted then the performance test shall be re-started and run again for the period as specified in the Contract. The Purchaser may at his discretion permit the period of test run prior to the interruption to be reckoned as part of the above mentioned period, in which case the test will be run for the duration of the balance period on re-commencement.

31.5 The Purchaser will have the right to charge such amounts as may be deemed reasonable for materials and services provided by the Purchaser, in case performance tests continue for an unreasonably long period due to interruption as defined in Clause 31.4 above. The Purchaser shall charge the Contractor on actuals.

31.6 The plant, machinery and equipment shall be considered to have concluded the performance test satisfactorily if, during the entire duration of the test, save as expected in Clause 31.4 above, the plant, machinery and equipment shall have delivered the guaranteed specified output or operated at the guaranteed specified capacity utilizing the quantity and quality of raw materials, utilities, fuel and supplies as specified in the Contract Specification.

31.7 On the satisfactory completion of the performance guarantee test, the Purchaser will issue a Provisional Acceptance Certificate provided the Contractor undertake to rectify all defects which do not influence normal operation but which are nevertheless present in the plant and which are indicated in writing by the Purchaser.

31.8 Normally, the entire plant, machinery and equipment will have to satisfactorily complete the performance test before the issue of the Provisional Acceptance Certificate. In special circumstances and at the Purchaser's sole discretion, the Provisional Acceptance Certificate may be issued for a part of the plant, machinery and equipment.

31.9 The date of completion of performance guarantee test shall be considered to be the date of the PAC, and the plant, machinery & equipment is ready for commencement of commercial production.

## 32.0 DEFECT LIABILITY PERIOD AND FINAL ACCEPTENCE

32.1 The defect liability or guarantee period shall be as stated in Clause 32.2 and after satisfactory completion of guarantee period the Purchaser will issue the Contractor a Final Acceptance Certificate (FAC). During the guarantee period the plant, machinery and equipment will be operated by and under the supervision of the Purchaser according to instruction issued by the

Contractor but the plant, machinery and equipment will not be deemed to have been formally taken over by the Purchaser. On the satisfactory completion of the guarantee period and issuance of the FAC, the Contractor shall be relieved of its contractual obligations under the Contract and the Contractor shall be entitled to receive the agreed payment towards FAC.

32.2 The Contractor shall warrant that the facilities or any part thereof shall be free from defects in the design, engineering, materials and workmanship of the plant, machinery and equipment and structures and refractories supplied and of the work executed for twelve (12) months from the date of issue of Provisional Acceptance Certificate.

32.3 The Purchaser shall give the Contractor a notice stating the nature of any such defect together with all available evidence thereof, promptly following the discovery thereof. The Purchaser shall afford all reasonable opportunity for the Contractor to inspect the defect.

32.4 The Purchaser shall afford the Contractor all necessary access to the Work and the Site to enable the Contractor to perform his obligations. The Contractor may, with the consent of the Purchaser and after submission of Bank Guarantee for the equivalent cost of plant, machinery and equipment, remove from the Site any plant, machinery and equipment or any part of the Works that are defective if the nature of the defect, and / or any damage to the plant, machinery and equipment caused by the defect, is such that repairs cannot be expeditiously carried out at the Site. In case defective parts are not repairable at Site but it is essential in the mean time for the commercial use of plant, the Contractor shall replace at Site free of cost to the Purchaser, the defective parts, before the defective parts are removed from the Site.

32.5 If the repair, replacement or making good is of such a character that it may affect the efficiency of the plant, machinery and equipment or any part thereof, the Purchaser may give to the Contractor a notice requiring that tests of the defective part of the plant, machinery and equipment shall be made by the Contractor immediately upon completion of such remedial work, whereupon the Contractor shall carry out such tests.

32.6 If such part fails the tests, the Contractor shall carry out further repair, replacement or making good (as the case may be) until that part of the plant, machinery and equipment passes such tests. The Purchaser and the Contractor shall agree upon the tests. If the Contractor does not commence the rectification either by repair or replacement of such defects within 30 (thirty) days from the date of notice by the Purchaser or does not complete the rectification with reasonable diligence and within a reasonable time, the Purchaser may, at its option, rectify the defects at the Contractor's expense. The Purchaser shall, in such case, deduct from payment due to the Contractor the expenses incurred by the Purchaser for remedy of such defects without prejudice to the other rights of the Purchaser under the Contract and under the applicable laws.

32.7 If the Contractor fails to commence the work necessary to remedy such defect of any damage to the plant, machinery and equipment caused by such defect within a reasonable time, which shall in no event considered to be less than 15 (fifteen) days, the Purchaser may, following notice to the Contractor, proceed to do such work, and the costs incurred by the Purchaser in connection therewith shall be paid to the Purchaser by the Contractor or may be deducted by the Purchaser from any money due to the Contractor or claimed under the performance Bank Guarantee.

32.8 If the plant, machinery and equipment or any part thereof cannot be used by reason of such defect and for making good of such defect, the Defect Liability Period of the plant, machinery and equipment or such part, as the case may be, shall be extended by a period equal to the period during which the Facilities or such part cannot be used by the Purchaser because of any of the aforesaid reasons.

32.9 Except as provided in the Contract, in the event of loss of or damage to property / accident or injury to workers / indemnification, hereof, the Contractor shall be under no liability whatsoever and howsoever arising, in respect of defects in the plant, machinery and equipment, design or engineering or work executed that appear after completion of the project or any part thereof, except where such defects are the result of the negligence, fraud, criminal or willful action of the Contractor.

32.10 In addition, the Contractor shall also provide an extended warranty for any repaired or replaced component of the plant, machinery and equipment for a period of minimum twelve (12) months from the date of repair / replacement.

**33.0 CHANGES IN THE WORK**

33.1 The Purchaser shall have the right to propose and / or consider Contractor's proposal, and subsequently order the Contractor from time to time during the performance of the Contract to make any changes, modification, addition or deletion to, in or from the Plant, Machinery & Equipment (hereinafter called "Change"), provided that such Change falls within the general scope of the plant, machinery and equipment and does not constitute unrelated work and that it is technically practicable, taking into account both the state of advancement of the Plant, Machinery & Equipment and the technical compatibility of Change envisaged with the nature of Plant, Machinery & Equipment as specified in the Contract.

33.2 If the Purchaser proposes and / or considers Contractor's proposal for a Change pursuant to Clause 33.1 hereof, it shall send to the Contractor a "Change Request" requiring the Contractor to prepare and furnish to the Purchaser as soon as reasonably practicable a "Change Proposal" which shall include the following-

a) Brief description of the Change
b) Effect on the Time for Completion
c) Estimated cost of the Change
d) Effect on functional Guarantees (if any)
e) Effect on any other provisions of the Contract

33.3 The pricing of the Change Proposal shall, as far as practicable, be calculated in accordance with the rates and prices included in the Contract. If such rates and prices are inequitable, the parties thereto shall agree on specific rate for the valuation of the Change.

33.4 On receipt of the Change Proposal, Purchaser and the Contractor shall mutually agree upon all matters therein contained. Within Thirty Days after such agreement, the Purchaser shall, if it intends to proceed with the Change, issue the Contractor a Change Order.

33.5 If the Purchaser decides not to proceed with the Change for whatever reason, it shall, within the period of Thirty Days, notify the Contractor accordingly.

## 34.0 OWNERSHIP OF DRAWINGS AND SPECIFICATIONS

34.1 All drawings, specifications, materials and design furnished by the Purchaser, Engineer, or their representatives shall be treated as the strictly confidential property of the Purchaser. All such drawings, specifications, manuals and other materials shall be returned to the Purchaser upon the completion of the work under this Contract. No copies, duplications or Photostats shall be retained by the Contractor without the consent of the Purchaser.

34.2 All drawings, specifications, and manuals and all specific designs furnished by or through the Contractor shall be treated as strictly confidential by the Purchaser, his employees and agents and shall be the property of the Purchaser who is entitled to use them for execution of the Contract and operation & maintenance of the plant, machinery and equipment being subject to the Contract.

## 35.0 FORCE MAJEURE

If at any time during the continuance of this Contract, the performance in whole or in part, neither party shall be liable of performance under this Contract, any obligations under the Contract of any party is prevented or delayed due to reasons beyond such party's control, including but not limited to acts of God, fire, flood, earthquake other natural catastrophes, any law, order, regulation, direction, action of any civil or military authority, national emergencies, insurrections, riots, war (whether declared or not), hostility, acts of the public or enemy, civil commotion, sabotage, explosion epidemic, quarantine restrictions, strikes and lock-outs, work stoppage or other labour difficulties, absence of the usual means of communication or transportation (hereinafter referred to as `eventuality`) provided however the party to which the force majeure has happened shall use commercially reasonable efforts to eliminate such an event.

Force majeure shall also be deemed in the event of any regulatory decision or government order requiring the either party to suspend its service(s) or operation(s) for any reasons whatsoever.

Notice of the happening of any such eventuality or force majeure as mentioned herein shall be given by either party to the other within fifteen (15) days from the date of the occurrence thereof along with supporting proof of the occurrence of the Force Majeure event , neither party shall, by reason of such eventuality, be entitled to terminate this Contract, nor shall either party have any claim for damages against the other in respect of such non-performance, or delay in performance, and the work under this Contract shall be resumed as soon as practicable after such eventuality has come to an end or ceased to exist, and the decision of the Purchaser as to whether the work has been so resumed shall be final and conclusive.

Certificate of a Chamber of Commerce (Commerce and Industry) or other competent authority or organization of respective country shall be a sufficient proof of commencement and cessation of the above circumstances.

The party who has given such notice shall be excused from the performance or punctual performance of its obligations under the Contract for so long as the relevant event of Force Majeure continues and to the extent that such party's performance it prevented, hindered or delayed. The time for completion shall be extended by number of days the party giving notice was prevented from performing his obligation due to Force Majeure, in accordance with Clause 27 hereof.

Should one or both parties be prevented from fulfilling their contractual obligations by a state of force majeure lasting continuously for a period of at least six (6) months, both the parties shall consult each other regarding the further implementation of the Contract, provided always that, if no mutually agreed arrangement is arrived at within a period within three (3) months from the expiry of the six (6) months referred to above, the Contract shall be deemed to have expired at the end of the said six (6) months referred to above. The above mentioned expiry of the Contract will imply that both the parties have the obligation to reach an agreement regarding the winding up and financial settlement of the Contract.

## 36.0 TEMPORARY SUSPENSION

### 36.1 Temporary Suspension during manufacture and Installation

36.1.1 The Purchaser may at any time temporarily stop the work being performed under the Contract or any part thereof by notice in writing to the Contractor specifying the reasons and approximate period of such suspension. All work so stopped shall be resumed by the Contractor based on a schedule to be mutually agreed upon between the Purchaser and the Contractor. Total cumulative period of such temporary suspension shall not exceed a period of six (6) months. However, if the period of temporary suspension exceeds six (6) months, the Parties shall mutually agree on the further course of action.

36.1.2 The Purchaser will not pay the Contractor for any work which is performed during such an interval of suspension, and the Purchaser shall not be liable to the Contractor for any damages or loss caused by such a suspension of work. However, the reasonable cost of necessary preservation of specific items, storage, watch & ward, withdrawal and re-deputation, etc, which is required during such suspension period, not for reasons attributable to the Contractor, to ensure proper resumption of work shall be mutually agreed between the Purchaser and the Contractor and shall be borne and paid by the Purchaser.

If the aggregate duration of the suspensions of the Contract for reasons not due to Contractor's default exceeds six (6) months on account of one or more periods of suspension, then the Parties shall mutually agree on the further course of action. In the event of termination of the Contract for reasons of suspension solely attributable to the Purchaser the documented costs incurred by the Contractor and if agreed by the

Purchaser, in performing the portion of the scope of supply prior to termination incurred for the execution and/or by the Contractor prior to the date of termination shall be paid by the Purchaser.

The extra/additional cost (if any) incurred by the Contractor in giving effect to the Purchaser's order under this Clause shall be borne by the Purchaser unless such suspension is (i) otherwise provided for in the Contract; (ii) necessary for proper execution of the work or by reason of weather or other force majeure conditions or by some default on the part of the Contractor; (iii) necessary for safety works or part thereof, provided the Contractor shall not be entitled to recover any such extra cost unless he gives notice in writing of his intention to claim to the Purchaser with 30 days of the purchaser's order. The Purchaser shall settle and determine the extra payment to be made to the Contractor in respect of such claims as the Purchaser/Engineer shall consider fair and reasonable.

## 37.0 PATENT INFRINGEMENT AND INDEMNITY

### 37.1 Patent Infringement

37.1.1 The Contractor shall at all times protect, indemnify and save/ keep harmless the Purchaser, its successors, assigns, , any claim made by a third party against all liability, including costs, expenses, claims, suits or proceedings at law, in equity or otherwise, arising out of, or in connection with, any actual or alleged patent infringement (including process patents, if any), or violation of any license with respect thereto, by reason of the manufacture and/or sale by, or on behalf of, the Contractor of the plant or any part thereof, or the purchase thereof by the Purchaser or the use thereof in India for the purchase for which it is furnished, or the sale by the Purchaser, its successors or assigns or products made, manufactured, fabricated, processed or produced with the said plant or any part thereof, and will defend or settle at the Contractor's own expense, any such claims, suits, or proceedings.

37.1.2 The Purchaser will promptly notify the Contractor in writing of any such claim, suit, action or proceeding coming to its attention, giving authority and all available information and assistance for the Contractor's defense of the same. If at any time the installation of the plant, or any part thereof or the use thereof in India for the purpose for which it is furnished, or the sale of products produced therewith, is prevented or enjoined because of patent infringement or claimed infringement, the Contractor shall promptly at his own expense, either procure for the Purchaser the right to use and continue to use such plant or replace the same at his own expense with equally efficient non-infringing plant satisfactory under all requirements of the Contract, so that the operation of the Purchaser's plant will not be unduly delayed or interrupted. If shipment of the plant, or any part thereof is prevented by attachment, injunction or otherwise at, or in the course of transit from, the Contractor's factory or other point of origin to the site of the Purchaser's plant, as a result of any claim of Patent infringement, the Contractor shall, at his own cost and expense, promptly furnish and post the necessary bond or take such other steps as may be necessary to enable shipment to be made without delay. The Purchaser will have

the right at its own expense to retain counsel of its own choice to collaborate in the defense of any such claim, suit action on proceeding.

