

ANNEXURE 'A'
SECTION - II

GENERAL REQUIREMENTS & GENERAL TERMS & CONDITIONS OF CONTRACT.

1.0 DEFINATION OF TERMS:

In constituting these general conditions and the annexed specifications, the following words shall have the meanings herein assigned to them unless there is something in the subject or context inconsistent with such construction.

- 1.1 The 'Purchaser' shall mean Maharashtra State Electricity Distribution Co. Ltd., Mumbai and shall include its successors and assigns.
- 1.2 The 'Supplier / Contractor' shall mean the tenderer whose tender has been accepted by the Purchaser for award of contract and shall include such tenderer's legal representatives, successors and permitted assigns.
- 1.3 'Sub-Contractor' shall mean the person other than the contractor named in the contract for any part of the work or any reason to whom any part of the contract has been sublet by the contractor with the consent in writing of the Engineer and shall include the legal representatives, successors and permitted assigns of such person.
- 1.4 'Engineer' shall mean the Technical Director (Stores) / Chief Engineer (Stores) or such other officers as may be duly authorized and appointed by the Purchaser to act as an Engineer for the purposes of the contract.
- 1.5 'Plant Equipment' shall mean and include any plant, equipment, stores and materials to be provided by the contractor under the contract.
- 1.6 The 'Site' shall mean the whole of the premises, buildings and grounds in or upon which the plant, work or works is / are to be provided, executed, erected, done or carried out.
- 1.7 The 'Contract' shall mean the letter of Intent / Award, Letter of Acceptance of Tender and shall include the conditions of contract, specifications, schedules, tender, guarantee, drawings and any further conditions which may be specifically agreed to between the parties as forming a part of the contract.
- 1.8 The 'Specifications' shall mean the specifications appended to these general conditions and the schedules and annexures thereto, if any.
- 1.9 'Manufacturer's works' or 'Contractor's works' shall mean the place of work used by the manufacturer, the contractor or sub-contractors for the performance of the works.
- 1.10 'Notice of Award to Contract / Letter of Award' shall mean the official notice / letters issued by the purchaser notifying the contractor that his tender has been accepted.
- 1.11 'Contract Price' shall mean the sum named in the contract agreement subject to such additions thereto or deductions there from as may be made under the provisions hereinafter contained.
- 1.12 'Manufacturer's supervisory Personnel' shall mean the supervisory personnel deputed by the contractor or any other manufacturer who has supplied the materials or under whose supervision the installation of the equipment is to be carried out.
- 1.13 'Guaranteed Test' shall mean such test as prescribed in the contract and as instructed by the Engineer to be performed by the contractor before the works are finally accepted by the purchaser ready for commercial use complete with all items to the satisfaction of the Engineer.
- 1.14 'Commissioning' shall mean the first successful operation of the equipment after all the initial adjustments, trials etc., cleaning and re-assembly required at site, if any, have been completed and the equipment is made ready for commercial use.
- 1.15 'Guarantee Period' shall mean the period during which the contractor shall remain liable for repair/replacement of any defective part of the works performed under the contract.

- 1.16 'Shipping' or 'Shipment' shall mean the shipment or transport by Rail or Road of all the plant & equipment covered by the contract and similar expression shall include all transport from the manufacturer's works to the works site.
- 1.17 'Month' shall mean the Gregorian calendar month.
- 1.18 'Day' or 'Days' unless herein otherwise expressly defined shall mean calendar day or day of 24 hours each.
- 1.19 'Writing' shall include any manuscript, under or over signature and / or seal as the case may be.

2.0 INTERPRETATION:

- 2.1 Words importing the singular only shall also include the plural and vice versa where the context is required.
- 2.2 Words importing 'Person' shall include firms, companies, corporations and associations or bodies of individuals, whether incorporated or not.
- 2.3 Terms and expressions not herein defined shall have the same meaning as are assigned to them in the Indian Sale of Goods Act (1930) failing that in the Indian Contract Act (1872) and failing that in the General Clauses Act (1897).

3.0 EFFECT OF CONTRACT:

The contract shall be considered as having come in to force from the date of Notification of Award. The tenderer whose offer is accepted is hereinafter called "the supplier/Contractor".

4.0 SCOPE OF CONTRACT:

- 4.1 The scope of contract shall be the design and engineering, wherever applicable, manufacturer, inspection and testing before despatch, packing and supply on F.O.R. Destination basis of the materials and equipment in accordance with the enclosed technical specification and bill of material.
- 4.2 The equipment shall be complete in every respect with all mountings, fixtures and standard accessories, which are normally supplied, though not specifically detailed herein.
- 4.3 Where required, the scope of contract shall include supervision of erection and commissioning of the equipment including performance of the Guarantee Tests as desired by the Engineer.

5.0 CONTRACT DOCUMENT:

The term contract document shall mean and include the following, which shall be deemed to form an integral part of the contract.

