

BURN STANDARD CO.LTD.,

(Ministry of Railways)
(A GOVT.OF INDIA UNDERTAKING),

(Regd.Office: 22-B, Raja Santhosh Road, KOLKATA-700 027)

GENERAL CONDITIONS OF CONTRACT FOR SUPPLY

GENERAL CONDITIONS OF CONTRACT FOR SUPPLY/PURCHASE(1974)

I. DEFINITIONS:-

I) In the Contract, the General Special Conditions governing it unless the context otherwise requires:

- a) “Acceptance of Tender” means the letter of memorandum communicating to the contractor the acceptance of his tender and includes an advance/of his tender:/acceptance.
- b) “Consignee” means where the stores are required by the acceptance of tender to be attached by rail, air or steamer, the person specified in the acceptance of tender to whom they are to be delivered at the destination; where the stores are required by the acceptance of tender to be delivered to a person such other person, and in any other case the person to whom the stores are required by the acceptance of tender to be delivered in the manner there in specified:
- c) “Contract” means and includes the invitation to tender/Purchase Enquiry, the instructions to tender, tender acceptance of tender, General Condition of Contract, Special Conditions of contract, particulars and the other conditions specified in the acceptance of tender and includes a repeat order which has been accepted or acted upon by the Contractor and a formal agreement if executed.
- d) The “Contractor” means the person, firm or company with whom the order for the supply is placed and shall be deemed to include the contractor’s successors(approved by the Purchaser), representatives, heirs, executors and administrators as the case may be unless excluded by the terms of the contract;
- e) “The Sub-Contractor” means any person, firm or company from whom the Contractor may obtain any material or fittings to be used in the supply or manufacture or the stores:
- f) “Drawing” means the drawing or drawings specified in or annexed to the Schedule or specification.
- g) “Company” means Burn Standard Company Limited.
- h) “The Inspecting Officer” means the person specified in the contract for the purpose of inspection of stores or work under the contract and includes his authorised representative.
- i) “Material” means anything used in the manufacture of fabrication of the stores.

j) PARTICULARS INCLUDE:

- (i) Specification
- (ii) Drawing
- (iii) Pattern bearing the seal and signature of the Inspecting Officer (hereinafter the sealed pattern), which shall include a certified copy thereof sealed by the Purchaser for the guidance of the Inspecting Officer.
- (iv) Sample sealed by the Purchaser for guidance of the Inspecting Officer (hereinafter called the certified sample), which shall include a certified copy thereof sealed, by the purchaser for the guidance of the Inspecting officer.

- (v) Trade pattern, that is to say, a pattern, stores conforming to which are obtainable in the open market and which denotes a standard of the Indian Standard Institute or other standardising authority or a general standard of the Industry;

- (vi) Proprietary mark or Brand means the mark or brand of a product, which is owned by industrial firms.

- (k) "Purchase Officer" means Burn Standard Company Limited, and includes its successors and assigns.
- (l) "The Purchaser" means Burn Standard Company Ltd., and includes its successors and assigns
- (m) "Schedule" means the Schedule annexed to the acceptance of tender.
- (n) "Site" means the specified in the schedule at which any work is required to be executed by the Contractor under the contract or any other place approved by the Purchaser for the purpose.
- (o) "Stores" means the goods specified in the Schedule, which the contractor has agreed to supply under the contract.
- (p) "Supply Order" means an order for supply of stores and includes an order for performance of service.
- (q) "Test" means such test as is prescribed by the particulars or considered necessary by the Inspecting Officer whether performed or made by the Inspecting Officer or any agency acting under the direction of the Inspecting Officer:

- (r) (1) "Contract Price" shall mean the sum accepted or the sum calculated in accordance with the prices accepted by or on behalf of the Purchaser.
- (2) The delivery of the stores shall be deemed to take place on delivery of the stores in accordance with the terms of the contract after approval by the Purchaser to
 - (a) The consignee at his premises; or
 - (b) Where so provided the interim consignee at this; or
 - (c) A carrier or other person named in the contract as an interim consignee for the Purpose of transmission of the consignee
- (3) Words in the singular include the plural and vice-versa.
- (4) Words importing the masculine gender shall be taken to include the feminine
Gender and word importing person shall include any company or association or body of individuals, whether incorporated or not;

(5) thereof;

(6) Terms and expression not herein defined shall have the meanings assigned to them in the (India) Sale of Goods Act, 1930 (as amended) or the (Indian) Contract Act, 1872 (as amended) or the General Clauses Act, 1897 (as amended) as the case may be

The heading of these conditions shall not affect the interpretation or construction

II. PARTIES:-

The Parties to the contract are the contractors, and the Purchaser name in Schedule.

