

SUPPLY ORDER FORMAT

Name and Address of Buyer
Contact details like Telephone, Fax, e-mail
File number
Date

To
Name of Seller
Address

Placement of Supply Order Number dated
Against RFP Number dated

Part I

Dear Sir/Madam,

1. This is to inform you that a formal Supply Order is being placed on you for supply of items/services at prices mentioned in Part-II. The Commercial terms and conditions are contained in Part-III and Part-IV of this Supply Order (S.O. in short). The word "Seller" in this S.O. is meant for your organization while the word "Buyer" is meant for this organization acting on behalf of President of India.
2. Following documents shall be the sole repository of this transaction –
 - a. Our RFP number _____ dated.
 - b. Your Bid number _____ dated.
 - c. Our letters _____ dated
 - d. Your letters _____ dated
 - e. Five Parts of this Supply Order as under - .
 - i. Part I – Communication of acceptance of Seller's Bid as finalized by Buyer.
 - ii. Part II – Buyer agrees to buy and Seller agrees to sell items/services mentioned in Part II at the prices mentioned therein. This Part also contains essential details of the items/services required, such as the Technical Specifications, Delivery Period, Place of Delivery and Consignee details agreed by the Seller.
 - f. Part III – Buyer and Seller agree to abide by the Standard Conditions of Supply Order mentioned in Part III.
 - g. Part IV - Buyer and Seller agree to abide by the Special Conditions of Supply Order mentioned in Part IV.

- h. Part V – It contains list of other addresses and other relevant details pertaining to this S.O.
3. Two copies of ink-signed Supply Order are being sent to you. Please acknowledge receipt within seven days of receipt of this Supply order, on your office letterhead duly signed by the authorized signatory. One copy of Supply Order duly signed and stamped on all pages should be returned to this office along with your acknowledgment letter. If such an acceptance or communication conveying any objection to certain part of this Supply Order is not received within seven days, then it would be deemed that this Supply Order is fully accepted by you and all obligations of Seller will be applicable to you under this S.O.

Thanking you,

Yours sincerely

Name and designation of Buyer
On and behalf of President of India

Part II – Essential Details of Items/Services Supply Ordered

1. **Schedule of Prices** – List of items / services Supply Ordered is as follows:

SI No	Denomination of items / services	Quantity	Unit price	Total price	Remarks
Grant Total					

2. **Technical Details:**

- a. Functional characteristics of items Supply Ordered
- b. Specifications/drawings, as applicable
- c. Technical details with technical parameters
- d. Details of training/on-job training
- e. Details of installation/commissioning
- f. Details of Factory Acceptance Trials (FAT), Harbor Acceptance Trails (HAT) and Sea Acceptance Trials (SAT)
- g. Details of technical documentation
- h. Nature of assistance required after completion of warranty
- i. Details of pre-site/equipment inspection
- j. Any other details, as considered necessary

3. **Delivery Period** - Delivery period for supply of items would be _____ from the effective date of Supply Order. Please note that Supply Order can be cancelled unilaterally by the Buyer in case items are not received within the Supply Ordered delivery period. Extension of Supply Ordered delivery period will be at the sole discretion of the Buyer, with applicability of LD clause.

4. **INCOTERMS for Delivery and Transportation** – (“E” / “F” / “C” / “D” Terms). The definition of Delivery Period for this Supply Order will be _____

5. **Consignee details** - _____

Part III – Standard Conditions of Supply Order

1. Law: The Supply Order shall be considered and made in accordance with the laws of the Republic of India. The Supply Order shall be governed by and interpreted in accordance with the laws of the Republic of India.

2. Effective Date of the Supply Order: The Supply Order shall come into effect on the date of its acknowledgment by the Seller and shall remain valid until the completion of the obligations of the parties under the Supply Order. The deliveries and supplies and performance of the services shall commence from the effective date of the Supply Order.

3. Arbitration: All disputes or differences arising out of or in connection with the Supply Order shall be settled by bilateral discussions. Any dispute, disagreement or question arising out of or relating to the Supply Order or relating to construction or performance, which cannot be settled amicably, may be resolved through arbitration. The Arbitration is as per Form DPM-7 (for indigenous trade) / DPM-8 (for foreign supplies) / DPM-9 (for PSUs) enclosed to Part-III of this Supply Order.

4. Penalty for use of Undue influence: The Seller 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 service of the Buyer or otherwise in procuring the Supply Orders or forbearing to do or for having done or forborne to do any act in relation to the obtaining or execution of the present Supply Order or any other Supply Order with the Government of India for showing or forbearing to show favour or disfavour to any person in relation to the present Supply Order or any other Supply Order with the Government of India. Any breach of the aforesaid undertaking by the Seller or any one employed by him or acting on his behalf (whether with or without the knowledge of the Seller) or the commission of any offers by the Seller or anyone employed by him or acting on his behalf, as defined in Chapter IX of the Indian Penal Code, 1860 or the Prevention of Corruption Act, 1986 or any other Act enacted for the prevention of corruption shall entitle the Buyer to cancel the Supply Order and all or any other Supply Orders with the Seller and recover from the Seller the amount of any loss arising from such cancellation. A decision of the Buyer or his nominee to the effect that a breach of the undertaking had been committed shall be final and binding on the Seller. Giving or offering of any gift, bribe or inducement or any attempt at any such act on behalf of the Seller towards any officer/employee of the Buyer or to any other person in a position to influence any officer/employee of the Buyer for showing any favour in relation to this or any other Supply Order, shall render the Seller to such liability/ penalty as the Buyer may deem proper, including but not limited to termination of the Supply Order, imposition of penal damages, forfeiture of the Bank Guarantee and refund of the amounts paid by the Buyer.

5. Agents / Agency Commission: The Seller confirms and declares to the Buyer that the Seller is the original manufacturer of the stores/provider of the services referred to in this Supply Order and has not engaged any individual or firm, whether Indian or foreign whatsoever, to intercede, facilitate or in any way to recommend to the Government of India or any of its functionaries, whether officially or unofficially, to the award of the Supply Order to the Seller; nor has any amount been paid, promised or intended to be paid to any such individual or firm in respect of any such intercession, facilitation or recommendation. The Seller agrees that if it is established at any time to the satisfaction of the Buyer that the present declaration is in any way incorrect or if at a later stage it is discovered by the Buyer that the Seller has engaged any such individual/firm, and paid or intended to pay any amount, gift, reward, fees, commission or consideration to such person, party, firm or institution, whether before or after the signing of this Supply Order, the Seller will be liable to refund that amount to the Buyer. The Seller will also be debarred from entering into any supply Supply Order with the Government of India for a minimum period of five years. The Buyer will also have a right to consider cancellation of the Supply Order either wholly or in part, without any entitlement or compensation to the Seller who shall in such an event be liable to refund all payments made by the Buyer in terms of the Supply Order along with interest at the rate of 2% per annum above LIBOR rate. The Buyer will also have the right to recover any such amount from any Supply Orders concluded earlier with the Government of India.

6. Access to books of Accounts: In case it is found to the satisfaction of the Buyer that the Seller has engaged an Agent or paid commission or influenced any person to obtain the Supply Order as described in clauses relating to Agents/Agency Commission and penalty for use of undue influence, the Seller, on a specific request of the Buyer, shall provide necessary information/ inspection of the relevant financial documents/information.

7. Non-disclosure of Supply Order documents: Except with the written consent of the Buyer/Seller, other party shall not disclose the Supply Order or any provision, specification, plan, design, pattern, sample or information thereof to any third party.

8. Liquidated damages: In the event of the Seller's failure to submit the Bonds, Guarantees and Documents, supply the stores/goods and conduct trials, installation of equipment, training, etc as specified in this Supply Order, the Buyer may, at his discretion, withhold any payment until the completion of the Supply Order. The Buyer may also deduct from the Seller as agreed, Liquidated Damages to the sum of 0.5% of the Supply Order price of the delayed/undelivered stores/services mentioned above for every week of delay or part of a week, subject to the maximum value of the Liquidated Damages being not higher than 10% of the value of delayed stores.

9. Termination of the Supply Order: The Buyer shall have the right to terminate this Supply Order in part or in full in any of the following cases :-

- (a) The delivery of the material is delayed for causes not attributable to Force Majeure for more than (____months) after the scheduled date of delivery.
- (b) The Seller is declared bankrupt or becomes insolvent.
- (c) The delivery of material is delayed due to causes of Force Majeure by more than (____months).
- (d) The Buyer has noticed that the Seller has utilised the services of any Indian/Foreign agent in getting this Supply Order and paid any commission to such individual/company etc.
- (e) As per decision of the Arbitration Tribunal.

10. Notices: Any notice required or permitted by the Supply Order shall be written in the English language and may be delivered personally or may be sent by FAX or registered pre-paid mail/airmail, addressed to the last known address of the party to whom it is sent.

11. Transfer and sub-letting: The Seller has no right to give, bargain, sell, assign or sublet or otherwise dispose of the Supply Order or any part thereof, as well as to give or to let a third party take benefit or advantage of the present Supply Order or any part thereof.

12. Patents and Other Industrial Property Rights: The prices stated in the present Supply Order shall be deemed to include all amounts payable for the use of patents, copyrights, registered charges, trademarks and payments for any other industrial property rights. The Seller shall indemnify the Buyer against all claims from a third party at any time on account of the infringement of any or all the rights mentioned in the previous paragraphs, whether such claims arise in respect of manufacture or use. The Seller shall be responsible for the completion of the supplies including spares, tools, technical literature and training aggregates irrespective of the fact of infringement of the supplies, irrespective of the fact of infringement of any or all the rights mentioned above.

13. Amendments: No provision of present Supply Order shall be changed or modified in any way (including this provision) either in whole or in part except by an instrument in writing made after the date of this Supply Order and signed on behalf of both the parties and which expressly states to amend the present Supply Order.

15. Taxes and Duties

- a) **In case of Foreign Seller** All taxes, duties, levies and charges which are to be paid for the delivery of goods, including advance samples, shall be paid by the parties under the present Supply Order in their respective countries.

OR

- b) **In case of Indigenous Seller**

i) **General**

1. If Bidder desires to ask for excise duty or Sales Tax / VAT extra, the same must be specifically stated. In the absence of any such stipulation, it will be presumed that the prices include all such charges and no claim for the same will be entertained.
2. If reimbursement of any Duty/Tax is intended as extra over the quoted prices, the Bidder must specifically say so. In the absence of any such stipulation it will be presumed that the prices quoted are firm and final and no claim on account of such duty/tax will be entreated after the opening of tenders.
3. If a Bidder chooses to quote a price inclusive of any duty/tax and does not confirm inclusive of such duty/tax so included is firm and final, he should clearly indicate the rate of such duty/tax and quantum of such duty/tax included in the price. Failure to do so may result in ignoring of such offers summarily.
4. If a Bidder is exempted from payment of any duty/tax upto any value of supplies from them, he should clearly state that no such duty/tax will be charged by him up to the limit of exemption which he may have. If any concession is available in regard to rate/quantum of any Duty/tax, it should be brought out clearly. Stipulations like, the said duty/tax was presently not applicable but the same will be charged if it becomes leviable later on, will not be accepted unless in such cases it is clearly stated by a Bidder that such duty/tax will not be charged by him even if the same becomes applicable later on. In respect of the Bidders, who fail to comply with this requirement, their quoted prices shall be loaded with the quantum of such duty/tax which is normally applicable on the item in question for the purpose of comparing their prices with other Bidders.
5. Any change in any duty/tax upward/downward as a result of any statutory variation in excise taking place within Supply Order terms shall be allowed to the extent of actual quantum of such duty/tax paid by the supplier. Similarly, in case of downward revision in any duty/tax, the actual quantum of reduction of such duty/tax shall be

reimbursed to the Buyer by the Seller. All such adjustments shall include all reliefs, exemptions, rebates, concession etc. if any obtained by the Seller.

ii) **Customs Duty –**

1. For imported stores offered against forward delivery, the Bidder shall quote prices thereof exclusive of customs duty. The Bidder shall specify separately the C.I.F. prices and total amount of customs duty payable. They will also indicate correctly the rate of customs duty applicable along with Indian Customs Tariff Number. Customs duty as actually paid will be reimbursed on production of necessary documents i.e. (i) Triplicate copy of the bill of entry; (ii) copy of bill of lading; (iii) a copy of foreign principal's invoice. However, if the Bidder imports the stores in question against his own commercial quota Import Licences, he will also be required to submit in addition the triplicate copy of bills of entry etc. a certificate from his Internal Auditor on the bill itself, to the effect that the following items/quantity in the bill of entry related to the stores imported against Defence Buyer Supply Order number..... dated.....
2. Subsequent to the reimbursement of customs duty, the Bidder will submit to the concerned Payment Authority a certificate to the effect that he has not obtained any refund of customs duty subsequent to the payment of duty to the Customs authority by him. In addition, he shall also submit to the Paying Authority concerned a certificate immediately after a period of three months from the date of payment of the duty to customs authorities to the effect that he has not applied for refund of the customs duty subsequent to the payment of duty to the customs authorities by him.
3. In case the Bidder obtains any refund of customs duty, subsequently to the payment of the same by him to the customs authorities and reimbursement of the customs duty to him by the Payment Authority, he should forthwith furnish the details of the refund obtained and afford full credit of the same to the Buyer.

iii) **Excise Duty**

1. Where the excise duty is payable on advalorem basis, the Bidder should submit along with the tender, the relevant form and the Manufacturer's price list showing the actual assessable value of the stores as approved by the Excise authorities.
2. Bidders should note that in case any refund of excise duty is granted to them by Excise authorities in respect of Stores supplied under the Supply Order, they will pass on the credit to the Buyer immediately

along with a certificate that the credit so passed on relates to the Excise Duty, originally paid for the stores supplied under the Supply Order. In case of their failure to do so, within 10 days of the issue of the excise duty refund orders to them by the Excise Authorities the Buyer would be empowered to deduct a sum equivalent to the amount refunded by the Excise Authorities without any further reference to them from any of their outstanding bills against the Supply Order or any other pending Government Supply Order and that no disputes on this account would be raised by them.