**37.2 Indemnity**

The Contractor assumes responsibility for, and shall at all times indemnify and save harmless the Purchaser, the Engineer, or their officers or employees from all losses, liability, claims, costs, expenses, taxes and assessments, including penalties, punitive damages, attorney's fees and court costs which are, or may be, required with respect to any breach of the Contractor's obligations under this Contract, or for which the Contractor has assumed responsibility under this Contract, including those imposed under any contract, local or national law or laws, or in respect to all salaries, wages, or the compensation of all persons employed by the Contractor or his Sub-Contractors or suppliers in connection with the performance of any work covered by the Contract. The Contractor shall execute and deliver and shall cause his subcontractors and suppliers to execute and deliver such other further instruments and to comply with such requirements of such laws, and regulations as may be necessary there under to confirm and effectuate this Contract and to protect the Purchaser, Engineer, or their officers or employees. The Purchaser shall not be in any way responsible for any accident or damages incurred or claims arising there from during the period of Erection, Installation and putting into operation and commissioning of the plant, machinery and equipment under the responsibility and supervision of the Contractor.

**38.0 ENVIRONMENT**

38.1 The Contractor shall take all reasonable steps to protect the environment (both on and off the Site) and to avoid injury, damage and nuisance to people and property resulting from pollution, noise and other results of his operations. The Contractor shall ensure that air emission, surface discharges and effluent from the Site during the Contract period shall not exceed the values indicated in the Purchaser's requirements, and shall not exceed the values prescribed by law. The Contractor shall conform to the Purchaser's requirements and shall indemnify the Purchaser against any liability or damages or claims arising out of his operations.

38.2 The Contractor shall abide by the following environment, safety and health policy of the Purchaser.

a) The Contractor must adhere to all the applicable statutory laws pertaining to safety, health and environment.

b) The Contractor must ensure that there is no wastage of water at the Work Site. The Contractor must also ensure that all the water tapping points are leak proof.

c) All the motor vehicles of the Contractor used for transporting materials/machinery etc. should have pollution control certificates and the same should be submitted at the time of obtaining gate passes. A copy of the same must be exhibited/pasted on the vehicle also.

d) The Contractor must ensure dust suppression measures in the work areas by sprinkling of water etc. and also ensure that all his workers use dust masks while working in dusty areas.

e) The Contractor must ensure proper housekeeping at site by keeping the work areas free from unwanted material and greases, oil to avoid slips & falls.

f) The Contractor must ensure that all the debris generated during the work is transported safely to dump yard such that there is no spillage of debris on the road during transportation (by covering with a plastic sheet/tarpaulin)

g) All the garbage collected from, dust bins etc. should be transported in covered vehicles.

h) All the material which may be recycled / reused should be transported to the designated place for reuse/recycling.

i) All the cut jungle growth and trees should be disposed at the dumping yard without open air burning.

j) The Contractor must ensure that there is no spillage of oil or paints on the floors/grounds etc.

k) All representatives/supervisors/workers of contractors must take safety and environmental induction training and comply with the instructions given therein.

## 39.0 REMEDIES OF PURCHASER

39.1 All costs or expenses for which the Contractor may become liable to the Purchaser under the Contract will be recovered from any invoice of the Contractor after informing the Contractor .If no amount is due to the Contractor such amount will be billed with evidence by the Purchaser to the Contractor. The Contractor shall pay the bills within sixty (60) days after receipt or advice the Purchaser of any objections within fifteen (15) days.

39.2 Failure of either party to insist upon strict performance of any of the terms and conditions of the Contract will not be deemed as a waiver of any rights or remedies that the said party may have and will not be deemed as a waiver of any subsequent default under the terms and conditions of the Contract. No right or remedy of the either party will be exclusive of any other right or remedy and the said party will have all rights and remedies given under the Contract and now or hereafter existing in law or by statute. The shipping or delivery by the Contractor or receiving of the payment by from the Purchaser for the plant, machinery and equipment under this Contract will not be deemed a waiver of any rights for any prior failure by the Contractor to comply with any of the provisions of the Contract.

39.3 All costs, charges damages or expenses which the Purchaser may have paid, for which under the Contract, the Contractor is liable, may be deducted, by the Purchaser from any money due or becoming due by him to the Contractor under the contract, or may be recovered by action of law or otherwise from the Contractor.

## 40.0 ARBITRATION

40.1 Any dispute(s) or difference(s) whatsoever arises under or out of or in connection with this Contract, or in respect of any defined legal relationship associated therewith or derived therefrom, the parties agree resolve/settle the same by submitting that dispute to arbitration in accordance with the International Centre for Alternative Dispute Resolution (ICADR) Arbitration Rules 1996.

The authority to appoint the arbitrator(s) shall be the International Centre for Alternative Dispute Resolution (ICADR).

The international center for alternative dispute resolution will provide administrative services in accordance with ICADR Arbitration Rules 1996

The language of the arbitration proceeding shall be English

The place of arbitration proceedings shall be Telangana, India.

Note: In respect of PSUs/Government organizations, the DPE guidelines shall be applicable.

Work under the contract shall be continued by the contractor during the arbitration proceedings, unless otherwise directed in writing by the Purchaser or unless the matter is such that the work cannot possibly be continued until the decision of the arbitrators is obtained, and save as those which are otherwise expressly provided in the Contract, no payment due or payable by the purchaser shall be withheld on account of such arbitration proceedings, unless it is the subject matter or one of the subject matter thereof.

40.2 Work under the Contract shall be continued by the Contractor during the arbitration proceeding, unless otherwise directed in writing by the Purchaser or unless the matter is such that the work cannot possibly be continued until the decision of the arbitrators is obtained, and save as those which are otherwise expressly provided in the Contract, no payment due or payable by the Purchaser shall be withheld on account of such arbitration proceedings, unless it is the subject matter or one of the subject matters thereof.

## 41.0 ADDITIONAL CONDITIONS FOR COMPLETE ERECTION OF EQUIPMENT

41.1 When the Contract requires the Contractor to undertake complete erection of plant, machinery and equipment start-up and putting into commission, the following conditions will apply, in conjunction with other clauses of the conditions of contract as stated hereinbefore in so far as they are applicable.

(i) The Contractor shall be solely responsible for the satisfactory Installation, start-up and commissioning of the plant, machinery and equipment supplied under the Contract, including demonstration of performance guarantees notwithstanding that the Contractor may have been assisted by the Purchaser or his authorized representative in doing so.

(ii) If the Contractor performs any work in a manner contrary to the Contract without the written approval of the Engineer/Purchaser, the Contractor shall bear all the costs arising there from and shall be responsible for all the losses to the Purchaser arising there from.

### 41.3 Installation

Installation and erection work shall be carried out by the Contractor in the presence and under the general supervision and to the satisfaction of the Engineer/Purchaser. The Contractor shall receive instructions and directions from the Engineer/Purchaser in connection with the Work and shall strictly abide by the same, within the preview of the Contract. If the Contractor performs

any work in a manner contrary to the Contract without the written approval of the Engineer/Purchaser, the Contractor shall bear all the costs arising therefrom and shall be responsible for all the damages and direct losses to the Purchaser arising therefrom.

**41.4 Facility to Purchaser's Engineers**

The Contractor shall provide every reasonable facility and opportunity to the Purchaser's engineers and personnel as required by the Purchaser to become familiar with the Installation, erection, operation and maintenance of the equipment supplied under the Contract.

**41.5 Programme and Particulars of work and Progress Reports**

41.5.1 The Contractor shall submit to the Purchaser for his approval before the commencement of erection work and subsequently, at such times as may be required by the Purchaser, the programme and order in which the Contractor proposes to carry out the work, with the date and completion times for various parts and phases of the work, including particulars regarding the Contractor's arrangements for carrying out the work and of the erection and transportation equipment and tools and category wise staff and labour which the Contractor shall engage on the work, such programmes shall be within the overall time schedule of completion of erection of equipment as specified in the contract. The submission to and approval by, the Purchaser of such programme or the furnishing of such particulars shall not relieve the Contractor of any of his duties or responsibilities under the Contract.

41.5.2 During the progress of the Work, the Contractor shall submit to the Engineer monthly progress reports and such other reports on the Installation work and the Contractor's field organization as may be required by the Engineer.

**41.6 Contractor's Agent and Personnel**

41.6.1 In order to carry out responsibilities under this section, the Contractor shall employ one competent agent, whose name shall be previously communicated in writing by the Contractor to the Purchaser, to superintend the Installation work. The said agent shall be constantly present at Site during working hours and during the extended period so granted to carry out the Installation work and any instructions given to the said agent by the Purchaser and / or Engineer shall be deemed to have been given to the Contractor.

41.6.2 The Contractor shall ensure that his agent and every other personnel employed by him at Site shall co-operate with any and all others agencies engaged in the Site. Failure to extend such co-operation or misconduct or incompetence or negligence by any individual including the agent, shall be sufficient cause for removal from the Site of such individual by the Contractor and the Contractor shall remove such individual forthwith from the Site, if required by the Purchaser. In such cases, the Contractor shall provide immediately competent personnel to replace such individual.

**41.7 Working Hours**

A normal working day shall mean eight hours of work. There shall be six (6) working days in a week. No work during Sundays and other locally recognized holidays and during night shall be carried out by the Contractor without the written permission of the Engineer. With the exception that, when the carrying out the work is unavoidable or necessary for the saving of life or property or for the safety of the erection work, the Contractor shall carry out such work and shall immediately inform the Purchaser / Engineer to that effect.

**41.8 Supply of Installation Equipment, Materials and Labour**

Unless otherwise provided in the Contract, the Contractor at his own expenses shall supply all Installation, erection and transportation equipment, tools, materials and labour and all other things of every kind necessary for the due fulfilment of the Contract.

**41.9 Delay in Obtaining Materials from Purchaser**

If the Purchaser has undertaken to supply any material specified in the Contract at rates and conditions stated therein, the Contractor shall keep himself in touch with the day to day position regarding the supply of materials by the Purchaser and shall so adjust the progress of the Work that his labour may not remain idle nor may there be any other claim due to or arising from delay in obtaining the materials. No claim whatsoever shall be admissible by the Purchaser on account of delay in supplying materials, if any.

**41.10 Purchaser's Installation and Transportation Equipment**

The Purchaser may at his discretion give on hire to the Contractor installation and/or transportation equipment, if available, for the use of the Contractor (but without prejudice to the Contractor's obligations under Clause 41.8 hereof) during the execution of the work on such terms as may be specified in the Contract or in a separate agreement for Hire of plant. The Contractor shall take all reasonable care of all such equipment belonging to the Purchaser but committed to his charge and shall be responsible for all damage or loss caused to such equipment while they are in his charge. On completion of the Contract or at its termination for any reason whatsoever or at any earlier occasion as required by the Purchaser, the Contractor shall return all such equipment to the Purchaser in good order and repair, wear and tear expected, and shall be entirely responsible for any failure to account for the same or any damage done thereto.

**41.11 Return of Surplus Materials**

Notwithstanding anything contained to the contrary anywhere in this Contract, wherever any materials for the execution of the work are procured with the assistance of the Purchaser, either by issue from the Purchaser's stocks or purchase made under orders or permits or license issued by the Purchaser, the Contractor shall use the said materials economically and solely for the purpose of the work and shall not dispose of them without the written permission of the Purchaser and shall return to the Purchaser all such surplus serviceable materials that may be left with the Contractor after the completion of the Contract or at its termination for any reason whatsoever, on being paid for or credited such price as the Purchaser shall determine, having due regard to the initial cost and the condition of the materials at the time of such returnthereof. The price to be

allowed to the Contractors however shall not exceed the amount charged to him, excluding the storage charge if any. The decision of the Purchaser in this regard shall be final and conclusive. In the event of a breach of the aforesaid condition, the Contractor shall (in addition to making himself liable for action for contravention of the terms of the license or permit and/or for criminal breach of trust) be liable to the Purchaser for payment of double the cost the material not returned as determined by the Purchaser plus all money, advantages of profits resulting or which in the usual course would have resulted to him by reason of such breach.

**41.12 Accident or Injury to Workmen**

41.12.1 The Contractor shall be solely liable for any accident or injury that may happen to any of his personnel engaged in connection with the installation work according to the Contract within the battery limit. The Purchaser shall not be liable for or in respect of any damage or compensation payable at law in respect of or in consequence of any accident or injury to any personnel in the employment of the Contractor and the Contractor shall indemnify and keep indemnified the Purchaser against all such claims, damages, compensations and proceedings.

41.12.2 The Contractor shall forthwith report to the Engineer all cases of accidents to any of his personnel and shall make every arrangement to render all possible assistance and aid to the victims of the accident.

**41.13 Compliance with Statutory and other Regulations**

41.13.1 The Contractor shall, in all matters arising in the performance of the Contract, confirm at his own expense with the provisions of all Central or State statutes, ordinances or laws and the rules, regulations, or bye-laws of any local or other duly constituted authority and shall keep the Purchaser indemnified against all penalties and liabilities of every kind for breach of any such statute, ordinance, law, rule, regulation or bye-law.

41.13.2 The Contractor shall give all notices and pay all fees and taxes required to be given or paid under any Central or State statutes, ordinances or other laws or any regulation or bye-laws of any local or other duly constituted authority in relation to the Installation work except where the Purchaser is statutorily required to obtain such approvals / clearance.

**41.14 Payment of Taxes for Foreign Personnel**

The Contractor shall pay all taxes due in India in respect of all personnel employed by him for Installation work, including any foreign personnel who are non-residents of India as detailed under the Contract.

**41.15 Work Permits, Passports etc.**

The Contractor shall be responsible for arranging and obtaining at his own cost the necessary work permits, passports, visas, police permits and expenses for custom's duty related to personal

and other effects of any personnel employed by him for Installation work, who are non-residents of India. Purchaser shall make all necessary efforts in order to help the Contractor in doing so.

**41.16 Travelling Expenses**

All travelling expenses for the Contractor's personnel shall be borne by the Contractor.

**41.17 Labour Rules**

41.17.1 *Provisions of Contract Labour Act*

In respect of all labour, directly or indirectly, employed by the Contractor for the Installation work, the Contractor shall comply with the provisions of the Contract Labour (Regulation and Abolition) Act, 1970, or any amendment thereof, and all legislations and rules of the State and/or Central Government or other local authority, framed from time to time governing the protection of health, sanitary arrangements, wages, welfare and safety for labour employed on the Installation work. The rules and other statutory obligations with regard to fair wages, welfare and safety measures, maintenance of registers etc., will be deemed to be part of the Contract.

41.17.2 *Provisions of Minimum Wages and Payment of Wages Act*

(i). The Contractor shall comply with the provisions of the Minimum Wages Act, 1948, the Payment of Wages Act, 1936, Provident Fund and Miscellaneous Provisions Act 1972, Employees State Insurance Act 1948, and any amendment thereof in respect of all employees employed by him for the purpose of carrying out the Installation work.The Contractor shall supply to the Purchaser any labour required to work wholly or partly under the direct order and control of the purchaser, whether in connection with any work being executed by the contractor or otherwise for the purpose of purchaser, and such labour shall for the purpose of this clause still be deemed to be persons employed by the Contractor.