- a) Tender specification of the Purchaser, covering the instructions to tenderers, general terms and conditions of contract, special terms and condition if any, technical specification, annexure, schedules etc.
- b) Contractor's tender proposal including the letters of clarifications thereto between the contractor and the purchaser prior to the award of contract.
- c) All the data and information of any sort given by the contractor along with his tender, subject to the approval of the Purchaser/Engineer.
- d) Any mutually agreed variation to the conditions of the documents and specifications and terms and conditions of contract, if any in writing.

6.0 ASSIGNMENT AND SUBLETTING OF CONTRACT:

- 6.1 The contractor shall not assign the contract or any part thereof or any benefit or interest therein or thereunder without the prior written consent of the Purchaser.
- 6.2 The contractor shall not sublet any part of the works without prior written consent of the Purchaser.

- 6.3 Such consent, if given, shall not relieve the contractor from any liability or obligation under the contract and he shall be responsible for the acts, defaults and neglects of any of his sub-contractor, his agents, servants or workman as fully as if they were the acts, defaults, neglect of the contractor, his agents, servants or workman.
- 6.4 The purchaser shall have the right to obtain from the contractor any agreement in writing entered into by the contractor with any of his sub contractors of any purchase orders placed for supplies and services in respect of the works included in the contract, provided that the contractor shall not be bound to disclose the sub contract value. The contractor shall supply the Engineer with full technical and commercial details of orders placed on his sub contractors. The technical specification of all the items ordered on sub contractor shall be subject to the approval of the Engineer.

7.0 CONTRACTOR TO INFORM HIMSELF FULLY:

- 7.1 The contractor shall be deemed to have satisfied himself as to all the conditions and circumstances affecting the contract price and as to the possibility of executing the work as shown and described in the contract. The contractor shall be deemed to have examined the availability of all inputs, transport facilities etc. and to have fixed his price taking into account all such relevant conditions and also the risk, contingencies and other circumstances which may influence or affect the supply of plant and equipment as specified in the contract.
- 7.2 The contractor shall be responsible for any misunderstanding or incorrect information, however obtained, on which the contract price has been based except the written information furnished by the purchaser.

8.0 SECURITY DEPOSIT :

The supplier shall pay within 15 days Security Deposit @ **10%** of the value of the order, unless having valid Permanent Bank Guarantee of Rs. 5(five) lakhs with the Purchaser. The maximum Security Deposit payable against the contract shall be limited to Rs. **Five Lakhs**. Security Deposit applicable to SSI Units in Maharashtra will be **3%** (Three percent) of the order value subject to a maximum of Rs. **50,000/-**. However, in respect of the following categories of suppliers, the Security Deposit applicable shall be as under:

a) For the order value upto Rs. 25,000/-, no security deposit shall be payable by the registered suppliers on the list of **Development Commissioner (Industries) and Stores Purchase Officer**.

b) Small Scale Industries registered with the Directorate of Industries and Maharashtra Khadi & Gramodyog Mandal shall be exempted from payment of security deposit for value of order upto Rs. 50,000/-.

The SSI units having industries outside Maharashtra State will not be eligible for exemption or concession in the security deposit. They will have to pay full security deposit at **10%** of the value of order limited to Rs. Five lakhs unless having deposited permanent bank guarantee of Rs. Five lakhs with the Purchaser.

The failure to make payment of security deposit within 15 days from the date of receipt of order as above will be viewed seriously and the contract awarded shall be liable to be terminated at the risk and cost of the Contractor and the Contractor shall be responsible for the consequences arising out of such termination.

The security deposit shall be paid in favour of Purchaser by way of:

(i) Cash or

(ii) Cheque or demand draft on any scheduled bank in Mumbai or

(iii) When the amount exceeds Rs. 5,000/-, bank guarantee from a scheduled bank valid for the guarantee period of last consignment of materials as given in clause no.27 of conditions of Tender and Supply in the standard form of the Purchaser or

- (iv) Pledging any of the certificates i.e. National Plan certificates, National Defense certificates, National Plan savings certificates, National Savings Certificates and National Defense Deposit certificates **or**
- (v) Fixed deposit receipts of any scheduled bank in favour of the Purchaser **or**,
- (vi) Purchaser debentures, **or**
- (vii) Government securities endorsed to the Purchaser as detailed below:
 - (a) All the endorsement on G.P. Notes including the last in favour of 'Purchaser' should be certified by the Public Debt Office, Reserve Bank of India or alternatively a fresh Note from Public Debt Office, Reserve Bank of India should be tendered.
 - (b) All the interest accrued on the G.P. Notes till date of transfer should be collected before submission and interest accruing subsequently will be collected by the Purchaser periodically and credited to the depositor's account less 2% subject to the minimum of Rs. 2/- which will be retained by the Purchaser to cover the cost of collection etc:

This security deposit in cash or in the form of bank guarantee or otherwise is for the due performance of the material/contract and the same shall be liable to apportion towards amount due or becoming due by the supplier on his failure to execute this order or any other contract and in the event of non fulfillment of the terms and conditions of the contract.