3. The Seller is also required to furnish to the Paying Authority the following certificates:
 - (a) Certificate with each bill to the effect that no refund has been obtained in respect of the reimbursement of excise duty made to the Seller during three months immediately preceding the date of the claim covered by the relevant bill.
 - (b) Certificate as to whether refunds have been obtained or applied for by them or not in the preceding financial year after the annual Audit of their accounts also indicating details of such refunds/applications, if any.
 - (c) A certificate along with the final payment bills of the Seller to the effect whether or not they have any pending appeal/protest for refund or partial refund of excise duties already reimbursed to the Seller by the Government pending with the Excise authorities and if so, the nature, the amount involved, and the position of such appeals.
 - (d) An undertaking to the effect that in case it is detected by the Government that any refund from Excise Authority was obtained by the Seller after obtaining reimbursement from the Paying Authority, and if the same is not immediately refunded by the Seller to the Paying Authority giving details and particulars of the transactions, Paying Authority will have full authority to recover such amounts from the Seller's outstanding bills against that particular Supply Order or any other pending Government Supply Orders and that no dispute on this account would be raised by the Seller.
4. Unless otherwise specifically agreed to in terms of the Supply Order, the Buyer shall not be liable for any claim on account of fresh imposition and/or increase of Excise Duty on raw materials and/or components used directly in the manufacture of the Supply Ordered stores taking place during the pendency of the Supply Order.

iv) **Sales Tax / VAT**

1. If it is desired by the Bidder to ask for Sales tax / VAT to be paid as extra, the same must be specifically stated. In the absence of any such stipulation in the bid, it will be presumed that the prices quoted by the Bidder are inclusive of sales tax and no liability of sales tax will be developed upon the Buyer.
2. On the Bids quoting sales tax extra, the rate and the nature of Sales Tax applicable at the time of supply should be shown separately. Sales tax will be paid to the Seller at the rate at which it is liable to be assessed or has actually been assessed provided the transaction of sale is legally liable to sales tax and the same is payable as per the terms of the Supply Order.

v) **Octroi Duty & Local Taxes**

1. Normally, materials to be supplied to Government Departments against Government Supply Orders are exempted from levy of town duty, Octroi Duty, Terminal Tax and other levies of local bodies. The local Town/Municipal Body regulations at times, however, provide for such Exemption only on production of such exemption certificate from any authorised officer. Seller should ensure that stores ordered against Supply Orders placed by this office are exempted from levy of Town Duty/Octroi Duty, Terminal Tax or other local taxes and duties. Wherever required, they should obtain the exemption certificate from the Buyer, to avoid payment of such local taxes or duties.
2. In case where the Municipality or other local body insists upon payment of these duties or taxes the same should be paid by the Seller to avoid delay in supplies and possible demurrage charges. The receipt obtained for such payment should be forwarded to the Buyer without delay together with a copy of the relevant act or by-laws/notifications of the Municipality of the local body concerned to enable him to take up the question of refund with the concerned bodies if admissible under the said acts or rules.

15) Pre-Integrity Pact Clause – A Pre-Integrity Pact is concluded between Buyer and Seller as per Form DPM-10 enclosed to Part-III of this Supply Order.

Part IV – Special Conditions of Supply Order

1. Performance Guarantee:

- a. **In case of Indigenous Seller** The Bidder will be required to furnish a Performance Guarantee by way of Bank Guarantee through a public sector bank or a private sector bank authorized to conduct government business (ICICI Bank Ltd., Axis Bank Ltd or HDFC Bank Ltd.) for a sum equal to 10% of the Supply Order value within 30 days of signing of this Supply Order. Performance Bank Guarantee will be valid up to 60 days beyond the date of warranty. The specimen of PBG is given in Form DPM-15, enclosed to Part-IV of this Supply Order.

OR

- b. **In case of Foreign Seller:** The Seller will be required to furnish a Performance Guarantee by way of a Bank Guarantee from Seller's Bank through an internationally recognised first class Bank in favour of the Government of India, Ministry of Defence to be confirmed by public sector bank or a private sector bank authorized to conduct government business (ICICI Bank Ltd., Axis Bank Ltd or HDFC Bank Ltd.) equal to 10(five percent) of the total value of this Supply Order i.e. for US \$ (US Dollars (in words) only). Performance Bank Guarantee should be valid up to 60 days beyond the date of warranty. The Performance Bank Guarantee shall be considered open upon receipt by the Buyer's Bank. In case any claims or any other Supply Order obligations are outstanding, the Seller will extend the Performance Bank Guarantee as asked for by the Buyer till such time as the Seller settles all claims and completes all Supply Order obligations. The Performance Bank Guarantee will be subject to encashment by the Buyer, in case the conditions regarding adherence to delivery schedule, settlement of claims and other provisions of the Supply Order are not fulfilled by the Seller. The specimen of PBG is given in Form DPM-15, enclosed to Part-IV of this Supply Order.
2. **Option Clause:** This Supply Order has an Option Clause, wherein the Buyer can exercise an option to procure an additional 50% of the original Supply Ordered quantity in accordance with the same terms & conditions of the present Supply Order. This will be applicable within the currency of Supply

Order. It will be entirely the discretion of the Buyer to exercise this option or not.

3. **Repeat Order Clause** – This Supply Order has a Repeat Order Clause, wherein the Buyer can order upto 50% quantity of the items under the present Supply Order within six months from the date of successful completion of this Supply Order, cost, terms & conditions remaining the same. It will be entirely the discretion of Buyer to place the Repeat order or not.
4. **Tolerance clause** – To take care of any change in the requirement during the period starting from issue of RFP till placement of the Supply Order, Buyer reserves the right to ___% plus/minus increase or decrease the quantity of the required goods upto that limit without any change in the terms & conditions and prices quoted by the Seller. While awarding the Supply Order, the quantity ordered has been increased or decreased by the Buyer within this tolerance limit.
5. **Payment terms for Indigenous Sellers** - The payment will be made as per the following terms, on production of the requisite documents:
 - a. 95% Payment against Inspection note, Proof of despatch, duly supported by Xerox copy of the Bank Guarantee and against Consignee's provisional receipt. Balance of 5% will be paid on receipt of items in good condition by consignee(s) along with user's certificate of complete Installation and successful commissioning.

OR

- b. 100% payment on delivery and acceptance by the user.

OR

- c. Stage-wise payments (To be defined as per complexity of case)

OR

- d. Quarterly payments on submission of User clearance certificate in respect of AMC Supply Orders.

6. **Payment terms for Foreign Sellers –**

- a. The payment will be arranged through Letter of Credit from Reserve Bank of India/State bank of India/any other Public Sector bank Bank, as decided by the Buyer, to the Bank of the Foreign Seller. The Seller will give a notification within a specified period about the readiness of goods. Letter of Credit is to be opened by the Buyer within _____ days on receipt of notification of readiness from the firm. The Letter of Credit will be valid for _____ days from the date of its opening, on extendable basis by mutual consent of both the Seller and Buyer.

OR

- b. If the value of the Supply Order is up to US \$ 100,000, payments will be made by Direct Bank Transfer. DBT payment will be made within 30 days of receipt of clean Bill of Lading / AWB/Proof of shipment and such other documents as are provided for in the Supply Order, but such payments will be subject to the deductions of such amounts as the Seller may be liable to pay under the agreed terms of the Supply Order.

OR

- c. Stage-wise payments (To be defined as per complexity of case)

OR

- d. Quarterly payments on submission of User clearance certificate in respect of AMC Supply Orders.

7. **Advance Payments:** No advance payment(s) will be made.

OR

- a. Advance payments will be made upto 15% against appropriate Bank guarantee or any authorised guarantee, as accepted by the Buyer. The specimen of PBG is given in Form DPM-16, enclosed to Part-IV of this Supply Order.

8. **Paying Authority:**

- a. **Indigenous Sellers** – (Name and address, contact details). The payment of bills will be made on submission of the following documents by the Seller to the Paying Authority along with the bill:

- i. Ink-signed copy of contingent bill / Seller's bill.
- ii. Ink-signed copy of Commercial invoice / Seller's bill.
- iii. Copy of Supply Order with U.O. number and date of IFA's concurrence, where required under delegation of powers.
- iv. CRVs in duplicate.
- v. Inspection note.
- vi. Claim for statutory and other levies to be supported with requisite documents / proof of payment such as Excise duty challan, Customs duty clearance certificate, Octroi receipt, proof of payment for EPF/ESIC contribution with nominal roll of beneficiaries, etc as applicable.
- vii. Exemption certificate for Excise duty / Customs duty, if applicable.
- viii. Bank guarantee for advance, if any.
- ix. Guarantee / Warranty certificate.
- x. Performance Bank guarantee / Indemnity bond where applicable.
- xi. DP extension letter with CFA's sanction, U.O. number and date of IFA's concurrence, where required under delegation of powers, indicating whether extension is with or without LD.
- xii. Details for electronic payment viz Account holder's name, Bank name, Branch name and address, Account type, Account number, IFSC code, MICR code (if these details are not incorporated in supply order).
- xiii. Any other document / certificate that may be provided for in the Supply order.
- xiv. User Acceptance.
- xv. Xerox copy of PBG.

(Note – From the above list, the documents that may be required depending upon the peculiarities of the procurement being undertaken, may be included in RFP)

- b. **Foreign Sellers** - (Name and address, contact details). Paid shipping documents are to be provided to the Bank by the Seller as proof of dispatch of goods as per Supply Orderual terms so that the Seller gets payment from LC. The Bank will forward these documents to the Buyer for getting the goods/stores released from the Port/Airport. Documents will include:
- i. Clean on Board Airway Bill/Bill of Lading
 - ii. Original Invoice
 - iii. Packing List
 - iv. Certificate of Origin from Seller's Chamber of Commerce, if any.
 - v. Certificate of Quality and current manufacture from OEM.
 - vi. Dangerous Cargo certificate, if any.
 - vii. Insurance policy of 110% if CIF / CIP Supply Order
 - viii. Certificate of Conformity & Acceptance Test at PDI, if any.
 - ix. Physio-sanitary / Fumigation Certificate, if any.
 - x. Performance Bond / Warranty Certificate

9. **Fall clause -**

- a. The price charged for the stores supplied under the Supply Order by the Seller shall in no event exceed the lowest prices at which the Seller sells the stores or offer to sell stores of identical description to any persons/Organisation including the purchaser or any department of the Central government or any Department of state government or any statutory undertaking the central or state government as the case may be during the period till performance of all supply Orders placed during the currency of the rate Supply Order is completed.
- b. If at any time, during the said period the Seller reduces the sale price, sells or offer to sell such stores to any person/organisation including the purchaser or any Deptt, of central Govt. or any Department of the State Government or any Statutory undertaking of the Central or state Government as the case may be at a price lower than the price chargeable under the Supply Order, the shall forthwith notify such reduction or sale or offer of sale to the Director general of Supplies & Disposals and the price payable under the Supply Order for the stores of such reduction of sale or offer of the sale shall stand correspondingly reduced. The above stipulation will, however, not apply to:--

- i. Exports by the Seller.
 - ii. Sale of goods as original equipment at price lower than lower than the prices charged for normal replacement.
 - iii. Sale of goods such as drugs which have expiry dates.
 - iv. Sale of goods at lower price on or after the date of completion of sale/placement of the order of goods by the authority concerned under the existing or previous Rate Supply Orders as also under any previous Supply Orders entered into with the Central or State Govt. Depts, including their undertakings excluding joint sector companies and/or private parties and bodies.
- c. The Seller shall furnish the following certificate to the Paying Authority along with each bill for payment for supplies made against the Rate Supply Order – “We certify that there has been no reduction in sale price of the stores of description identical to the stores supplied to the Government under the Supply Order herein and such stores have not been offered/sold by me/us to any person/organisation including the purchaser or any department of Central Government or any Department of a state Government or any Statutory Undertaking of the Central or state Government as the case may be upto the date of bill/the date of completion of supplies against all supply orders placed during the currency of the Rate Supply Order at price lower than the price charged to the government under the Supply Order except for quantity of stores categories under sub-clauses (a),(b) and (c) of sub-para (ii) above details of which are given below -”.

10. Exchange Rate Variation Clause:

(a) Detailed time schedule for procurement of imported material and their value at the FE rates adopted for the Supply Order is to be furnished by the Seller as per the format given below

Year wise and major currency wise import content break up

Year	Total cost of material	FE content outflow (Equivalent in Rupees - crores)		
		Dollar denominated	Euro denominated	Other currencies denominated

(b) ERV will be payable/refundable depending upon movement of exchange rate with reference to exchange rate adopted for the valuation of the Supply Order. Base exchange rate of each major currency used for calculating FE content of the Supply Order will be the BC Selling rate of the State Bank of India on the date of the opening of Price Bids.

(c) The base date for ERV would be Supply Order date and variation on the base date will be given upto the midpoint manufacture unless Seller indicates the time schedule within which material will be exported by them. Based on information given above, the cut off date/dates within the Delivery schedule for the imported material will be fixed for admissibility of ERV.

(d) ERV clause will not be applicable in case delivery periods for imported content are subsequently to be refixed /extended.

(e) The impact of notified Exchange Rate Variation shall be computed on an yearly basis for the outflow as mentioned by the Seller in their tender and shall be paid / refunded before the end of the financial year based on the certification of the Buyer.

11. Risk & Expense clause –

- a. Should the stores or any installment thereof not be delivered with the time or time specified in the contract documents, or it defective delivery is made in respect of the stores or any installment thereof, the Buyer shall after granting the Seller 45 days to cure the breach, be at liberty, without prejudice to the right to recover liquidated damages as a remedy for breach of contract, to declare the contract as cancelled either wholly or to the extent of such default.
- b. Should the stores or any installment thereof not perform in accordance with the specifications / parameters provided by the SELLER during the check proof tests to be one in the BUYER's country, the BUYER shall be at liberty, without prejudice to any other remedies for breach of contract, to cancel the contract wholly or to the extent of such default.
- c. In case of a material breach that was not remedied within 45 days, the BUYER shall, having given the right of first refusal to the SELLER be at liberty to purchase, manufacture, or procure from any other source as he things fit other stores of the same or similar description to make good:-
 - i. Such default.
 - ii. In the event of the contract being wholly determined the balance of the stores remaining to be delivered thereunder.
- d. Any excess of the purchase price, cost of manufacturer, or value of any stores procured from any other supplier as the case may be, over the contract price appropriate to such default or balance shall be recoverable from the SELLER. Such recoveries shall not exceed _____% of the value of the contract.”