III. AUTHORITY OF PERSON SIGNING THE CONTRACT ON BEHALF OF THE CONTRACTOR:-

A person signing the tender or any other document in respect of the contract on behalf of the contractor without disclosing his authority to do shall be deemed to warrant that he has authority to bind the contractor. If it is discovered at any time that the person so signing had no authority to do so, the Purchaser may, without prejudice to any other right or remedy of the Purchaser, cancel the contract and make or authorise the making of a purchaser of the stores at the risk and cost of such person and held such the person liable to the purchaser for all and damages arising from the cancellation of the contract including any loss which the purchaser may sustain on account of such purchase.

IV. QUOTATIONS OF RATES BY CONTRACTOR:-

(a) The price quoted by the contractor shall not be greater than the controlled or ceiling price fixed by Law or the Government of the stores or where there is no ceiling price, save for special reasons started in the tender be greater than the price usually charged by the controller for stores of the same nature, class or description to any other purchaser.

(b) If it is discovered that the contractor has contravened the above condition, then without prejudice to any other action, which might be taken against him, it shall be lawful for the purchaser (i) to revise the price at any state so as to bring it in conformity with sub-clause. (a) above or (ii) to terminate the contract and forfeit the Security Deposit.

V. SECURITY DEPOSIT:-

(a) Unless otherwise agreed between the Purchaser and the Contractor the contract shall within 14 days after written notice of acceptance of the Tender has been posted to the Contractor, deposit with the company by Bank Draft in favour of the company on the Bank specified, by the purchaser or the equivalent in Government Securities or approved Banker's Guarantee Bond a sum as follows:

Value of Order/Stores/Contract	Sum of Security Deposit
Up to Rs. 2 Lacs	Rs.10,000/-
Above Rs.2 Lacs up to Rs. 5 Lacs	Rs.15,000/-
Above Rs.5 Lacs up to 10 Lacs	Rs. 25,000/-
Above Rs.10 Lacs up to 25 Lacs	Rs.50,000/-

Above Rs.25 Lacs

2% of value of Orders/Stores/Contract

No claim shall lie against the purchaser in respect of interest on case deposits or Government Securities or depreciation thereof.

- (b) The Purchaser shall be entitled and it shall be lawful, on his part to forfeit the said security deposit in whole or in part in the event of any default, failure or neglect on the part of the Contractor in the fulfillment or performance in all respects of the contract under reference or any other contract with the Purchaser or any Part thereof to the satisfaction of the purchaser and the shall also be entitled to deduct from the said deposits any loss or damage which the purchaser may suffer or be put to by reason of or due to any act or other default, recoverable by the purchaser from the contractor in respect of the contract under reference or any other contract and in either of the event aforesaid to call upon the contractor to maintain the said security deposit at its original limit by making further deposits, provided further that the purchaser shall be entitled to recover any such claim form 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.
- (c) In the event of the contractor failing to make and to maintain a security deposit in the manner aforesaid he shall be liable to forfeit to the purchaser any money lodged with the tender by him; and the purchaser shall be entitled to cancel the acceptance of the tender.
- (d) On due performance and completion of the contract in all respects the security deposit will be returned to the contractor without any interest on presentation of an absolute "No Demand Certificate" in the prescribed form and upon return in good condition of any specifications, drawings, samples or other property belonging to the Purchaser which have been issued to the contractor.

VI. DELIVERY:-

- (a) The contractor shall, as may be required by the purchaser either deliver free or FOR Or CIF at the place or places detailed in the schedule to the quantities of the store detailed therein and the stores shall be delivered or despatched not later than the dates specified in the schedule.
- (b) The Purchaser shall not be liable to render assistance to the contractor in securing or to arrange for or provide transport to the Contractor unless it is so specifically stated in the schedule.
- (c) Notwithstanding any inspection and approved by the Inspector on the Contractor's Premises/Works prior to despatch, properly in the stores shall not pass on to the Purchaser until the stores have been received, Inspected and accepted by the consignee.
- (d) No Stores shall be delivered to the consignee on weekly holidays and Public holidays without the written permission of the consignee.

VII. TIME FOR AND DATE OF DELIVERY THE ESSENCE OF THE CONTRACT:-

- (a) The time for and the date specified in the Schedule or as extended for the delivery of the stores shall be deemed to be the essence of the contract and delivery must be completed not later than the date(s) so specified or extended.
- (b) **FACILITIES TO THE INSPECTING OFFICER:-**

The contractor shall allow reasonable facilities and free access to his works and records to the Inspecting Officer. Progress Officer or such other as may be nominated by the purchaser for the purpose of ascertaining the progress of the deliveries under the Contract.