The security deposit shall be refunded on the expiry of the guarantee period specified in condition No.27 stated herein below. In case of G.P. Notes, the amount of security deposit payable should be on the basis of market value of the G.P. notes at the time of presentation of the G.P. Notes.

9.0 PERFORMANCE DEPOSIT (WHEREVER APPLICABLE):

- 9.1** After the first consignment is effected and when the 95% or 100% payment becomes due to the contractor, he will have to furnish contract performance deposit as mentioned in Clause 9.2 below for proper fulfillment of the contract for balance period of contract upto expiry of guarantee period.
- 9.2** The contract performance deposit shall be of an amount equal to 10% of the contract value and shall be paid by all the types of contractors. The Security Deposit paid by the contractor shall be refunded on furnishing the contract performance deposit within 30 days except in the cases where permanent Bank Guarantee of Rs. 5 Lakhs is furnished. The contract performance deposit can be furnished in either of the forms prescribed for Security Deposit.
- 9.3** The contract performance deposit shall be refunded within 90 days from the date of expiry of the guarantee period of the equipment supplied. The purchaser shall not be liable to pay any interest or compensation to the contractor for retaining the deposit after the end of the said period.
- 9.4** The contract performance deposit is intended to secure the performance of the contract for guarantee period of the equipments supplied. However, it is not to be construed as limiting the damages stipulated in other clauses of the contract.

10.0 CONTRACT DRAWINGS:

The tenderer shall submit the drawings and bill of material confirming with the tender specification wherever applicable. In such cases the offers without drawings & Bill of Material shall not be evaluated and considered for evaluation of the offer but the drawings & Bill of Material of the successful tenderers shall be scrutinized when the Purchaser decides to accept such tender.

The tenderer shall be required to depute his representative immediately either on hearing from the Purchaser for discussion on drawings or after receipt of Letter of Award. The supplies against the contract shall conform to the approved detailed drawings and Bill of Material along with detailed technical specification. It may, however, be noted that

Purchaser's action of evaluation of tender bid would not mean approval of the drawings and bill of material submitted along with tender bids.

11.0 WORKMANSHIP AND MATERIALS:

- 11.1 All materials supplied shall be strictly as per specification laid down and in strict accordance with approved standard samples wherever applicable. In case of materials of which there are no standard approved sample, the supplies shall be of the best workmanship materials as far as applicable and practicable and confirm to the latest specification of ISI, where applicable.
- 11.2 All materials used in the manufacture of the equipment shall be of high grade, free from defects, any imperfection, of recent manufacture and unused.
- 11.3 All work shall be performed and completed in accordance with the best shop practice. Manufacture of high grade equipment casting shall be free from blow holes, flaws, cracks or other defects and shall be smooth, close grained and of correct dimensions. All materials, supplies, parts supplied under this contract shall be tested as far as reasonably practical.

12.0 INSPECTION, TESTING & INSPECTION CERTIFICATES:

- 12.1 Materials shall be inspected by the Purchaser's Executive Engineer/or the representative authorized by the Purchaser before despatch. An intimation in the prescribed proforma about the date on which material shall be ready for inspection, indicating approximate quantity, shall have to be given to **the Executive Engineer (Inspection Wing), Maharashtra State Electricity Distribution Co. Ltd., 'Prakashgad'. 1st floor, Station Road, Bandra (East), Mumbai - 400 051**, so as to reach him sufficiently in advance, failing which, the supplier shall be responsible for delay in delivery on account of inspection. On receipt of such intimation, the materials shall be inspected within **30** days. The materials shall be despatched only after inspection and approval of same by the Inspector. The inspection approval letter shall be valid for a period of **21** days from the date of issue of letter to enable the supplier to pack the material and arrange transportation thereof within the said period. After this period of **21** days, the validity of this inspection approval letter will lapse. Thereafter, the material will have to be offered for re-inspection at the cost and risk of the supplier. Further, the price variation shall be payable limited to the period of original call letter or the actual date of despatch whichever is lower and the liquidated damages for late delivery shall be levied on such delays.
- 12.2 The supplier shall notify the names of the consignees to whom the inspected lot would be despatched. The Inspector shall intimate change in destination, if any, at the time of inspection approval and accordingly the material shall be despatched. The supplier shall get the copies of inspection approval letter together with witness certificate duly signed by the concerned Inspecting Officer IN BLUE INK only and also mention reference of inspection approval letter on the challan / invoice, failing which any delay occurred in getting the S.R. Notes from the consignees would be solely to supplier's account.
- 12.3 When the factory tests have been satisfactorily completed at the contractor's / sub-contractors works, the Engineer shall issue a certificate to this effect within three (3) days after completion of the tests.
The contractor shall make specifically clear where the materials inspection of bought out items / galvanized materials is to be carried out failing which the material will be inspected at the contractor's works only.
- 12.4 In all cases where the contract provided for tests whether at the premises or works of the contractor or of any sub-contractor, the contractor, except where otherwise specified, shall provide free of charge such items as labor, materials, electricity, fuel, water, Stores apparatus and instruments as may be reasonably demanded by the Engineer or his authorized representative witnessing the tests. All test apparatus and instruments shall be

validly calibrated in recognized laboratory for their accuracy. Necessary documentary proof shall be provided for the same.