12. **Buy-Back offer** - Buyer will be hand over the old items and the agreed prices will be adjusted in the final payment to the Seller. It will be the responsibility of Seller to carry away the old items from the Buyer's premises within 15 days of signing of this Supply Order. The expenditure on account of Handling charges and transportation expenses to carry away the old items will be borne by the Seller.
13. **Force Majeure**: Should any Force Majeure circumstances arise, each of the contracting party shall be excused for the non-fulfilment or for the delayed fulfilment of any of its contractual obligations, if the affected party within (____ days) of its occurrence informs the other party in writing. Force Majeure shall mean fires, floods, natural disasters or other acts, that are unanticipated or unforeseeable, and not brought about at the instance of the party claiming to be affected by such event, or which, if anticipated or foreseeable, could not be avoided or provided for, and which has caused the non-performance or delay in performance, such as war, turmoil, strikes, sabotage, explosions, quarantine restriction beyond the control of either party. A party claiming Force Majeure shall exercise reasonable diligence to seek to overcome the Force Majeure event and to mitigate the effects thereof on the performance of its obligations under this Supply Order. Format of this clause will be as per Form DPM-6, enclosed to Part-IV of this Supply Order.
14. **Specification**: The Seller guarantees to meet the specifications as per Part-II of this Supply Order and to incorporate the modifications to the existing design configuration to meet the specific requirement of the Buyer Services as per modifications/requirements recommended after the Maintenance Evaluation Trials. All technical literature and drawings shall be amended as the modifications by the Seller before supply to the Buyer. The Seller, in consultation with the Buyer, may carry out technical upgradation/alterations in the design, drawings and specifications due to change in manufacturing procedures, indigenisation or obsolescence. This will, however, not in any way, adversely affect the end specifications of the equipment. Changes in technical details, drawings repair and maintenance techniques along with necessary tools as a result of upgradation/alterations will be provided to the Buyer free of cost within (____) days of affecting such upgradation/alterations.
15. **OEM Certificate**: In case the Seller is not the OEM, the agreement certificate with the OEM for sourcing the spares shall be mandatory. However, where OEMs do not exist, minor aggregates and spares can be sourced from authorized vendors subject to quality certification.
16. **Export License**: The Seller is to confirm that they have requisite export license from their Government and Authorization from the manufacturing plant, in case they are not the OEM, to export the military / non-military goods to India.

17. **Earliest Acceptable Year of Manufacture:** _____ Quality / Life certificate will need to be enclosed with the Bill.

18. **Buyer Furnished Equipment:** The following equipment will be provided by the Buyer at his expense to the Seller:

.....
.....

19. **Transportation:**

a. **CIF/CIP** – The stores shall be delivered CIF/CIP _____ (Port of destination). Seller will bear the costs and freight necessary to bring the goods to the port of destination. The Seller also has to procure marine insurance against the Buyer's risk of loss of or damage to goods during the carriage. The Seller will Supply Order for insurance and pay the insurance premium. Seller is also required to clear the goods for export. The stores shall be delivered to the Buyer by Indian ships only. The date of issue of the Bill of Lading shall be considered as the date of delivery. No part shipment of goods would be permitted. Transshipment of goods would not be permitted. In case it becomes inevitable to do so, the Seller shall not arrange part-shipments and/or transshipment without the express/prior written consent of the Buyer. The goods should be shipped by Indian vessels only. However, the Seller can still utilize the services of the MoD, Govt of India Freight Forwarding Agent details for which will be provided by the Buyer. Seller will be required to communicate the following information invariably by telex/signed in case of import of Defence Stores being brought in commercial ships to Embarkation Head Quarters concerned well in advance before the Ship sails the port of loading:

- i. Name of the Ship
- ii. Port of Loading and name of Country.
- iii. ETA at port of Discharge i.e. Bombay, Calcutta, Madras and Cochin.
- iv. Number of Packages and weight.
- v. Nomenclature and details of major equipment.
- vi. Special instructions, if any stores of sensitive nature requiring special attention.

OR

b. **FOB/FAS** -- The stores shall be delivered FOB/FAS (as per INCOTERMS 2000, or latest version). The stores shall be delivered to the Buyer by Indian Ships only. In case of FOB/FAS Supply Orders, shipping arrangements shall be made by the Shipping Co-ordination and Chartering Division/Shipping Co-ordination and Officer, Ministry of Surface Transport, New Delhi, India. Notice about the readiness of Cargo for shipment shall be given by the supplier from time to time at least eight weeks in advance for finalizing the shipping arrangement,

through Fax/Telex and courier, to the Chief Controller of Chartering, Shipping Co-ordination Officer, Ministry of Surface Transport, Government of India, New Delhi. Within 3 (three) weeks of receipt of the advance notice, as above, the said Chief Controller of Chartering, Shipping Coordination Officer will advise the supplier, through Fax/Telex and courier when and on board what vessels, these goods or such part thereof are to be delivered. If the advice for shipping arrangement is not furnished to the Seller within 3 (three) weeks as aforesaid or if the vessel arranged is scheduled to arrive at the specified port of loading later than 15 (fifteen) days of the date of readiness of cargo, as aforesaid, the Seller may arrange for such transport on alternative carriers with the prior written consent of the Buyer. Where the Seller is required under the Supply Order to deliver the goods on FOB/FAS basis and to arrange on behalf and at the expense of the Buyer for ocean transportation on Indian flag vessels or vessels of conference lines in which India is a member country, the Seller may arrange for such transportation on alternate carriers if the specified Indian flag vessels or conference vessels are not available to transport the goods within the time period(s) specified in the Supply Order, with the prior written consent of the Buyer. Should the goods or any part thereof be not delivered on the nominated vessel (except in case where prior written consent of the Buyer was obtained), the Seller will be liable for all payments and expenses that the Buyer may incur or be put to, by reason of such non-delivery including dead and extra freight, demurrage of vessels and any other charges, whatsoever incurred by the Buyer. The date of issue of the Bill of Lading shall be considered as the date of delivery. No part shipment of goods would be permitted. Trans-shipment of goods would not be permitted. In case it becomes inevitable to do so, the Seller shall not arrange part-shipments and/or transshipment without the express/prior written consent of the Buyer. The Seller may contact Shipping Officer, Ministry of Surface Transport, Chartering Wing, Transport Bhavan, Parliament Street, New Delhi-110011 (Telegraphic Address: TRANSCHART, NEW DELHI-1, Telex "VAHAN" In 31-61157 OR 31-61158, Phone 2371 9480, Fax 2371 8614).

OR

- c. **FCA** - The delivery of the goods shall be FCA _____ Airport. The dispatch of goods shall be made by air to port consignee. The Buyer shall advise full details of its freight forwarder to the Seller no later than 60 days prior to the delivery of the first consignment otherwise the Seller may nominate the freight forwarder which shall be at the Buyer's expense. Any delay in advising or delay by the freight forwarder shall be at the responsibility of the Buyer. The date of issue of the Air Way Bill shall be considered as the date of delivery.

20. **Air lift:** Should the Buyer intend to airlift all or some of the stores, the Seller shall pack the stores accordingly on receipt of intimation to that effect from the Buyer. Such deliveries will be agreed upon well in advance and paid for as may be mutually agreed.

21. **Packing and Marking:**

- a. The Seller shall provide packing and preservation of the equipment and spares/goods Supply Ordered so as to ensure their safety against damage in the conditions of land, sea and air transportation, transshipment, storage and weather hazards during transportation, subject to proper cargo handling. The Seller shall ensure that the stores are packed in containers, which are made sufficiently strong, and with seasoned wood. The packing cases should have hooks for lifting by crane/fork lift truck. Tags with proper marking shall be fastened to the special equipment, which cannot be packed.
- b. The packing of the equipment and spares/goods shall conform to the requirements of specifications and standards in force in the territory of the Seller's country.
- c. Each spare, tools and accessory shall be packed in separate cartons. A label in English shall be pasted on the carton indicating the under mentioned details of the item contained in the carton. A tag in English with said information shall also be attached to six samples of the item. If quantity Supply Ordered is less than six then tag shall be affixed to complete quantity Supply Ordered of the item. The cartons shall then be packed in packing cases as required.
 - i. Part Number :
 - ii. Nomenclature :
 - iii. Supply Order annex number :
 - iv. Annex serial number :
 - v. Quantity Supply Ordered :
- d. One copy of the packing list in English shall be inserted in each cargo package, and the full set of the packing lists shall be placed in Case No.1 painted in a yellow colour.
- e. The Seller shall mark each package with indelible paint in the English language as follows:-
 - i. EXPORT
 - ii. Supply Order No. -----
 - iii. Consignee -----
 - iv. Port / airport of destination -----
 - v. Ultimate consignee -----
 - vi. SELLER -----
 - vii. Package No. -----

- viii. Gross/net weight : -----
- ix. Overall dimensions/volume : -----
- x. The Seller's marking _____

- f. If necessary, each package shall be marked with warning inscriptions: <Top>, "Do not turn over", category of cargo etc.
- g. Should any special equipment be returned to the Seller by the Buyer, the latter shall provide normal packing, which protects the equipment and spares/goods from the damage of deterioration during transportation by land, air or sea. In this case the Buyer shall finalize the marking with the Seller.

22. **Quality:** - The quality of the stores delivered according to the present Supply Order shall correspond to the technical conditions and standards valid for the deliveries of the same stores for in Seller's country or specifications enumerated as per RFP and shall also include therein modification to the stores suggested by the Buyer. Such modifications will be mutually agreed to. The Seller confirms that the stores to be supplied under this Supply Order shall be new i.e. not manufactured before (Year of Supply Order), and shall incorporate all the latest improvements and modifications thereto and spares of improved and modified equipment are backward integrated and interchangeable with same equipment supplied by the Seller in the past if any. The Seller shall supply an interchangeability certificate along with the changed part numbers wherein it should be mentioned that item would provide as much life as the original item.

23. **Quality Assurance:** After the Supply Order is finalized, the Seller would be required to provide the Standard Acceptance Test Procedure (ATP). Buyer reserves the right to modify the ATP. Seller would be required to provide all test facilities at his premises for acceptance and inspection by Buyer. The item should be of the latest manufacture, conforming to the current production standard and having 100% defined life at the time of delivery.

24. **Inspection Authority:** The Inspection will be carried out by _____. The mode of Inspection will be Departmental Inspection / User Inspection / Joint Inspection / Self-certification.

25. **Pre-Dispatch Inspection –**

- a. The Buyer's representatives will carry out Pre-Dispatch Inspection (PDI) of the stores/equipment in order to check their compliance with specifications in accordance with its usual standard procedures. Upon successful completion of such PDI, the Seller and Buyer will issue and sign a Certificate of Conformity as per the specimen at Form DPM-21 enclosed as part of Part-IV.

- b. The Seller shall intimate the Buyer at least 45 days before the scheduled date of PDI. The time required for completing visa formalities by the Seller should not be included in this notice. The Buyer will send his authorised representative(s) to attend the PDI.
- c. The list of Buyer's representatives together with their particulars including name, title, date and place of birth, passport numbers including date of issue and date of expiry, address, etc. must be communicated by the Buyer at least _____(No of days) in advance to apply for the necessary authorisations and clearances to be granted.
- d. The Buyer reserves the right not to attend the PDI or to request for postponement of the beginning of the PDI by a maximum of fifteen (15) days from the date fixed for such PDI in order to allow his representative(s) to attend such tests, in which cases he shall inform in writing the Seller within 15 days before the date of the beginning of the PDI. Should the Buyer request for such postponement, liquidated damages, if any, shall not apply. In case the Buyer informs the Seller within the period mentioned hereinabove that he cannot attend the PDI or in case the Buyer does not come at the postponed date requested by him for performance of the PDI as mentioned above, the Seller shall be entitled to carry out said tests alone as scheduled. The Certificate of Conformity and the Acceptance Test Report will be signed by the Seller's QA representative alone and such documents bearing the sole signature of the Seller's QA representative shall have the same value and effect as if they have been signed by both the parties. In case Buyer does not elect to attend the PDI, the Buyer shall intimate the Seller in writing that it does not wish to attend the PDI.
- e. The Seller shall provide all reasonable facilities, access and assistance to the Buyer's representative for safety and convenience in the performance of their duties in the Seller's country.
- f. All costs associated with the stay of the Buyer's Representative(s) in the country where the PDI is to be carried out, including travel expenses, boarding and lodging, accommodation, daily expenses, shall be borne by the Buyer.
- g. The Seller shall provide Acceptance Test Procedure to the Buyer's QA Agency within one month from the signing of the Supply Order.

26. Joint Receipt Inspection:

- a. The Parties agree that the Joint Receipt Inspection (JRI) of delivered goods shall be conducted on arrival in India at location to be nominated by the Buyer. JRI shall be completed within 120 days (for armament/ammunition)/ 90 days (for other than armament/ammunition) of arrival of good at the Port Consignee. JRI will consist of
 - i. Quantitative checking to verify that the quantities of the delivered goods correspond to the quantities defined in this Supply Order and the invoices.
 - ii. Complete functional checking of the stores/equipment as per specifications in the Supply Order and as per procedures and tests laid down by Buyer but functional checking of spares shall not be done.
 - iii. Check proof and firing if required.
- b. JRI will be carried out by the Buyer's representative(s). The Buyer will invite the Seller with a prior notice of a minimum of fifteen (15) days to attend the JRI for the delivered goods. The Seller shall have the right not to attend the JRI. The bio data of the Seller's representative will need to be communicated fifteen (15) days prior to the despatch of goods to the Buyer for obtaining necessary security clearance in accordance with the rules applicable in the Buyer's country.
- c. Upon completion of each JRI, JRI proceedings and Acceptance will be signed by both the parties. In case the Seller's representative is not present, the JRI proceedings and Acceptance Certificate shall be signed by the Buyer's representative only and the same shall be binding on the Seller. Copy of JRI proceedings and Acceptance Certificate shall be despatched to the Seller within 30 days of completion of the JRI. In case of deficiencies in quantity and quality or defects, details of these shall be recorded in the JRI proceedings, Acceptance Certificate shall not be issued and claims raised as per the Article on Claims in the Supply Order. In case of claims, Acceptance Certificate shall be issued by Buyer's representative after all claims raised during JRI are settled. If the Buyer does not perform the JRI as mentioned above for reasons exclusively attributable to him, the JRI in India shall be deemed to have been performed and the stores/equipment fully accepted.

27. Franking Clause

- a. **In the case of Acceptance of Goods** "The fact that the goods have been inspected after the delivery period and passed by the Inspecting Officer will not have the effect of keeping the Supply Order alive. The goods are being passed without prejudice to the rights of the Buyer under the terms and conditions of the Supply Order".

- b. **In the case of Rejection of Goods** “The fact that the goods have been inspected after the delivery period and rejected by the Inspecting Officer will not bind the Buyer in any manner. The goods are being rejected without prejudice to the rights of the Buyer under the terms and conditions of the Supply Order.”