VIII. FAILURE AND TERMINATION:-

- a. If the contractor fails to deliver the stores or any installment thereof within the period fixed for such delivery in the Schedule or as extended or at any time repudiates the contract before the expiry of such period the purchaser may without prejudice to his other rights:-
1. recover from the contractor as agreed liquidated damages and not by way of penalty a sum equivalent of 2% of the price of any stores(including elements of taxes, duties, freight etc.,) which the contractor has failed to deliver within the period fixed for delivery within the schedule or as extended for each month or part of a month during which the delivery of such stores may be in arrears where delivery thereof is accepted after Expiry of the aforesaid period, or
 2. Cancel the contract or a portion thereof and if so desired purchase or authorise the purchase of the stores not so delivered or others of a similar description(where stores exactly complying with particulars are not in the opinion of the purchaser, which shall be final readily procurable)at the risk and cost of the contractor.
 3. Where action is taken sub clause (ii)above, the contractor shall be liable for any loss which the purchaser, may sustain on that account provided the purchase, or if there is an agreement to purchase such agreement is made, incase of failure to deliver the stores within the period fixed for such delivery in the schedule or as extended, within six months from the date of such failure and in case if repudiation of the contract before the expiry of the aforesaid period of delivery, within six months from the date of cancellation of the contract. The Contractor shall not be entitled to any gain on such purchase and the manner and method of such purchase shall be in the entire discretion of the purchaser. It shall not be necessary for the purchaser to serve a notice of such purchase on the contractor.

IX. EXTENSION OF THE TIME FOR DELIVERY:-

If such failure as aforesaid shall have arisen from any cause which the purchaser may admit as reasonable ground for extension of time, the Purchaser may allow such addition time as he considers to be justified by the circumstances of the case, and shall forego the whole or such part, as he may consider reasonable of his claim for such loss or damage as aforesaid. Any failure or delay on the part of the sub-contractor, though their employment may have been sanctioned under condition XIV(a) hereof, shall not be admitted as reasonable ground for any extension of time or for exempting the contractor from liable for any such loss or damage as aforesaid.

X. EXAMINATION OF DRAWING SPECIFICATION AND PATTERNS:-

(a) When Tender are called for in accordance with a drawing specification or sealed pattern, the contractor's tenders to supply in accordance with such drawing specification of sealed pattern shall be deemed to be an admission on his part that he has fully acquainted himself with the details thereof and in no circumstances will any claim on his part which may arise on account of his non-examination or in sufficient examination of the said drawing, specification or sealed pattern be considered.

(b) **ALTERATION OF SPECIFICATIONS, PATTERNS AND DRAWINGS:-**

The purchaser reserves the right to alter from time to time the said specifications, Patterns and Drawings so altered. In the event of any such alteration involving an alteration in the cost of or in the period required for production a revision of the contract price and of the time for delivery shall be made in relation to the articles, the subject of the alteration. The decision of the Purchaser on the question whether the alteration involves an alteration in the cost of or in the period required for production shall be final and conclusive.

XI. SAMPLES:-

(a) **ADVANCE SAMPLES :-**

Where an advance sample is required to be approved under the terms of the contract ; the contractor shall submit the sample free of cost to the Inspecting Officer within the time specified in the acceptance of tender. In the event of the failure of the contractor to deliver the advance sample by the date specified in the acceptance of tender or any other date to which the time may be extended by the purchaser or of the rejection of the sample, the purchaser shall be entitled to cancel the contract and of so desired purchase or authorise the purchase of the stores at the risk and cost of the contractor.

(b) Unless otherwise provided in the contract, the contractor free of cost shall supply all samples required for test. Where a sample which is supplied free, is rejected after examination and test, the same or whatsoever remains of the sample after examination and test will be returned to the contractor at his request and cost within three months of the date of such rejection at Public Tariff Rate at owner's risk.

(c) **MARKING:**

Sample submitted shall be clearly labeled with the contractor's name and address and the acceptance of tender number.

