

General Commercial Terms & conditions for Purchase revised in May 2010

SAIL P1

1.0 Definitions :

- i) “Contract” means the Contract agreement entered into by the Company and the Supplier together with all the contract documents from the tender to the final signing of agreement
- ii) “Company” means Steel Authority of India Limited (SAIL), a Company registered under the Indian Companies Act 1956 and having its registered office at Ispat Bhawan, Lodhi Road, New Delhi –110003, India and having one of its Plants / Units / Mines / Offices atand includes its legal successors and assignees.
- iii) “Purchaser” shall mean the “Plants / Units / Mines / Offices” of Steel Authority of India Limited, and includes its successors and assignees
- iv) “Bidder” or “Tenderer” means the individual, firm or company who has submitted a valid Bid /Tender.
- v) “Supplier” means the “Successful Bidder”/ “Successful Tenderer” i.e. the individual, firm or company etc. whose Bid has been accepted and on whom Purchase Order has been placed and who enters into the Contract to supply the material. The term includes the Supplier’s authorized representatives, legal successors and permitted assigns.
- vi) “Stores” shall mean the materials contracted for supply as per quantities and specifications indicated in the contract.

1.1 Terms / Conditions & expressions not herein defined shall have the same meaning as assigned to them in the Indian Contracts Act 1872 & Sales of Goods Act 1930, as amended from time to time.

2.0 Authority of person signing documents:

- a) A person signing the Tender Form or any document forming part of the contract on behalf of the supplier shall be deemed to warranty that he has authority to sign such documents.
- b) In case of e-procurement, the submission of On-Line Quotation / Bid through the E-Procurement System of the Purchaser by any authorized representative of the Tenderer who logs on to the system with the valid ID and password shall be taken as valid and the Tenderer shall be fully responsible for the execution of the Contract arising there from.

3.0 Responsibility for Performance of Contract:

The Supplier shall be entirely responsible for the performance of the contract in all respects in accordance with the terms and conditions as specified in the Contract. The Supplier shall not sublet, transfer or assign the contract without the written permission of the Purchaser. In case permission is given by the purchaser, Supplier shall be liable to any loss or damage which the Purchaser may sustain in consequence or arising out of such subletting of the contract.

4.0 Samples and testing:

- i) **Samples:** Samples, wherever required for examination & testing, shall be supplied by the tenderer free of cost.
- ii) **Testing:** Wherever the materials involve testing for acceptance, tenderers shall clearly

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indicate the availability of testing facilities in their premises and confirm testing free of charge. In case material is tested at Purchaser's premises, no charges need be paid by the supplier.

- iii) If item is required to be tested at outside laboratory (not in the Purchaser's premises), testing charge will be borne by Purchaser. However, only in case of testing of Umpire Sample in an outside lab, if the Umpire sample fails, the supplier shall bear the expenses of the umpire sample testing.

6.0 Inspection & Rejection

- i. **Inspection:** Inspection, if required may be carried out by the Purchaser or his authorized agent at destination, or at the Supplier's premises or at any other place as the Purchaser may deem fit as stipulated in the Contract during different stages of manufacture including final Pre-dispatch inspection and accordingly Inspection Certificates shall be issued.
- ii. **Notification by Supplier** – In case of inspection at the Supplier's premises, notice in writing shall be sent by the Supplier, sufficiently in advance, to the Purchaser when the stores to be supplied are ready for inspection. In case of third party inspection notice shall be given directly to the third party inspection agency under intimation to purchaser.
- iii. **Removal of Rejections** – Any stores inspected and rejected at Purchaser's premises must be removed by the Supplier within 30 days from date of receipt of intimation of rejection of supplies in case of indigenous suppliers & 45 days in case of foreign suppliers. If the rejected goods have already been paid for (partly or fully), the supplier shall before removal of rejected goods, either deliver correct replacement goods at Purchaser's premises completely free of cost (including cost of goods, freight, taxes, duties etc) or refund the payment received as well as make full compensation for freight taxes, duties etc. Such rejected Stores shall lie at supplier's risk from the time of such rejections and if not removed within the above time limit, the Purchaser shall have the right to dispose off the said rejected materials as he may deem fit without any financial obligation to the supplier.