(ii). If any amount shall, as a result of any claim or application made under the said applicable laws, be directed to be paid by the Purchaser, such, amounts shall be deemed to be amounts payable to the Purchaser by the Contractor. On failure by the Contractor to repay the Purchaser, any amounts paid by the Purchaser as aforesaid, within seven (7) days of demand being made from the Contractor, the Purchaser shall be entitled to recover the same from any amounts due or accruing to the Contractor under this or any other contract with the Purchaser.

(iii). In the event of the retrenchment of workers by the Contractor or Sub-Contractors employed by the Contractor during or after the completion of the Work, the retrenchment compensation and other benefits will be paid by the Contractor to the workers as per the Industrial Disputes Act.

41.17.3 *Provisions of Employee Compensation Act*

The Contractor shall at all times indemnify and keep indemnified the Purchaser against all claim for compensation under the provision of the Employee Compensation Act, 1923 or any other law for the time being in force and as amended from time to time, in respect of, any workman employed by the Contractor in carrying out of the Contract and against all costs and expenses or penalties incurred by the Purchaser in connection therewith. In every case in which, by virtue of the provisions of Section 12, sub-section (1) of the Employee Compensation Act, 1923, the Purchaser is obliged to pay compensation to a workman employed by the Contractor in executing the contract the Purchaser shall recover from the Contractor the amount of the compensation so paid and, without prejudice to the rights of the Purchaser under Section 12, sub-section (2) of the said Act, the Purchaser shall be at liberty to recover such amount or any part thereof deducting it from the security deposit or from any sum due by the Purchaser to the Contractor whether under this Contract or otherwise. The Purchaser shall not be bound to contest any claim made against him under Section 12, sub-section (1) of the said 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 consequence of contesting such claim.

41.17.4 *Accommodation for Contractor's Staff*

No quarters shall normally be provided by the Purchaser for the accommodation of the Contractor or any of his staff employed in connection with the Installation work. In exceptional cases where accommodation is provided to the Contractor at the Purchaser's discretion, recoveries shall be made at such rates as may be fixed by the Purchaser towards the rent of the building and furniture and fittings, if any, therein, as well as charges for electric current, water supply and conservancy.

41.17.5 *Accommodation for workmen*

The Contractor shall, at his own expense, make adequate arrangement for housing, supply of drinking water and provision of toilets for his staff and labour and disposal of sewerage. Suitable sites on the Purchaser's land, if available, may be allotted to the Contractor for the installation of camp site on such terms and conditions as may be prescribed by the Purchaser. All camp-sites shall be maintained in clean and sanitary condition by the Contractor at his own cost.

The Contractor shall comply with all sanitary rules in force and carry out all sanitary measures and permit inspection of all sanitary arrangement at all reasonable times by the Purchaser. Should the Contractor fail to make adequate sanitary arrangements, these will be provided by the Purchaser and the cost thereof shall be recovered from the Contractor.

41.17.6 *Preservation of Peace*

The Contractor shall take requisite precautions and use his best endeavour to prevent any riotous or unlawful behaviour by or amongst, his workmen and/or others employed by him and for the preservation of peace and protection of the inhabitants and security of property in the neighbourhood of the Site. In the event of the Purchaser requiring the

maintenance of a special police force at or in the vicinity of the Site during the tenure of the Contract, in consequence of the riotous or unlawful behaviour by or amongst the Contractor's workmen and/or others employed by him, all expenses thereof and costs of all damages due to such riotous or unlawful behaviour shall be borne by the Contractor, and, if paid by the Purchaser, shall be recoverable from the Contractor from any moneys due or that may become due to the Contractor by the Purchaser. The Contractor also undertakes to indemnify and hold harmless the Purchaser against any claims on such account.

41.17.8 *Infectious Diseases*

The Contractor shall remove from his camp site such labour and their families who refuse protective inoculations and vaccinations when called upon to do so by any competent authority. In the event of any breakout of infectious disease in the camp site, the Contractor undertakes to forthwith provide for all medical facilities and assistance and take all possible steps to prevent spread of such disease and also discard and destroy all belongings of and used materials by the infected parties and promptly arrange new accommodation in healthy sites as may be required by the labour and employees of the Contractor.

41.17.9 *Medical Facilities at Site& health & safety*

The Contractor shall provide medical facilities at the Site as per rule in force in relation to the strength of the Contractor's staff and workmen. The Contractor shall at all times take all reasonable precaution to maintain the health and safety of its personnel, employees and workmen. The Contractor shall ensure that medical staff, first aid facilities, sick bay and ambulance facilities/services are available at all times at the Site and suitable arrangements are made for all necessary welfare and hygiene requirements and for prevention of epidemics. The Contractor shall also appoint an accident prevention officer at the Site responsible for maintaining safety and protection against accidents.

41.17.10 *Use of Intoxicants*

The sale, use & consumption of alcohol or other intoxicating beverages in the Site or in any of the buildings, encampments or tenements owned, occupied by, or within the control of the Contractor or any of his employees or Sub-Contractors is forbidden, and the Contractor shall secure strict compliance with this condition.

41.17.11 *Age Limits of Labour*

The Contractor shall not employ children below the age of 18 as labourers for the Installation work.

41.17.12*Observance by Sub-Contractor*

The Contractor shall be responsible for the observance of the provisions of Clauses 41.17.1 to 41.17.11 hereof by any Sub-Contractor(s) employed by him in the execution of the Contract.

41.17.13 *Contractor's personnel*

The Contractor's personnel shall be appropriately qualified, skilled and experienced in their respective trades or occupations. The Engineer/Purchaser may require the Contractor to remove (or cause to be removed) any person employed on the Site or Works, including the Contractor's representative if applicable, who: (i) persists in any misconduct or lack of care, (ii) carries out duties incompletely or negligently, (iii) fails to conform with any provisions of the Contract, or (iv) persists in any conduct which is prejudicial to safety, health, or the protection of the environment. If appropriate, the Contractor shall then appoint (or cause to be appointed) a suitable replacement person.

## 41.18 Time of Completion for Installation Work and Delays

41.18.1 *Date of Commencement of Installation Work*

The date of commencement for the Installation work shall be reckoned from the dates on which the Contractor is given possession of the Site to commence Installation, which will be intimated to him in writing by the Purchaser and shall be as per the Bar/Pert Chart attached to the Contract Specifications.

41.18.2 *Possession of Site*

In terms of the Contract, the extent of portions of the Site of which the Contractor is to be given possession from time to time and the order in which such portion shall be made available to him, and subject to any requirement in the Contract to the order in which the Installation work shall be executed, the Purchaser will give to the Contractor possession of as much of the Site as may be required to enable the Contractor to commence and proceed with the Installation work. This will be in accordance with the programme referred to in Clause 41.5.1 hereof and otherwise in accordance with such reasonable proposals of the Contractor as he shall give by notice in writing to the Purchaser / Engineer. The Purchaser, will from time to time, as the work proceeds, give to the Contractor possession of such further portions of the Site as may be required to enable the Contractor to proceed with the Installation work, in accordance with the said programme or proposals (as the case may be). If the Contractor suffers delay from failure on the part of the Purchaser to give possession in accordance with the terms of this clause, the Purchaser shall grant an extension of time for the completion of the work. No compensation will be payable by the Purchaser for any such failure and delay.

41.18.3 *Time of Completion for Installation Work*

Time is the essence of the Contract. The whole of the work, including conducting performance tests to demonstrate performance guarantees according to the Contract shall

be completed within the time stipulated in the Contract, which shall be reckoned from the date of the commencement of the Installation work in accordance with Clause 41.18.1 hereof. Execution times indicated in the Contract are based on the assumption that the Site will be handed over to the Contractor free of obstacles and all other preconditions for installation of the material delivered are fully met.

41.18.4 *Extension of Time of Completion for Installation Work*

Save and except elsewhere provided in the Contract, should the amount of additional work of any kind or other circumstances of any kind whatsoever, which may occur, be such as fairly to entitle the Contractor to an extension of time for the completion of the Installation work, the Purchaser shall discuss and determine the period of such extension mutually with the Contractor.

41.18.5 *Rate of Progress*

The whole of the materials, plant, machinery, equipment and labour to be provided by the Contractor and the mode, manner and speed of execution of the Installation work are to be of a kind, and conducted in a manner, as per time schedule. Should the rate of progress of the Installation work be at any time, in the opinion of the Engineer / Purchaser, too slow to ensure the completion of the Work by the prescribed time or extended time for completion, the Purchaser / Engineer shall so notify the Contractor in writing, and the Contractor shall thereupon take such steps, as he may think necessary and the Purchaser / Engineer may approve, to, expedite the progress so as to complete the entire Installation work by the prescribed time or extended time for completion. If the Contractor shall request permission to work by night as well as by day, then if the Engineer shall grant permission to work also by night, then the Contractor shall not be entitled to any additional payment whatsoever for so doing but, if such permission is refused and there is no equivalent practicable method of expediting the progress of the work, the time for completion of the Installation work may be extended by the Purchaser by such period if any, as is solely attributable to such refusal and deemed proper by the Purchaser / Engineer.

*41.18.6 Night work without disturbance*

If work at night is permitted as aforesaid it shall be carried out without unreasonable noise and disturbance. The Contractor shall indemnify the Purchaser from, and against, any liability for damage on account of noise or other disturbance created while, or in carrying out the Installation work, and from, and against, all claims, demands, proceedings, damages costs, charges and expenses whatsoever in regard to or in relation to, such liability.

41.18.7 *Liquidated damages due to Delay in Completion*

(i) If the Contractor fails to deliver as per the time schedules or complete the commissioning of the Project within the Time for Completion specified in the

Contract or any extension thereof (allowed without Liquidated Damage) due to reasons attributable to the Contractor including its Sub-Contractors, the Purchaser shall be entitled to recover the amount of Liquidated Damages, but not by way of penalty, by making deductions from the Contractor's account lying with the Purchaser and if the amount to be deducted is not sufficient or available then by encashment of Contractor's Bank Guarantees, at the rate of 1% of the Contract Price, specified in the Contract , including taxes, duties, levies, cess, etc. per complete week of delay or part thereof up to a maximum of 10% of such Contract Price including taxes, duties, levies, cess, etc.

In case, the Contractor is a Consortium, the Purchaser shall recover the amount of Liquidated Damages, but not by way of penalty, by making deductions from the account of the lead member of Consortium and if the amount is not available then as a last resort by encashment of their Bank Guarantees, at the rate of 1% of the Contract Price, specified in the Contract , including taxes, duties, levies, cess, etc. per complete week of delay or part thereof up to a maximum of 10% of such Contract Price including taxes, duties, levies, cess, etc.

(ii) Any recovery of Liquidated Damages shall be effected from the amount payable to the Contractor against Commissioning, Performance Guarantee Test, Final Acceptance Certificate and Performance Bank Guarantee.

(iii) The Purchaser may, without prejudice to any other method of recovery, deduct the amount of such damages from any amounts in his hands due to the Contractor. The payment or deduction of such damages shall not relieve the Contractor from his obligations to complete the work or from any other of his obligations and liabilities under the Contract.

**41.19 Safety, Watching and Lighting**

41.19.1 The Contractor shall be responsible for the provision of safety arrangement and protective clothing for all his workmen on Site whether or not engaged in actual Installation work thereof. He shall ensure that all his workmen on Site use safety belts, gloves, helmets, masks etc. as are necessary for their safety. The Contractor shall also be responsible for safety arrangement of all equipment used by him in connection with the installation and transportation work and shall employ only trained & competent operators to man the installation and transportation equipment. The Contractor shall use only tested equipment, tools, wire ropes etc. and shall periodically renew tests to the satisfaction of the Engineer. All test certificates shall be made available to the Engineer at site as and when required by him.

41.19.2 The Contractor shall, in connection with the Installation work, provide and maintain at his own cost all lights, guards, fencing and watching, when and where necessary or required by the Engineer or by any duly constituted authority, for the protection of the work and/or for the safety and convenience of the public or others. The Contractor shall

provide at his own cost the necessary watch and ward to ensure security and safety of all equipment and materials placed under the Contractor's custody.

**41.20 Security Regulations**

The Contractor shall abide by all the security regulations at Site promulgated by the Purchaser from time to time. The Contractor shall provide identity badges for all his personnel which must be properly displayed by them at Site. In order to facilitate the issue of exit gate permits by the Purchaser for materials and equipment after the completion of the work, the Contractor shall submit to the Purchaser lists of installation equipment etc. and/or other materials that shall be taken by him inside the Site from time to time.

**41.21 Care of Work**

From the commencement to the completion of the installation work the Contractor shall take full responsibility for the care of plant, machinery and equipment and for all temporary works and in case any damage or loss shall happen to the plant, machinery and equipment or to temporary works from any cause whatsoever shall at his own cost replace or repair and make good the same.

**41.22 Damage to Persons or Property**

The Contractor shall indemnify and keep indemnified the Purchaser against all losses and claims for injuries or damage to any person or any property whatsoever which may arise out of, or in consequence of, the work at site carried out by the Contractor and against all claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto.

**41.23 Extraordinary Traffic**

The Contractor shall use every reasonable means to prevent any of the highways or bridges communicating with on the routes to the Site from being subjected to extraordinary traffic within the meaning of the Road Traffic Act, by any traffic of the Contractor or any of his Sub-Contractors and in particulars the Contractor shall select routes and use vehicles and restrict and distribute loads so that any such extraordinary traffic as will inevitably arise from moving of plant and materials from and to the Site shall be limited so far as reasonably possible and so that no unnecessary damage or injury may be occasioned to such highways and bridges. For any damage caused to highways or bridges by extraordinary traffic as aforesaid the Contractor shall be solely responsible.

**41.24 Co-operation with other Contractors**

The Contractor shall plan and execute his work in a phased manner as directed by the Purchaser from time to time and shall fully co-operate with other agencies working at site simultaneously and afford all responsible facilities to these agencies so as not to obstruct or retard the works simultaneously being executed by such agencies in any way.

**41.25 Inspection of other Contractor's Works**

If any part of the Contractor's work depends for proper execution on the Work of another contractor, the Contractor shall inspect and promptly report to Engineer/Purchaser, the defects, if any in such work that render it unsuitable for such proper execution and result. The Contractor's failure to so inspect and report shall constitute an acceptance of the other contractor's work as fit and proper for the reception of his work, except as to defects which may develop in the other contractor's work after the execution thereof.

**41.26 Vesting of Constructional / Erection Plant etc.**

All constructional/erection plant, temporary works and materials owned by the Contractor, or by any company in which the Contractor has a controlling interest, shall, when brought on to the Site, immediately be deemed to become the property of the Purchaser.

**41.27 Irremovability of Constructional/Installation, Materials etc.**

No Constructional/erection plant, temporary works or materials or any part thereof shall be removed from the site by the Contractor without the written consent of the Purchaser, which consent shall not be unreasonably withheld where the same is no longer immediately required for the purpose of the completion of the work and the Purchaser will permit the Contractor the exclusive use of all such constructional/erection plant, temporary works and materials in and for the completion of the work until the occurrence of any events which gives the Purchaser the right to exclude the Contractor from the Site and proceed with the completion of the Work.