28. Claims:

- a. The claims may be presented either: (a) on quantity of the stores, where the quantity does not correspond to the quantity shown in the Packing List/Insufficiency in packing, or (b) on quality of the stores, where quality does not correspond to the quality mentioned in the Supply Order.
- b. The quantity claims for deficiency of quantity shall be presented within 45 days of completion of JRI and acceptance of goods. The quantity claim shall be submitted to the Seller as per Form DPM-22 (Available in MoD website and can be given on request).
- c. The quality claims for defects or deficiencies in quality noticed during the JRI shall be presented within 45 days of completion of JRI and acceptance of goods. Quality claims shall be presented for defects or deficiencies in quality noticed during warranty period earliest but not later than 45 days after expiry of the guarantee period. The quality claims shall be submitted to the Seller as per Form DPM-23 (Available in MoD website and can be given on request) .
- d. The description and quantity of the stores are to be furnished to the Seller along with concrete reasons for making the claims. Copies of all the justifying documents shall be enclosed to the presented claim. The Seller will settle the claims within 45 days from the date of the receipt of the claim at the Seller’s office, subject to acceptance of the claim by the Seller. In case no response is received during this period the claim will be deemed to have been accepted.
- e. The Seller shall collect the defective or rejected goods from the location nominated by the Buyer and deliver the repaired or replaced goods at the same location under Seller’s arrangement.
- f. Claims may also be settled by reduction of cost of goods under claim from bonds submitted by the Seller or payment of claim amount by Seller through demand draft drawn on an Indian Bank, in favour of Principal Controller/Controller of Defence Accounts concerned.

- g. The quality claims will be raised solely by the Buyer and without any certification/countersignature by the Seller's representative stationed in India.

29. **Warranty** –

- a.
 - i. Except as otherwise provided in the invitation tender, the Seller hereby declares that the goods, stores articles sold/supplied to the Buyer under this Supply Order shall be of the best quality and workmanship and new in all respects and shall be strictly in accordance with the specification and particulars contained/mentioned in Supply Order. The Seller hereby guarantees that the said goods/stores/articles would continue to conform to the description and quality aforesaid for a period of 12 months from the date of delivery of the said goods stores/articles to the Buyer or 15 months from the date of shipment/despatch from the Seller's works whichever is earlier and that notwithstanding the fact that the Buyer may have inspected and/or approved the said goods/stores/articles, if during the aforesaid period of 12/15 months the said goods/stores/articles be discovered not to conform to the description and quality aforesaid not giving satisfactory performance or have deteriorated, and the decision of the Buyer in that behalf shall be final and binding on the Seller and the Buyer shall be entitled to call upon the Seller to rectify the goods/stores/articles or such portion thereof as is found to be defective by the Buyer within a reasonable period, or such specified period as may be allowed by the Buyer in his discretion on application made thereof by the Seller, and in such an event, the above period shall apply to the goods/stores/articles rectified from the date of rectification mentioned in warranty thereof, otherwise the Seller shall pay to the Buyer such compensation as may arise by reason of the breach of the warranty therein contained.
 - ii. Guarantee that they will supply spare parts, if and when required on agreed basis for an agreed price. The agreed basis could be and including but without any limitation an agreed discount on the published catalogue or an agreed percentage of profit on the landed cost.
 - iii. Warranty to the effect that before going out of production for the spare parts they will give adequate advance notice to the Buyer of the equipment so that the latter may undertake the balance of the lifetime requirements.

- iv. Warranty to the effect that they will make available the blue prints of drawings of the spares if and when required in connection with the main equipment.

OR

b.

- i. The Seller warrants that the goods supplied under the Supply Order conform to technical specifications prescribed and shall perform according to the said technical specifications.
- ii. The Seller warrants for a period of _____ months from the date of acceptance of stores by Joint Receipt Inspection or date of installation and commissioning, whichever is later, that the goods/stores supplied under the Supply Order and each component used in the manufacture thereof shall be free from all types of defects/failures.
- iii. If within the period of warranty, the goods are reported by the Buyer to have failed to perform as per the specifications, the Seller shall either replace or rectify the same free of charge, within a maximum period of 45 days of notification of such defect received by the Seller, provided that the goods are used and maintained by the Buyer as per instructions contained in the Operating Manual. Warranty of the equipment would be extended by such duration of downtime. Record of the down time would be maintained by the user in the logbook. Spares required for warranty repairs shall be provided free of cost by the Seller. The Seller also undertakes to diagnose, test, adjust, calibrate and repair/replace the goods/equipment arising due to accidents by neglect or misuse by the operator or damage due to transportation of the goods during the warranty period, at the cost mutually agreed to between the Buyer and the Seller.
- iv. The Seller also warrants that necessary service and repair back up during the warranty period of the equipment shall be provided by the Seller and he will ensure that the downtime is within ____% of the warranty period.
- v. Seller shall associate technical personnel of Maintenance agency and Quality Assurance Agency of the Buyer during warranty repair and shall also provide the details of complete defects, reasons and remedial actions for defects.

- vi. If a particular equipment/goods fails frequently and/or, the cumulative down time exceeds ___% of the warranty period, the complete equipment shall be replaced free of cost by the Seller within a stipulated period of ___days of receipt of the notification from the Buyer. Warranty of the replaced equipment would start from the date of acceptance after Joint Receipt Inspection by the Buyer/date of installation and commissioning.
- vii. In case the complete delivery of Engineering Support Package is delayed beyond the period stipulated in this Supply Order, the Seller undertakes that the warranty period for the goods/stores shall be extended to that extent.
- viii. The Seller will guarantee the shelf life of (_____) years under the Indian tropical condition as given below:
 - 1. Minimum temperature - -
 - 2. Maximum temperature ---
 - 3. Average Humidity ---
- ix. For procurement of oils and lubricants, the following will be applicable –
 - 1. The Seller warrants that the special oils and lubricants required during the warranty period of the equipment shall be provided by the Seller himself.
 - 2. The penalty amounting to (_____%) of the value of the equipment shall be imposed on the Seller in case the Seller refuses or fails to meet the requirement of oils and lubricants during the warranty period of the equipment.
 - 3. The Seller shall make available the detailed specifications of all oils and lubricants required to be used in the equipment at the line of initial delivery of equipment to facilitate identification and development of indigenous equivalents to be used after the expiry of the warranty period.

30. Product Support:

- a. The Seller agrees to provide Product Support for the stores, assemblies/subassemblies, fitment items and consumables, Special Maintenance Tools(SMT)/Special Test Equipments (STE) sub Supply Ordered from other agencies/ manufacturer by the Seller for a maximum period of _____years including _____ years of warranty period after the delivery of _____(name of equipment).

- b. The Seller agrees to undertake Maintenance Supply Order for a maximum period of _____months, extendable till the complete Engineering Support Package is provided by the Seller.
- c. In the event of any obsolescence during the above mentioned period of product support in respect of any component or sub-system, mutual consultation between the Seller and Buyer will be undertaken to arrive at an acceptable solution including additional cost, if any.
- d. Any improvement/modification/ up gradation being undertaken by Seller or their sub suppliers on the stores/equipment being purchased under the Supply Order will be communicated by the Seller to the Buyer and, if required by the Buyer, these will be carried out by the Seller at Buyer's cost.
- e. The Seller agrees to provide an Engineering Support Package as modified after confirmatory Maintenance Evaluation Trials (METs). The SELLER agrees to undertake the repair and maintenance of the equipment, SMTs/STEs test set up, assemblies/sub assemblies and stores supplied under this Supply Order for a period of _____years as maintenance Supply Order as specified or provision of complete Engineering Support Package to the Buyer which ever is later, as per terms and conditions mutually agreed between the Seller and the Buyer.

31. Annual Maintenance Supply Order (AMC) Clause -

- a. The Seller would provide comprehensive AMC for a period of ____ years. The AMC services should cover the repair and maintenance of all the equipment and systems purchased under the present Supply Order. The Buyer Furnished Equipment which is not covered under the purview of the AMC should be separately listed by the Seller. The AMC services would be provided in two distinct ways:
 - i. Preventive Maintenance Service: The Seller will provide a minimum of four Preventive Maintenance Service visits during a year to the operating base to carry out functional check ups and minor adjustments/ tuning as may be required.
 - ii. Breakdown maintenance Service: In case of any breakdown of the equipment/system, on call from the Buyer, the Seller is to provide maintenance service to make the equipment/system serviceable.
- b. Response time: The response time of the Seller should not exceed _____hours from the time the breakdown intimation is provided by the Buyer.

- c. Serviceability of_% per year is to be ensured. This amounts to total maximum downtime of ___days per year. Also unserviceability should not exceed ___days at one time. Required spares to attain this serviceability may be stored at site by the Seller at his own cost. Total down time would be calculated at the end of the year. If downtime exceeds permitted downtime, LD would be applicable for the delayed period.
- d. Maximum repair turnaround time for equipment/system would be _____ days. However, the spares should be maintained in a serviceable condition to avoid complete breakdown of the equipment/system.
- e. Technical Documentation: All necessary changes in the documentation (Technical and Operators manual) for changes carried out on hardware and software of the equipment will be provided.
- f. During the AMC period, the Seller shall carry out all necessary servicing/repairs to the equipment/system under AMC at the current location of the equipment/system. Prior permission of the Buyer would be required in case certain components/sub systems are to be shifted out of location. On such occasions, before taking over the goods or components, the Seller will give suitable bank guarantee to the Buyer to cover the estimated current value of item being taken.
- g. The Buyer reserves its right to terminate the maintenance Supply Order at any time without assigning any reason after giving a notice of _____ months. The Seller will not be entitled to claim any compensation against such termination. However, while terminating the Supply Order, if any payment is due to the Seller for maintenance services already performed in terms of the Supply Order, the same would be paid to it as per the Supply Order terms.

32. **Engineering Support Package (ESP) clause -**

- a. **Repair Philosophy:** The Engineering Support Philosophy shall conform to the repair philosophy as follows:
- i. **Unit level repairs** - These are repairs carried out within the unit holding this equipment with tools generally held within the unit or supplied by the manufacturer with each equipment or as per scaling of 1:10 or any other scaling recommended by the manufacturer as per population held in the unit. These pertain to cleaning, lubrications, minor repairs and replacement of components and minor assemblies that can be carried out in field without any sophisticated tools or test equipment. For carrying out such repairs, the manufacturer is required to provide the following:-
 1. Table of Tools and Equipment (TOTE) with each equipment including operators manual.
 2. Scaling of special tools and spares as mentioned above including Maintenance manual.
 - ii. **Field Repairs** – These are repairs carried out in the field by technicians specially trained for this purpose and where the required special tools and spares have to be provided. These repairs comprise replacement of major assemblies and other components beyond the scope of unit level repairs. Normally a field work shop that carries out such repairs looks after three to four units holding the said equipment. The manufacturer is required to provide the following:-
 1. Quantity and specification of spares that need to be stocked for a population of _____equipment.
 2. Special Maintenance Tools and Test Equipment that need to be provided to each such field work shop. (The total number of such facilities would also have to be stated based on deployment pattern of the concerned equipment to carryout total costing).
 - iii. **Base overhaul** - All repairs including repairs to components, subassemblies and overhaul of the complete equipment are carried out by this facility. Depending on the population of the equipment, one to five such facilities may be established in India

for this purpose (The actual No would have to be stated for costing).The manufacturer is required to provide the following:-

1. All Special Maintenance Tools, jigs, fixtures and test equipment for carrying out repairs up to component level.
 2. Quantity and specification of spares, sub assemblies as per population expected to be maintained.
 3. Oils and lubricants necessary for overhaul.
 4. All necessary technical literature.
 5. Calibration facilities for test equipment.This level of repair defines stripping and rebuilding of equipment in a Base workshop.
- b. Manufacturers Recommended List of Spares (MRLS). - Based on the explanation given above, Bidders are requested to provide MRLS to sustain the equipment for a period of ---- years for various levels of repair as per format given at Form DPM-19 (Available in MoD website and can be given on request). Bidders will be required to provide these both with Technical and Commercial proposals. (In case where the equipment has been in usage the spares would be sought by Buyer, on the recommended list to be furnished by the maintenance agency, based on the exploitation of the equipment, and NOT as per MRLS). While with the commercial proposal, the actual costs of each component/spare will be provided, in the case of Technical Proposal these will be reflected as Low Cost/ Medium Cost/High Cost. A guideline for this purpose is as under:-
- i. Low Cost. Less than 2 % of the unit cost of the equipment/sub system.
 - ii. Medium Cost. 2 to 10% of the unit cost of the equipment/sub system.
 - iii. High Cost. Greater than 10 % of the unit cost of equipment/subsystem.

If the complete equipment comprises a number of different sub systems, for e.g. it is coming mounted on a vehicle or is provided with a stand for mounting or is inclusive of a generator or an air conditioner or has a sight, the MRLS must be provided separately for each such sub system.

- c. Special Maintenance Tools and Test Equipment - This is to be formulated in a similar manner as explained for MRLS. A suggested format is given at Form DPM-17 (Available in MoD website and can be given on request) and is to be included in both Technical and

Commercial Proposals. The cost column may be left blank in the Technical Proposal.

- d. Technical Literature - The details of technical literature to be supplied with the system should be listed as per the suggested format at Form DPM-18 (Available in MoD website and can be given on request). This should be provided with both Technical and Commercial Proposals. The cost column may be left blank in the Technical Proposal.
- e. Miscellaneous Aspects (Applicable only when trials are required) - In cases where the equipment is required to undergo trials, the equipment will also be put through Maintenance Evaluation Test. Based on this evaluation and in consultation with the supplier, the MRLS may be refined. During user trials it may be brought out that the equipment is acceptable subject to carrying out certain modifications / improvements.
- f. Maintainability Evaluation Trials (MET). This is carried with a view to facilitate provisioning of effective engineering support during life cycle of the equipment. This would involve stripping of the equipment and carrying out recommended tests and adjustments and establishing adequacy of maintenance tools, test equipment and technical literature. To facilitate this process the Bidder is required to provide the following :-
 - i. Technical Literature.
 1. User Handbook/Operators Manual in English and Hindi.
 2. Design Specifications.
 3. Technical Manuals.
 - a. Part I Tech description, specifications, functioning of various systems.
 - b. Part II Inspection/Maintenance tasks repair procedures, materials used, fault diagnosis and use of Special Maintenance Tools (SMTs)/Special Test Equipment (STEs).
 - c. Part III Procedure for assembly/disassembly, repair up to component level, safety precautions.
 - d. Part IV Part list with drawing reference and List of SMTs/STEs Test Bench.
 4. Manufacturers Recommended List of Spares (MRLS).
 5. Illustrated Spare Parts List (ISPL) and along with the prices in the Commercial offer.
 6. Technical Manual on STE with drawing reference.

7. Complete Equipment Schedule.

8. Table of Tools & Equipment (TOTE) & carried spares.

9. Rotable list, norms of consumption, mandatory/ non mandatory spares list for each system.

ii. One set of Gauges

iii. One set of Special Maintenance Tools (SMTs).

iv. One set of Special Test Equipment (STEs).

v. Servicing Schedule.

vi. Condemnation limits.

vii. Permissive repair schedule.

viii. Packing specifications /instructions.

ix. Design Specifications.

x. Any additional information suggested by the OEM.

g. Vendors quoting lesser ESP / MRLS in terms of range and depth will have to make good the deficiency. The vendors quoting surplus items in ESP / MRLS should agree to buy back the surplus spares.