- 7.0 Supplier responsibility:** The supplier should undertake to be responsible for the delivery of the goods in satisfactory condition and without any loss or damage at the final destination and until the same is actually received by the Purchaser at its works or other place of final destination. For this purpose goods carried by the railway or other carrier shall be deemed to be carried at the risk of the supplier. If on inspection at final destination the Purchaser discovers any discrepancy, the Purchaser will be entitled (notwithstanding that the property of goods shall have passed on to the company) to refuse acceptance of the goods altogether and claim damages and/or cancel the contract and buy its requirement in the open market at the risk and cost of the supplier, reserving always to itself, the right of forfeiture of any amount found due and payable or the deposit, if any, placed by the supplier for the due fulfillment of the contract as also to recover any amount, if already paid..

8.0 Packing:

- (i) **Responsibility for proper packing** – The Supplier shall be responsible for the stores being sufficiently and properly packed, for transport by rail/road/sea/air/ or any combination of above, so as to ensure their being free from loss or damage on arrival at the destination. Packing material shall not be returned to the supplier, unless stated

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otherwise.

- (ii) **Marking of Packages, Packing, etc.** - Each package delivered under the contract shall bear the following:-
- Name of the Supplier
 - Contract Number
 - Consignee's name and address
 - Description and quantity of contents
 - Gross weight, net weight,
 - Distinctive number or mark which is also to be shown, for the purpose of identification, on the Supplier's packing list.

9.0 Delivery:

- i) Timely delivery is the essence of the contract & must be completed as per the dates specified therein.
- ii) The Supplier shall deliver items preferably on F.O.R. Stores basis of the Purchaser indicated in the Contract and in accordance with the delivery terms indicated therein.
- iii) Notification of delivery or dispatch in regard to each and every consignment shall be made to the authorities named in the Contract.

10.0 Failure and Termination – Should the Supplier fail to deliver the stores or any consignment thereof, within the period prescribed for such delivery, the Purchaser shall be entitled at his option, to the following:

i) Liquidated Damages:

In event of supply not being effected within the contractual delivery schedule liquidated damages @1%, not by way of penalty, of the value of the materials without taxes, duties & freight, per month of delay or part thereof, subject to maximum of 5%, is recoverable from the supplier without prejudice to the rights of Purchaser to procure the balance material at the risk and cost of the supplier. The payment or deduction of such damages shall not relieve the Supplier from the contractual obligations to complete the supply or balance portion thereof in time as stipulated in the Contract.

- ii) **Risk Purchase** : If the Supplier fails to deliver the stores either in full or in part, within the prescribed delivery period, the Purchaser shall be entitled at his option to take alternate procurement action, at the risk & cost of the supplier for the unsupplied portion of the goods / items for which delivery has expired without canceling the contract in respect of the stores not yet due for delivery, or to cancel the contract based on progress of work, including stores not due for delivery, and, if thought fit/necessary, to purchase the stores at the risk and cost of the Supplier. The price differential in case of higher cost to SAIL, if any, shall have to be borne by the defaulting supplier. Moreover the defaulting supplier shall have no claim over the quantity, which they failed to supply

11.0 Freight:

- i) The specified goods / items shall be dispatched by the mode of Transport specified in the Purchase order at Public Tariff Rate, Railway Material Concession Rate and Railway/Carrier's Risk as may be specified in the Contract.
- ii) For road dispatches, the Stores are to be dispatched through the Purchaser's authorised Transporters unless otherwise specified.
- iii) In the case of "despatch by Rail and F.O.R. Station of Despatch" contract the Stores should be booked at full rake load in case of bulk materials and full wagonload for others,

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wherever applicable, through the most economical route. Failure to do so will render the Supplier liable for the whole or part of any avoidable expenditure, caused to the Purchaser.

12.0 Weighment:

For bulk material to be accepted by weight, all the trucks / wagons / trailers / tankers etc. shall be weighed at the destination at the purchaser's weighbridge(s).

Supplier's challan weight for each truck / wagon / trailer / tanker etc. shall be accepted as final, if the weighment at purchaser's premises for that truck / wagon / trailer / tanker etc. is within the tolerance range indicated in the contract. If the weighment at purchaser's weighbridge(s) is found to be more than the challan weight, the payment shall be restricted to the challan weight.

In case the weighment at purchaser's weighbridge(s) is found to be less than challan weight even after allowing the tolerance range indicated in the contract, the weighment at purchaser's premises shall be final for the purpose of payment.