**41.28 Removal of Constructional/Installation Materials**

Upon the removal of any such constructional/erection plant, temporary works and materials as have deemed to have become the property of the Purchaser under Clause 41.26 hereof, with consent as aforesaid, the property therein shall be deemed to revest in the Contractor and upon the completion of the Work, the property in the remainder of such constructional/erection plant, temporary works, and materials as aforesaid shall be deemed to re-vest in the Contractor. If the Contractor fails to remove any constructional/erection plant, temporary works or materials as aforesaid, within such reasonable time after completion of the Work as may be allowed by the Purchaser, then the Purchaser may sell any such constructional/erection plant, temporary works and materials as aforesaid and after deduction from any proceeds of sales, the costs, charges and expenses of and in connection with such sale, shall pay the balance (if any) to the Contractor, but to the extent that the proceeds of any sale are insufficient to meet all such costs, charges and expenses, the excess shall be a debt due from the Contractor to the Purchaser and shall be deductable or recoverable by the Purchaser accordingly as aforesaid.

**41.29 Purchaser not liable for Loss or Injury to Construction/Erection Plant**

The Purchaser shall not at any time be liable for the loss of or injury to, any of the constructional / erection plant, temporary works or materials.

### 41.30 Work in or around an Operating Plant

When the work is being carried out in or around an operating plant, where the plant must run uninterrupted, the Contractor shall only work at specified places and times as mutually arranged between the Contractor and the Purchaser. The Contractor shall take sufficient care in moving his construction erection plant and equipment from one place to another in an operating plant so that they may not cause any damage to the property of the purchaser, like roads, overhead and underground cables, pipes and/or any other services or equipment or building and in the event of the contractor's failure to do so, the cost of such damages, including eventual loss of working hours as estimated by the Purchaser, is to be borne by the Contractor.

### 41.31 Site to be cleared on Completion of Work

During erection the Contractor shall at all times keep the working and storage areas used by him free from accumulation of waste materials and/or rubbish, immediately after the completion of erection, the Contractor shall remove or dispose of all temporary structures, waste, debris, rubbish etc. and leave the Site in a clean condition to the satisfaction of the Purchaser.

### 41.32 Possession Prior to Completion

The Purchaser shall have right to take possession of or use any completed or partially completed part of the Work. Such possession or use shall not be deemed to be in acceptance of any Work done not in accordance with the Contract.

### 41.33 Withholding Payment

The Purchaser will have full liberty to withhold and set off all sums due or to become due to the Contractor (including security deposit), whether under this or any other contract, against any sum due or to become due to the Purchaser from the Contractor under this or any other contract. The Purchaser also reserves the right to withhold the whole or part of the payment claimed by the Contractor which in the opinion of the Purchaser, is necessary to protect himself from loss on account of defective work not remedied, guarantees not met, claims filed against the Contractor, failure by the Contractor to make due payments for materials, labour employed by him, damages to other contractor etc. When grounds for withholding payments are removed to the satisfaction of the Purchaser, payment of the amount due to the Contractor shall be made by the Purchaser without interest.

### 41.34 Termination of Contract

The Purchaser, without prejudice to any other rights or remedies it may possess, may terminate the Contract in case of the Contractor's noncompliance of his undertakings and obligations under this Contract and more particularly but not limited to the following circumstances by giving notice of termination and its reasons thereof to the Contractor:

(i). if the Contractor becomes bankrupt or insolvent, has a receiving order issued against it, compounds with its creditors, or if, the Contractor is a corporation, a resolution is passed

or order is made for its winding up (other than voluntary liquidation for the purpose of amalgamation or reconstruction), a receiver is appointed over any part of its undertaking or assets, or if the Contractor takes or suffers any other analogous action in consequence of debt;

(ii). if the Contractor assigns or transfers the Contract or any right or interest therein in violation of the terms of the Contract;

(iii). if the Contractor

a) abandoned or repudiated the Contract; or
b) have an execution levied on his goods or property; or
c) has without any valid reasons to the satisfaction of the Purchaser failed to commence Work as provided in the Contract promptly or has suspended the progress of the Contract performance for more than 14 (fourteen) days after receiving a written instruction from the Purchaser to proceed; or
d) persistently fails to execute the Contract in accordance with the Contract or persistently neglects to carry out its obligations under the Contract; or
e) Refuses or is unable to provide sufficient materials, service or labour and adequate resources to execute and complete the Work in the manner and progress rate as specified in the Contract.

(iv). Unjustified and un-warranted interruption of services performed by the Contractor and such interruption occurred for more than 15 (fifteen) days without assigning any reason.

(v). Errors, negligence, insufficiencies in the specifications and contractual work under execution, or failure to supply sufficient material or man-power as per Technical Specification or other similar circumstances affecting the quality of work for reasons attributable to the Contractor.

(vi). If during the work, it appears that the design, specifications, recommendations supplied / provided by or through the Contractor do not conform to the terms and conditions of the Contract and good and sound current engineering or fabrication practices.

(vii). If the Contractor disregards the instructions of the Purchaser in relation to the execution of the Installation work or refuses to implement instructions received from the Purchaser or Engineer within the stipulations of this Contract.

(viii). If the Contractor promises, offers or gives any bribe, commission, gift or advantage, either by himself or through his agent, to any officer or employee of the Purchaser or Engineer or to any person on their behalf in relation to the execution of this Contract.

Then, in any of the aforesaid cases, the Purchaser may serve the Contractor with a notice in writing to that effect, and if the Contractor does not, within seven (7) days after the delivery to him of such notice, proceed to make good his default, , and carry on the work in compliance with such directions as stated in the aforesaid notice to the entire satisfaction of the Purchaser, the

Purchaser shall be entitled, after giving forty eight (48) hours` notice in writing to expel the Contractor from the Site without thereby avoiding the Contract or releasing the Contractor from any of his obligations or liabilities under the Contract or effecting the rights and powers conferred on the Purchaser by the Contract. The expiry of forty-eight (48) hours from the time of serving such notice in writing to the Contractor by the Purchaser shall be conclusive evidence of the expulsion of the Contractor from the Site, notwithstanding any physical presence of the Contractor or his workmen at Site after such expiry.

Upon receipt of termination hereof, the Contractor shall either immediately or upon such date as may be provided in the notice of termination:

(i). cease all such work, except for such work as the Purchaser may specify in the said notice for the sole purpose of protecting that part of the Project already executed or any work required to leave the Site in a clean and safe condition;

(ii). terminate all sub contracts except those to be assigned to the Purchaser pursuant to sub clause (iv) below;

(iii). deliver to the Purchaser the parts of the work /Project executed by the Contractor up to the date of termination;

(iv). to the extent legally permissible, assign to the Purchaser all rights, title and benefit of the Contractor in relation to the plant, machinery and equipment as at the date of termination and as may be required by the Purchaser, in any subcontracts concluded between the Contractor and its subcontractors;

(v). deliver to the Purchaser all drawing and specifications and other documents prepared by the Contractor or its subcontractor as at the date of termination in connection with the work.

Upon such expulsion or termination, the Purchaser may himself complete the Installation work or may employ any other contractor to complete the Work at the risk and cost of the Contractor. In such case, the Contractor shall be liable for any costs for obtaining and /or executing the balance of the work from another agency/contractor in excess of the Contract price. In case of termination of part of the Contract, the Contractor will continue performance on the Contract to the extent not terminated by the Purchaser. The Purchaser or such other contractor may use for such completion so much of the constructional / installation plant, temporary works and materials which has become the property of the Purchaser or which is available on the Site pursuant to Clause 41.28 hereof as he or they may think proper. The Purchaser pursuant to Clause 41.28 is entitled at any time to sell any of the said constructional / installation plant, temporary works and unused materials and apply the proceeds of sale in, or towards, the satisfaction of any sums due or which may become due to him from the Contract or under the Contract. The Purchaser may to the exclusion of the right of the Contractor take over and use any Contractors equipment owned by the Contractor and on the Site in connection with the Work for such reasonable period as the Purchaser considers expedient for the supply and Installation of the Project. Provided always that the Purchaser shall at any time after expelling the Contractor from the Site, have the right to rescind this Contract and claim damages from the Contractor. Provided further that, the exercise of any of the rights aforesaid, shall not prejudice the Purchaser`s right and remedies under the law and under the Contract.

**41.35 Waiver**

Provided always that, in any case in which any of the powers conferred upon the Purchaser by Clause 41.34 hereof shall have become exercisable but have not been exercised, the non-exercise thereof shall not constitute a waiver of any of the conditions thereof, and such powers shall notwithstanding be exercisable by the Purchaser in the event of any future case of default by the Contractor for which his liability for past and future defaults shall remain unaffected. Further, if any condition of the Contract has been waived by the Purchaser at the request of the Contractor in a specific case this will not constitute a waiver in all similar cases in future and will not be cited as precedence.

**41.36 Valuation on Determination**

The Purchaser shall as soon as may be practicable, after such expulsion of the Contractor from the Site, fix and determine ex-parte or by, or after, reference to the parties or after such investigation or enquiries as he may consider fit to make or institute and certify the amount (if any) which had at the time of such expulsion been earned by or would accrue to the Contractor in respect of the erection work till then executed by him under the Contract, as the Purchaser shall consider reasonable and proper. The Contractor shall have however no claim to compensation for any loss sustained by him, by reason of his having purchased or procured any equipment materials or entered into any commitments or made any advances on account of, or with a view to, the execution of the erection work or the performance of the Contract.

**41.37 Payment after Termination**

If the Contractor is expelled as aforesaid, the Purchaser shall not be liable to pay to the Contractor any moneys, including the security deposit on account of the Contract, until the costs of the completion of the erection work, considering the cost of carrying out the erection work, either by the Purchaser itself or by any other contractor employed by it, in excess of the sum which would have been payable to the Contractor if the erection work had been completed by the Contractor under the terms of Contract, damages for the delay in completion (if any) and all other expenses incurred by the Purchaser have been ascertained. The Contractor shall then be entitled to receive only such sum (if any) as the Purchaser may certify after deduction of the said amount from the sum payable to the Contractor. But if such amount shall exceed the sum which would have been payable to the Contractor, then the Contractor shall, upon demand, pay to the Purchaser the amount of such excess, and it shall be deemed a debt due by the Contractor to the Purchaser and be recoverable accordingly.

**41.38 Jurisdiction**

The Contract and all questions, disputes or differences arising under or in connection with this Contract, subject to Arbitration clause, shall be subject to the exclusive Jurisdiction of the courts within the local limits of Telangana, India.

## 42.0 CONSTRUCTION OF CONTRACT

This Contract and the clauses thereof shall be interpreted and applied solely according their wording, to the objects in view. The Contract shall in all respects be construed and operated as a contract as defined in the Indian Contract Act, 1872, and, save as otherwise expressly provided herein, shall be governed by the provision of the said Act.

## 43.0 PENALTY FOR USE OF UNDUE INFLUENCE

The Contractor undertakes that he has not given, offered or promised to give, directly or indirectly any gift, consideration, reward, commission, fees, brokerage or inducement to any person in services of the Purchaser or otherwise in procuring the Contract or forbearing to do or for having done or forborne to do any act in relation to the obtaining or execution of the Contract or any other contract with the Government for showing or forbearing to show favour or disfavour to any person in relation to the contract or any other contract with the Government. Any breach of the aforesaid undertaking 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 anyone employed by him or acting on his behalf, as defined in Chapter IX of Indian Penal Code, 1860 or the Prevention of Corruption Act, 1947 or any other Act enacted for the prevention of corruption shall entitle the Purchaser to cancel the contract and all or any other contracts with the contractor and recover from the contractor the amount of any loss arising from such cancellation. A decision of the Purchaser or his nominee to the effect that a breach of the undertaking has been committed shall be final and binding on the contractor.

Giving or offering of any gift, bribe or inducement or any attempt to any such act on behalf of the Contractor towards any officer/employee of the Purchaser or to any other person in a position to influence the decision of the Purchaser, directly or indirectly or any attempt to influence any officer/employee of the Purchaser, directly or indirectly or any attempt to influence any officer/employee of the Purchaser for showing any favour in relation to this or any other contract, shall render the Contractor to such liability/penalty as the purchaser may deem proper, including but not limited to termination of the Contract, imposition of penal damages, forfeiture of the Bank Guarantee and refund of the amount paid by the purchaser.

## 44.0 GENERAL

Should any conditions in the General Conditions of Contract be contrary to the Special Conditions of the Contract, if any, such special contract conditions shall prevail.

## 45.0 LIMITATION OF LIABILITY

Except in cases of criminal negligence or willful misconduct the aggregate liability of the Contactor to the Purchaser, whether under the Contract, in tort or otherwise, including the cost of repairing or replacing defective equipment shall not exceed the 100% (Hundred Percent) of the Contract Price, provided that this limitation shall not apply to the cost of repairing or replacing defective plant and equipment or any obligation of the Contractor to indemnify the Purchaser with respect to copyright (applicable to software) patent infringement and Employee/workman compensation and other liabilities and compensation as per the clauses specified in the Contract.

## 46.0 LIABILITY OF GOVERNMENT OF INDIA

It is expressly understood and agreed between the Contractor and the Purchaser that the Purchaser is entering into this Contract solely on its own behalf and not on behalf of any other person or entity. In particular, it is expressly understood and agreed that the Government of India is not a party to this Contract and has no liabilities, obligations or rights hereunder. It is expressly understood and agreed that the Purchaser is an independent legal entity with power and authority to enter into e-contracts solely on its own behalf under the applicable laws of India and general principles of Contract Law. The Contractor expressly agrees, acknowledges and understands that the Purchaser is not an agent, representative or delegate of the Government of India. It is further understood and agreed that the Government of India is not and shall not be liable for any acts, omissions, commissions, breaches or other wrongs arising out of the Contract. Accordingly, the Contractor hereby, expressly waives, releases and foregoes any and all actions and claims, including cross claims, impleader claims or counter claims against the Government of India arising out of this Contract and covenants not to sue the Government of India as to any manner, claim, and cause of action or thing whatsoever arising of or under this Contract.

**PROCEDURE TO BE FOLLOWED FOR SUBMISSION OF TENDER**
**(In Separate Sealed Covers)**

**ENVELOPE NO.1:**

PART – I "TECHNO- COMMERCIAL BID"
ALONG WITH EMD AND PRE-CONTRACT INTEGRITY PACT
ENQUIRY NO. MDN/PUR/10210158/ADVT/084/22-23
DATE: 04.06.2022
DUE DATE : 01.07.2022 AT 10:30 HRS.

TO
THE ADDL. GENERAL MANAGER (PURCHASE)
MIDHANI, HYDERABAD - 500 058.