33. **Price Variation (PV) Clause** –

a. The formula for Price Variation should ordinarily include a fixed element, a material element and a labour element. The figures representing the material element and the labour element should reflect the corresponding proportion of input costs, while the fixed element may range from 10 to 25%. That portion of the price represented by the fixed element, will not be subject to variation. The portions of the price represented by the material element and labour element along will attract Price Variation. The formula for Price Variation will thus be :-

$$P_1 = P_0 \left\{ F + a \left(\frac{M_1}{M_0} \right) + b \left(\frac{L_1}{L_0} \right) - P_0 \right\}$$

Where P_1 is then adjustment amount payable to the supplier (a minus figure will indicate a reduction in the Contract Price)

P_0 is the Contract Price at the base level.

F is the Fixed element not subject to Price Variation

a is the assigned percentage to the material element in the Contract Price.

b is the assigned percentage to the labour element in the Contract Price.

L_0 and L_1 are the wage indices at the base month and year and at the month and year of calculation respectively.

M_0 and M_1 are the material indices at the base month and year and at the month and year of calculation respectively.

If more than one major item of material is involved, the material element can be broken up into two or three components such as M_x , M_y , M_z . Where price variation clause has to be provided for services (with insignificant inputs of materials) as for example, in getting Technical Assistance normally paid in the form of per diem rates, the price variation formula should have only two elements, viz. a high fixed element and a labour element. The fixed element can in such cases be 50% or more, depending on the mark-up by the supplier of the Per Diem rate vis-a-vis the wage rates.

- b. Following conditions would be applicable to Price Adjustment –
- i. Base dates shall be due dates of opening of price bids.
 - ii. Date of adjustment shall be mid point of manufacture.
 - iii. No price increase is allowed beyond original DP unless the delay is attributable to the Buyer.
 - iv. Total adjustment will be subject to maximum ceiling of ____%.
 - v. No price adjustment shall be payable on the portion of contract price paid to the Seller as an advance payment.

Standard Conditions of Contract

1. Law: The Contract shall be considered and made in accordance with the laws of the Republic of India. The contract shall be governed by and interpreted in accordance with the laws of the Republic of India.

2. Effective Date of the Contract: The contract shall come into effect on the date of signatures of both the parties on the contract (Effective Date) and shall remain valid until the completion of the obligations of the parties under the contract. The deliveries and supplies and performance of the services shall commence from the effective date of the contract.

3. Arbitration: All disputes or differences arising out of or in connection with the Contract shall be settled by bilateral discussions. Any dispute, disagreement or question arising out of or relating to the Contract or relating to construction or performance, which cannot be settled amicably, may be resolved through arbitration. The Arbitration is as per Form DPM-7 / DPM-8 / DPM-9 enclosed to Part-III of this contract.

4. Penalty for use of Undue influence: The Seller 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 service of the Buyer or otherwise in procuring the Contracts or forbearing to do or for having done or forborne to do any act in relation to the obtaining or execution of the present Contract or any other Contract with the Government of India for showing or forbearing to show favour or disfavour to any person in relation to the present Contract or any other Contract with the Government of India. Any breach of the aforesaid undertaking by the Seller or any one employed by him or acting on his behalf (whether with or without the knowledge of the Seller) or the commission of any offence by the Seller or anyone employed by him or acting on his behalf, as defined in Chapter IX of the Indian Penal Code, 1860 or the Prevention of Corruption Act, 1986 or any other Act enacted for the prevention of corruption shall entitle the Buyer to cancel the contract and all or any other contracts with the Seller and recover from the Seller the amount of any loss arising from such cancellation. A decision of the Buyer or his nominee to the effect that a breach of the undertaking had been committed shall be final and binding on the Seller. Giving or offering of any gift, bribe or inducement or any attempt at any such act on behalf of the Seller towards any officer/employee of the Buyer or to any other person in a position to influence any officer/employee of the Buyer for showing any favour in relation to this or any other contract, shall render the Seller to such liability/ penalty as the Buyer 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 amounts paid by the Buyer.

5. Agents / Agency Commission: The Seller confirms and declares to the Buyer that the Seller is the original manufacturer of the stores/provider of the services

referred to in this Contract and has not engaged any individual or firm, whether Indian or foreign whatsoever, to intercede, facilitate or in any way to recommend to the Government of India or any of its functionaries, whether officially or unofficially, to the award of the contract to the Seller; nor has any amount been paid, promised or intended to be paid to any such individual or firm in respect of any such intercession, facilitation or recommendation. The Seller agrees that if it is established at any time to the satisfaction of the Buyer that the present declaration is in any way incorrect or if at a later stage it is discovered by the Buyer that the Seller has engaged any such individual/firm, and paid or intended to pay any amount, gift, reward, fees, commission or consideration to such person, party, firm or institution, whether before or after the signing of this contract, the Seller will be liable to refund that amount to the Buyer. The Seller will also be debarred from entering into any supply Contract with the Government of India for a minimum period of five years. The Buyer will also have a right to consider cancellation of the Contract either wholly or in part, without any entitlement or compensation to the Seller who shall in such an event be liable to refund all payments made by the Buyer in terms of the Contract along with interest at the rate of 2% per annum above LIBOR rate. The Buyer will also have the right to recover any such amount from any contracts concluded earlier with the Government of India.

6. Access to books of Accounts: In case it is found to the satisfaction of the Buyer that the Seller has engaged an Agent or paid commission or influenced any person to obtain the contract as described in clauses relating to Agents/Agency Commission and penalty for use of undue influence, the Seller, on a specific request of the Buyer, shall provide necessary information/ inspection of the relevant financial documents/information.

7. Non-disclosure of Contract documents: Except with the written consent of the Buyer/Seller, other party shall not disclose the contract or any provision, specification, plan, design, pattern, sample or information thereof to any third party.

8. Liquidated damages: In the event of the Seller's failure to submit the Bonds, Guarantees and Documents, supply the stores/goods and conduct trials, installation of equipment, training, etc as specified in this contract, the Buyer may, at his discretion, withhold any payment until the completion of the contract. The Buyer may also deduct from the Seller as agreed, Liquidated Damages to the sum of 0.5% of the contract price of the delayed/undelivered stores/services mentioned above for every week of delay or part of a week, subject to the maximum value of the Liquidated Damages being not higher than 10% of the value of delayed stores.

9. Termination of the contract: The Buyer shall have the right to terminate this Contract in part or in full in any of the following cases :-

(a) The delivery of the material is delayed for causes not attributable to Force Majeure for more than (____months) after the scheduled date of delivery.

(b) The Seller is declared bankrupt or becomes insolvent.

(c) The delivery of material is delayed due to causes of Force Majeure by more than (___months).

(d) The Buyer has noticed that the Seller has utilised the services of any Indian/Foreign agent in getting this contract and paid any commission to such individual/company etc.

(e) As per decision of the Arbitration Tribunal.

10. **Notices:** Any notice required or permitted by the contract shall be written in the English language and may be delivered personally or may be sent by FAX or registered pre-paid mail/airmail, addressed to the last known address of the party to whom it is sent.

11. **Transfer and sub-letting:** The Seller has no right to give, bargain, sell, assign or sublet or otherwise dispose of the Contract or any part thereof, as well as to give or to let a third party take benefit or advantage of the present Contract or any part thereof.

12. **Patents and Other Industrial Property Rights:** The prices stated in the present Contract shall be deemed to include all amounts payable for the use of patents, copyrights, registered charges, trademarks and payments for any other industrial property rights. The Seller shall indemnify the Buyer against all claims from a third party at any time on account of the infringement of any or all the rights mentioned in the previous paragraphs, whether such claims arise in respect of manufacture or use. The Seller shall be responsible for the completion of the supplies including spares, tools, technical literature and training aggregates irrespective of the fact of infringement of the supplies, irrespective of the fact of infringement of any or all the rights mentioned above.

13. Amendments: No provision of present Contract shall be changed or modified in any way (including this provision) either in whole or in part except by an instrument in writing made after the date of this Contract and signed on behalf of both the parties and which expressly states to amend the present Contract.

14. Taxes and Duties

- a) **In case of Foreign Seller** All taxes, duties, levies and charges which are to be paid for the delivery of goods, including advance samples, shall be paid by the parties under the present contract in their respective countries.

OR

- b) **In case of Indigenous Seller**

i) **General**

1. If Bidder desires to ask for excise duty or Sales Tax / VAT extra, the same must be specifically stated. In the absence of any such stipulation, it will be presumed that the prices include all such charges and no claim for the same will be entertained.
2. If reimbursement of any Duty/Tax is intended as extra over the quoted prices, the Bidder must specifically say so. In the absence of any such stipulation it will be presumed that the prices quoted are firm and final and no claim on account of such duty/tax will be entertained after the opening of tenders.
3. If a Bidder chooses to quote a price inclusive of any duty/tax and does not confirm inclusive of such duty/tax so included is firm and final, he should clearly indicate the rate of such duty/tax and quantum of such duty/tax included in the price. Failure to do so may result in ignoring of such offers summarily.
4. If a Bidder is exempted from payment of any duty/tax upto any value of supplies from them, he should clearly state that no such duty/tax will be charged by him up to the limit of exemption which he may have. If any concession is available in regard to rate/quantum of any Duty/tax, it should be brought out clearly. Stipulations like, the said duty/tax was presently not applicable but the same will be charged if it becomes leviable later on, will not be accepted unless in such cases it is clearly stated by a Bidder that such duty/tax will not be charged by him even if the same becomes applicable later on. In respect of the Bidders, who fail to comply with this requirement, their quoted prices shall be loaded with the quantum of such duty/tax which is normally applicable on the item in question for the purpose of comparing their prices with other Bidders.
5. Any change in any duty/tax upward/downward as a result of any statutory variation in excise taking place within contract terms shall be allowed to the extent of actual quantum of such duty/tax paid by the supplier. Similarly, in case of downward revision in any duty/tax, the actual quantum of reduction of such duty/tax shall be reimbursed

to the Buyer by the Seller. All such adjustments shall include all reliefs, exemptions, rebates, concession etc. if any obtained by the Seller.

ii) Customs Duty –

1. For imported stores offered against forward delivery, the Bidder shall quote prices thereof exclusive of customs duty. The Bidder shall specify separately the C.I.F. prices and total amount of customs duty payable. They will also indicate correctly the rate of customs duty applicable along with Indian Customs Tariff Number. Customs duty as actually paid will be reimbursed on production of necessary documents i.e. (i) Triplicate copy of the bill of entry; (ii) copy of bill of lading; (iii) a copy of foreign principal's invoice. However, if the Bidder imports the stores in question against his own commercial quota Import Licences, he will also be required to submit in addition the triplicate copy of bills of entry etc. a certificate from his Internal Auditor on the bill itself, to the effect that the following items/quantity in the bill of entry related to the stores imported against Defence Buyer contract number..... dated.....
2. Subsequent to the reimbursement of customs duty, the Bidder will submit to the concerned Payment Authority a certificate to the effect that he has not obtained any refund of customs duty subsequent to the payment of duty to the Customs authority by him. In addition, he shall also submit to the Paying Authority concerned a certificate immediately after a period of three months from the date of payment of the duty to customs authorities to the effect that he has not applied for refund of the customs duty subsequent to the payment of duty to the customs authorities by him.
3. In case the Bidder obtains any refund of customs duty, subsequently to the payment of the same by him to the customs authorities and reimbursement of the customs duty to him by the Payment Authority, he should forthwith furnish the details of the refund obtained and afford full credit of the same to the Buyer.

iii) Excise Duty

1. Where the excise duty is payable on advalorem basis, the Bidder should submit along with the tender, the relevant form and the Manufacturer's price list showing the actual assessable value of the stores as approved by the Excise authorities.
2. Bidders should note that in case any refund of excise duty is granted to them by Excise authorities in respect of Stores supplied under the contract, they will pass on the credit to the Buyer immediately along with a certificate that the credit so passed on relates to the Excise Duty, originally paid for the stores supplied under the contract. In

case of their failure to do so, within 10 days of the issue of the excise duty refund orders to them by the Excise Authorities the Buyer would be empowered to deduct a sum equivalent to the amount refunded by the Excise Authorities without any further reference to them from any of their outstanding bills against the contract or any other pending Government Contract and that no disputes on this account would be raised by them.

3. The Seller is also required to furnish to the Paying Authority the following certificates:
 - (a) Certificate with each bill to the effect that no refund has been obtained in respect of the reimbursement of excise duty made to the Seller during three months immediately preceding the date of the claim covered by the relevant bill.
 - (b) Certificate as to whether refunds have been obtained or applied for by them or not in the preceding financial year after the annual Audit of their accounts also indicating details of such refunds/applications, if any.
 - (c) A certificate along with the final payment bills of the Seller to the effect whether or not they have any pending appeal/protest for refund or partial refund of excise duties already reimbursed to the Seller by the Government pending with the Excise authorities and if so, the nature, the amount involved, and the position of such appeals.
 - (d) An undertaking to the effect that in case it is detected by the Government that any refund from Excise Authority was obtained by the Seller after obtaining reimbursement from the Paying Authority, and if the same is not immediately refunded by the Seller to the Paying Authority giving details and particulars of the transactions, Paying Authority will have full authority to recover such amounts from the Seller's outstanding bills against that particular contract or any other pending Government contracts and that no dispute on this account would be raised by the Seller.
4. Unless otherwise specifically agreed to in terms of the contract, the Buyer shall not be liable for any claim on account of fresh imposition and/or increase of Excise Duty on raw materials and/or components used directly in the manufacture of the contracted stores taking place during the pendency of the contract.

iv) **Sales Tax / VAT**

1. If it is desired by the Bidder to ask for Sales tax / VAT to be paid as extra, the same must be specifically stated. In the absence of any such stipulation in the bid, it will be presumed that the prices quoted by the Bidder are inclusive of sales tax and no liability of sales tax will be developed upon the Buyer.
2. On the Bids quoting sales tax extra, the rate and the nature of Sales Tax applicable at the time of supply should be shown separately. Sales tax will be paid to the Seller at the rate at which it is liable to be assessed or has actually been assessed provided the transaction of sale is legally liable to sales tax and the same is payable as per the terms of the contract.

v) **Octroi Duty & Local Taxes**

1. Normally, materials to be supplied to Government Departments against Government Contracts are exempted from levy of town duty, Octroi Duty, Terminal Tax and other levies of local bodies. The local Town/Municipal Body regulations at times, however, provide for such Exemption only on production of such exemption certificate from any authorised officer. Seller should ensure that stores ordered against contracts placed by this office are exempted from levy of Town Duty/Octroi Duty, Terminal Tax or other local taxes and duties. Wherever required, they should obtain the exemption certificate from the Buyer, to avoid payment of such local taxes or duties.
2. In case where the Municipality or other local body insists upon payment of these duties or taxes the same should be paid by the Seller to avoid delay in supplies and possible demurrage charges. The receipt obtained for such payment should be forwarded to the Buyer without delay together with a copy of the relevant act or by-laws/notifications of the Municipality of the local body concerned to enable him to take up the question of refund with the concerned bodies if admissible under the said acts or rules.