- (d) If the contractor submits a sample whether with, before or after the tender, the same shall not govern the standard of supply except when it has been so specifically stated in the acceptance of tender.
- (e) Where under the contract, the contractor is required to submit an advance sample, any expense incurred by the contractor on or in connection with the production of stores in bulk, before the sample has been approved unconditionally, shall be borne by the contractor and he shall not claim any compensation in the event of such sample being found unacceptable by Inspecting Officer.
- (f) The rejection of the sample by the Inspecting Authority or Inspecting Officer shall be final and binding on the contractor.
- (g) If under the contract supplies are governed by a sealed pattern, the contractor shall be bound to examine such pattern before preparing a sample or manufacturing the store in bulk as the case may be.

XII. RISK OR LOSS OR DAMAGE TO COMPANY OR PURCHASER'S PROPERTY:-

- (a) All the property of the company or purchaser loaned whether with or without deposit on terms and conditions to be separately agreed upon in respect of each particular contract to the contractor in connection with the contract shall remain the property of the Corporation of the Purchaser, or as the case may be. The contractor shall use such property for the purpose of the execution of the contract and for no other purpose whatsoever.
- (b) All such property shall be deemed to be in good condition when received by the contractor unless he shall have within twenty-four hours of the receipt notified the Purchase Officer to the contrary. If the contractor fails to notify any defect in the condition or quality of such property he shall be deemed to have lost the right to do so at any subsequent stage.
- (c) The contractor shall return all such property and shall be responsible for the full value thereof to be assessed by the Purchaser whose decision shall be final and binding on the contractor. The contractor shall be liable for loss or damage to such property from whatsoever cause happening while such property is in the possession of or under the control of the contractor, his servants, workman or agents.

XIII. INSPECTION NOTICE:-

When Inspection during manufacture or before delivery of despatch is required, notice in writing shall be sent by the contractor to the Inspecting Officer when the stores or material to be supplied are ready for inspection and test and no stores shall be delivered or despatched until the Inspecting Officer has certified in writing that such have been inspected and approved by him.

XIV. CHARGES FOR WORK NECESSARY FOR COMPLETION OF THE CONTRACT:-

The contractor shall pay all the charges for handling, stamping, painting, marking, protecting or preserving patent rights, drawings, templates, models and gauges and for all such measures as the Purchaser or the Inspecting Officer may deem necessary for the proper completion of the contract, though special provision therefore may not be made in the specification or drawing.

XV. RESPONSIBILITY OF THE CONTRACTOR FOR EXECUTING THE CONTRACT:-

- (a) This contract is for the supply of the stores of the description, specifications and drawings and in the quantities set forth in the schedule to the order on the date or dates specified therein.
- (b) Any variation or amendment of the contract shall not be binding on the Purchaser unless and until the same is duly endorsed on the contract or incorporated in formal instrument or in exchange of letters and signed by the parties.
- (c) **RISK IN THE STORES:-**

The contractor shall perform the contract in all respect in accordance with the terms and conditions thereof. The stores and every constituent part thereof, whether in the possession or control of the contractor, his agents or servants or a carrier, or in the joint possession of the contractor, his agents or servants and the purchaser his agents and servants shall remain in every respect at the risk of the contractor until their actual delivery to the consignee at the stipulated place of destination or, where so provided in the acceptance of tender until their delivery to a person specified in the schedule as interim consignee for the purpose of despatch deterioration of or to the stores from any cause whatsoever while the stores after approval by the Inspecting Officer are awaiting despatch or delivery or are in the course of transit from the contractor to the consignee, or as the case may be interim consignee. The contractor shall along be entitled and responsible to make claims against a railway administration or other carrier in respect of non delivery, short delivery, mis-delivery, loss, destruction, damage or deterioration of the goods entrusted to such carrier by the contractor for transmission to the consignee or the interim consignee as the case may be.

(d) **CONSIGNEE'S RIGHT OF REJECTION:-**

Notwithstanding any approval which the Inspecting Office may have in respect of the stores or any material or other particulars or the work or workmanship involved in the performance of the contract (Whether with direction of the Inspecting Officer) and or the Inspecting Officer or under the direction of the Inspecting Officer) and notwithstanding delivery of the stores where so provided to the interim consignee, it shall be lawful for the consignee, on behalf of the purchaser, to reject the stores or any part, portion or consignment thereof within a reasonable time after actual delivery thereof to him at the place or destination specified in the schedule if such stores or part portion or consignment thereof is not in all respects in conformity with the terms and conditions of the contract whether on account of any loss, deterioration or damage before despatch or delivery or during transit or otherwise howsoever.

