

## **TERMS AND CONDITIONS OF CONTRACT**

### **01. DEFINITIONS :**

**a).** The terms 'Purchaser' shall mean the Director, Indian Institute of Astrophysics, Bangalore -560 034.

**b).** The term 'Contractor' shall mean, the person, firm or company with whom or with which the order of stores is placed and shall be deemed to include the Contractor's successors, representative, heirs, executors and administrators unless excluded by the contract.

**c).** The 'Stores' shall mean that contractor agrees to supply under the contract as specified in the Purchase Order including erection Plants and machinery and subsequent testing, should such as condition be included in the Purchase Order.

**d).** The terms 'Purchase Order' shall mean the communication signed on behalf of the Purchaser by an Officer duly authorized intimating the acceptance on behalf the Purchaser on the terms and conditions mentioned or referred to in the said communications accepting the tender or offer of the contractor for supply of stores or plant, machinery or equipment or part thereof.

### **02. PRICES :**

Tenders, offering firm prices will be preferred, where a price variation clause is insisted upon by a tenderer, quotations with a reasonable ceiling should be submitted. Such offers should variably be supported by the base price taken into account at the time of tendering and also the formula for any such variations.

### **03. TENDER CURRENCIES:-**

The bidder supplying indigenous goods or already imported goods shall quote only in Indian Rupees, Further, imported goods to be imported and supplied by the bidder are also required to be quoted in Indian Rupees.

For imported goods if supplied directly from abroad, prices shall be quoted in any freely convertible currency say US Dollar, Euro, GBP or Yen. As regards price(s) for allied services (Including Software), if any, required with the goods, the same shall be quoted in Indian Rupees only, if such services are to be performed / undertaken in India.

Tenders, where prices are quoted in any other way shall be treated as non responsive and rejected.

### **04. DUTY EXEMPTION :**

(a.)Excise duty and customs duty exemption certificate will be provided if considered against the categories of items tendered, under the Govt. of India Notification No. 10/97 and 51/96 valid upto 2018.

## **05. SECURITY DEPOSIT:**

On acceptance of Tender, the Contractor shall, within the period specified deposit in cash or any other form as the Purchaser may determine, Security deposit not exceeding five (5 %) percent of the value of the contract as the Purchaser shall specify. If the contractor is called upon by the purchaser to deposit 'Security' and the contractor fails to provide the security within the period specified, such failure shall constitute a breach of the contract and purchase shall be entitled to make other arrangements for the re-purchase of the stored contracted for at the risk of contractor in terms of sub-clause (ii) and (iii) of clause 10 (b) hereof and/or to recover from the contractor damages arising from such cancellation.

## **06. GUARANTEE AND REPLACEMENT :**

a.) The contractor shall guarantee that the stores supplied shall comply fully with the specifications laid down, for material workmanship and performance.

b.) For a period of (12) twelve months after the acceptance of the stores, if any defects are discovered therein or any defects therein found to have developed under proper use arising from faulty stores, design or workmanship, contractor shall remedy such defects at his own cost provided he is called upon to do so within a period of 14 months from the date of acceptance thereof by the purchaser who shall state in writing in what respect the store or any part thereof are faulty.

c.) If in the opinion of the purchaser, it becomes necessary to replace or renew any defective stores such replacement or renewal shall be made by the Contractor free of all costs to the purchaser provided the notice informing the contractor of the defect is given by the purchaser in this regard within the said 14 months from the date of acceptance thereof.

d.) Should the contractor fail to rectify the defects, the purchaser shall have the right to reject or repair or replace at the cost of the contractor the whole or any portion of the defective stores.

e.) The decision of the purchaser, notwithstanding any prior approval of acceptance or inspection thereof on behalf of the purchaser, as to whether or not the stores supplied by the contractor are defective or any defects has developed within the said period of 12 months or as to whether the nature of the defectives required renewal or replacement shall be final, conclusive and binding on the contractor.

f.) To fulfill guarantee conditions outlined in Clause 5(a) to (d) above, the contractor shall, at the option of the purchaser, furnish a Bank Guarantee (as prescribed by the purchaser) from a Bank approved by the purchaser for an amount equivalent to 10% of the value of the contract along with first shipment documents. On the performance and completion of the contract in all respects, the Bank Guarantee will be returned to the contractor without any interest.

g.) All the replacement stores shall also be guaranteed for a period of 12 months from the date of arrival of stores at Purchaser's site.

h.) Even while the 12 months guarantee applied to all stores in case where a greater period is called forth by our specifications then such a specification shall apply; in such cases the period of 14 months referred to in Para 5(b) and (c) shall be 'asked for' guarantee period plus two months.