NAME OF THE TENDERER:

**ENVELOPE NO.2:**

PART - II "PRICE BID"
ENQUIRY NO. MDN/PUR/10210158/ADVT/084/22-23
DATE: 04.06.2022

TO
THE ADDL. GENERAL MANAGER (PURCHASE)
MIDHANI, HYDERABAD - 500 058.

NAME OF THE TENDERER:

PLEASE PUT ALL THE TWO ENVELOPES IN A BIGGER SIZE ENVELOPE:

**ENVELOPE NO: 3 (BOTH THE ENVELOPE NO. 1 & NO. 2 TO BE PLACED IN THE ENVELOPE NO. 3):**

TENDER NO.
ENQUIRY NO. MDN/PUR/10210158/ADVT/084/22-23
DATE: 04.06.2022
DUE DATE : 01.07.2022 AT 10:30 HRS.

CONTENTS:

1) TECHNO-COMMERCIAL BID ALONG WITH EMD
2) PRICE BID

To
THE ADDL. GENERAL MANAGER (PURCHASE)
MISHRA DHATU NIGAM LIMITED
PO: KANCHANBAGH,
HYDERABAD - 500 058.

NAME OF THE TENDERER:

Specimen Forms of Bank Guarantees

## BANK GUARANTEE FOR EARNEST MONEY DEPOSIT

1. WHEREAS MISHRA DHATU NIGAM LIMITED (A GOVERNMENT OF INDIA ENTERPRISE) PO KANCHANBAGH, HYDERABAD (hereinafter referred as " The Owner / Company"which expression shall unless repugnant to the subject or context includes its legal representatives, successors and assigns) has issued tender paper vide its Tender No: _____ for supply of _____ (herein after called "the said tender") to M/s. _____ (herein after called "the said Tenderer(s)" which expression shall unless repugnant to the subject or context includes their legal representatives, successors and assigns) and as per terms and conditions of the said tender, the tenderer shall submit a Bank Guarantee for Rs./USD_____ towards earnest money in lieu of cash.

2. WE (Bank Name and Address) (herein after called the bank) do hereby undertake to pay the amount due and payable under this Guarantee without any demur merely on a demand from the company stating that in the opinion of the company, which is final and binding, the amount claimed is due because of any withdrawal of the tender or any material alteration to the tender after the opening of the tender by way of any loss or damage caused or would be caused or suffered by the company by reason of any breach by the said tenderer(s) of any of the terms and conditions contained in the said tender or failure to accept the Letter of Intent / Agreement or that the amount covered under this Guarantee is forfeited. Any such demand made on the bank by the owner shall be conclusive as regards the amount due and payable by the Bank under this Guarantee. However, our liability under this guarantee shall be restricted to an amount not exceeding Rs./USD_____.

3. We undertake to pay to the Company any money so demanded notwithstanding any dispute or disputes raised by the tenderer(s) in any suit or proceeding pending before any office, court or tribunal relating thereto, our liability under this present guarantee being absolute and unequivocal. The payment so made by us under this bond shall be a valid discharge of our liability for payment thereunder. Our liability to pay is not dependant or conditional on the owner proceeding against the tenderer.

4. The guarantee herein contained shall not be determined or affected or suspended by the liquidation or winding up, dissolution or change of constitution or insolvency of the said tenderer(s) but shall in all respect and for all purposes be binding and operative until payment of all money due or liabilities under the said tender are fulfilled.

5. WE (Bank Name and Address) further agree that the guarantee herein contained shall remain in full force and effect during the period that would be taken for the finalization of the said tender and that it shall continue to be enforceable till the said tender is finally decided and order placed on the successful tenderer(s) and /or till all the dues of the company under/or by virtue of the said tender have been fully paid and its claims satisfied or discharged or till a duly authorized officer of the company certifies that the terms and conditions of the said tender have been fully and properly carried out by the said tender(s) or till date: _____ whichever is earlier and accordingly discharges the guarantee.

6. That the Owner/Company will have full liberty without reference to us and without affecting this guarantee to postpone for any time or from time to time, the exercise of any of the power of the owner under the tender.

7. We (Bank Name and Address), lastly undertake not to revoke this guarantee during its currency except with the previous consent of the company in writing. We further undertake to keep this Guarantee renewed from time to time on the request of the Tenderer(s).

8. Notwithstanding anything contained herein before, our liability shall not exceed Rs./USD_____ towards earnest money in lieu of cash and shall remain in force till (date). Unless a demand or claim under this Guarantee is made on us within three months from the date of expiry i.e., _____ we shall be discharged from all the liabilities under this guarantee.

Date: _____ (Bank Name and Address)
Signature of duly
Authorized person
On behalf of the Bank
With seal & signature code

Specimen Forms of Bank Guarantees

## FORM OF BANK GUARANTEE IN LIEU OF SECURITY DEPOSIT

1. This deed of guarantee executed on .....day of ..... by .....

(Name and Address of the Bank)

the Bank hereinafter called Bank (which term shall mean and include its successors and assigns wherever the context so admits) in favour of M/s. MISHRA DHATU NIGAM LIMITED., a government of India Enterprise incorporated and registered as a company under the Companies Act, 1956, having its registered office at P.O. Kanchanbagh, Hyderabad – 500 058, state of A.P. India, herein after referred to as the "purchaser" (which terms shall mean and include its successors in office and assigns).

2. In consideration of M/s. Mishra Dhatu Nigam Limited (Purchaser) having agreed to exempt ..... hereinafter called the said Contractor(s) (which term shall mean and include its successors assigns and legal representatives) from the demand under the terms and conditions of Purchase / Work Order No. ..... dated ..... for .....(hereinafter called the said agreement) of Earnest Money / Security Deposit/ Defect Liability deposit for the due 3ulfilment by the said Contractor(s) of the terms and conditions contained in the said agreement on production of a bank guarantee for Rs.....(Rupees..... only), we ..... (name of the bank, address) (hereinafter referred to as "The Bank") at the request of ..... Contractor(s) do hereby undertake to pay Purchaser an amount not exceeding Rs ..... against any losses or damage caused to or suffered or would be caused to or suffered Purchaser by reason of any breach by the said Contractor(s) of any of the terms and conditions contained in the said agreement.

3. We ..... (Bank) do hereby unconditionally and irrevocably agree and undertake to pay to Purchaser the amounts due and payable under this Guarantee without any demur, merely on a demand from Purchaser stating that the amount claimed is due by way of loss or damage caused to or would be caused to on suffered by Purchaser by reason of breach by the said agreement or by reason of the contractor(s) failure to perform the said agreement. Any such demand made on the Bank shall be conclusive as regards the amount due and payable by the Bank under this Guarantee. However, our liability under this Guarantee shall be restricted to an amount not exceeding Rs .....

4. We undertake to pay Purchaser and money so demanded notwithstanding any dispute or disputes by the contractor(s) / supplier(s) in any suit or proceedings pending before any court of tribunal relating thereto, our liability under this present being absolute and unequivocal. The payment so made by us under this Guarantee shall be valid discharge of

our liability for payment thereunder and the contractor(s) shall have not claim against us for making such payment.

5. We ..... (Bank) further agree that the guarantee herein contained shall remain in full force and affect during the period that would be taken for the performance of the said Agreement and that it shall continue to be enforceable till all the dues of Purchase under or by virtue of the said Agreement have been fully paid and its claims satisfied or discharges or till Purchaser certifies that the terms and conditions of the said Agreement have been fully and properly carried out by the said contractor(s) and accordingly discharges this guarantee. Provided that if Purchaser together with the Contractor seeks an extension of terms of the Guarantee, such extension shall be granted by the Bank and the guarantee shall be in full force till the expiry of such extended period.

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

7. It shall not be necessary for Purchaser to proceed against the contractor before proceeding against the Bank and the guarantee herein contained shall be enforceable against the Bank notwithstanding any security which Purchaser may have obtained or obtains from the contractor.

8. This guarantee shall not be discharged due to the change in the constitution of the Bank or the contractor(s).

9. We ..... (Bank) lastly undertake not to revoke this guarantee during its currency except with the previous consent of Purchase in writing.

10. Our liability is limited to a sum not exceeding Rs ..... unless a claim is made on us in writing on or before ..... (3 months beyond the date of delivery / completion as specified in the contract) we shall be discharged from liability under this guarantee.

In witness whereof these presents are executed at ..... on the date, month and year first herein above written.

FOR AND ON BEHALF OF THE BANK WITHIN NAMED

Specimen Forms of Bank Guarantees

## BANK GUARANTEE TOWARDS PERFORMANCE BANK GUARANTEE

This Deed of Guarantee executed on..... Day of..... by..... Bank. ..... hereinafter called the "Guarantor" (which term shall mean and include its successors, assigns and legal representatives, where the context so admits) in favour of M/s. MISHRA DHATU NIGAM LIMITED, a Government of India Enterprise incorporated and registered as a Company under the Companies Act, 1956, having its registered office at P.O. Kanchanbagh, Hyderabad - 500 058, State of A.P. INDIA, hereinafter referred to as the "Purchaser", (which term shall mean and include its successors and assigns).

WHEREAS the Purchase Order No: MDN/PUR/..... *(Indicate both the order Numbers)* Dated..... has been entered into between the Purchaser and M/s..... a company incorporated and registered under the Laws of ..... by which the company is permitted to manufacture and sell certain products, and having its registered office situated at ..... hereinafter referred to as the SUPPLIER (which term shall mean and include its successors, assigns and legal representatives) for the supply of ..... *(Indicate the list of Items which are replaced/repaired)* as fully described in the aforesaid Purchase Order.

AND WHEREAS it has been agreed under the terms and conditions of the aforesaid Purchase Order that the Purchaser shall make balance payment to the Supplier of .....(amount) in words (.....) representing ***10%*** of the total value of the repaired and replaced parts in the Purchase Orders on final acceptance of the ..... and on furnishing a Guarantee from a Bank acceptable to the Purchaser by the Supplier towards satisfactory performance of the ..... supplied.

AND WHEREAS the Guarantor has, as per the terms and conditions of the aforesaid Purchase Order, agreed to stand guarantee for the amount of ten per cent of the balance payment in favour of the Supplier and the Guarantor is acceptable to the Purchaser.

NOW THIS DEED witnesses that, in pursuance of the terms and conditions of the aforesaid Purchase Order and in consideration of the payment of ..... representating ***10%*** of the total value of the repaired and replaced parts in the Purchase Orders agreed to be made to the Supplier by the Purchaser, the Guarantor do hereby agree and undertake to indemnify the Purchaser and keep the purchaser indemnified to the extent of a sum not exceeding the said sum of ..... (Amount) ( In Words .....) against any damage or loss that may be suffered by the Purchaser by reason of non-fulfillment of or breach any of the terms and conditions of the Purchase Order by the supplier, and the guarantor hereby undertaken to pay on demand and without any demur to the purchaser any sum unconditionally and irrevocably not exceeding the sum of ..... (Amount) (In Words ..... as may be demanded by the Purchaser's General Manager (Commercial) or Representative of the purchaser as the damages or loss that the purchaser may have suffered by reasons of non-fulfillment of any of the terms and conditions

of the Purchase Order by the Supplier, and Guarantor hereby covenants with the Purchaser as follows:

1. That the decision of the General Manager (Commercial) or Representative of the Purchaser as to whether the said installation under the Purchase Order gives satisfactory performance or not and as to the amount of damages suffered by the Purchaser on account of the unsatisfactory performance of the said installation under the Purchase Order shall be conclusive, final and binding on the Bank.
2. That the Guarantee herein contained shall remain in full force and effect till the Purchaser certifies in writing that the terms and conditions of the said Purchase Order have been fully and properly carried out by the said Supplier and accordingly discharges the Guarantee. Unless a demand for claim under this Guarantee is made on the Bank in writing on or before ....., the Bank shall be discharged from all liabilities under this Guarantee thereafter, provided that if the Purchaser, together with the Supplier, seeks an extension of the term of the Guarantee, such extension shall be granted by the Bank and the Guarantee shall be in full force and effect till the expiry of such extended period.
3. That the Purchaser shall have the fullest liberty, without affecting in any way the liability of the Bank under this Guarantee or Indemnity, from time to time to vary any of the terms and conditions of the said Purchase Order or to extend its performance by the said Supplier as provided or to postpone, for any time and from time to time, any of the powers exercisable by it against the said Supplier and either to enforce or forbear from enforcing any of the terms and conditions governing the said Purchase Order, and the said Bank shall not be released from its liability under these presents by any exercise by the Purchaser of the liberty with reference to matters aforesaid or by reason of time being given to the said Supplier or any other forbearance, act or omission on the part of the Purchaser or any indulgence by the Purchaser to the said Supplier or of any other matter or thing whatsoever which, under the law relating to sureties, would, but for this provision, have the effect of so releasing the Bank from its liability.
4. It shall not be necessary for the Purchaser to proceed against the Supplier before proceeding against the Bank and the Guarantee herein contained shall be enforceable against the Bank notwithstanding any security which the Purchaser may have obtained or obtain from the Supplier.
5. The Bank lastly undertakes not to revoke this Guarantee during its currency, except with the previous consent of the Purchaser in writing, and agrees that any change in the constitution of the said Supplier or the said Bank shall not discharge the Bank's liability hereunder.

   In witness whereof these presents are executed at ..... the date, month and year, first herein above written.

FOR & ON BEHALF OF THE BANK WITHIN NAMED

Annexure-VI

Specimen Forms of Bank Guarantees

## BANK GUARANTEE TO SECURE THE INITIAL ADVANCE PAYMENT

1. This deed of guarantee executed on .....day of ..... by.....

(Name and Address of the Bank)

the Bank hereinafter called Bank (which term shall mean and include its successors and assigns wherever the context so admits) in favour of M/s. MISHRA DHATU NIGAM LIMITED., a government of India Enterprise incorporated and registered as a company under the Companies Act, 1956, having its registered office at P.O. Kanchanbagh, Hyderabad – 500 058, state of A.P. India, herein after referred to as the "purchaser" (which terms shall mean and include its successors in office and assigns).

2. In consideration of M/s. Mishra Dhatu Nigam Limited (Purchaser) agreeing to make an advance payment of Rs ..... representing ..... % of the total contract value along with the 14% interest per annum as per the terms and conditions of the Purchase / Works Order No. ..... dated ..... (hereinafter called the Agreement) to ..... hereinafter called the said Contractor(s) (which term shall mean and include its successors assigns and legal representatives) on production of a bank guarantee for Rs .....(Rupees..... only), we ..... (name of the bank, address) (Hereinafter referred to as "The Bank") at the request of ..... Contractor(s) do hereby undertake to pay Purchaser an amount not exceeding Rs ..... against any losses or damage caused to or suffered or would be caused to or suffered Purchaser by reason of any breach by the said Contractor(s) of any of the terms and conditions contained in the said agreement.