13.0 Taxes, Duties & Levies:

- i) Tenderers must clearly mention their Sales Tax Registration, E.C.C & TIN/ SRIN in their offers and invoices.
- ii) **Sales Tax / VAT, Excise Duty, Countervailing Duty (CVD), Entry Tax, Service Tax (ST), etc.** shall be clearly mentioned in the offer indicating the applicable rates. In case order is placed on the tenderer , fresh imposition or variation in statutory taxes / duties / levies, if imposed beyond the contractual delivery period, shall be admissible / availed of, provided it is Cenvatable/ setoff is admissible against these levies..
- iii) **CenVat/ Input Tax Rebate (ITR)** – In order to enable SAIL to avail CenVAT credit, the supplier shall ensure submission of duplicate copy (transporter's copy) of invoice under Rule 11 of the Central Excise Rule, 2002 and or cenvat credit rules, 2002, along with the supplies. To avail input tax credit against VAT, relevant tax invoice is to be submitted as per VAT rules. In case the supplier fails to submit the requisite documents, the reimbursable amount on account of duties/ taxes , levies as indicated in his quotation/ invoice / purchase order/contract shall be deducted from his bill.

14.0 Bank details mentioning bank name type of account, account number, city, branch code and PAN should be furnished in the offer, to facilitate timely payment.. The vendors shall be required to submit details of their bank account in the enclosed proforma for enabling SAIL to make payment in e- mode, wherever facilities to make payment by e-mode exist". Mandate form for facilitating payment in electronic mode is enclosed.

15.0 GUARANTEE/ WARRANTY: The supplier must replace, free of charge, any stores & spares which owing to defect in design, material or workmanship fail or show signs of failure at any time within 12 months from date of putting them to use / operation or 18 months from date of delivery , whichever is earlier or as otherwise specified in the tender document.

16.0 Settlement for discrepant material: After receipt of material at purchaser's premises, if it is found that the material does not conform to order specification but material is found

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useable, intimation in this regard shall be given to supplier within 90 days of receipt of such material. Supplier shall depute his representative within 30 days of receipt of such intimation for inspection/assessment if so desired. Purchaser shall decide the amount to be recovered from the supplier and supplier shall remit the same to the purchaser on receipt of such intimation. All costs associated with above shall be borne by supplier.

17.0 Recovery of Sums due: Whenever under this contract any sum of money is recoverable from and payable by the Supplier, the Purchaser shall be entitled to recover such sum by appropriating, in part or whole the security deposited by the Supplier, 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 Supplier, then the balance or the sum recoverable, as the case may be, shall be deducted from any sum when due or which at any time thereafter may become due to the Supplier under this or any other contract with the Purchaser / Company. Should this sum be not sufficient to cover the full amount recoverable the Supplier shall pay to the Purchaser / Company on demand the remaining balance due.

18.0 Indemnity: The Supplier shall at all times 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 or damage which may occur or failure of the supply from whatever cause arising. The Supplier shall be entirely responsible for the sufficiency of all the means used by them for the fulfillment of the contract.

19.0 Force Majeure:

If at any time during the currency of the Contract, the performance in whole or in part by either party of any obligation under this Contract shall be prevented or delayed by reasons of War, Hostility, Acts of Public Enemy, Civil Commotion(s), Sabotage, Fire(s), Flood(s), Explosion(s), Epidemic, Quarantine Restrictions, Acts of State or Acts of God, hereinafter referred to as eventualities, then the Contract period will get extended for the period of Force Majeure, provided Notice of the happenings of any such eventualities is given, supported by a certificate of appropriate authority or Chamber of Commerce by either party to the other within 15 days from the date of occurrence thereof. Neither party shall by reason of such eventualities be entitled to terminate this contract nor shall either party have any claim for damages against the other in respect of such non performance or delay in performance. Work under this contract shall resume as soon as practicable after such eventualities have come to an end or ceased to exist and the decision of the Company as to whether the work has to be resumed shall be final and conclusive. Should one or both parties be prevented from fulfilling their contractual obligations by state of Force Majeure lasting continuously for a period of at least three months, the parties shall consult each other regarding further continuation of the Contract.

20.0 Conciliation:- All questions, claims, disputes and or differences of any kind whatsoever arising out of or in connection with or concerning this contract, at any time, whether before or after determination of the contract, shall be referred by the parties hereto for Conciliation before a Conciliatory Forum / Body.

The Conciliatory Forum / Body will be composed of the following members :-

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- i) Nominee of the Steel Plant / Unit – Independent of officer handling the contract. (to be nominated by the head of the concerned department.)
- ii) Nominee of the Contractor / Supplier.