## **07. PACKAGING, FORWARDING AND INSURANCE :**

The Contractor will be held responsible for the stores being sufficiently and properly packed for transport by rail, road, sea or air, to withstand transit hazards and ensure safe arrival at the destination. The packing and marking of packing shall be done by and at the expenses of the contractor. The Purchaser will not pay separately for transit insurance, all risks in transit being exclusively of the contractor and the Purchaser shall pay only for such stores as are actually received in good condition, in accordance with contract.

## **08. TEST CERTIFICATE :**

Wherever required Test Certificate should be sent along with the relevant dispatch documents.

## **09. ACCEPTANCE OF STORES :**

a) The Stores shall be tendered by the contractor for inspection at such places as may be specified by the purchaser at the Contractor's own risk, expenses and cost.

b) It is expressly agreed that the acceptance of stores, contracted for is subject to final approval by the Purchaser, whose decision shall be final.

c) If, in the opinion of the Purchaser all or any of the stores that do not meet the performance or quality requirements specified in the Purchase Order, they may be either rejected or accepted at the price to be fixed by the purchaser and his decision as to rejection and the prices to be fixed shall be final and binding on the contractor.

d) If the whole or any part of the store supplied are rejected in accordance with Clause No.8(c) above, the Purchaser shall be at the liberty, with or without notice to the Contractor, to purchase in the open market at the expenses of the Contractor, stores meeting the necessary performance and quality contracted for in place of these rejected, provided that either the purchase, or the agreement to purchase, from another supplier is made within six months from the date of rejection of the stores as aforesaid.

## **10. REJECTION OF STORES :**

Rejected stores will remain at the destination at the Contractor's risk and responsibility, if instructions for their disposal are not received from the Contractor within a period of 14 days from the date of receipt of the advice or rejection, the Purchaser or his representative has, at his discretion the right to scrap or seal or consign the rejected stores to the Contractor's address at the Contractor's entire risk and expense, freight being payable by the Contractor at actual.

## **11. DELIVERY PERIOD :**

a.) The delivery period of the stores stipulated in the purchase order shall be deemed to be the essence of the Contract, and delivery must be completed on or before the specified dates/period.

b.) Should the Contractor fails to deliver the stores or any consignment thereof within the period prescribed for such delivery, the Purchaser shall be entitled at his option either.

i) to recover from the Contractor as agreed liquidated damages and not by way of penalty, a sum of 2% of the price of any stores which the contractor has failed to deliver as aforesaid for each month or part of a month, during which the delivery of such stores may in arrears, or

ii) to purchase elsewhere, without notice to the Contractor on the account and at the risk of the contractor, the stores not delivered or others of similar description (where other exactly complying with the particulars are not, in the opinion of the purchaser readily procurable, such opinion being final) without canceling the Contract in respect of the consignment(s) not yet due for delivery or,

iii) to cancel the contract or a portion thereof, and, if so desired to purchase or authorize the purchase of stores not so delivered or others of similar description (where other exactly complying with the particulars are not, in the opinion of the purchaser readily procurable, such opinion final) at the risk and cost of the Contractor.

In the event of action being taken under sub-clause (ii) and (iii) of clause 10 above, the Contractor shall be liable for any loss which the Purchaser may sustain on that account, provided that the re-purchase, or if there is an agreement to re-provide shall be made within (6) six months from the date of such failure. But the Contractor shall not be entitled to any gain on such re-purchase made against default. It shall not be necessary for the purchaser to serve a notice of such re-purchase on the defaulting Contractor. This right shall without prejudice to the right of the purchase to recover damages for breach of contract by the Contractor.

## **12. LIQUIDITY DAMAGES:-**

In case there is a delay in the Supplies / Services by tenderer beyond the delivery / contract period, tenderer is liable to pay Liquidated Damages for the uncompleted portion of the work / supplies at the rate of 0.5% of the uncompleted work / supplies per week of delay subject to a maximum of 10% of the total contract value.