3. We ..... (Bank) do hereby unconditionally and irrevocably agree and undertake to pay to Purchaser the amounts due and payable under this Guarantee without any demur, merely on a demand from Purchaser stating that the amount claimed is due by way of loss or damage caused to or would be caused to on suffered by Purchaser by reason of breach by the said agreement or by reason of the contractor(s) failure to perform the said agreement. Any such demand made on the Bank shall be conclusive as regards the amount due and payable by the Bank under this Guarantee. However, our liability under this Guarantee shall be restricted to an amount not exceeding Rs .....

4. We undertake to pay Purchaser and money so demanded notwithstanding any dispute or disputes by the contractor(s) / supplier(s) in any suit or proceedings pending before any court of tribunal relating thereto, our liability under this present being absolute and unequivocal. The payment so made by us under this Guarantee shall be valid discharge of our liability for payment thereunder and the contractor(s) shall have not claim against us for making such payment.

5. We ..... (Bank) further agree that the guarantee herein contained shall remain in full force and affect during the period that would be taken for the performance of the said Agreement and that it shall continue to be enforceable till all the dues of Purchase under or by virtue of the said Agreement have been fully paid and its claims satisfied or discharges or till Purchaser certifies that the terms and conditions of the said Agreement have been fully and properly carried out by the said contractor(s) and accordingly discharges this guarantee. Provided that if Purchaser together with the Contractor seeks an extension of terms of the Guarantee, such extension shall be granted by the Bank and the guarantee shall be in full force till the expiry of such extended period.

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

7. It shall not be necessary for Purchaser to proceed against the contractor before proceeding against the Bank and the guarantee herein contained shall be enforceable against the Bank notwithstanding any security which Purchaser may have obtained or obtains from the contractor.

8. This guarantee shall not be discharged due to the change in the constitution of the Bank or the contractor(s).

9. We ..... (Bank) lastly undertake not to revoke this guarantee during its currency except with the previous consent of Purchase in writing.

10. Our liability is limited to a sum not exceeding Rs ..... unless a claim is made on us in writing on or before ..... (3 months beyond the date of delivery / completion as specified in the contract) we shall be discharged from liability under this guarantee.

    In witness whereof these presents are executed at,..... on the date, month and year first herein above written.

FOR AND ON BEHALF OF THE BANK WITHIN NAMED

Annexure-VI

Specimen Forms of Bank Guarantees

## BANK GUARANTEE TO SECURE THE PAYMENT FOR GENERAL ARRANGEMENT DRAWING

This Deed of Guarantee executed on..... Day of..... by..... Bank. ..... hereinafter called the "Guarantor" (which term shall mean and include its successors, assigns and legal representatives, where the context so admits) in favour of M/s. MISHRA DHATU NIGAM LIMITED, a Government of India Enterprise incorporated and registered as a Company under the Companies Act, 1956, having its registered office at P.O. Kanchanbagh, Hyderabad - 500 058, State of A.P. INDIA, hereinafter referred to as the "Purchaser", (which term shall mean and include its successors and assigns).

WHEREAS the Contract vide Purchase Order No: ....., date ..... has been entered into between the Purchaser and M/s. ..... a company incorporated and registered under the Companies Act 1956 by which the company is permitted to manufacture and sell products and having its registered office situated at ..... Hereinafter referred to as the CONTRACTOR, (which term shall mean and include its successors, assigns and legal representatives) for the purchase of ..... as fully described in the aforesaid contract.

AND WHERE AS it has been agreed under the terms and conditions of the aforesaid contract that the Purchaser shall make an advance payment to the Contractor of ₹ .....(in words .....) representating .....% of the total contract value along with the 14% interest per annum for utilizing it for the purpose of contract on furnishing a Guarantee from a Bank.

AND WHERE AS the Gurantor has, as per the terms and conditions of the aforesaid contract, agreed to stand guarantee for the amount of advance payment including interest there on in favour of the Contractor.

NOW THIS DEED witnesses that in pursuance of the terms and conditions of the aforesaid contract and in consideration of the advance payment of ₹ ..... representating .....% of the total value of the Contract agreed to be made to the Contractor by the Purchaser, the Guarantor do hereby agree and undertake to indemnify the department, and keep the department indemnified to the extent of a sum not exceeding the said sum of ₹ ..... (in words Rupees .....) against any damage or loss that may be suffered by the purchaser by reason of nonfulfilment of any of the terms and conditions of the contract by the contractor and the Guarantor hereby undertake to pay on demand and without any demur to the Department any sum unconditionally and irrevocably not exceeding the sum of ₹ ..... (Rupees .....) as may be ascertained by the GM (Commercial) of the Purchaser as the damages or loss that the department may have suffered by reason of nonfulfillment of any particular terms and conditions of the Contract by the Contractor, provided that the Guarantee comes into force when the advance payment has been made to the account of the Contractor and Guarantor hereby covenants with the Department as follows:

(1) That the decision of the General Manager (Commercial) of the Purchaser as to whether the contractor has committed breach of any such terms and conditions of the Contract or not and as to the amount of damages or loss assessed by the said official of the Purchaser on account of such breach shall be conclusive final and binding on the Guarantor.

(2) That the Guarantee herein contained shall remain in full force and effect till the Contract delivery date viz. by which date all the supplies required under the aforesaid contract are expected to be completed to the full satisfaction of the department / purchaser or till the purchaser certifies in writing that the terms and conditions of the said Contract and accordingly discharges the Guarantee. The Guarantor undertakes to pay on demand and without any demur the amount demanded by the department or GM (Commercial) of purchaser unconditionally and irrevocably. Unless a demand or claim under this Guarantee is made on the Guarantor in writing on or before ....., the Guarantor shall be discharged from all liabilities under this Guarantee thereafter.

(3) That the purchaser shall have the fullest liberty, without Guarantor's consent and affecting in any way the liability of the Guarantor under this Guarantee or Indemnity from time to time to vary any of the terms and conditions of the said contract or to extend time of Performance by the said contractor or to postpone for any time or from time to time any of the powers exercisable by it against the said contractor and either to enforce or forbear from enforcing any of the terms and conditions governing the said Contract and the said Guarantor shall not be released from its liability under these presents by any exercise by the Department of GM (Commercial). Purchaser of the liberty with reference to matters aforesaid act or omission on the part of the purchaser or any indulgence by the purchaser to the said contractor or of any other matter or thing whatsoever which under the law relating to sureties would but for this provision have the effect of so releasing the Guarantor from its liability.

(4) It shall not be necessary for the department or GM (Commercial) of the Purchaser to proceed against the Contractor before proceeding against the Guarantor and the Guarantee herein contained shall be enforceable against the Guarantor notwithstanding any security which the Purchaser may have obtained or obtain from the Contractor at the time when proceedings are taken against the Guarantor hereunder be outstanding or unrealised.

(5) The Guarantor undertakes to pay to the department / purchaser any money so demanded notwithstanding any dispute or disputes raised by the Contractor with the Guarantor or purchaser / department in any suit or proceedings pending before any court or tribunal relating thereto the guarantor's liability under these presents being absolute and unequivocal.

(6) The Guarantor lastly undertakes not to revoke this Guarantee during its currency except with the previous consent of the Purchaser in writing and agrees that any change in the constitution of the said Contractor or the said Guarantor shall not discharge the Guarantor's liability hereunder.

(7) Our liability is limited to a sum not exceeding ₹ ..... unless a claim is made on us in writing on or before ..... (3 months beyond the date of delivery / completion as specified in the Contract) we shall be discharged from liability under this guarantee.

In witness where of these presents are executed at ..... on the date, month and year first herein above written.

FOR & ON BEHALF OF THE GUARANTOR WITHIN NAMED

Annexure – VII

**UNDERTAKING (to be submitted by the Bidder along with Integrity Pact)**

Date:

To,

PURCHASE DEPARTMENT,
MISHAR DHATU NIGAM LIMITED,
KANCHANBAGH, HYDERABAD – 58.

Sub: Procurement of _____ (Item description)
Ref: Tender no. & date: _____

-*-

- We (The Bidder / Contractor) confirm acceptance and compliance with the Integrity Pact in letter and spirit.
- We (The Bidder / Contractor) confirm that the Integrity Pact is signed without any variation (or) modification.
- We (The Bidder / Contractor) agree that Integrity Pact is deemed as part of NIT / Contract and we are bound by its provisions for the entire Pact duration as per Section. 9 of the enclosed Integrity Pact format.
- In case, if we (The Bidder / Contractor) fails to honour the above conditions, MIDHANI shall have absolute right to take action as per Section. 3 of the enclosed Integrity Pact format.

Yours faithfully,

(BIDDER)

# INTEGRITY PACT

Between

**Mishra Dhatu Nigam Limited (MIDHANI)** hereinafter referred to as **"The Principal"**,
and
..... hereinafter referred to as **"The Bidder/ Contractor"**

## Preamble

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

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

### Section 1 – Commitments of the Principal

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

a. No employee of the Principal, personally or through family members, will in connection with the tender for , or the execution of a contract, demand, take a promise for or accept, for self or third person, any material or immaterial benefit which the person is not legally entitled to.
b. The Principal will, during the tender process treat all Bidder(s) with equity and reason. The Principal will in particular, before and during the tender process, provide to all Bidder(s) the same information and will not provide to any Bidder(s) confidential / additional information through which the Bidder(s) could obtain an advantage in relation to the tender process or the contract execution.
c. The Principal will exclude from the process all known prejudiced persons.

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

### Section 2 – Commitments of the Bidder(s)/ Contractor(s)

(1) The Bidder(s)/ Contractor(s) commit themselves to take all measures necessary to prevent corruption. The Bidder(s)/ Contractor(s) commit themselves to observe the following principles during participation in the tender process and during the contract execution.

a. The Bidder(s)/ Contractor(s) will not, directly or through any other person or firm, offer, promise or give to any of the Principal's employees involved in the tender process or the execution of the contract or to any third person any material or other benefit which he/she is not legally entitled to, in order to obtain in exchange any advantage of any kind whatsoever during the tender process or during the execution of the contract.

b. The Bidder(s)/ Contractor(s) will not enter with other Bidders into any undisclosed agreement or understanding, whether formal or informal. This applies in particular to prices, specifications, certifications, subsidiary contracts, submission or non-submission of bids or any other actions to restrict competitiveness or to introduce cartelization in the biddingprocess.

c. The Bidder(s)/ Contractor(s) will not commit any offence under the relevant IPC/PC Act; further the Bidder(s)/ Contractor(s) will not use improperly, for purposes of competition or personal gain, or pass on to others, any information or document provided by the Principal as part of the business relationship, regarding plans, technical proposals and business details, including information contained or transmitted electronically.

d. The Bidder(s)/Contractors(s) of foreign origin shall disclose the name and address of the Agents/representatives in India, if any. Similarly the Bidder(s)/Contractors(s) of Indian Nationality shall furnish the name and address of the foreign principals, if any. Further details as mentioned in the "Guidelines on Indian Agents of Foreign Suppliers" shall be disclosed by the Bidder(s)/Contractor(s).Further, as mentioned in the Guidelines all the payments made to the Indian agent/representative have to be in Indian Rupees only. Copy of the "Guidelines on Indian Agents of Foreign Suppliers" is enclosed.

e. The Bidder(s)/ Contractor(s) will, when presenting their bid, disclose any and all payments made, are committed to or intend to make to agents, brokers or any other intermediaries in connection with the award of the contract.

f. Bidder(s) /Contractor(s) who have signed the Integrity Pact shall not approach the Courts while representing the matter to IEMs and shall wait for their decision in the matter.

(2) The Bidder(s)/ Contractor(s) will not instigate third persons to commit offences outlined above or be an accessory to such offences.

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

If the Bidder(s)/Contractor(s), before award or during execution has committed a transgression through a violation of Section 2, above or in any other form such as to put their reliability or credibility in question, the Principal is entitled to disqualify the Bidder(s)/Contractor(s) from the tender process or take action as per the procedure mentioned in the Purchase Policy, MIDHANI and as per "Guidelines on Debarment of firms from Bidding" issued by Procurement Policy Division, Ministry of Finance, Department of Expenditure, Government of India from time to time (current OM date 02.11.2021). Copy of "Guidelines on Banning of Business dealing" is enclosed.

**Section 4 – Compensation for Damages**

(1) If the Principal has disqualified the Bidder(s) from the tender process prior to the award according to Section 3, the Principal is entitled to demand and recover the damages equivalent to Earnest Money Deposit/ Bid Security.

(2) If the Principal has terminated the contract according to Section 3, or if the Principal is entitled to terminate the contract according to Section 3, the Principal shall be entitled to demand and recover from the Contractor liquidated damages of the Contract value or the amount equivalent to Performance Bank Guarantee.

**Section 5 – Previous transgression**

(1) The Bidder declares that no previous transgressions occurred in the last three years with any other Company in any country conforming to the anti-corruption approach or with any Public Sector Enterprise in India that could justify his exclusion from the tender process.

(2) If the Bidder makes incorrect statement on this subject, he can be disqualified from the tender process or action can be taken as per the procedure mentioned in "Purchase policy MIDHANI".

**Section 6 – Equal treatment of all Bidders / Contractors / Subcontractors**

(1) In case of Sub-contracting, the Principal Contractor shall take the responsibility of the adoption of Integrity Pact by the Sub-contractor. In case of subcontract (only when the contract provide for sub contracting) the clause is applicable.

(2) The Principal will enter into agreements with identical conditions as this one with all Bidders and Contractors.

(3) The Principal will disqualify from the tender process all bidders who do not sign this Pact or violate its provisions.

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

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

**Section 8 – Independent External Monitor**

(1) The Principal appoints competent and credible Independent External Monitor for this Pact after approval by Central Vigilance Commission. The task of the Monitor is to review independently and objectively, whether and to what extent the parties comply with the obligations under this agreement.

(2) The Monitor is not subject to instructions by the representatives of the parties and performs his/her functions neutrally and independently. The Monitor would have access to all Contract documents, whenever required. It will be obligatory for him / her to treat the information and documents of the Bidders/Contractors as confidential. He/ she reports to the C&MD MIDHANI.

(3) The Bidder(s)/Contractor(s) accepts that the Monitor has the right to access without restriction to all Project documentation of the Principal including that provided by the Contractor. The Contractor will also grant the Monitor, upon his/her request and demonstration of a valid interest, unrestricted and unconditional access to their project documentation. The same is applicable to Sub-contractors.

(4) The Monitor is under contractual obligation to treat the information and documents of the Bidder(s)/ Contractor(s)/ Sub-contractor(s) with confidentiality. The Monitor has also signed declarations on 'Non-Disclosure of Confidential Information' and of 'Absence of Conflict of Interest'. In case of any conflict of interest arising at a later date, the IEM shall inform C&MD MIDHANI and recuse himself / herself from that case.