- (e) **Provided that where, under the terms of the contract, the stores are required to be delivered to an interim consignee for the purpose of despatch to the consignee the stores shall be at the purchaser's risk after their delivery to the interim consignee, but nevertheless it shall be lawful for the consignee on behalf of the purchase to reject the stores or any part, portion or consignment thereof upon their actual delivery to him at the destination if they are not in all respects in conformity with the terms and conditions of contract except where they have been damaged or have deteriorated in the course of transit or otherwise after their delivery to the interim consignee.**
- (f) **The Provisions contained in Clause XXIV relating to the removal of stores rejected by the Inspecting Officer shall, mutatis mutandis apply to stores rejected by the consignee as herein provided.**

XVI. SUBLETING AND ASSIGNMENT:-

- (a) **The Contractor shall not serve with the previous consent in writing of the purchaser sublet, transfer or assign the contract or any part thereof or interest therein or benefit or advantage thereof in any manner whatsoever.**

In the event of the Contractor's subletting or assigning this contract or any thereof without such permission, the purchaser shall be entitled to cancel the contract, and to purchase the stores elsewhere on the Contractor's account and risk and contractor shall be liable for any loss or damage which the purchaser may sustain in consequence or arising out of such purchase.

- (b) **CHANGES IN A FIRM:-**

- (i) **On the death or retirement of any partner of the contractor firm before complete performance of the contract the purchaser may, at his option cancel the contract and in such case the contractor shall have no claim whatsoever to compensation against the purchaser.**
- (ii) **If the contract is not determined as provided in sub-clause (i) above notwithstanding the retirement of a partner from the firm he shall continue to be liable under the contract for acts of the firm until a copy of the public notice given by him under section 32 of the Partnership Act has been sent by him to the purchaser by Registered Post with Acknowledgement due.**
- (iii) **The decision of the purchaser as to any matter or thing concerning or arising out of this sub clause or any question whether the contractor or any partner of the contractor firm has committed a breach of any of the conditions in this sub clause contained shall be final and binding on the contractor.**

XVII. ASSISTANCE TO THE CONTRCTOR:-

- a. **The contractor shall be solely responsible to procure any material or obtain any import on other license or permit required for the fulfillment of the contract and the grant by the purchaser or any other authority of a quota certificate or permit required under any law for distribution of acquisition or iron and steel or any other commodity or any other form of assistance in the procurement of the material**

aforesaid or any attempt to render assistance in the matter aforesaid shall not be construed as a representation on the part of the Purchaser that the material covered by such licence or permit or quota certificate is available or constitute any promise undertaking or assurance on the part of the purchaser regarding the procurement of the same or effect any variation in the rights and liabilities of the parties under the contract. But, if by reasons of any such assistance as aforesaid the contractor obtains any materials at less than their market price or the cost of production of the stores lowered the price of the stores payable under the contract shall be reduced proportionately, and the extent of such reduction shall be determined by the purchaser whose decision shall be final and binding on the contractor.

- b. Every effort made by the Purchaser to supply or give assistance in the procurement of materials, whether from the Company stock or by the purchaser under a permit or release order issued by or on behalf or under authority from company or by any officer empowered in that behalf by law or under other arrangements made by the purchaser shall be deemed to be subject to the condition that it will be performed with due regard to other demands and only if it is found practicable to do so within the stipulated time and the decision if the purchaser whether it was practicable to supply or give assistance as aforesaid or not shall be final and binding on the contractor.

XVIII USE OF RAW MATERIALS SECURED WITH PURCHASER'S ASSISTANCE:-

- (a) Where any raw material for the execution of the contract is procured with the assistance of the Purchaser by purchase or under arrangement made or permit licence, quota certificate or release order issued by or on behalf of or under authority from the Government or by any officer empowered in that behalf by law or is issued from Company stock and where advance payments are made to the contractor to enable him to procure such raw materials for the execution of the contract the contractor.
- (i) Shall hold such material as trustee for the Purchaser
 - (ii) Shall use such material economically and solely for the purpose of the contract:
 - (iii) Shall not dispose of the same without the previous permission in writing of the purchaser and shall render due account of such material and return to the Purchaser at such place as the purchaser may direct all surplus or unserviceable material that may be left after the complication of the contract or its termination for any reason whatsoever
 - (iv) On returning such material the contractor shall be entitled to such price thereof as the purchaser may fix having regard to the condition of such material
- (b) Where the contract is terminated due to any default on the part of the contractor, the contractor shall pay all transport charges incurred for returning any material up to such destination as may be determined any the purchaser and the decision of the purchaser in that behalf shall be final and binding on the contractor.
- (c) If the contractor commits breach of any of the conditions in this clause specified, he shall without prejudice to any other liability, penal or otherwise be liable to account to the purchaser for all moneys advantages or profits accruing from or which in the usual course would have accrued to him by reason of such breach.