The parties in dispute would place their facts in writing before the Body / Forum and the process of conciliation would be completed within the period of three months from the date of reference to the Conciliatory Forum / Body.

On failure of the conciliation, the aforesaid questions, claims, disputes and or differences shall be referred by the parties here to for the decision by a Sole Arbitrator to be appointed as herein after mentioned.

21.0 Arbitration:-

Matters in question, claims, dispute and or difference in respect of the contract to be submitted to arbitration as aforesaid shall be referred for decision to a Sole Arbitrator to be appointed by MD of Steel Plant / Head of unit, (SAIL). Before appointing the Sole Arbitrator, MD of Steel Plant / Head of unit, (SAIL) shall nominate three names out of which the contractor / supplier shall give his consent for one of them for appointment as Sole Arbitrator, failing which after 30 days of the issuance of the letter informing three names MD of Steel Plant / Head of unit, (SAIL) shall have the power to appoint one of the three notified persons as the Sole Arbitrator.

In case the designation of the Managing Director of Steel Plant (SAIL) is changed or his office abolished, the officer who for the time being is entrusted with the functions of the Managing Director of Steel Plant (SAIL), by whatever designation such officer is called, shall be the person designated to appoint the Sole Arbitrator. The arbitrator so appointed shall adjudicate upon the disputes between the parties hereto.

The Sole Arbitrator appointed as stated above, shall from the time of his appointment and throughout the arbitration proceedings, without any delay, disclose to the parties in writing any circumstances likely to give rise to justifiable doubts as to his independence or impartiality provided that the mere fact that such Sole Arbitrator is an employee of SAIL or its subsidiary shall not be regarded as such circumstances. The arbitrator shall decide the questions, claims, disputes or differences submitted to him by the parties in accordance with the substantive law for the time being in force in India.

The arbitrator shall hear the cases independently and impartially and shall not represent the interest of any party. Any arbitrator having personal interest in the case at the time of his appointment and at any time subsequently thereafter must withdraw from his office himself and the parties shall also have the right to ask him to do so. The venue of the arbitration shall be _____ (For domestic tenders, the place where Plant / Unit is located; and for global tenders Delhi).

Procedure for conduct of the arbitration proceeding shall be decided by the arbitrator, in consultation with the parties before proceeding with reference. The arbitrator may hold preparatory meeting(s) for this purpose. In the preparatory meeting(s) as aforesaid, the arbitrator/s as the case may be in consultation with the parties shall also determine the

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manner of taking evidence, the summoning of expert evidence, and all such matters as are necessary for the expeditious disposal of the arbitration proceedings.

The provision of the Arbitration and Conciliation Act, 1996 and the rules framed there under, if any and all modifications / amendments thereto shall deem to apply and / or be incorporated in this contract and when such modifications / amendments to the Act / Rules are carried out.

Work / supply under the contract shall be continued by the contractor / supplier, under the contract, during the arbitration proceedings and recourse to arbitration shall not be a bar to continuance for the work or supply unless otherwise directed in writing by the Plant / Unit.

- 22.0 Declaration by the Tenderer:** The Tenderer shall be required to declare whether the proprietor or any partner of the firm or Director of their company as the case may be has any relation with any employee working with the Purchaser and if so, give the name of the employee and the relationship and also whether any of them has a relationship within the meaning of Section 6 of the Companies act, 1956 with any of the Directors of Steel Authority of India Limited and if so, give details.
- 23.0 Language:** Offer submitted by the tenderer and all correspondence and documents relating to the offer exchanged between the tenderer and the Purchaser shall be written in the English Language. Any printed literature furnished by the tenderer may be written in another language so long as it is accompanied by a duly signed English translation in which case, for the purposes of interpretation of the offer, the English translation shall govern.
- 24.0 Termination at Purchaser's Discretion:** The Purchaser may, at any time, terminate the contract for any reason by giving the Supplier notice of termination. Upon receipt of the notice of termination, the Supplier shall either immediately or upon the date specified in the notice of termination, cease all further work except for such as the Purchaser may specify in the notice of termination. In the event of termination of the Contract the Purchaser shall only pay to the Supplier, the Price for the parts executed by the Supplier as of the date of termination.
- 25.0 Waiver:** Failure to operate or to enforce any condition under this GCC / Contract shall not operate as a waiver of the condition itself or any subsequent breach thereof.
- 26.0 Governing Law:** The Contract entered into between the Company and the Supplier shall be governed by and interpreted in accordance with the Laws of India. **The place of jurisdiction** shall be the place where the Purchaser is located, unless otherwise specified.
- 27.0** In case of any mismatch between clauses stated herein and that appearing in contract, the clauses appearing in the contract shall prevail.
- 28.0 Additional Terms & Conditions – Specific to Import**

