

**STANDARD TERMS AND CONDITIONS OF SUPPLY  
(IMPORTED EQUIPMENT / MACHINERY FOR PROJECT)**

**INDEX**

1. GENERAL
2. QUOTATIONS AND ORDER ACCEPTANCE TERMS
3. PACKING, SHIPPING, INSURANCE & FREIGHT DETAILS, AND DELIVERY
4. GUARANTEE / WARRANTY
5. QUALITY CERTIFICATION
6. TERMS OF PAYMENT
7. INSPECTION, TESTING AND COMMISSIONING ASSISTANCE
8. MISCELLANEOUS

**ANNEXURE**

1. STACS ACCEPTANCE FORMAT
2. BID BOND / EMD BANK GUARANTEE FORMAT
3. SECURITY DEPOSIT BANK GUARANTEE FORMAT
4. PERFORMANCE BANK GUARANTEE FORMAT
5. SHIPPING INSTRUCTIONS

**PE-1 GENERAL**

PE-101

The word '**Purchaser**' refers to MAZAGON DOCK LIMITED, (MDL), a Company registered under the Indian Companies Act, 1913 and it includes its successors or assigns.

PE-102

The word '**Sub-contractor / Supplier / Vendor** ' means the person / firm / Company who undertakes to manufacture and or supply and or undertake work of any nature assigned by the Purchaser from time to time and includes its successors or assigns.

PE-103

The word '**Owner**' means the person or authority with whom Mazagon Dock Limited (Purchaser) has contracted to carry out work in relation to which orders are placed by the Purchaser on the Sub-contractor / Supplier / Vendor under this contract for supply or manufacture of certain items and would include Department of Defence Production & Supplies, Ministry of Defence, Government of India, the Indian Navy, the Coast Guard and any other specified authority.

PE-104

The equipment / products / items to be supplied shall be strictly in accordance with the Drawings / Specifications / Requirements indicated in the Tender / Enquiry / Order with deviations, if any, as mutually accepted.

PE-105

The Sub-contractor / Supplier / Vendor shall not either wholly or partly sell, transfer, assign or otherwise dispose of the rights, liabilities and obligations under the contract between him and the Purchaser without prior consent of the Purchaser in writing.

PE-106

The Sub-contractor / Supplier / Vendor shall hold harmless and keep the Purchaser indemnified against all claims arising as a result of infringement of any patent / copy rights on account of manufacture, sale or use of articles covered by the order.

PE-107

Any letter, facsimile message, e-mail intimation or notice sent to the Sub-contractor / Supplier / Vendor at the last known address mentioned in the offer / order shall be deemed to be valid communication for the purpose of the contract.

PE-108

All contracts shall be deemed to have been wholly made in Mumbai and all claims thereunder are payable in Mumbai City and it is the distinct condition of the order that no suit or action for the purpose of enforcing any claim in respect of the order shall be instituted in any Court other than that situated in Mumbai City, Maharashtra State, India.

PE-109

The Sub-contractor / Supplier / Vendor shall unconditionally and free of cost to the Purchaser transfer information on technological developments / innovations / modifications which the Sub-contractor / Supplier / Vendor would evolve in future (within 3 years) in relation to the supplied equipment. To enable this, the Purchaser's address shall be added to the Sub-contractor's / Supplier's / Vendor's mailing list or database or any other document maintained for dissemination of product information and the Purchaser shall be informed of the action taken in this regard. If such improvements / modifications are brought in by the Sub-contractor's / Supplier's / Vendor's Design Department in the course of manufacture of equipment ordered by the Purchaser, the Sub-contractor / Supplier / Vendor shall incorporate such improved versions in the equipment without any extra cost to the Purchaser.

PE-110

If the Purchaser be desirous of getting incorporated all post supply modifications / improvements arising out of technological developments to the original equipment supplied by the Sub-contractor / Supplier / Vendor, the Sub-contractor / Supplier / Vendor, shall quote for and carry out all such modifications to the equipment.

PE-110.1

Where the whole or a portion of the equipment has been specifically developed by the Sub-contractor / Supplier / Vendor for the Owner and the latter would through the Purchaser be bearing the entire or part of the development cost incurred by the Sub-contractor / Supplier / Vendor, the design rights for the whole or portion thereof, of the equipment as appropriate, shall vest in the Owners.

PE-110.2

Prior approval of the Owner should be obtained before similar articles are sold / supplied to any other party other than the Owner. If such approval is given and sale is effected, the Sub-contractor / Supplier / Vendor shall pay to the Owner royalty at the rate mutually agreed to.

PE-111

All property (such as materials, drawings, documents etc) issued by the Purchaser or any other individual or firm on behalf of the Purchaser in connection with the contract shall remain confidential, being the property of the Purchaser and the Sub-contractor / Supplier / Vendor shall undertake to return all such property so issued

and will be responsible for any or all loss thereof and damage thereto resulting from whatever causes and shall reimburse the Purchaser the full amount of loss and damage.

PE-112

A detailed procedure for long and short term preservation of the equipment and periodicity of preservation alongwith special preservatives, if required, prior to installation of the equipment shall be furnished by the Sub-contractor / Supplier / Vendor. The detailed procedure for de-preservation prior to commissioning shall also be furnished.

PE-113

The Sub-contractor / Supplier / Vendor shall render free of cost guidance in case the Purchaser intends to set-up testing, repair / maintenance facility to overhaul the equipment supplied by the Sub-contractor / Supplier / Vendor.