- (d) Where the stores manufactured or fabricated by the contractor out of the materials arranged or procured by or on behalf of the purchaser are rejected the contractor shall, without prejudice to any right or remedy of the Corporation, pay to the purchaser on demand the cost or market value or all such materials whichever is greater.

XIX. INDEMNITY:-

The contractor shall at the times indemnify the purchaser against all claims which may be made in respect of the stores infringement of any right protected by patent, registration of designs or trade mark. Provided always that in the event of any claim in respect of alleged breach of letters patent, registered designs or trade mark being made against the purchaser the purchaser shall notify the contractor of the same and the contractor shall at his own expense either settle any such dispute or conduct any litigation that may arise therefrom.

XX. PACKING:-

- (a) The contractor shall pack at his own cost of the stores sufficiently and properly for transit by rail/road, air and or sea as provided in the schedule so as to ensure their being free from loss or damage on arrival at their destination.
- (b) Unless otherwise provided in the schedule all containers(including packing cases, boxes, tins, drums and wrappings) in which the stores are supplied by the container, shall be considered as non-returnable and their cost as having been included in the contract price.
- (c) If the schedule provides that the containers shall be returnable, they must be marked “returnable” and they will be returned to the contractor as per terms of the contract.
- (d) If the schedule provides that returnable containers shall be separately changed, they shall be invoiced by the contractor at the price specified in acceptance of tender. In such cases the contractor shall give full credit for the invoiced amount if the containers are returned to the contractor.
- (e) Return of container shall be made a reasonable time and in the event of any dispute or difference arising as to whether the containers were so returned the decision of the purchaser thereon shall be final and binding and the purchaser may in his discretion award such compensations as may in his opinion be proper for any undue delay in returning the containers.
- (f) Each bale of package delivered under the contract shall be marked by the contractor at this own expense. Such marking shall be distinct (all previous irrelevant marking being carefully obliterated) and shall clearly indicate the description and quantity of the stores, the name and address of the consignee, the gross weight of the package and the name of the contractor with a distinctive number of mark sufficient for the purpose of identification. All markings shall be carried out with such materials as may be found satisfactory by the Inspecting Officer as regards quickness of drying, fastness and indelibility.
- (g) The Inspecting Officer may reject the stores if the stores are not packed and/or marked as aforesaid and in case where the packing materials are separately

prescribed, if such materials are not in accordance with the terms of the contract. Such rejection of the stores by the Inspecting Officer shall be final and binding on the contractor.

- (h) Each bale or package shall contain a packing note specifying the name and address of the contractor the number and date of the acceptance of tender or supply order and the designation of the Purchase or Officer issuing the supply order, the description of the stores and the quantity contained in such bale or package.

XXI. NOTIFICATION OF DELIVERY:-

Notification of delivery or despatch in regard to each and every installment shall be made to the consignee and to the purchaser any other authority specified in the acceptance of the tender/or supply order immediately on despatch or delivery. The contractor shall further supply to the consignee, of the interim consignee, as the case may be a packing account quoting number of the acceptance of tender and/or supply or repeat order and date of despatch of the stores.

All packages, containers, bundles and loose materials part of each and every installment shall be fully described in the packing account and full details of the contents of the packages and quantity of materials shall be given to enable the consignee to check the stores on arrival at destination. The Railway Receipt/Consignment Note or Bill of Lading if any shall be forwarded to the consignee by Registered Post under advice to purchase officer immediately on the despatch of stores. The contractor shall bear and reimburse to the purchaser demurrage charges, if any paid by reason of delay on the part of the contractor in forwarding the Railway Receipt, Consignment Note Or Bill of Lading.

XXII. PROGRESS REPORTS:-

- (a) The contractor shall from time to time render such reports concerning the progress of the contract and/or supply of the stores in such form as may be required by the purchaser.
- (b) The submission, receipt and acceptance of such reports shall not prejudice the rights of the purchaser under the contract, not shall operate as an estoppel against purchaser merely by reason of the fact that he has not taken notice or subjected to test information contained in such report.

XXIII. FREIGHT:-

The stores shall be despatched at Public Tariff rates. In the case of F.O.R station of despatch contact, the stores shall be booked by the most economical route or most economical tariff available at the time of despatch as the case may be. Failure to do so will render the contractor liable for any avoidable expenditure caused to the purchaser. Where alternative routes exists, the purchaser shall if called upon to do so indicate the most economical route available, or name the authority whose advice in the matter shall be taken and acted upon. If any advice of any such authority is sought, his decision or advice in the matter shall be final and binding on the contractor.