(5) The Principal will provide to the Monitor sufficient information about all meetings among the parties related to the Project provided such meetings could have an impact on the contractual relations between the Principal and the Contractor. The parties offer to the Monitor the option to participate in such meetings.

(6) As soon as the Monitor notices, or believes to notice, a violation of this agreement, he/she will so inform the Management of the Principal and request the Management to discontinue or take corrective action, or to take other relevant action. The monitor can in this regard submit non-binding recommendations. Beyond this, the Monitor has no right to demand from the parties that they act in a specific manner, refrain from action or tolerate action.

(7) The Monitor will submit a written report to the C&MD MIDHANI within 8 to 10 weeks from the date of reference or intimation to him by the Principal and, should the occasion arise, submit proposals for correcting problematic situations.

(8) If the Monitor has reported to the C&MD MIDHANI, a substantiated suspicion of an offence under relevant IPC/ PC Act, and the C&MD MIDHANI has not, within the reasonable time taken visible action to proceed against such offence or reported it to the Chief Vigilance Officer, the Monitor may also transmit this information directly to the Central Vigilance

Commissioner.

(9) The word **'Monitor'** would include both singular and plural.

**Section 9 – Pact Duration**

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

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

**Section 10 – Other provisions**

(1) This agreement is subject to Indian Law. Place of performance and jurisdiction is the Registered Office of the Principal, i.e. Hyderabad.

(2) Changes and supplements as well as termination notices need to be made in writing. Side agreements have not been made.

(3) If the Contractor is a partnership or a consortium, this agreement must be signed by all partners or consortium members.

(4) Should one or several provisions of this agreement turn out to be invalid, the remainder of this agreement remains valid. In this case, the parties will strive to come to an agreement to their original intentions.

(5) Issues like Warranty / Guarantee etc. shall be outside the purview of IEMs.

**Section 11 - Independent Monitors**

The Central Vigilance Commission (CVC) has appointed the following Independent External Monitors (IEMs) to oversee the implementation of the Integrity Pact for MIDHANI:

**Address of IEMs are as follows:**

a. Shri Anand Deep, IRS (Retd.),
117/363, H-1, next to Gurdwara Pandu Nagar,
Kanpur, U.P. 208005
e-mail: anand.deep117@gmail.com

b. Shri P. Mallikarjuna Rao, IFS (Retd.),
72, Prashasan Nagar,
Jubilee Hills 83, Lodi Estate,
Hyderabad – 500096
e-mail: pmkrao72@gmail.com

(For & On behalf of the Principal) (For & On behalf of Bidder/ Contractor)

(Office Seal) (Office Seal)

Place -.....
Date .....

Witness 1:
(Name &
Address)
Witness 2:
(Name & Address)

## GUIDELINES FOR INDIAN AGENTS OF FOREIGN SUPPLIERS

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

1.1 Registered agents will file an authenticated Photostat copy duly attested by a Notary Public/Original certificate of the principal confirming the agency agreement and giving the status being enjoyed by the agent and the commission/ remuneration/ salary/ retainer ship being paid by the principal to the agent before the placement of order by MIDHANI.

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

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

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

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

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

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

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

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

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

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

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

2.4 Failure to furnish correct and detailed information as called for in paragraph 2.0 above will render the concerned tender liable to rejection or in the event of a contract materializing, the same liable to termination by MIDHANI. Besides this there would be a penalty of banning business dealings with MIDHANI or damage or payment of a named sum.

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## GUIDELINES ON DEBARMENT OF FIRMS FROM BIDDING - MIDHANI

**Ref: Procurement Policy Division, Ministry of Finance, Department of Expenditure, Government of India OM dated 02.11.2021.**

1. The Guidelines are classified under following two types:

(i) In cases where debarment is proposed to be limited to a single Ministry, the appropriate Orders can be issued by that Ministry itself, thereby banning all its business dealing with the debarred firm.

(ii) Where it is proposed to extend the debarment beyond the jurisdiction of the particular Ministry i.e. covering to all central Ministries/ Departments, the requisite Orders shall be issued by Department of Expenditure (DoE), Ministry of Finance (MoF).

**Definitions**

2. **Firm:** The term 'firm' or 'bidder" has the same meaning for the purpose of these Guidelines, which includes an individual or person, a company, a cooperative society, a Hindu undivided family and an association or body of persons, whether incorporated or not, engaged in trade or business.

3. **Allied firm:** All concerns which come within the sphere of effective influence of the debarred firms shall be treated as allied firms. In determining this, the following factors may be taken into consideration:

a. Whether the management is common;
b. Majority interest in the management is held by the partners or directors of banned/ suspended firm;
c. Substantial or majority shares are owned by the banned/ suspended firm and by virtue of this it has a controlling voice.
d. Directly or indirectly controls, or is controlled by or is under common control with another bidder.
e. All successor firms will also be considered as allied firms.

4. The terms "banning of firm", 'suspension', 'Black-Listing' etc. convey the same meaning as of "Debarment".

**Debarment by a Single Ministry/ Department**

5. Orders for Debarment of a firm(s) shall be passed by a Ministry/ Department/ organizations, keeping in view of the following:

a. A bidder or any of its successors may be debarred from participating in any procurement process for a period not exceeding two years.
b. Firms will be debarred if it is determined that the bidder has breached the code of integrity as per Rule 175 of GFRs 2017.
c. A bidder can also be debarred for any actions or omissions by the bidder other than violation of code of integrity, which in the opinion of the Ministry/department, warrants debarment, for the reasons like supply of sub-standard material, non-supply of material, abandonment of works, sub-standard quality of works, failure to abide "Bid securing Declaration" etc.
d. It shall not be circulated to other Ministries/Departments. It will only be applicable to all the attached/ subordinate offices, Autonomous bodies, Central Public sector Undertakings (CPSUs) etc. of the Ministry/Department issuing the debarment order.
e. The concerned Ministry/Department before issuing the debarment order against a firm must ensure that reasonable opportunity has been given to the concerned firm to represent against such debarment (including personal hearing, if requested by firm).
f. Secretary of Ministry/Department may nominate an officer at the rank of joint secretary/Additional secretary as competent authority to debar the firms.

g. Ministry/ Department that issued the order of debarment can also issue an order for revocation of debarment before the period of debarment os over, if there is adequate justification for the same. Ordinarily, the revocation of the order before expiry of debarred period should be done with approval of secretary concerned of Ministry/Department.
h. The Ministry/Department will maintain list of debarred firms, which will also be displayed on its website.
i. Debarment is an executive function and should not be allocated to vigilance department.

6. Code of integrity as contained in Rule 175 of the GFRs is reproduced as under:

No official of the procuring entity or a bidder shall act in contravention of the courts which includes
(i) Prohibition of

(a) making offer, solicitation or acceptance of bribe, reward or gift on any material benefit, either directly or indirectly, in exchange for an unfair advantage in the procurement process or to otherwise influence the procurement process.
(b) any omission or mis-representation that may mislead or attempt to mislead so that financial or other benefit may be obtained or an obligation avoided.
(c) any collusion, bid rigging or anti competitive behavior that may impair the transparency, fairness and the progress of the procurement process.
(d) improper use of information provided by the procuring entity to the bidder with an intent to gain unfair advantage in the procurement process or for personal gain.
(e) any financial or business transaction between the bidder and any official of the procuring entity related to tender or execution process of the contract which can affect the decision of the procuring entity directly or indirectly.
(f) any coercion or any threat to impair or harm, directly or indirectly, any party or its property to influence the procurement process.
(g) obstruction of any investigation or auditing of a procurement process.
(h) making false declaration or providing false information for participation in a tender process or to secure a contract.

(ii) Disclosure of Conflict of interest.

(iii) Disclosure by the bidder of any previous transgressions made in respect of the provisions of the sub-clause (i) with an entity in any country during the last three years or of being debarred by any other procuring entity.

7. It is possible that the firm may be debarred concurrently by more than one ministry/department.

8. Ministries/Departments at their option may also delegate powers to debar bidders to their CPSUs, attached offices/Autonomous bodies etc. in such cases, broad principles for debarment in para 5 as above are to be kept in mind. Debarment by such bodies like CPSUs etc., shall be applicable only for the procurements made by such bodies.

9. Similarly, Government e-Market place (GeM) can also debar bidders upto two years on its portal.

10. In case of debarments under para 8 as above, revocation the debarment orders before expiry of debarred period should be done only with the approval of chief executive officer of concerned CPSUs etc.,

**Debarment across all ministries/Departments**

11. Where a Ministry/Department is of the view that business dealings with a particular firm should be banned across all the ministries/departments by debarring the firm from taking part in any bidding procedure floated by the central govt. ministries/departments, the ministry/department concerned, should after obtaining the approval of the secretary concerned, forward to DoE a self contained note setting out all the facts of the case and the justification for the proposed debarment, along with all the relevant papers and documents. DoE will issue the necessary orders after satisfying itself that proposed debarment across all the Ministries/Departments is in accordance with rule 151 of GFRs, 2017. This scrutiny is intended to ensure uniformity of treatment in all cases.

12. The firm will remain in suspension mode (i.e., debarred) during the interim period till the final decision taken by DoE, only in the ministry/department forwarding such proposal.

13. Ministry/Department before forwarding the proposal to DoE must ensure that reasonable opportunity has been given to the concerned firm to represent against such debarment (including personal hearing, if requested by firm). If DoE realizes that sufficient opportunity has not be given to the firm to represent against the debarment, such debarment requests received from ministries/department shall be rejected.

14. DoE can also give additional opportunity, at their option, to firm to represent against proposed debarment. DoE can also take suo-moto action to debar the firms in certain circumstances.

15. No contract of any kind whatsoever shall be placed on the debarred firm, including its allied firms by any Ministries/Departments/Attached/Subordinate offices of the Government of India including autonomous body, CPSUs etc. after the issue of a debarment order.

16. DoE will maintain list of such debarred firms, which will be displayed on Central Public Procurement Portal.

**Revocation of Orders**

17. An order for debarment passed shall be deemed to have been automatically revoked on the expiry of that specified period and it will not be necessary to issue a specific formal order revocation.

18. A debarment order may be revoked before the expiry of the order, by the competent authority, if it is of the opinion that the disability already suffered is adequate in the circumstances of the case or for any other reason.

**Other provisions (Common to both types of debarment)**

19. No contract of any kind whatsoever shall be placed to debarred firm including its allied firms after the issue of a debarment order by the Ministry/ Department. Bids from only such firms shall be considered for placement of contract, which are neither debarred on the date of opening of tender (first bid, normally called as technical bid, in case of two packet/two stage bidding) nor debarred on the date of contract. Even in the cases of risk purchase, no contract should be placed on such debarred firms.

20. In case, any debar firms has submitted the bid, the same will be ignored. In case such form is lowest (L-1), next lowest firm shall be considered as L-1. Bid security submitted by such debarred firms shall be returned to them.

21. Contracts concluded before the issue of the debarment order shall, not be affected by the debarment orders.

22. The department shall be automatically extended to all its allied firms. In case of joint venture/consortium is debarred all partners will also stand debarred for the period specified in debarment order. The names of partners should be clearly specified in the "Debarment Order".

23. Debarment if any manner does not impact any other contractual or other legal rights of the procuring entities.

24. The period debarment shall start from the date of issue of debarment order.

25. The order of debarment will indicate the reason(s) in brief that lead to debarment of the firm.

26. Ordinarily, the period of debarment should not be less than six months.

27. In case of shortage of suppliers in a particular group, such debarments may also hurt the interest of procuring entities. In such cases, endeavor should be to pragmatically analyze the circumstances, try to reform the supplier and may get a written commitment from the supplier that its performance will improve.

28. All Ministries/Departments must align their existing debarment Guidelines in conformity with these Guidelines within two months of issued of these guidelines. Further, bidding documents must also be suitably amended, if required.

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Annexure - VIII

No. P-45021/2/2017-PP (BE-II)
Government of India
Ministry of Commerce and Industry
Department for Promotion of Industry and Internal Trade
(Public Procurement Section)

Udyog Bhawan, New Delhi
Dated: 16th September, 2020

To

All Central Ministries/Departments/CPSUs/All concerned

**ORDER**

**Subject: Public Procurement (Preference to Make in India), Order 2017– Revision; regarding.**

**Department for Promotion of Industry and Internal Trade, in partial modification [Paras 2, 3, 5, 10 & 13] of Order No.P-45021/2/2017-B.E.-II dated 15.6.2017 as amended by Order No.P-45021/2/2017-B.E.-II dated 28.05.2018, Order No.P-45021/2/2017-B.E.-II dated 29.05.2019 and Order No.P-45021/2/2017-B.E.-II dated 04.06.2020, hereby issues the revised 'Public Procurement (Preference to Make in India), Order 2017" dated 16.09.2020 effective with immediate effect.**

**Whereas** it is the policy of the Government of India to encourage 'Make in India' and promote manufacturing and production of goods and services in India with a view to enhancing income and employment, and

**Whereas** procurement by the Government is substantial in amount and can contribute towards this policy objective, and

**Whereas** local content can be increased through partnerships, cooperation with local companies, establishing production units in India or Joint Ventures (JV) with Indian suppliers, increasing the participation of local employees in services and training them,

**Now therefore the following Order is issued:**

1. This Order is issued pursuant to Rule 153 (iii) of the General Financial Rules 2017.

2. **Definitions:** For the purposes of this Order:

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

   *'Class-I local supplier'* means a supplier or service provider, whose goods, services or works offered for procurement, meets the minimum local content as prescribed for 'Class-I local supplier' under this Order

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*'Class-II local supplier'* means a supplier or service provider, whose goods, services or works offered for procurement, meets the minimum local content as prescribed for 'Class-II local supplier' but less than that prescribed for 'Class-I local supplier' under this Order.

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

*'L1'* means the lowest tender or lowest bid or the lowest quotation received in a tender, bidding process or other procurement solicitation as adjudged in the evaluation process as per the tender or other procurement solicitation.

*'Margin of purchase preference'* means the maximum extent to which the price quoted by a "Class-I local supplier" may be above the L1 for the purpose of purchase preference.

*'Nodal Ministry'* means the Ministry or Department identified pursuant to this order in respect of a particular item of goods or services or works.

*'Procuring entity'* means a Ministry or department or attached or subordinate office of, or autonomous body controlled by, the Government of India and includes Government companies as defined in the Companies Act.

*'Works'* means all works as per Rule 130 of GFR- 2017, and will also include *'turnkey works'*.