- 12.5 The inspection by the Engineer and issue of inspection certificates thereon, shall in no way limit the liabilities and responsibilities of the contractor in respect of the agreed quality assurance programme forming a part of the contract.
- 12.6 Copies of the approved test reports and certificates shall be sent to the concerned consignee along with copies of the approved drawings, O & M manuals and approved bill of material.
- 12.7 The contractor shall normally offer at a time the entire quantity required to be delivered every month as per the delivery schedule indicated in the offer, for inspection by the Purchaser. However, in exceptional circumstances, the supplier may be allowed to offer quantity at a time not less than **50%** of the quantity required to be delivered every month.
- 12.8 In the event during the inspection by the Purchaser's Inspecting Officers if it is observed that the quantity actually offered for inspection is less than the quantity indicated for inspection in the inspection call, the Purchaser shall be entitled to recover the actual expenses incurred by the Purchaser for deputing its inspector for the inspection, from the supplier and the supplier shall not dispute the amount to be recovered.

13.0 FURNISHING OF SAMPLE:

- 13.1 Unless otherwise provided for the contract, all samples required for tests shall be supplied by the contractor free of cost to the Purchaser. Where a sample which is supplied free is rejected after examination and tests, the tested sample shall be collected by the contractor from the Purchaser within 30 days of intimation and deliver fresh sample for the tests. The rejection of the sample shall be final and binding on the contractor. In case of failure of the contractor to deliver a fresh sample, the Purchaser shall be entitled to cancel the contract and purchase the stores from elsewhere at the risk and cost of the contractor.
- 13.2 Where the supply does not conform to the approved sample, the Purchaser reserves the right to reject the supplies and require the contractor to make fresh supplies in conformity with the approved sample free of cost to the Purchaser.

14.0 BILL OF MATERIAL:

Before effecting despatches, the contractor shall furnish final bill of material for each type of equipment ordered and get it approved well in advance by the concerned Chief Engineer of the Purchaser. The copies of the approved bill of material shall be sent to the concerned consignees and field officers and G.M. (F&A-SB) Mumbai by the Purchaser. The copies of approved bill of material should always be enclosed with the bills to be submitted to The G.M. (F&A-SB) for payments. The bill should also carry certificate to the effect that all the material and components are despatched out of approved bill of material. i.e. the equipment is despatched in totality. Payment will be made on despatch of full equipment/material only.

15.0 PACKING LIST:

Each packing shall contain, in water proof cover, the detailed list indicating the order reference, date, list of content and reference to the approved bill of material and enclosed in the package. Each item contained in the package shall be described sufficiently to enable identification of the quantity, weight etc. Copy of the packing list should be sent to all the **consignees, Executive Director (Stores) as well as** G.M. (F&A-SB) and should be enclosed with the bills along with other documents.

16.0 TEST REPORT, MANUALS & DRAWINGS:

The contractor should ensure that a copy of the approved test report and certificate, O & M manuals and approved drawings are despatched along with the equipment itself duly packed properly for its safe receipt.

17.0 TIME, THE ESSENCE OF CONTRACT:

The time stipulated in the contract for the delivery of the plant and equipment shall be deemed to be the essence of the contract. The contractor shall so organize his resources as to complete the delivery within the stipulated date.

18.0 PACKING, FORWARDING & TRANSPORTATION ETC.:

18.1 The contractor shall be fully responsible for packing, forwarding the equipment by road or any other authorized mode of transport.

18.2 The contractor, wherever applicable, shall after proper painting, pack and crate all the equipment in such a manner as to protect them from deterioration and damage during rail, road or any other authorized mode of transportation to the site. Where the equipment is to be transported by rail, the packing shall be done to railway standards. The contractor shall be held responsible for all damages / losses due to improper packing. While packing the materials, the limitations from the point of view of availability of railway wagons, trailers etc. and their size should be taken into account. It shall be the responsibility of the contractor to obtain permission from the concerned authorities for transport of over-dimensioned consignments.

18.3 The contractor shall properly clean the equipment and apply an initial coat of rust inhibitor and a flat shop coat of paint. All close-machined parts shall be covered with an approved protective coating to prevent deterioration of surfaces during transportation and storage.

18.4 All equipments and parts susceptible to damage by exposure to moisture and all electrical equipment shall be thoroughly protected against damage during transit and storage.

18.5 The contractor shall notify the Purchaser the date of each shipment from his works and the expected date of arrival at the site for the information of the Purchaser. The contractor shall also give all shipping information concerning the weight, size and content of each package including any other information the Purchaser may require.