15. Pre-Integrity Pact Clause – A Pre-Integrity Pact is concluded between Buyer and Seller as per Form DPM-10 enclosed to Part-III of this Contract.

Part IV – Special Conditions of Contract

1. Performance Guarantee:

a. In case of Indigenous Seller The Bidder will be required to furnish a Performance Guarantee by way of Bank Guarantee through a public sector bank or a private sector bank authorized to conduct government business (ICICI Bank Ltd., Axis Bank Ltd or HDFC Bank Ltd.) for a sum equal to 10% of the contract value within 30 days of signing of this contract. Performance Bank Guarantee will be valid up to 60 days beyond the date of warranty. The specimen of PBG is given in Form DPM-15, enclosed to Part-IV of this contract.

OR

b. In case of Foreign Seller: The Seller will be required to furnish a Performance Guarantee by way of a Bank Guarantee from Seller's Bank through an internationally recognised first class Bank in favour of the Government of India, Ministry of Defence to be confirmed by public sector bank or a private sector bank authorized to conduct government business (ICICI Bank Ltd., Axis Bank Ltd or HDFC Bank Ltd.) equal to 10(five percent) of the total value of this contract i.e. for US \$ (US Dollars (in words) only). Performance Bank Guarantee should be valid up to 60 days beyond the date of warranty. The Performance Bank Guarantee shall be considered open upon receipt by the Buyer's Bank. In case any claims or any other contract obligations are outstanding, the Seller will extend the Performance Bank Guarantee as asked for by the Buyer till such time as the Seller settles all claims and completes all contract obligations. The Performance Bank Guarantee will be subject to encashment by the Buyer, in case the conditions regarding adherence to delivery schedule, settlement of claims and other provisions of the contract are not fulfilled by the Seller. The specimen of PBG is given in Form DPM-15, enclosed to Part-IV of this Contract.

2. Option Clause: This contract has an Option Clause, wherein the Buyer can exercise an option to procure an additional 50% of the original contracted quantity in accordance with the same terms & conditions of the present contract. This will be applicable within the currency of contract. It will be entirely the discretion of the Buyer to exercise this option or not.

3. Repeat Order Clause – This contract has a Repeat Order Clause, wherein the Buyer can order upto 50% quantity of the items under the present contract within six months from the date of successful completion of this contract, cost, terms & conditions remaining the same. It will be entirely the discretion of Buyer to place the Repeat order or not.

4. Tolerance clause – To take care of any change in the requirement during the period starting from issue of RFP till placement of the contract, Buyer reserves the right to ___% plus/minus increase or decrease the quantity of the required goods upto that limit without any change in the terms & conditions and prices quoted by the Seller. While awarding the contract, the quantity ordered has been increased or decreased by the Buyer within this tolerance limit.

5. Payment terms for Indigenous Sellers - The payment will be made as per the following terms, on production of the requisite documents:

a. 95% Payment against Inspection note, Proof of despatch, duly supported by Xerox copy of the Bank Guarantee and against Consignee's provisional receipt. Balance of 5% will be paid on receipt of items in good condition by consignee(s) along with user's certificate of complete Installation and successful commissioning.

OR

b. 100% payment on delivery and acceptance by the user.

OR

c. Stage-wise payments (To be defined as per complexity of case)

OR

d. Quarterly payments on submission of User clearance certificate in respect of AMC contracts.

6. Payment terms for Foreign Sellers –

a. The payment will be arranged through Letter of Credit from Reserve Bank of India/State bank of India/any other Public Sector bank Bank, as decided by the Buyer, to the Bank of the Foreign Seller. The Seller will give a notification within a specified period about the readiness of goods. Letter of Credit is to be opened by the Buyer within _____days on receipt of notification of readiness from the firm. The Letter of Credit will be valid for _____days from the

date of its opening, on extendable basis by mutual consent of both the Seller and Buyer.

OR

b. If the value of the contract is up to US \$ 100,000, payments will be made by Direct Bank Transfer. DBT payment will be made within 30 days of receipt of clean Bill of Lading / AWB/Proof of shipment and such other documents as are provided for in the contract, but such payments will be subject to the deductions of such amounts as the Seller may be liable to pay under the agreed terms of the Contract.

OR

c. Stage-wise payments (To be defined as per complexity of case)

OR

d. Quarterly payments on submission of User clearance certificate in respect of AMC contracts.

7. Advance Payments: No advance payment(s) will be made.

OR

a. Advance payments will be made upto 15% against appropriate Bank guarantee or any authorised guarantee, as accepted by the Buyer. The specimen of PBG is given in Form DPM-16, enclosed to Part-IV of this Contract.

8. Paying Authority:

a. **Indigenous Sellers** – (Name and address, contact details). The payment of bills will be made on submission of the following documents by the Seller to the Paying Authority along with the bill:

- i. Ink-signed copy of contingent bill / Seller's bill.
- ii. Ink-signed copy of Commercial invoice / Seller's bill.
- iii. Copy of Contract with U.O. number and date of IFA's concurrence, where required under delegation of powers.
- iv. CRVs in duplicate.

- v. Inspection note.
- vi. Claim for statutory and other levies to be supported with requisite documents / proof of payment such as Excise duty challan, Customs duty clearance certificate, Octroi receipt, proof of payment for EPF/ESIC contribution with nominal roll of beneficiaries, etc as applicable.
- vii. Exemption certificate for Excise duty / Customs duty, if applicable.
- viii. Bank guarantee for advance, if any.
- ix. Guarantee / Warranty certificate.
- x. Performance Bank guarantee / Indemnity bond where applicable.
- xi. DP extension letter with CFA's sanction, U.O. number and date of IFA's concurrence, where required under delegation of powers, indicating whether extension is with or without LD.
- xii. Details for electronic payment viz Account holder's name, Bank name, Branch name and address, Account type, Account number, IFSC code, MICR code (if these details are not incorporated in contract).
- xiii. Any other document / certificate that may be provided for in the contract.
- xiv. User Acceptance.
- xv. Xerox copy of PBG.

(Note – From the above list, the documents that may be required depending upon the peculiarities of the procurement being undertaken, may be included in RFP)

b. Foreign Sellers - (Name and address, contact details). Paid shipping documents are to be provided to the Bank by the Seller as proof of dispatch of goods as per contractual terms so that the Seller gets payment from LC. The Bank will forward these documents to the Buyer for getting the goods/stores released from the Port/Airport. Documents will include:

- i. Clean on Board Airway Bill/Bill of Lading
- ii. Original Invoice
- iii. Packing List

- iv. Certificate of Origin from Seller's Chamber of Commerce, if any.
- v. Certificate of Quality and current manufacture from OEM.
- vi. Dangerous Cargo certificate, if any.
- vii. Insurance policy of 110% if CIF / CIP contract
- viii. Certificate of Conformity & Acceptance Test at PDI, if any.
- ix. Physio-sanitary / Fumigation Certificate, if any.
- x. Performance Bond / Warranty Certificate

9. Fall clause -

a. The price charged for the stores supplied under the contract by the Contractor shall in no event exceed the lowest prices at which the contractor sells the stores or offer to sell stores of identical description to any persons/Organisation including the purchaser or any department of the Central government or any Department of state government or any statutory undertaking the central or state government as the case may be during the period till performance of all supply Orders placed during the currency of the rate contract is completed.

b. If at any time, during the said period the contractor reduces the sale price, sells or offer to sell such stores to any person/organisation including the purchaser or any Deptt, of central Govt. or any Department of the State Government or any Statutory undertaking of the Central or state Government as the case may be at a price lower than the price chargeable under the contract, the shall forthwith notify such reduction or sale or offer of sale to the Director general of Supplies & Disposals and the price payable under the contract for the stores of such reduction of sale or offer of the sale shall stand correspondingly reduced. The above stipulation will, however, not apply to:--

- i. Exports by the contractor.
- ii. Sale of goods as original equipment at price lower than lower than the prices charged for normal replacement.
- iii. Sale of goods such as drugs which have expiry dates R/C holders cannot reduce rates under pretext of fall clause in Drug and medicine contracts.
- iv. Sale of goods at lower price on or after the date of completion of sale/placement of the order of goods by the authority concerned under the existing or previous Rate Contracts as also under any previous

contracts entered into with the Central or State Govt. Depts, including their undertakings excluding joint sector companies and/or private parties and bodies.

- c. The Seller shall furnish the following certificate to the Paying Authority along with each bill for payment for supplies made against the Rate contract – “We certify that there has been no reduction in sale price of the stores of description identical to the stores supplied to the Government under the contract herein and such stores have not been offered/sold by me/us to any person/organisation including the purchaser or any department of Central Government or any Department of a state Government or any Statutory Undertaking of the Central or state Government as the case may be upto the date of bill/the date of completion of supplies against all supply orders placed during the currency of the Rate Contract at price lower than the price charged to the government under the contract except for quantity of stores categories under sub-clauses (a),(b) and (c) of sub-para (ii) above details of which are given below -”.

10. Exchange Rate Variation Clause:

- (a) Detailed time schedule for procurement of imported material and their value at the FE rates adopted for the contract is to be furnished by the Seller as per the format given below

Year wise and major currency wise import content break up

Year	Total cost of material	FE content outflow (Equivalent in Rupees - crores)		
		Dollar denominated	Euro denominated	Other currencies denominated

- (b) ERV will be payable/refundable depending upon movement of exchange rate with reference to exchange rate adopted for the valuation of the contract. Base exchange rate of each major currency used for calculating FE content of the contract will be the BC Selling rate of the State Bank of India on the date of the opening of Price Bids.

- (c) The base date for ERV would be contract date and variation on the base date will be given upto the midpoint manufacture unless Seller indicates the time schedule within which material will be exported by them. Based on

information given above, the cut off date/dates within the Delivery schedule for the imported material will be fixed for admissibility of ERV.

(d) ERV clause will not be applicable in case delivery periods for imported content are subsequently to be refixed /extended.

(e) The impact of notified Exchange Rate Variation shall be computed on an yearly basis for the outflow as mentioned by the Seller in their tender and shall be paid / refunded before the end of the financial year based on the certification of the Buyer.

11. Risk & Expense clause –

- a. Should the stores or any installment thereof not be delivered with the time or time specified in the contract documents, or it defective delivery is made in respect of the stores or any installment thereof, the Buyer shall after granting the Seller 45 days to cure the breach, be at liberty, without prejudice to the right to recover liquidated damages as a remedy for breach of contract, to declare the contract as cancelled either wholly or to the extent of such default.
- b. Should the stores or any installment thereof not perform in accordance with the specifications / parameters provided by the SELLER during the check proof tests to be one in the BUYER's country, the BUYER shall be at liberty, without prejudice to any other remedies for breach of contract, to cancel the contract wholly or to the extent of such default.
- c. In case of a material breach that was not remedied within 45 days, the BUYER shall, having given the right of first refusal to the SELLER be at liberty to purchase, manufacture, or procure from any other source as he things fit other stores of the same or similar description to make good:-
 - i. Such default.
 - ii. In the event of the contract being wholly determined the balance of the stores remaining to be delivered thereunder.
- d. Any excess of the purchase price, cost of manufacturer, or value of any stores procured from any other supplier as the case may be, over the contract price appropriate to such default or balance shall be recoverable from the SELLER. Such recoveries shall not exceed ____% of the value of the contract.”

12. Buy-Back offer - Buyer will be hand over the old items and the agreed prices will be adjusted in the final payment to the Seller. It will be the responsibility of Seller to carry away the old items from the Buyer's premises within 15 days of signing of this contract. The expenditure on account of Handling charges and transportation expenses to carry away the old items will be borne by the Seller.

13. Force Majeure: Should any Force Majeure circumstances arise, each of the contracting party shall be excused for the non-fulfilment or for the delayed fulfilment of any of its contractual obligations, if the affected party within (___days)

of its occurrence informs the other party in writing. Force Majeure shall mean fires, floods, natural disasters or other acts, that are unanticipated or unforeseeable, and not brought about at the instance of the party claiming to be affected by such event, or which, if anticipated or foreseeable, could not be avoided or provided for, and which has caused the non-performance or delay in performance, such as war, turmoil, strikes, sabotage, explosions, quarantine restriction beyond the control of either party. A party claiming Force Majeure shall exercise reasonable diligence to seek to overcome the Force Majeure event and to mitigate the effects thereof on the performance of its obligations under this contract.

14. Specification: The Seller guarantees to meet the specifications as per Part-II of this contract and to incorporate the modifications to the existing design configuration to meet the specific requirement of the Buyer Services as per modifications/requirements recommended after the Maintenance Evaluation Trials. All technical literature and drawings shall be amended as the modifications by the Seller before supply to the Buyer. The Seller, in consultation with the Buyer, may carry out technical upgradation/alterations in the design, drawings and specifications due to change in manufacturing procedures, indigenisation or obsolescence. This will, however, not in any way, adversely affect the end specifications of the equipment. Changes in technical details, drawings repair and maintenance techniques alongwith necessary tools as a result of upgradation/alterations will be provided to the Buyer free of cost within (____) days of affecting such upgradation/alterations.

15. OEM Certificate: In case the Seller is not the OEM, the agreement certificate with the OEM for sourcing the spares shall be mandatory. However, where OEMs do not exist, minor aggregates and spares can be sourced from authorized vendors subject to quality certification.

16. Export License: The Seller is to confirm that they have requisite export license from their Government and Authorization from the manufacturing plant, in case they are not the OEM, to export the military / non-military goods to India.

17. Earliest Acceptable Year of Manufacture: _____ Quality / Life certificate will need to be enclosed with the Bill.

18. Buyer Furnished Equipment: The following equipment will be provided by the Buyer at his expense to the Seller:

.....
.....