3. **Eligibility of 'Class-I local supplier'/ 'Class-II local supplier'/ 'Non-local suppliers' for different types of procurement**

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

(b) Only 'Class-I local supplier' and 'Class-II local supplier', as defined under the Order, shall be eligible to bid in procurements undertaken by procuring entities, except when Global tender enquiry has been issued. In global tender enquiries, 'Non-local suppliers' shall also be eligible to bid along with 'Class-I local suppliers' and 'Class-II local suppliers'. In procurement of all goods, services or works, not covered by sub-para 3(a) above, and with estimated value of purchases less than Rs. 200 Crore, in accordance with Rule 161(iv) of GFR, 2017, Global tender enquiry shall not be issued except with the approval of competent authority as designated by Department of Expenditure.

(c) For the purpose of this Order, works includes Engineering, Procurement and Construction (EPC) contracts and services include System Integrator (SI) contracts.

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3A. Purchase Preference

(a) Subject to the provisions of this Order and to any specific instructions issued by the Nodal Ministry or in pursuance of this Order, purchase preference shall be given to 'Class-I local supplier' in procurements undertaken by procuring entities in the manner specified here under.

(b) In the procurements of goods or works, which are covered by para 3(b) above and which are divisible in nature, the 'Class-I local supplier' shall get purchase preference over 'Class-II local supplier' as well as 'Non-local supplier', as per following procedure:

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

ii. If L1 bid is not a 'Class-I local supplier', 50% of the order quantity shall be awarded to L1. Thereafter, the lowest bidder among the 'Class-I local supplier' will be invited to match the L1 price for the remaining 50% quantity subject to the Class-I local supplier's quoted price falling within the margin of purchase preference, and contract for that quantity shall be awarded to such 'Class-I local supplier' subject to matching the L1 price. In case such lowest eligible 'Class-I local supplier' fails to match the L1 price or accepts less than the offered quantity, the next higher 'Class-I local supplier' within the margin of purchase preference shall be invited to match the L1 price for remaining quantity and so on, and contract shall be awarded accordingly. In case some quantity is still left uncovered on Class-I local suppliers, then such balance quantity may also be ordered on the L1 bidder.

(c) In the procurements of goods or works, which are covered by para 3(b) above and which are not divisible in nature, and in procurement of services where the bid is evaluated on price alone, the 'Class-I local supplier' shall get purchase preference over 'Class-II local supplier' as well as 'Non-local supplier', as per following procedure:

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

ii. If L1 is not 'Class-I local supplier', the lowest bidder among the 'Class-I local supplier', will be invited to match the L1 price subject to Class-I local supplier's quoted price falling within the margin of purchase preference, and the contract shall be awarded to such 'Class-I local supplier' subject to matching the L1 price.

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

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

**3B. Applicability in tenders where contract is to be awarded to multiple bidders -** In tenders where contract is awarded to multiple bidders subject to matching of L1 rates or otherwise, the 'Class-I local supplier' shall get purchase preference over 'Class-II local supplier' as well as 'Non-local supplier', as per following procedure:

a) In case there is sufficient local capacity and competition for the item to be procured, as notified by the nodal Ministry, only Class I local suppliers shall be eligible to bid. As such, the multiple suppliers, who would be awarded the contract, should be all and only 'Class I Local suppliers'.

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

c) If 'Class I Local suppliers' qualify for award of contract for at least 50% of the tendered quantity in any tender, the contract may be awarded to all the qualified bidders as per award criteria stipulated in the bid documents. However, in case 'Class I Local suppliers' do not qualify for award of contract for at least 50% of the tendered quantity, purchase preference should be given to the 'Class I local supplier' over 'Class II local suppliers'/ 'Non local suppliers' provided that their quoted rate falls within 20% margin of purchase preference of the highest quoted bidder considered for award of contract so as to ensure that the 'Class I Local suppliers' taken in totality are considered for award of contract for at least 50% of the tendered quantity.

d) First purchase preference has to be given to the lowest quoting 'Class-I local supplier', whose quoted rates fall within 20% margin of purchase preference, subject to its meeting the prescribed criteria for award of contract as also the constraint of maximum quantity that can be sourced from any single supplier. If the lowest quoting 'Class-I local supplier', does not qualify for purchase preference because of aforesaid constraints or does not accept the offered quantity, an opportunity may be given to next higher 'Class-I local supplier', falling within 20% margin of purchase preference, and so on.

e) To avoid any ambiguity during bid evaluation process, the procuring entities may stipulate its own tender specific criteria for award of contract amongst different bidders including the procedure for purchase preference to 'Class-I local supplier' within the broad policy guidelines stipulated in sub-paras above.

4. **Exemption of small purchases**: Notwithstanding anything contained in paragraph 3, procurements where the estimated value to be procured is less than Rs. 5 lakhs shall be exempt from this Order. However, it shall be ensured by procuring entities that procurement is not split for the purpose of avoiding the provisions of this Order.

5. **Minimum local content**: The 'local content' requirement to categorize a supplier as 'Class-I local supplier' is minimum 50%. For 'Class-II local supplier', the 'local content' requirement is minimum 20%. Nodal Ministry/ Department may prescribe only a higher

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percentage of minimum local content requirement to categorize a supplier as 'Class-I local supplier'/ 'Class-II local supplier'. For the items, for which Nodal Ministry/ Department has not prescribed higher minimum local content notification under the Order, it shall be 50% and 20% for 'Class-I local supplier'/ 'Class-II local supplier' respectively.

6. **Margin of Purchase Preference**: The margin of purchase preference shall be 20%.

7. **Requirement for specification in advance**: The minimum local content, the margin of purchase preference and the procedure for preference to Make in India shall be specified in the notice inviting tenders or other form of procurement solicitation and shall not be varied during a particular procurement transaction.

8. **Government E-marketplace**: In respect of procurement through the Government E-marketplace (GeM) shall, as far as possible, specifically mark the items which meet the minimum local content while registering the item for display, and shall, wherever feasible, make provision for automated comparison with purchase preference and without purchase preference and for obtaining consent of the local supplier in those cases where purchase preference is to be exercised.

9. **Verification of local content**:

   a. The 'Class-I local supplier'/ 'Class-II local supplier' at the time of tender, bidding or solicitation shall be required to indicate percentage of local content and provide self-certification that the item offered meets the local content requirement for 'Class-I local supplier'/ 'Class-II local supplier', as the case may be. They shall also give details of the location(s) at which the local value addition is made.

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

   c. Decisions on complaints relating to implementation of this Order shall be taken by the competent authority which is empowered to look into procurement-related complaints relating to the procuring entity.

   d. Nodal Ministries may constitute committees with internal and external experts for independent verification of self-declarations and auditor's/ accountant's certificates on random basis and in the case of complaints.

   e. Nodal Ministries and procuring entities may prescribe fees for such complaints.

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

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g. A supplier who has been debarred by any procuring entity for violation of this Order shall not be eligible for preference under this Order for procurement by any other procuring entity for the duration of the debarment. The debarment for such other procuring entities shall take effect prospectively from the date on which it comes to the notice of other procurement entities, in the manner prescribed under paragraph 9h below.

h. The Department of Expenditure shall issue suitable instructions for the effective and smooth operation of this process, so that:

i The fact and duration of debarment for violation of this Order by any procuring entity are promptly brought to the notice of the Member-Convenor of the Standing Committee and the Department of Expenditure through the concerned Ministry /Department or in some other manner;

ii. on a periodical basis such cases are consolidated and a centralized list or decentralized lists of such suppliers with the period of debarment is maintained and displayed on website(s);

iii. in respect of procuring entities other than the one which has carried out the debarment, the debarment takes effect prospectively from the date of uploading on the website(s) in the such a manner that ongoing procurements are not disrupted.

10. **Specifications in Tenders and other procurement solicitations:**

a. Every procuring entity shall ensure that the eligibility conditions in respect of previous experience fixed in any tender or solicitation do not require proof of supply in other countries or proof of exports.

b. Procuring entities shall endeavour to see that eligibility conditions, including on matters like turnover, production capability and financial strength do not result in unreasonable exclusion of 'Class-I local supplier'/ 'Class-II local supplier' who would otherwise be eligible, beyond what is essential for ensuring quality or creditworthiness of the supplier.

c. Procuring entities shall, within 2 months of the issue of this Order review all existing eligibility norms and conditions with reference to sub-paragraphs 'a' and 'b' above.

d. **Reciprocity Clause**

i. When a Nodal Ministry/Department identifies that Indian suppliers of an item are not allowed to participate and/ or compete in procurement by any foreign government, due to restrictive tender conditions which have direct or indirect effect of barring Indian companies such as registration in the procuring country, execution of projects of specific value in the procuring country etc., it shall provide such details to all its procuring entities including CMDs/CEOs of PSEs/PSUs, State Governments and other procurement agencies under their administrative control and GeM for appropriate reciprocal action.

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

iii. The stipulation in (ii) above shall be part of all tenders invited by the Central Government procuring entities stated in (i) above. All purchases on GeM shall also necessarily have the above provisions for items identified by nodal Ministry/ Department.

iv. State Governments should be encouraged to incorporate similar provisions in their respective tenders.

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

e. Specifying foreign certifications/ unreasonable technical specifications/ brands/ models in the bid document is restrictive and discriminatory practice against local suppliers. If foreign certification is required to be stipulated because of non-availability of Indian Standards and/or for any other reason, the same shall be done only after written approval of Secretary of the Department concerned or any other Authority having been designated such power by the Secretary of the Department concerned.

f. "All administrative Ministries/Departments whose procurement exceeds *Rs.* 1000 Crore per annum shall notify/ update their procurement projections every year, including those of the PSEs/PSUs, for the next 5 years on their respective website."

**10A. Action for non-compliance of the Provisions of the Order:** In case restrictive or discriminatory conditions against domestic suppliers are included in bid documents, an inquiry shall be conducted by the Administrative Department undertaking the procurement (including procurement by any entity under its administrative control) to fix responsibility for the same. Thereafter, appropriate action, administrative or otherwise, shall be taken against erring officials of procurement entities under relevant provisions. Intimation on all such actions shall be sent to the Standing Committee.

11. **Assessment of supply base by Nodal Ministries**: The Nodal Ministry shall keep in view the domestic manufacturing / supply base and assess the available capacity and the extent of local competition while identifying items and prescribing the higher minimum local content or the manner of its calculation, with a view to avoiding cost increase from the operation of this Order.

12. **Increase in minimum local content**: The Nodal Ministry may annually review the local content requirements with a view to increasing them subject to availability of sufficient local competition with adequate quality.

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13. **Manufacture under license/ technology collaboration agreements with phased indigenization**: While notifying the minimum local content, Nodal Ministries may make special provisions for exempting suppliers from meeting the stipulated local content if the product is being manufactured in India under a license from a foreign manufacturer who holds intellectual property rights and where there is a technology collaboration agreement / transfer of technology agreement for indigenous manufacture of a product developed abroad with clear phasing of increase in local content.

13A. In procurement of all goods, services or works in respect of which there is substantial quantity of public procurement and for which the nodal ministry has not notified that there is sufficient local capacity and local competition, the concerned nodal ministry shall notify an upper threshold value of procurement beyond which foreign companies shall enter into a joint venture with an Indian company to participate in the tender. Procuring entities, while procuring such items beyond the notified threshold value, shall prescribe in their respective tenders that foreign companies may enter into a joint venture with an Indian company to participate in the tender. The procuring Ministries/Departments shall also make special provisions for exempting such joint ventures from meeting the stipulated minimum local content requirement, which shall be increased in a phased manner.

14. **Powers to grant exemption and to reduce minimum local content**: The administrative Department undertaking the procurement (including procurement by any entity under its administrative control), with the approval of their Minister-in-charge, may by written order, for reasons to be recorded in writing,

    a. reduce the minimum local content below the prescribed level; or
    b. reduce the margin of purchase preference below 20%; or
    c. exempt any particular item or supplying entities from the operation of this Order or any part of the Order.

    A copy of every such order shall be provided to the Standing Committee and concerned Nodal Ministry / Department. The Nodal Ministry / Department concerned will continue to have the power to vary its notification on Minimum Local Content.

15. **Directions to Government companies**: In respect of Government companies and other procuring entities not governed by the General Financial Rules, the administrative Ministry or Department shall issue policy directions requiring compliance with this Order.

16. **Standing Committee**: A standing committee is hereby constituted with the following membership:

    Secretary, Department for Promotion of Industry and Internal Trade—Chairman
    Secretary, Commerce—Member
    Secretary, Ministry of Electronics and Information Technology—Member
    Joint Secretary (Public Procurement), Department of Expenditure—Member
    Joint Secretary (DPIIT)—Member-Convenor

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The Secretary of the Department concerned with a particular item shall be a member in respect of issues relating to such item. The Chairman of the Committee may co-opt technical experts as relevant to any issue or class of issues under its consideration.

17. **Functions of the Standing Committee**: The Standing Committee shall meet as often as necessary, but not less than once in six months. The Committee

a. shall oversee the implementation of this order and issues arising therefrom, and make recommendations to Nodal Ministries and procuring entities.
b. shall annually assess and periodically monitor compliance with this Order
c. shall identify Nodal Ministries and the allocation of items among them for issue of notifications on minimum local content
d. may require furnishing of details or returns regarding compliance with this Order and related matters
e. may, during the annual review or otherwise, assess issues, if any, where it is felt that the manner of implementation of the order results in any restrictive practices, cartelization or increase in public expenditure and suggest remedial measures
f. may examine cases covered by paragraph 13 above relating to manufacture under license/ technology transfer agreements with a view to satisfying itself that adequate mechanisms exist for enforcement of such agreements and for attaining the underlying objective of progressive indigenization
g. may consider any other issue relating to this Order which may arise.

18. **Removal of difficulties**: Ministries /Departments and the Boards of Directors of Government companies may issue such clarifications and instructions as may be necessary for the removal of any difficulties arising in the implementation of this Order.

19. **Ministries having existing policies**: Where any Ministry or Department has its own policy for preference to local content approved by the Cabinet after 1st January 2015, such policies will prevail over the provisions of this Order. All other existing orders on preference to local content shall be reviewed by the Nodal Ministries and revised as needed to conform to this Order, within two months of the issue of this Order.

20. **Transitional provision**: This Order shall not apply to any tender or procurement for which notice inviting tender or other form of procurement solicitation has been issued before the issue of this Order.

(Rajesh Gupta)
Director
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Annexure-18

# Bidder Security Declaration

Date:

From:

To: Mishra Dhatu Nigam Limited

Tender Reference Number:

Bid No. (If any):

We, the undersigned, declare that: We understand that, according to Midhani tender terms and conditions, bids must be supported by a Bid-Security Declaration. We accept that we will automatically be suspended from being eligible for bidding in any contract with Midhani for the period of time of 2 years without prejudice to Midhani right to take any other action as deemed fit in case we withdraw or change /amend our Bid during the period of bid validity .

We understand this Bid-Securing Declaration shall expire if we are not the successful Bidder.

Signature and seal:

Name:

In the capacity of:

Date:

Note: In case of a Joint Venture, the Bid-Securing Declaration must be signed by all partners to the Joint Venture that submits the bid.