XXIV. REMOVAL OF REJECTED STORES:-

- (a) Any stores submitted for inspection at a place other than the premises of the contractor and rejected shall be removed by the contractor subject as herein after provided within 21 days of the date of issue of intimation of such rejection. If it is proved that letter containing such intimation is addressed and posted him at the address to mention in the purchase order/acceptance of tender/contract it will be deemed to have been served on the contractor at the time when such letter would in the course of ordinary post reach the contractor. It shall be within his authority for the purchaser or the Inspector call upon the contractor to remove what he considers to be dangerous inactive or perishable stores within 48 hours of the receipt of such intimation.
- (b) Such rejected stores shall under all circumstances lie at the risk of the contractor from the moment of such rejection and if stores are not removed by the contractor within the period aforementioned the consignee may either return the same to the contractor at contractor's risk and cost by such mode of transport as the Purchaser or Consignee may select or dispose of such stores at contractor's risk on his account and retain such portion of the proceeds as may be necessary to cover the expenses incurred in connection with such disposal. The purchaser shall also be entitled to cover ground rent/demurrage charges on the rejected stores after the expiry of the free time mentioned above.
- (c) Stores that have been despatched by rail and rejected after arrival at destination may be taken back by the Contractor either at the station where they were rejected or at the station from which they were sent. If the contract is placed for delivery F.O.R. station of despatch the contractor shall pay the carriage charges on the rejected consignment at public Tariff Rates from the station of despatch to the station from which they were rejected. If the contractor elects to take back the goods at the station from which they were rejected, the goods shall in addition to be booked back to him freight to pay at Public Tariff Rates and at Owner's Risk. The contractor shall be liable to reimburse packing and incidental costs and charged incurred in such return of rejected stores. The goods shall remain the property of the contractor unless and until accepted by the purchaser after inspection.

XXV. SYSTEM OF PAYMENT:-

- (a) Unless otherwise agreed upon between the parties, payment for delivery of stores will be:
- (b) Generally 100% payment for the stores shall be paid on receipt of the stores or each consignment thereof in accordance with the terms of contract in good condition, by the consignee. A consignee receipt certificate issued by the consignee shall accompany the bill submitted by the contractor.
- (c) In special cases by prior agreement between the Purchaser and Contractor 90% price of each consignment will be paid on presentation of bill accompanied with the proof of despatch and certificate regarding inspection of stores in terms of contract, Balance 10% will be paid on receipt of each consignment in accordance with the terms of the contract in good conditions and issuance if a consignee receipt certificate which shall accompany the contractor bill.

XXVI. RECOVERY OF SUMS DUE:-

(a)Whenever any claim for the payment of a sum of money arises out of or under the contact against the contractor, the purchaser shall be entitled to recover such sum by appropriating in whole or in part, the security if any, deposited by the contractor and for the purpose, aforesaid shall be entitled to sell and/or realise securities forming the whole part of any such security has been taken from the contractor, the entire sum recoverable shall be recovered by appropriating any sum then due or which at any thereafter may become due to the contractor under the contract or any other contract with the purchaser or any person contracting through the purchaser. If such sum even were not sufficient to cover the full amount recoverable the contractor shall on demand pay to the purchaser the balance remaining due.

(b)For the purpose of this clause, where the contractor is a partnership firm, the purchase shall be entitled to recover such amount by appropriating in whole or part any sum due to any partner of the firm whether in his individual capacity or otherwise.

XXVII. WARRANTY:-

- a. Contractor shall warrant the everything to be furnished hereunder shall be free from all defects and faults in material, workmanship and manufacture and shall be the highest grade and consistent with the established and generally accepted standards for materials of the type ordered and in full conformity with the contract specifications, drawings or samples, if any and shall if operable operate properly.
- b. This warranty shall survive inspection of payment for and acceptance of the goods, but shall expire 24 months after their delivery or 18 months from the date of placing in service, whichever shall be earlier except in respect of complaint defects and/or claims notified to the Contractor within 2/3 months of such dates. Any approval or acceptance by the purchaser of the stores or of the materials incorporated herein shall not in any way limit the contractor's liability.
- c. The Contractor's liability in this respect of any complaints, defects and/or claims shall be limited to the furnishing and installation of replacement parts free of any charges or the repair of defective parts only to the extent that such replacement or repairs are attributable to or arise from, faulty workmanship or materials or design in the manufacture of the stores provided defects are brought to the notice of contractor within 2/3 months of their being first discovered during the guarantee period and 2/3 months from the date of expiry of warranty period or at the option of the purchaser to the payment of the value, expenditure and damages as thereafter mentioned.
- d. The contractor shall if required, replace or repair the goods or such portion thereof as is rejected by the purchaser free of cost at the ultimate destination, or at the option of the Purchaser the Contractor shall pay to the Purchaser Value thereof at the contract price and such other expenditure and damage as may arise by reason of the breach of the condition herein specified.
- e. All replacement and repairs that the Purchaser shall call upon the contractor or deliver or perform under this warranty shall be delivered and performed by the contractor within 4 months(Promptly and Satisfactorily). If the contractor so desires, the replaced parts can be taken over by him or his representative for disposal as he deems fit within a period of three whatsoever, shall lie on the purchaser.
- f. The warranty, herein contained shall not apply to any materials, which shall have been repaired or altered by the Purchaser or on his behalf in any way without the consent of the