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- 28.1** Tenderers should quote as per INCOTERMS – 2000 as may be revised from time to time, clearly indicating FOB, FCA & CFR < Sea Port/ Airport name > rates. Evaluation shall be done on CFR basis. However, Purchaser reserves the right to place order on FOB, FCA or CFR basis. Offer should be submitted directly by the manufacturer/ supplier.

As a policy, SAIL would not like the foreign bidders to appoint any Indian Agents. However, in case, it is necessary to engage an Indian agent, they shall furnish the following details in the techno- commercial offer:

- I. Details of agent, address, fax, e-mail address etc.
- II. Amount of commission included in FOB price(s) for such Indian agent as a percentage of the FOB price.
- III. One agent cannot represent more than one supplier or quote on their tender. In case one agent represents two suppliers or quotes on their behalf in the tender, all the tenders may be liable for rejection.
- IV. Confirmation of the bidder that the commission , if any , payable to his Indian agent shall be paid by SAIL plants in Indian Rupees.
- V. All Indian agents should necessarily get registered with purchaser, for release of agency commission against the order.
- VI. Offer from trading house (foreign) /Indian subsidiary /agent/dealer/ distributor must be authorised by the principal and accompanied by an authorization certificate. However quotation submitted by the agent/ trading house in Indian rupees will not be accepted.
- VII. Agency commission shall be paid after receipt of goods at purchaser's stores and the same will be released in INR as per the exchange rate prevailing at the date of order at TT buying rate.

- 28.6 Inspection at Purchaser's premises:** After inspection at destination, if it is found that the stores do not conform to the ordered specifications, discrepancy in this regard will be intimated to supplier within 60 days from date of receipt of the material at stores. On receipt of such discrepancy letter supplier will have the option to inspect the material jointly at destination and reassess, if they so desire. In case the Supplier does not exercise this option within 4 weeks from the date of receipt of intimation, the discrepancy will be treated as final conclusion & materials will be replaced by correct supply on DDP Purchaser's Store basis (even in FOB contracts) and all charges, duties, freight, insurance etc up to Purchaser's Stores will be borne by supplier.

28.7 Shipping arrangement:

- i. Unless otherwise specified shipping arrangement by sea will be made by the Ministry of Surface Transport, Govt. of India, New Delhi. Adequate notice, of not less than 6 weeks, in advance of readiness of the material for shipment must be given to them. Necessary intimation shall also be given to Purchaser / his authorized agent, as stated in the contract, after shipment giving the necessary details as specified in Contract.
- ii. Air freighting by Purchaser's air consolidating agents whose name will be specified in the order.

28.8 Negotiable Shipping Documents to be submitted are as follows:

- Clean Bill of lading/ Airway bill

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- Invoice
- Packing List
- Certificate of country of origin
- Works test certificate
- Guarantee/ warranty certificate.
- Phyto-sanitary certificate (wherever applicable)

28.10 Test and Fitment Certificate – the Supplier must furnish test certificate for the material shipped showing the details of test results. Fitment certificate is required in case of proprietary spares / components.

28.11 Country of origin-This must be indicated in tenderer's offer along with manufacturer's name and address.

28.12 Packing : Supplier shall arrange Phyto-Sanitary Certificate from authorized Agency for packing materials made of wood/wood products, wherever applicable.

28.13 (i) Letter of credit – All charges outside India, shall be borne by supplier and those in India will be borne by Purchaser. In case letter of credit is extended for reasons attributable to supplier, the extension charges will be borne by the supplier.

(ii) Validity of Letter of Credit - The L/C shall be valid for delivery period for shipment plus negotiation period, which will be 21 days.

28.14 Weighment: The weight mentioned in the third party inspection certificate or the Bill of Lading, whichever is less, shall be final for all the payment purposes.

28.15. Legal interpretation:

- a) The Contract shall be governed by & construed according to the Laws of India for the time being in force.
- b) To interpret all commercial terms & abbreviations used herein, which have not been otherwise defined, INCOTERMS 2000 amended from time to time, may be referred.
- c) Only the competent courts of India will have jurisdiction over any dispute arising out of and in relation to this contract.