19.0 RAILWAY RECEIPTS AND LORRY RECEIPTS:

19.1 All the Lorry Receipts (L/R) and Railway Receipts (R/R) shall be freight paid drawn in the name of the consignee.

19.2 The RR/LR shall be forwarded directly to the consignee. In case of late receipt of R.R. by the consignee due to any reasons including routing through Bank, demurrage, wharfage charges and other charges etc, paid by the consignee shall be to the account of the contractor.

19.3 The RR/LR shall be clear in all respects without having any remarks. Any loss to the Purchaser due to non-compliance of this requirement by the contractor, shall be to the account of the contractor. In case of Lorry Transport, care shall be taken by the contractor to ensure that there would be no transshipment of the material enroute. In case of Rail Transport, the route shall be chosen by the contractor so that transshipment is avoided.

19.4 It shall not be obligatory for the consignee to take the delivery of the consignment on indemnity bond in case of late receipt of LR/RR. However, all the efforts shall be made by the consignee to clear the consignments on indemnity bond but failure on this account shall not relieve the contractor from the recovery of the expenditure incurred by the consignee.

Consolidated details of the above information shall be furnished to office of the **Executive Director (Stores)** after completing the supplies of a particular order. The copy of this consolidated information shall invariably be forwarded to the respective consignees, failing which, security deposit paid against the contract shall not be released.

22.2 The purchaser shall have the right to inform the contractor not to dispatch the equipment / material due to weather or any other reasonable cause and in all such cases, the contractor shall withhold shipment of such parts without any compensation, for a reasonable time.

23.0 LIQUIDATED DAMAGES FOR LATE DELIVERY:

In case the materials are not delivered within the period stipulated in the order, the contractor will be liable to pay at the discretion of the competent authority of the Purchaser, the liquidated damages to the Purchaser upto half percent per week or part of week on the price subject to a maximum of cumulative ceiling of **10%** reckoned on the contract value of such completed portion or section of the plant, equipment or material delayed and also the portion supplied which could not be brought into commission due to any part thereof not having been delivered in time. Due consideration may be given in the levy of liquidated damages for reasons absolutely beyond the control of the supplier, for which documentary evidence shall be produced to the satisfaction of the competent authority of the Purchaser.

The Purchaser shall be entitled to deduct / recover the amount of liquidated damages from the current bill payable to the supplier or any other amount due or payable to him against this or any other contract.

For computing the liquidated damages for delayed supplies, the date of Railway Receipt or the date of receipt of material at Stores in case of Road Transport, shall be the date of delivery.

In case the Purchaser does not arrange for inspection of material within thirty (**30**) days from the date of receipt of inspection call in its office, the period of delay in inspection excluding **30** days shall be considered while calculating the liquidated damages. For computing the period taken for inspection in such cases, the relevant dates mentioned in the inspection certificate issued by the Inspecting Officers would be considered.

23.1 ORDER PLACED ON TIME PREFERENCE BASIS (WHEREVER APPLICABLE):

In case of order on time preference basis (i.e. orders given at higher rate on delivery period considerations only) if order is given at higher rate of L-2 (or L-3 etc.), then the payment at higher rates will be made provided the firm makes supplies within the stipulated time period. In case of delay in supplies, the payment will be made at the rates offered by L-1. In addition, Clause No. 23 above for Liquidated Damages for late delivery will also be applicable.

23.2 PERFORMANCE OF CONTRACT:

The Purchaser will not be in any way liable for non-performance either in whole or in part of any contract or for any delay in performance thereof in consequence of strikes, shortages, non-availability of raw materials, combination of labour or workman or lockout, break down or accident to machinery or accidents of whatever nature, failure on the part of the Railways to supply sufficient wagons to carry essential raw material etc. and finished products from the Stores, subject to the provision and stipulation made in the Clause of 'Liquidated damages for late delivery'.

24.0 TERMS OF PAYMENT:

- 24.1 The contractor who have furnished permanent deposit of Rs. 5,00,000/- shall be paid 95% payment against Material Receipt Intimation (MRI) within 60 days for materials received in good condition and against furnishing contract performance deposit. Balance payment will be paid within 120 days from the date of receipt of material at site in good condition against Stores Receipt Notes (S.R. Notes) issued by the concerned consignee.
- 24.1.1 The contractor who have not paid permanent deposit shall be paid **100%** payment within 120 days from the date of receipt of material at site in good condition, against Stores Receipt Notes (S.R. Notes) issued by the concerned consignee.
- 24.1.2 **However, in respect of only those entities which qualify for 45 days payment period under the Micro, Small and Medium Enterprises Development Act, 2006, 100% payment of the Contract price will be paid within 45 days from the date of receipt of material at site in good condition, against Stores Receipt Notes (S.R. Notes) issued by the concerned consignee.**
- 24.1.3 The payment shall be effected by A/C payee cheques. Following documents as required in terms of order, will have to be forwarded to the G.M. (F&A-SB), **Maharashtra State Electricity Distribution Co. Ltd., Prakashgad, Station Road, Bandra (East), Mumbai - 400 051** along with bills in triplicate with a copy to the Executive Engineer (Concerned Group) and the consignee to facilitate payment.
- (i) Bill / Invoice on the basis of rates accepted as per A/T.
 - (ii) Supplementary Invoice / Bill for price variation claim if applicable with the relevant documents in support of P.V. claim.
 - (iii) Material Receipt Intimation for 95% payment.
 - (iv) Inspection and Test Certificate approval.
 - (v) The proof of having paid the excise duty as required under the prevailing rules.
 - (vi) Copy of Acceptance letter of Permanent Bank Guarantee / Security Deposit Certificate.
 - (vii) Packing list.
 - (viii) Approved Bill of Material.
 - (ix) Certificate of having dispatched Operation & Maintenance Manual, copies of Test Certificates and approved drawings / Bill of Material to consignees wherever applicable.