contractor so as to affect its strength, performance or reliability, or to any defect to any part due to misuse negligence or accident.

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

XXVIII. CORRUPT PRACTICES:-

- a. The contractor shall not offer or give or agree to any person in the employment of the Purchaser or working under the orders of the Purchaser any gift or consideration of any kind as and inducement or reward for doing or forbearing to do or for having done or forborne to do any act in relation to the obtaining or execution of the contract or any other contact with the purchaser or for showing any favour of forbearing to show disfavour to any person with relating to the contract or any other contract with the purchase. Any breach of the aforesaid condition by the contractor or any one employed by him or acting on his behalf (Whether with or without the knowledge of the contractor) or the commission of any offence by the contractor or by any one employed by him or acting on his behalf under chapter XI of the Indian Penal Code 1860 or the Prevention of Corruption Act 1947 or any other enacted for the prevention of corruption by Public servants shall entitle the Purchaser to cancel the contract and all or any other contracts with the contractor and to recover from the contractor the amount of any other contracts with the contractor and to recover from the contractor the amount of any loss arising from such cancellation.
- b. Any dispute or difference in respect of either the interpretation, effect or application of the condition immediately preceding or of the amount recoverable there under by the Purchaser from the Contractor, shall be decided by the Purchaser, whose decision thereon shall be final and binding on the contractor.

XXIX. INSOLVANCY AND BREACH OF CONTRACT:-

The Purchaser may at any time, by notice in writing, summarily determine the contract without compensation to the contractor in any one of the following events that is to say:

- a. If the contractor being an individual or if a firm any partner thereof, shall at any time, be adjusted insolvent or shall have a receiving order or order for administration of his estate made against him or shall take any proceeding for composition under any Insolvency Act for the time being in force or make any conveyance or assignment of this effects or enter into any arrangement or composition with his creditors or suspend payment or if the firm be dissolved under the Partnership Act, or.
- b. If the contractor being a company is wound up voluntarily or by the order of a court or a Receiver, Liquidator, or Manager on behalf of the Debenture holders appointed or circumstances shall have arisen which entitle the court or Debenture-holders to appoint a Receiver, Liquidator or Manager or
- c. If the Contractor Commits any breach of the contract not herein specifically provided for: Provided always that such determination shall not prejudice any right of action or remedy which shall have accrued or shall accrue thereafter to the Purchaser and provided also the contractor shall be liable to pay to the purchaser for any expenditure he is thereby put to and the Contractor shall be liable to pay to the purchaser for any expenditure he is thereby put to and the Contractor shall under no circumstances be entitled to any gain on re-purchase.

XXX. LAWS GOVERNING THE CONTRACT:-

- a. This contract shall be governed by the Laws of India for the time being in force.
- b. Irrespective of the place of delivery, the place or performance or place of payment under the contract, the contract shall be deemed to have been made at the place from which the acceptance of tender has been issued.
- c. **JURISDICTION OF COURTS:-**

The Courts of the place from where the acceptance of tender has been issued shall alone have Jurisdiction to decide any dispute arising out of or in respect of the contract.

XXXI. ARBITRATION:-

- a. In the event of any question, dispute or difference arising under these conditions or any special condition of contract, or in connection with this contract(except as to matters the decision of which is specially provided for by these or the special conditions) the same shall be referred to the sole arbitration of a person appointed to the arbitrator, the Chairman/Custodian/Managing Director of the Company. It will be no objection if the arbitrator is an “Employee at the Company that he had to deal with matters to which the contract related on that in the course of his duties as a Company employee he has expressed views on all or any of the matters in dispute or difference. The award of the arbitrator shall be final and binding on the parties to this contract”.
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