## **13. EXTENSION OF DELIVERY TIME :**

As soon as it is apparent that Contractor delivery period/dates cannot be adhered to, an application shall be sent by the Contractor to the Purchaser. If failure, on the part of the Contractor to deliver the stores in proper time shall have arisen from any cause which the Purchaser may admit as reasonable ground for an extension of the time (and his decision shall be final he may allow such additional time as he considers it to be justified by the circumstances of the case without prejudice to the Purchaser's rights to recover liquidated damages under clause 10(i)(ii) and (iii).

## **14. PAYMENT :**

Contractor's bill will be passed only after the stores have been received, inspected and accepted by the Purchaser for payment.

## **15. RECOVERY OF SUMS DUE :**

Whenever there is breach of contract whether liquidated or not, money arising out of or under this contract against the contract, the Purchaser shall be entitled to recover such sum by appropriating, in part or whole, the security deposited by the Contractor, if a Security is taken against the contract. In the event of the Security being insufficient or if no security has been taken from the Contractor, then the balance or the total sum recoverable as the case may be shall be deducted from any sum then due or which at any time thereafter may become due to the contractor under this or any

other contract with the Purchaser. Should this sum be not sufficient to cover the full amount recoverable, the Contractor shall pay to the Purchaser on demand the remaining balance due. Similarly, if the purchaser has or makes any claims, whether liquidated or not, against the Contractor under any other contract with the purchaser, the payment of all moneys payable under the contract to the Contractor including the Security Deposit shall be withheld till such claims of the Purchaser are finally adjudicated upon and paid by the Contractor.

#### **16. INDEMNITY :**

The Contractor shall warrant and be deemed to have warranted that all stores supplied against this contract are free and clean of infringement of any patent, copy right or trade mark, and shall at all time indemnify the purchaser against all claims which may be made in respect of the stores for infringement of any right protected by patent, registration of design or trade mark and shall take all risk of accidents of damage which may cause a failure of the supply from whatever cause arising and the entire responsibility for sufficiency of all the means used by him for the fulfillment of contract.

#### **17. ARBITRATION:**

In the event of any question, dispute or difference arising under these conditions contained in the purchase order in connection with this contract, (except as to any matters the decision of which is specially provided for by these conditions), the same shall be referred to the sole arbitration of the Head of the Institution or of some other person appointed by him. It will be no objection that the arbitrator is a Government Servant, that he has to deal with matter to which the Contract relates or that in the course of his duties as Government Servant he has expressed views on all or any of the matters in dispute binding on the parties of this Contract.

#### **(a)IT IS TERMS OF THIS CONTRACT:**

If the Arbitrator be the Head of the Institution.,

i) in the event of his being transferred or vacating his office by resignation or otherwise, it shall be lawful for his successor-in-office either to proceed with the reference himself, or to appoint another person as arbitrator, or,

ii) in the event of his being unwilling or unable to act for any reason, it shall be lawful for the Head of the Institution, to appoint another person as arbitrator or,

#### **(b) If the Arbitrator be a Person appointed by the Head of the Institution:-**

In the event of his death, neglecting or refusing to act, or resigning or being unable to act for any reason, it shall be lawful for the Institution either to proceed with reference himself or to appoint another person as arbitrator in place of the outgoing arbitrator. Subject as aforesaid the Arbitration Act, 1940 and the rules there under and any statutory modifications thereof for the time being in force shall be deemed to apply to the arbitration proceedings under this clause. The Arbitrator shall have the power to extend with the consent of the Purchaser and the Contractor the time for making a publishing the award. The venue of Arbitration shall be the place as the Purchaser. In his absolute discretion may determine. Work under the contract shall if reasonably possible, continue during Arbitration proceedings.

**18. COUNTER TERMS AND CONDITIONS OF SUPPLIERS :**

Where Counter Terms and Conditions/printed or cyclostyled conditions have been offered by the Supplier, the same shall not be deemed to have been accepted by the Purchaser, unless specific written acceptance thereof is obtained.

**19. SECURITY FOR PURCHASER'S MATERIAL(S) :**

Successful Tenderer will have to furnish in the form of a Bank Guarantee or any other form as called for by the Purchaser towards adequate security for the materials/property by the Purchaser for the due execution of the Contract.

**20. FORCE MAJEURE:-**

Should a part or whole work covered under this purchase order be delayed due to reasons of Force majeure which shall include legal lockouts, strikes, riots, civil commotion, fire accident, quarantines, epidemic, natural calamities and embargoes the completion period for work, equipment referred to in this agreement shall be extended by a period not in excess of the duration of such Force Majeure. The occurrence shall be notified within reasonable time.