The supplier shall forward the original R.R./L.R. direct to the consignee alongwith relevant documents. The original bill shall be forwarded to **The G.M. (F&A-SB), MSEDCL, Prakashgad, Bandra (E)** and marked **ORIGINAL**. The bill should indicate the sales tax registration certificate no. and date held by him under the Sales Tax Act. The Purchaser shall not be responsible for delay in payment of bills if the supplier fails to comply with any of the above requirements.

Supplier's copy of S.R. Note will be forwarded by the consignees through their respective Major Stores for supplier's record towards acknowledgement of receipt of material. Accounts copy of S.R. Note will be forwarded by the respective Major Stores to G.M. (F&A-SB) for payment.

In case the supplier is a trader, it shall be imperative for him to furnish documentary evidence of having paid excise duty by the manufacturer whose product has been offered.

Wherever the payment is to be effected against Material Receipt Intimation (MRI) and if the supplier fails to forward the documents such as inspection report, bill of materials, approved drawings, etc. along with the invoice to the respective consignees, the MRI issued will be a qualified one and no payment shall be made against the said MRI.

The whole of the first lot as well as monthly lot when delivered in installments, the date of delivery and due date of payment will be counted after the receipt of the entire lot along with following documents complete in all respect by the consignee:

- i) Copy of invoice/challan

- ii) Packing list
- iii) Approved sample (if applicable)
- iv) Original copy of RR / LR
- v) Inspection approval letter signed by the Inspecting Officer in Blue ink along with copies of routine / acceptance test certificate OR copy of letter of waiver of inspection as the case may be.

24.2 The Purchaser at its discretion, shall arrange for payments as above from its own sources or alternatively under ICICI line of credit / IDBI rediscounting scheme / D.D.S. of SIDBI as per terms of ICICI / IDBI / SIDBI as may be applicable, in which case, co-acceptance charges/stamp duty shall be to Purchaser's account.

25.0 TAXES AND DUTIES:

(A) Notwithstanding the fact that contract price is inclusive of excise duty and sales tax/VAT

- (i) Excise duty shall be only on Ex-works price and shall be paid / reimbursed at actuals on the basis of due date of delivery, against documentary evidence.
- (ii) Sales tax/VAT shall be paid at actuals on the basis of due date of delivery.
- (iii) Variation in excise duty and sales tax/VAT on bought out items shall not be entertained.

(B) Structural changes in and due to 'CENVAT' Scheme:

- (i) In the event of any structural change occurred in the CENVAT Scheme after the date of submission of the tender till the currency of the contract, the benefit out of such change shall be passed on to either of the parties.
- (ii) In the event of 'CENVAT' credit being extended by the Government of India to more items than those already covered, the firm should advise the purchaser about the additional benefits accrued or any variation thereof, through a letter containing the following certificate, as may be considered necessary by the purchaser.

"We hereby declare that we can avail additional duty set-offs as per latest CENVAT Scheme in force now and we hereby give a reduction of per unit and agree to revise the prices indicated in the order. The current excise duty of% is payable on this reduced price. Therefore, we request you to amend the order accordingly."

The above clause shall not be applicable for traders & for those firms who quoted zero percentage central excise duty.

26.0 DEDUCTION:

Any amount or amounts which become payable by the supplier to the purchaser under a particular contract, shall be deducted by the purchaser from any amount / amounts due or becoming due to the supplier under the same or any other contract and shall be adjusted against dues to the Purchaser.

27.0 GUARANTEE:

Goods offered shall be guaranteed for a period of **18** months from the date of commissioning or **24** months from the date of despatch whichever is earlier. The stores / materials found defective within the above guarantee period shall be replaced / repaired by the supplier free of cost, within one month of receipt of intimation. If the defective stores / materials are not replaced / repaired within the specified period as above, the Purchaser shall recover an equivalent amount plus **15 %** supervision charges from any of the bills of the supplier. Further, in case of repeated failures of equipments / material, the Purchaser reserves the right to debar / disqualify the supplier for future tenders / orders.