19. Transportation:

a. **CIF/CIP** – The stores shall be delivered CIF/CIP _____(Port of destination). Seller will bear the costs and freight necessary to bring the goods to the port of destination. The Seller also has to procure marine insurance against the Buyer's risk of loss of or damage to goods during the

carriage. The Seller will contract for insurance and pay the insurance premium. Seller is also required to clear the goods for export. The stores shall be delivered to the Buyer by Indian ships only. The date of issue of the Bill of Lading shall be considered as the date of delivery. No part shipment of goods would be permitted. Trans-shipment of goods would not be permitted. In case it becomes inevitable to do so, the Seller shall not arrange part-shipments and/or transshipment without the express/prior written consent of the Buyer. The goods should be shipped by Indian vessels only. However, the Seller can still utilize the services of the MoD, Govt of India Freight Forwarding Agent details for which will be provided by the Buyer. Seller will be required to communicate the following information invariably by telex/signed in case of import of Defence Stores being brought in commercial ships to Embarkation Head Quarters concerned well in advance before the Ship sails the port of loading:

- i. Name of the Ship
- ii. Port of Loading and name of Country.
- iii. ETA at port of Discharge i.e. Bombay, Calcutta, Madras and Cochin.
- iv. Number of Packages and weight.
- v. Nomenclature and details of major equipment.
- vi. Special instructions, if any stores of sensitive nature requiring special attention.

OR

- c. **FOB/FAS** -- The stores shall be delivered FOB/FAS (as per INCOTERMS 2000, or latest version). The stores shall be delivered to the Buyer by Indian Ships only. In case of FOB/FAS contracts, shipping arrangements shall be made by the Shipping Co-ordination and Chartering Division/Shipping Co-ordination and Officer, Ministry of Surface Transport, New Delhi, India. Notice about the readiness of Cargo for shipment shall be given by the supplier from time to time at least eight weeks in advance for finalizing the shipping arrangement, through Fax/Telex and courier, to the Chief Controller of Chartering, Shipping Co-ordination Officer, Ministry of Surface Transport, Government of India, New Delhi. Within 3 (three) weeks of receipt of the advance notice, as above, the said Chief Controller of Chartering, Shipping Coordination Officer will advise the supplier, through Fax/Telex and courier when and on board what vessels, these goods or such part thereof are to be delivered. If the advice for shipping arrangement is not furnished to the Seller within 3 (three) weeks as aforesaid or if the vessel arranged is scheduled to arrive at the specified port of loading later than 15 (fifteen) days of the date of readiness of cargo, as aforesaid, the Seller may arrange for such transport on alternative carriers with the prior written consent of the Buyer. Where the Seller is required under the contract to deliver the goods on FOB/FAS basis and to arrange on behalf and at the expense of the Buyer for ocean transportation on Indian flag vessels or vessels of conference lines in which India is a member country, the Seller may

arrange for such transportation on alternate carriers if the specified Indian flag vessels or conference vessels are not available to transport the goods within the time period(s) specified in the contract, with the prior written consent of the Buyer. Should the goods or any part thereof be not delivered on the nominated vessel (except in case where prior written consent of the Buyer was obtained), the Seller will be liable for all payments and expenses that the Buyer may incur or be put to, by reason of such non-delivery including dead and extra freight, demurrage of vessels and any other charges, whatsoever incurred by the Buyer. The date of issue of the Bill of Lading shall be considered as the date of delivery. No part shipment of goods would be permitted. Trans-shipment of goods would not be permitted. In case it becomes inevitable to do so, the Seller shall not arrange part-shipments and/or transshipment without the express/prior written consent of the Buyer. The Seller may contact Shipping Officer, Ministry of Surface Transport, Chartering Wing, Transport Bhavan, Parliament Street, New Delhi-110011 (Telegraphic Address: TRANSCHART, NEW DELHI-1, Telex "VAHAN" In 31-61157 OR 31-61158, Phone 2371 9480, Fax 2371 8614).

OR

- c) **FCA** - The delivery of the goods shall be FCA _____Airport. The dispatch of goods shall be made by air to port consignee. The Buyer shall advise full details of its freight forwarder to the Seller no later than 60 days prior to the delivery of the first consignment otherwise the Seller may nominate the freight forwarder which shall be at the Buyer's expense. Any delay in advising or delay by the freight forwarder shall be at the responsibility of the Buyer. The date of issue of the Air Way Bill shall be considered as the date of delivery.

20. Air lift: Should the Buyer intend to airlift all or some of the stores, the Seller shall pack the stores accordingly on receipt of intimation to that effect from the Buyer. Such deliveries will be agreed upon well in advance and paid for as may be mutually agreed.

21. Packing and Marking:

- a. The Seller shall provide packing and preservation of the equipment and spares/goods contracted so as to ensure their safety against damage in the conditions of land, sea and air transportation, transshipment, storage and weather hazards during transportation, subject to proper cargo handling. The Seller shall ensure that the stores are packed in containers, which are made sufficiently strong, and with seasoned wood. The packing cases should have hooks for lifting by crane/fork lift truck. Tags with proper marking shall be fastened to the special equipment, which cannot be packed.

- b. The packing of the equipment and spares/goods shall conform to the requirements of specifications and standards in force in the territory of the Seller's country.
- c. Each spare, tools and accessory shall be packed in separate cartons. A label in English shall be pasted on the carton indicating the under mentioned details of the item contained in the carton. A tag in English with said information shall also be attached to six samples of the item. If quantity contracted is less than six then tag shall be affixed to complete quantity contracted of the item. The cartons shall then be packed in packing cases as required.
 - i) Part Number :
 - ii) Nomenclature :
 - iii) Contract annex number :
 - iv) Annex serial number :
 - v) Quantity contracted :
- d. One copy of the packing list in English shall be inserted in each cargo package, and the full set of the packing lists shall be placed in Case No.1 painted in a yellow colour.
- e. The Seller shall mark each package with indelible paint in the English language as follows:-
 - i. EXPORT
 - ii. Contract No. -----
 - iii. Consignee -----
 - iv. Port / airport of destination -----
 - v. Ultimate consignee -----
 - vi. SELLER -----
 - vii. Package No. -----
 - viii. Gross/net weight : -----
 - ix. Overall dimensions/volume : -----
 - x. The Seller's marking _____
- f. If necessary, each package shall be marked with warning inscriptions: <Top>, "Do not turn over", category of cargo etc.
- g. Should any special equipment be returned to the Seller by the Buyer, the latter shall provide normal packing, which protects the equipment and spares/goods from the damage of deterioration during transportation by land, air or sea. In this case the Buyer shall finalize the marking with the Seller.

22. Quality: The quality of the stores delivered according to the present Contract shall correspond to the technical conditions and standards valid for the deliveries

of the same stores for in Seller's country or specifications enumerated as per RFP and shall also include therein modification to the stores suggested by the Buyer. Such modifications will be mutually agreed to. The Seller confirms that the stores to be supplied under this Contract shall be new i.e. not manufactured before (Year of Contract), and shall incorporate all the latest improvements and modifications thereto and spares of improved and modified equipment are backward integrated and interchangeable with same equipment supplied by the Seller in the past if any. The Seller shall supply an interchangeability certificate along with the changed part numbers wherein it should be mentioned that item would provide as much life as the original item.

23. Quality Assurance: After the contract is negotiated, the Seller would be required to provide the Standard Acceptance Test Procedure (ATP). Buyer reserves the right to modify the ATP. Seller would be required to provide all test facilities at his premises for acceptance and inspection by Buyer. The item should be of the latest manufacture, conforming to the current production standard and having 100% defined life at the time of delivery.

24. Inspection Authority: The Inspection will be carried out by _____. The mode of Inspection will be Departmental Inspection / User Inspection / Joint Inspection / Self-certification.

25. Pre-Dispatch Inspection -

a. The Buyer's representatives will carry out Pre-Dispatch Inspection (PDI) of the stores/equipment in order to check their compliance with specifications in accordance with its usual standard procedures. Upon successful completion of such PDI, the Seller and Buyer will issue and sign a Certificate of Conformity as per the specimen at Form DPM-21 enclosed as part of Part-IV.

b. The Seller shall intimate the Buyer at least 45 days before the scheduled date of PDI. The time required for completing visa formalities

by the Seller should not be included in this notice. The Buyer will send his authorised representative(s) to attend the PDI.

c. The list of Buyer's representatives together with their particulars including name, title, date and place of birth, passport numbers including date of issue and date of expiry, address, etc. must be communicated by the Buyer at least _____(No of days) in advance to apply for the necessary authorisations and clearances to be granted.

d. The Buyer reserves the right not to attend the PDI or to request for postponement of the beginning of the PDI by a maximum of fifteen (15) days from the date fixed for such PDI in order to allow his representative(s) to attend such tests, in which cases he shall inform in writing the Seller within 15 days before the date of the beginning of the

PDI. Should the Buyer request for such postponement, liquidated damages, if any, shall not apply. In case the Buyer informs the Seller within the period mentioned hereinabove that he cannot attend the PDI or in case the Buyer does not come at the postponed date requested by him for performance of the PDI as mentioned above, the Seller shall be entitled to carry out said tests alone as scheduled. The Certificate of Conformity and the Acceptance Test Report will be signed by the Seller's QA representative alone and such documents bearing the sole signature of the Seller's QA representative shall have the same value and effect as if they have been signed by both the parties. In case Buyer does not elect to attend the PDI, the Buyer shall intimate the Seller in writing that it does not wish to attend the PDI.

e. The Seller shall provide all reasonable facilities, access and assistance to the Buyer's representative for safety and convenience in the performance of their duties in the Seller's country.

f. All costs associated with the stay of the Buyer's Representative(s) in the country where the PDI is to be carried out, including travel expenses, boarding and lodging, accommodation, daily expenses, shall be borne by the Buyer.

g. The Seller shall provide Acceptance Test Procedure to the Buyer's QA Agency within one month from the signing of the Contract.

26. Joint Receipt Inspection:

a. The Parties agree that the Joint Receipt Inspection (JRI) of delivered goods shall be conducted on arrival in India at location to be nominated by the Buyer. JRI shall be completed within 120 days (for armament/ammunition)/ 90 days (for other than armament/ammunition) of arrival of good at the Port Consignee. JRI will consist of

- i. Quantitative checking to verify that the quantities of the delivered goods correspond to the quantities defined in this contract and the invoices.
- ii. Complete functional checking of the stores/equipment as per specifications in the contract and as per procedures and tests laid down by Buyer but functional checking of spares shall not be done.
- iii. Check proof and firing if required.

b. JRI will be carried out by the Buyer's representative(s). The Buyer will invite the Seller with a prior notice of a minimum of fifteen (15) days to attend the JRI for the delivered goods. The Seller shall have the right not to attend the JRI. The bio data of the Seller's representative will need to be communicated fifteen (15) days prior to the despatch of goods to the Buyer

for obtaining necessary security clearance in accordance with the rules applicable in the Buyer's country.

c. Upon completion of each JRI, JRI proceedings and Acceptance will be signed by both the parties. In case the Seller's representative is not present, the JRI proceedings and Acceptance Certificate shall be signed by the Buyer's representative only and the same shall be binding on the Seller. Copy of JRI proceedings and Acceptance Certificate shall be despatched to the Seller within 30 days of completion of the JRI. In case of deficiencies in quantity and quality or defects, details of these shall be recorded in the JRI proceedings, Acceptance Certificate shall not be issued and claims raised as per the Article on Claims in the contract. In case of claims, Acceptance Certificate shall be issued by Buyer's representative after all claims raised during JRI are settled. If the Buyer does not perform the JRI as mentioned above for reasons exclusively attributable to him, the JRI in India shall be deemed to have been performed and the stores/equipment fully accepted.

27. Franking Clause

a. In the case of Acceptance of Goods "The fact that the goods have been inspected after the delivery period and passed by the Inspecting Officer will not have the effect of keeping the contract alive. The goods are being passed without prejudice to the rights of the Buyer under the terms and conditions of the contract".

b. In the case of Rejection of Goods "The fact that the goods have been inspected after the delivery period and rejected by the Inspecting Officer will not bind the Buyer in any manner. The goods are being rejected without prejudice to the rights of the Buyer under the terms and conditions of the contract."

28. Claims: The following Claims clause will form part of the contract placed on successful Bidder –

a. The claims may be presented either: (a) on quantity of the stores, where the quantity does not correspond to the quantity shown in the Packing List/Insufficiency in packing, or (b) on quality of the stores, where quality does not correspond to the quality mentioned in the contract.

b. The quantity claims for deficiency of quantity shall be presented within 45 days of completion of JRI and acceptance of goods. The quantity claim shall be submitted to the Seller as per Form DPM-22 (Available in MoD website and can be given on request).

c. The quality claims for defects or deficiencies in quality noticed during the JRI shall be presented within 45 days of completion of JRI and acceptance of goods. Quality claims shall be presented for defects or deficiencies in quality noticed during warranty period earliest but not later than 45 days after expiry

of the guarantee period. The quality claims shall be submitted to the Seller as per Form DPM-23 (Available in MoD website and can be given on request) .

d. The description and quantity of the stores are to be furnished to the Seller along with concrete reasons for making the claims. Copies of all the justifying documents shall be enclosed to the presented claim. The Seller will settle the claims within 45 days from the date of the receipt of the claim at the Seller's office, subject to acceptance of the claim by the Seller. In case no response is received during this period the claim will be deemed to have been accepted.

e. The Seller shall collect the defective or rejected goods from the location nominated by the Buyer and deliver the repaired or replaced goods at the same location under Seller's arrangement.

f. Claims may also be settled by reduction of cost of goods under claim from bonds submitted by the Seller or payment of claim amount by Seller through demand draft drawn on an Indian Bank, in favour of Principal Controller/Controller of Defence Accounts concerned.

g. The quality claims will be raised solely by the Buyer and without any certification/countersignature by the Seller's representative stationed in India.

29. Warranty –

a. The following Warranty will form part of the contract placed on successful Bidder –

- i. Except as otherwise provided in the invitation tender, the Seller hereby declares that the goods, stores articles sold/supplied to the Buyer under this contract shall be of the best quality and workmanship and new in all respects and shall be strictly in accordance with the specification and particulars contained/mentioned in contract. The Seller hereby guarantees that the said goods/stores/articles would continue to conform to the description and quality aforesaid for a period of 12 months from the date of delivery of the said goods stores/articles to the Buyer or 15 months from the date of shipment/despatch from the Seller's works whichever is earlier and that notwithstanding the fact that the Buyer may have inspected and/or approved the said goods/stores/articles, if during the aforesaid period of 12/15 months the said goods/stores/articles be discovered not to conform to the description and quality aforesaid not giving satisfactory performance or have deteriorated, and the decision of the Buyer in that behalf shall be final and binding on the Seller and the Buyer shall be entitled to call upon the Seller to rectify the goods/stores/articles or such portion thereof as is found to be defective by the Buyer within a reasonable period, or such specified period as may be allowed by the

Buyer in his discretion on application made thereof by the Seller, and in such an event, the above period shall apply to the goods/stores/articles rectified from the date of rectification mentioned in warranty thereof, otherwise the Seller shall pay to the Buyer such compensation as may arise by reason of the breach of the warranty therein contained.