28.0 REPLACEMENT OF GOODS LOST, BROKEN OR DAMAGED IN TRANSIT:

Notwithstanding anything herein contained, the supplier undertakes to be responsible for the safe arrival of the materials in good condition and without any loss or damage at the final destination and until the same be actually delivered to and received by the Purchaser at its stores or other place of final destination and for this purpose, materials carried by railways or other carrier shall be deemed to be so carried at the risk of the supplier. In case of transit damages / shortages, the payment shall be made only for the quantity received in good and working condition and the consignee shall lodge claims with carriers and transfer the same to the supplier with all necessary documents for settlement of the same with carriers at the supplier's end. The transit damages / shortages / losses reported by the consignee shall be repaired / replaced by the supplier duly inspected, free of cost, within one month from the date of such intimation of breakages / shortages / losses without waiting for settlement of the claims from carrier or insurance co. etc.

29.0 REPLACEMENT OF REJECTED MATERIAL:

If, on inspection at the final destination, the Purchaser discovers any loss in the materials supplied or that they are received in damaged condition or that in the opinion of the Purchaser, they are not of the contracted quality or specification, the Purchaser shall be entitled (notwithstanding that the property in the materials shall have passed on to the Purchaser) to refuse to accept or reject the materials altogether and claim damages or cancel the contract and buy its requirements from any of its suppliers, stipulating earliest possible delivery and in accordance with its tender system against the supplier and recover the damages if any, from the supplier from any outstanding, sums that may be due to the supplier from the Purchaser against this contract or against any of the contract entered into with the supplier, without prejudice to other rights and remedies available to it in law and reserving always to itself the right to forfeit the security deposit placed by the supplier for the due fulfillment of the contract.

In case the stores / materials are found not in accordance with the prescribed specifications and / or the approved sample, the same will be rejected and the supplier shall replace the rejected stores / materials free of cost within one month from the date of intimation. The replacement of goods shall also have to be got inspected as per inspection clause. Further if the stores / equipment supplied becomes incomplete on account of either rejection or short supply of its components, the complete cost of the stores / equipment shall be recovered from supplier's bills without notice.

29(a) VERIFICATION OF MATERIAL SUPPLIED:

The Purchaser shall have the option to carryout various tests including type tests as per specification on the samples selected at random from the supplies effected, to ensure that the supplies conform in quality and workmanship to the relevant specification. The testing shall be done at independent laboratory at Purchaser's cost. Due notice shall be given to supplier for such sample selection and such testing thereof to enable him to be present for the same if so desired by him. If the supplier or his authorized representative fails to attend the sample selection and testing, the same shall be carried out unilaterally by the Purchaser and the result thereof shall be binding upon the supplier. In case the sample selected from the supplies fails to withstand the required tests, then

I. for the first time failure of sample,

- (a) supplier shall have to replace the full quantity of the respective inspected lot supplied to various Stores and lying unused at Stores.
- (b) for the quantity already accepted against the order and used, deduction in price of 10% of the value of material supplied shall be made

AND

- II. in respect of further supplies made against the order, if failure of sample is noticed (i.e. second time failure against the order)
- (a) the quantity lying unused at various Stores shall be rejected.
 - (b) for the quantity already accepted against the order and used, deduction in price of 10% of the value of material supplied shall be made,
 - (c) balance quantity against the order including the rejected quantity shall be cancelled without any liability on either side,
 - (d) the firm will be debarred from dealing with the Purchaser upto a period of three years from the date of rejection.

30.0 LIFTING OF DAMAGED / REJECTED MATERIAL:

- a) On failure to replace or repair the transit damaged or rejected material within one month from the date of intimation as required under tender, it shall be deemed to have concluded that such material is finally rejected. The damaged / rejected material shall be lifted by the supplier within **30** days from the date of receipt of notice to that effect from the concerned consignee on reimbursement to the Purchaser of the cost of the material / equipment, if any, already paid in terms of payment clause in the contract and actual expenses incurred by the consignee towards octroi, handling, demurrage / wharfage / under charges, freight, insurance premium etc. The Purchaser shall not be responsible in any case for the loss, destruction, damage, deterioration of the material after expiry of the said **30** days period.
- b) If the supplier fails to lift the material within this period, the material will remain with the Purchaser at the cost and risk of the supplier. Supplier shall, therefore, be liable to pay ground rent @ **0.1%** per day of purchase cost of the material to be lifted from the date of intimation of rejection till the actual date of lifting.
- c) The Purchaser will be also free to dispose of such materials, after the period of said **30** days by Public auction / Tender notice / Destruction as may be deemed fit and storage charges @ **0.1 %** per day of purchase cost will be recovered from the date of intimation of rejection of materials till the date of realization of the sale amount / physical removal of the material besides the actual expenses incurred as referred to at (a) above.
- d) Notwithstanding what is contended in the foregoing clauses, the supplier shall be liable to pay the Purchaser the cost and expenses incurred by the Purchaser, if any, including ground rent and the same shall be appropriated and recovered from the sale proceeds.

30.1 Repairs /replacement of goods within guarantee period:

In addition to clause No. 27,28,29 & 30 of Annexure-‘A’ (Section-II) regarding repairs, replacement of goods, damages in transit / failed within the guarantee period, the following terms shall also be applicable.

- (i) If in case, the equipment is required to be returned to the supplier for repairs etc. at their works, and if any payment is already effected to the supplier for such equipment, then Bank Guarantee equivalent to the value of payment made to the supplier prior to return of such goods / equipment to their works shall be given. You shall not lift the equipment unless approval of acceptance of the Bank Guarantee is received from our **S.E. (Stores)**.
- (ii) To and fro charges for returning the equipment for repairs will have to be borne by the supplier. Requisite transit insurance will also have to be arranged by the supplier at their cost.

31.0 OWNERSHIP OF PLANT AND EQUIPMENT:

Ownership of the plant and equipment supplied pursuant to this contract shall vest with the Purchaser at whichever is the earlier of the following times namely,

- a) When the contractor has been paid any sum to which he may be entitled to in accordance with the terms of payments clause incorporated in the contract.
- b) When the plant and equipment has been delivered to the destination in good condition as per the dispatch instructions.

32.0 PATENT RIGHTS:

32.1 The contractor shall fully indemnify the Purchaser against all actions, suits, claims, demands, costs, charges and expenses arising from or incurred by reason of any infringement or alleged infringement of any letters, patent, design, trade mark or name, copyright or other protected rights in respect of any machine, plant, work, materials, things or system or method of using, fixing, working of arrangement used or fixed or supplied by the contractor but this indemnity shall not extend or apply to any action, suit, claim, demand, cost, charges or expenses arising from or incurred by reasons of the use of the works or any part thereof otherwise than in the manner or for the purpose contemplated by the contract. All royalties and other similar payments which may have to be paid for the use of any such machine, plant, work, materials, thing, systems or method as aforesaid (whether payable in one sum or by installments or otherwise) shall be deemed to have been covered by the contract price and payable by the contractor.

32.2 In the event of any claim or demand being made or action or suit brought against the purchaser in respect of any such matter or matters as aforesaid, the contractor shall be duly notified thereof and he shall conduct all negotiations for the settlement of such claim or demand and such action or suit shall also be conducted by him, if and so far as the Purchaser shall think proper, subject to the supervision and control of the Purchaser through the officer duly authorized in this behalf.

33.0 TERMINATION OF CONTRACT:

In case the contractor / supplier fails to deliver the stores / material or any consignment thereof within the contracted period of delivery or in case the Stores / materials are found not in accordance with the prescribed specification and the approved samples, the Purchaser shall exercise its discretionary power either,

- (a) to purchase from elsewhere, after giving due notice to the contractor, at the risk of contractor, such Stores / material not so delivered or other of similar description, without canceling the contract in respect of consignment not yet due for delivery. **OR**
- (b) cancel the contract reserving Purchaser's right to recover damages.

Notwithstanding that the powers under (a) and (b) referred above are in addition to the rights and remedy available to the Purchaser under the General Law of India relating to contract.

Notes :

- (i) In the event of risk purchase of stores of similar description, the option of the Purchaser shall be final. In the event of action taken under (a) or (b) above, the supplier shall be liable for any loss which the Purchaser may sustain on that account but the supplier shall not be entitled to any saving on such purchases made against default.
- (ii) The company reserves its right not to deal with the supplier, whose contract is terminated for whatsoever reasons, for a period from the date of cancellation of contract as may be deemed fit.
- (iii) The company may also blacklist the supplier whose contract is terminated for whatsoever reasons on giving opportunity to show cause for such action to the supplier.
- (ii) The decision of the Purchaser shall be final as regards the acceptability of the stores supplied by the supplier and the Purchaser shall not be required to give any reason in writing or otherwise at any time for the rejection of the stores/materials.

34.0 RIGHT TO REVISE DISPATCH INSTRUCTIONS, DELIVERY SCHEDULE AND TO DEFER SUPPLIES:

- i) The Purchaser reserves its right to revise the despatch instructions issued along with the order, at the time of giving final clearance for despatch after inspection of the material. If such change in destination is not intimated at the time of inspection approval or waiver of inspection, the supplier shall despatch the material as per the despatch instructions in accordance with A/T indicated by him in the inspection call letter.
- ii) The Purchaser reserves its right to change the delivery schedule of the contract either by reducing the monthly lot upto **60%** of the agreed lot or by increasing the same upto **120%** of the agreed lot with prior two months notice and the Purchaser shall not be liable to pay any compensation / damages on account of such change in delivery schedule.
- iii) The Purchaser reserves its right to defer the balance supply to be received against the order by giving two months notice for a maximum period of **6** months. In such an event, the delivery period for the deferred material shall be deemed to be extended proportionate to the period of deferment and the Purchaser shall not be liable to pay any compensation / damages on account of such deferment of deliveries.

35.0 JURISDICTION OF CONTRACT:

Any disputes or difference arising under, out of or in connection with this tender or contract if concluded, shall be subject to the exclusive jurisdiction of the Courts in Mumbai.