- ii. Guarantee that they will supply spare parts, if and when required on agreed basis for an agreed price. The agreed basis could be and including but without any limitation an agreed discount on the published catalogue or an agreed percentage of profit on the landed cost.
- iii. Warranty to the effect that before going out of production for the spare parts they will give adequate advance notice to the Buyer of the equipment so that the latter may undertake the balance of the lifetime requirements.
- iv. Warranty to the effect that they will make available the blue prints of drawings of the spares if and when required in connection with the main equipment.

OR

b. The following Warranty will form part of the contract placed on successful Bidder -

- i. The Seller warrants that the goods supplied under the contract conform to technical specifications prescribed and shall perform according to the said technical specifications.
- ii. The Seller warrants for a period of _____ months from the date of acceptance of stores by Joint Receipt Inspection or date of installation and commissioning, whichever is later, that the goods/stores supplied under the contract and each component used in the manufacture thereof shall be free from all types of defects/failures.
- iii. If within the period of warranty, the goods are reported by the Buyer to have failed to perform as per the specifications, the Seller shall either replace or rectify the same free of charge, within a maximum period of 45 days of notification of such defect received by the Seller, provided that the goods are used and maintained by the Buyer as per instructions contained in the Operating Manual. Warranty of the equipment would be extended by such duration of downtime. Record of the down time would be maintained by the user in the logbook. Spares required for warranty repairs shall be provided free of cost by the Seller. The Seller also undertakes to diagnose, test, adjust, calibrate and repair/replace the goods/equipment arising due to accidents by neglect or misuse by the operator or damage due to transportation of the goods during the warranty period, at the cost mutually agreed to between the Buyer and the Seller.

- iv. The Seller also warrants that necessary service and repair back up during the warranty period of the equipment shall be provided by the Seller and he will ensure that the downtime is within ___ % of the warranty period.
- v. Seller shall associate technical personnel of Maintenance agency and Quality Assurance Agency of the Buyer during warranty repair and shall also provide the details of complete defects, reasons and remedial actions for defects.
- vi. If a particular equipment/goods fails frequently and/or, the cumulative down time exceeds ___% of the warranty period, the complete equipment shall be replaced free of cost by the Seller within a stipulated period of ___ days of receipt of the notification from the Buyer. Warranty of the replaced equipment would start from the date of acceptance after Joint Receipt Inspection by the Buyer/date of installation and commissioning.
- vii. In case the complete delivery of Engineering Support Package is delayed beyond the period stipulated in this contract, the Seller undertakes that the warranty period for the goods/stores shall be extended to that extent.
- viii. The Seller will guarantee the shelf life of (_____) years under the Indian tropical condition as given below:
 - 1. Minimum temperature - -
 - 2. Maximum temperature ---
 - 3. Average Humidity ---
- ix. For procurement of oils and lubricants, the following will be applicable:–
 - 1. The Seller warrants that the special oils and lubricants required during the warranty period of the equipment shall be provided by the Seller himself.
 - 2. The penalty amounting to (_____%) of the value of the equipment shall be imposed on the Seller in case the Seller refuses or fails to meet the requirement of oils and lubricants during the warranty period of the equipment.
 - 3. The Seller shall make available the detailed specifications of all oils and lubricants required to be used in the equipment at the line of initial delivery of equipment to facilitate identification and development of indigenous equivalents to be used after the expiry of the warranty period.

30. Product Support: The following Product Support clause will form part of the contract placed on successful Bidder –

a. The Seller agrees to provide Product Support for the stores, assemblies/subassemblies, fitment items and consumables, Special Maintenance Tools(SMT)/Special Test Equipments (STE) subcontracted from other agencies/ manufacturer by the Seller for a maximum period of _____years including _____years of warranty period after the delivery of _____(name of equipment).

b. The Seller agrees to undertake Maintenance Contract for a maximum period of _____months, extendable till the complete Engineering Support Package is provided by the Seller.

c. In the event of any obsolescence during the above mentioned period of product support in respect of any component or sub-system, mutual consultation between the Seller and Buyer will be undertaken to arrive at an acceptable solution including additional cost, if any.

d. Any improvement/modification/ up gradation being undertaken by Seller or their sub suppliers on the stores/equipment being purchased under the Contract will be communicated by the Seller to the Buyer and, if required by the Buyer, these will be carried out by the Seller at Buyer's cost.

e. The Seller agrees to provide an Engineering Support Package as modified after confirmatory Maintenance Evaluation Trials (METs). The SELLER agrees to undertake the repair and maintenance of the equipment, SMTs/STEs test set up, assemblies/sub assemblies and stores supplied under this contract for a period of _____years as maintenance contract as specified or provision of complete Engineering Support Package to the Buyer which ever is later, as per terms and conditions mutually agreed between the Seller and the Buyer.

31. Annual Maintenance Contract (AMC) Clause - The following AMC clause will form part of the contract placed on successful Bidder -

a. The Seller would provide comprehensive AMC for a period of ___years. The AMC services should cover the repair and maintenance of all the equipment and systems purchased under the present Contract. The Buyer Furnished Equipment which is not covered under the purview of the AMC should be separately listed by the Seller. The AMC services would be provided in two distinct ways:

i. Preventive Maintenance Service: The Seller will provide a minimum of four Preventive Maintenance Service visits during a year to the operating

base to carry out functional check ups and minor adjustments/ tuning as may be required.

ii. Breakdown maintenance Service: In case of any breakdown of the equipment/system, on call from the Buyer, the Seller is to provide maintenance service to make the equipment/system serviceable.

b. Response time: The response time of the Seller should not exceed _____ hours from the time the breakdown intimation is provided by the Buyer.

c. Serviceability of ___% per year is to be ensured. This amounts to total maximum downtime of ___days per year. Also unserviceability should not exceed ___days at one time. Required spares to attain this serviceability may be stored at site by the Seller at his own cost. Total down time would be calculated at the end of the year. If downtime exceeds permitted downtime, LD would be applicable for the delayed period.

d. Maximum repair turnaround time for equipment/system would be _____ days. However, the spares should be maintained in a serviceable condition to avoid complete breakdown of the equipment/system.

e. Technical Documentation: All necessary changes in the documentation (Technical and Operators manual) for changes carried out on hardware and software of the equipment will be provided.

f. During the AMC period, the Seller shall carry out all necessary servicing/repairs to the equipment/system under AMC at the current location of the equipment/system. Prior permission of the Buyer would be required in case certain components/sub systems are to be shifted out of location. On such occasions, before taking over the goods or components, the Seller will give suitable bank guarantee to the Buyer to cover the estimated current value of item being taken.

g. The Buyer reserves its right to terminate the maintenance contract at any time without assigning any reason after giving a notice of ___months. The Seller will not be entitled to claim any compensation against such termination. However, while terminating the contract, if any payment is due to the Seller for maintenance services already performed in terms of the contract, the same would be paid to it as per the contract terms.

32. Engineering Support Package (ESP) clause - The following ESP clause will form part of the contract placed on successful Bidder –

a. Repair Philosophy: The Engineering Support Philosophy shall conform to the repair philosophy as follows:

i. Unit level repairs - These are repairs carried out within the unit holding this equipment with tools generally held within the unit or supplied by the manufacturer with each equipment or as per scaling of 1:10 or any other scaling recommended by the manufacturer as per population held in the unit. These pertain to cleaning, lubrications, minor repairs and replacement of components and minor assemblies that can be carried out in field without any sophisticated tools or test equipment. For carrying out such repairs, the manufacturer is required to provide the following:-

1. Table of Tools and Equipment (TOTE) with each equipment including operators manual.
2. Scaling of special tools and spares as mentioned above including Maintenance manual.

vi. **Field Repairs** – These are repairs carried out in the field by technicians specially trained for this purpose and where the required special tools and spares have to be provided. These repairs comprise replacement of major assemblies and other components beyond the scope of unit level repairs. Normally a field work shop that carries out such repairs looks after three to four units holding the said equipment. The manufacturer is required to provide the following:-

1. Quantity and specification of spares that need to be stocked for a population of _____ equipment.
2. Special Maintenance Tools and Test Equipment that need to be provided to each such field work shop. (The total number of such facilities would also have to be stated based on deployment pattern of the concerned equipment to carryout total costing).

vii. **Base overhaul** - All repairs including repairs to components, subassemblies and overhaul of the complete equipment are carried out by this facility. Depending on the population of the equipment, one to five such facilities may be established in India for this purpose (The actual No would have to be stated for costing).The manufacturer is required to provide the following:-

1. All Special Maintenance Tools, jigs, fixtures and test equipment for carrying out repairs up to component level.
2. Quantity and specification of spares, sub assemblies as per population expected to be maintained.

3. Oils and lubricants necessary for overhaul.
4. All necessary technical literature.
5. Calibration facilities for test equipment. This level of repair defines stripping and rebuilding of equipment in a Base workshop.

b. **Manufacturers Recommended List of Spares (MRLS).** - Based on the explanation given above, Bidders are requested to provide MRLS to sustain the equipment for a period of ---- years for various levels of repair as per format given at Form DPM-19 (Available in MoD website and can be given on request). Bidders will be required to provide these both with Technical and Commercial proposals. (In case where the equipment has been in usage the spares would be sought by Buyer, on the recommended list to be furnished by the maintenance agency, based on the exploitation of the equipment, and NOT as per MRLS). While with the commercial proposal, the actual costs of each component/spare will be provided, in the case of Technical Proposal these will be reflected as Low Cost/ Medium Cost/High Cost. A guideline for this purpose is as under:-

- i. Low Cost. Less than 2 % of the unit cost of the equipment/sub system.
- ii. Medium Cost. 2 to 10% of the unit cost of the equipment/sub system.
- iii. High Cost. Greater than 10 % of the unit cost of equipment/subsystem.

If the complete equipment comprises a number of different sub systems, for eg it is coming mounted on a vehicle or is provided with a stand for mounting or is inclusive of a generator or an air conditioner or has a sight, the MRLS must be provided separately for each such sub system.

c. **Special Maintenance Tools and Test Equipment** - This is to be formulated in a similar manner as explained for MRLS. A suggested format is given at Form DPM-17 (Available in MoD website and can be given on request) and is to be included in both Technical and Commercial Proposals. The cost column may be left blank in the Technical Proposal.

d. **Technical Literature** - The details of technical literature to be supplied with the system should be listed as per the suggested format at Form DPM-18 (Available in MoD website and can be given on request). This should be provided with both Technical and Commercial Proposals. The cost column may be left blank in the Technical Proposal.

- e. **Miscellaneous Aspects (Applicable only when trials are required)** - In cases where the equipment is required to undergo trials, the equipment will also be put through Maintenance Evaluation Test. Based on this evaluation and in consultation with the supplier, the MRLS may be refined. During user trials it may be brought out that the equipment is acceptable subject to carrying out certain modifications / improvements.
- f. **Maintainability Evaluation Trials (MET)**. This is carried with a view to facilitate provisioning of effective engineering support during life cycle of the equipment. This would involve stripping of the equipment and carrying out recommended tests and adjustments and establishing adequacy of maintenance tools, test equipment and technical literature. MET details will be given as per format given at Form DPM-20 (Available in MoD website and can be given on request). To facilitate this process the Bidder is required to provide the following :-
- i. Technical Literature.
 1. User Handbook/Operators Manual in English and Hindi.
 2. Design Specifications.
 3. Technical Manuals.
 - a. Part I Tech description, specifications, functioning of various systems.
 - b. Part II Inspection/Maintenance tasks repair procedures, materials used, fault diagnosis and use of Special Maintenance Tools (SMTs)/Special Test Equipment (STEs).
 - c. Part III Procedure for assembly/disassembly, repair up to component level, safety precautions.
 - d. Part IV Part list with drawing reference and List of SMTs/STEs Test Bench.
 4. Manufacturers Recommended List of Spares (MRLS).
 5. Illustrated Spare Parts List (ISPL) and along with the prices in the Commercial offer.
 6. Technical Manual on STE with drawing reference.
 7. Complete Equipment Schedule.
 8. Table of Tools & Equipment (TOTE) & carried spares.
 9. Rotable list, norms of consumption, mandatory/ non mandatory spares list for each system.
 - ii. One set of Gauges
 - iii. One set of Special Maintenance Tools (SMTs).
 - iv. One set of Special Test Equipment (STEs).

- v. Servicing Schedule.
- vi. Condemnation limits.
- vii. Permissive repair schedule.
- viii. Packing specifications /instructions.
- ix. Design Specifications.
- x. Any additional information suggested by the OEM.

g. Vendors quoting lesser ESP / MRLS in terms of range and depth will have to make good the deficiency. The vendors quoting surplus items in ESP / MRLS should agree to buy back the surplus spares.

33. **Price Variation (PV) Clause** – The following PV clause will form part of the contract placed on successful Bidder (Note - DGS&D Manual provides Standardised Price Variation Clauses. Any of those clauses could be considered for inclusion. A sample clause is indicated below) –

- c. The formula for Price Variation should ordinarily include a fixed element, a material element and a labour element. The figures representing the material element and the labour element should reflect the corresponding proportion of input costs, while the fixed element may range from 10 to 25%. That portion of the price represented by the fixed element, will not be subject to variation. The portions of the price represented by the material element and labour element along will attract Price Variation. The formula for Price Variation will thus be :-

$$P_1 = P_0 \left\{ F + a \left(\frac{M_1}{M_0} \right) + b \left(\frac{L_1}{L_0} \right) - P_0 \right\}$$

Where P_1 is then adjustment amount payable to the supplier (a minus figure will indicate a reduction in the Contract Price)

P_0 is the Contract Price at the base level.

F is the Fixed element not subject to Price Variation

a is the assigned percentage to the material element in the Contract Price.

b is the assigned percentage to the labour element in the Contract Price.

L_0 and L_1 are the wage indices at the base month and year and at the month and year of calculation respectively.

M_0 and M_1 are the material indices at the base month and year and at the month and year of calculation respectively.

If more than one major item of material is involved, the material element can be broken up into two or three components such as M_x , M_y , M_z . Where price variation clause has to be provided for services (with insignificant inputs of materials) as for example, in getting Technical Assistance normally paid in the form of per diem rates, the price variation formula should have only two elements, viz. a high fixed element and a labour element. The fixed element can in such cases be 50% or more, depending on the mark-up by the supplier of the Per Diem rate vis-a-vis the wage rates.

- d. Following conditions would be applicable to Price Adjustment –
- i. Base dates shall be due dates of opening of price bids.
 - ii. Date of adjustment shall be mid point of manufacture.
 - iii. No price increase is allowed beyond original DP unless the delay is attributable to the Buyer.
 - iv. Total adjustment will be subject to maximum ceiling of ____%.
 - v. No price adjustment shall be payable on the portion of contract price paid to the Seller as an advance payment.

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