PE-114

The Sub-contractor / Supplier / Vendor shall continue to support the equipment for a minimum period of 20 years from the date of supply by making available spare parts and assemblies of the equipment supplied. Should the Sub-contractor / Supplier / Vendor decides to discontinue the product, for any reason whatsoever, adequate notice shall be given to the Purchaser / Owner to enable procurement of the requisite lifetime spares.

PE-115

The Purchaser reserves the right to accept and or reject any or all tenders and or to withdraw the tender in toto without assigning any reason whatsoever.

PE-2. Quotations and Order Acceptance Terms:

PE-201

Tenderer shall pay special attention to the following points. Failure to comply with these may disqualify the tenderer.

- a. Tender number and due date to be superscribed on all the envelopes.
- b. Tender to be submitted on or before the due date and time.
- c. Offer to be as per specifications and complying with tender conditions.
- d. The envelopes to be sealed properly.

PE-202

Unless otherwise stated, the offers shall be in 'Two Bid System' only, in two separately sealed envelopes: -

- a. PART-I - 'Techno-Commercial Bid' and marked thus. In addition, Part-I shall include-
  - i. Proforma Price Schedule blanking the prices and indicating 'Quoted / Not Quoted' (as applicable against each item on tender).
  - ii. Duties / Taxes, Octroi, freight charges, insurance and or any other Statutory levies payable, specifying incidence clearly / separately against each head.
  - iii. The cost incidence against each head clearly indicating for Door Delivery or F. O. R. / F. O. B. / C & F or Ex-works alongwith charges for packing and forwarding.

- iv. Compliance Statement clearly highlighting deviations / exceptions, if any, to Technical Specifications, Standard Terms and Conditions of Supply, Specific Tender Conditions. Non-specifying of deviations against any or all clauses would be construed as compliance to any / all conditions of tender. Any deviations to STACS, having financial implications, would be considered suitably for loading the quoted price. (STACS Acceptance Format is placed at Annexure 1).
  - v. Earnest Money Deposit @ 2% of the total bid value by way of a bank guarantee from a bank of international repute or value of Bid Bond as stipulated in the tender, to be provided by overseas bidder / supplier as per format provided by the Purchaser. (Format placed at Annexure 2).
  - vi. Copy of IS 9000: 2000 or equivalent Quality System Standards certificate valid as of date.
  - vii. A copy of the valid Export Licence.
  - viii. Delivery Schedule.
- b. PART-II - 'Price Bid' - Quotes to be written in figures and words duly authenticated / signed by the authorised person and marked thus.

#### PE-203

a) Both these sealed envelopes-Part I and Part II, shall be put in a third envelope duly superscribing the Tender number and Due Date and sealed properly and deposited by 14.00 Hours as specified in the enquiry in the Tender Box kept at the following place/s: -

Commercial Section, 4th Floor, Service Block, North Yard. \* OR East Yard Commercial Section, VI floor, 'A' Bldg. \* OR Offshore Commercial Section, 1st Floor, Mazdock House.\* (\*strike out whichever is not applicable)

b) Overseas Bidders / Tenderers shall forward their offers addressed to Deputy General Manager (Commercial - Shipbuilding) OR Deputy General Manager (Commercial - East Yard) OR Deputy General Manager (Commercial-Offshore), Mazagon Dock Limited, Dockyard Road, Mumbai 400 010, as the case may be, either by courier service or by speed post so as to reach 48 hours in advance of the due date of tender or by hand delivery before due date and time of tender closing. Purchaser shall not be responsible for any postal / courier delay and it is attributable solely to the tenderer.

c) Offer in "Two Bid System" received by fax / e-mail and or offers received beyond due date and time of tender is liable to be rejected.

#### PE-204

(a) The Price per 'Ship set' shall be quoted and breakup price of individual items of main equipment and its accessories for supply to Purchaser's Yard for both on FOB as well as on C & F basis, must be clearly stated.

(b) The cost incidence against each head shall be clearly indicated for -

- F.O.B. inclusive of transport and delivery to port of shipment.
- Ex-Works with charges for packing and forwarding.

(c) The offer shall indicate the discounted price, if more than one ship-set is ordered.

(d) When goods supplied are on exportation, subject to a customs duty drawback in respect of duty paid on the stores or material used in its manufacture, the prices charged shall be net after allowing for such duty drawback. The price shall be inclusive of all rights, if any, of patents, registered designs or trademarks and the Sub-contractor / Supplier / Vendor shall indemnify the Purchaser against all claims in respect of the same.

#### PE-205

(a) The offer shall be valid for 90 days for acceptance and the prices shall remain firm and fixed until delivery of the full quantity of the goods in the Purchaser's Yard. If not, the Sub-contractor / Supplier / Vendor shall indicate the period during which the quoted price shall remain valid for supply of the equipment / article/s contracted for.

Should the Purchaser desire postponement of delivery of the equipment / article within or beyond validity date of the offer, the Sub-contractor / Supplier / Vendor shall indicate -

- i. the date by which such communication must be received by him for deferring delivery without any financial implication to the Purchaser,
- and**
- ii. terms and conditions for effecting postponement of delivery beyond the price validity period.

(b) Purchaser reserves the right to consider placement of Purchase Order in part or in full against the tendered quantity.

#### PE-206

The Sub-contractor / Supplier / Vendor shall inform the Purchaser in advance in case he is unable to participate in the tender for whatsoever reason. Failure to comply with this will be viewed seriously and consecutive three failure on the part of Sub-contractor / Supplier / Vendor to do so is liable for disqualification / debarring of the Sub-contractor / Supplier / Vendor from all future tender enquiries and or delisting from the list of 'Approved Registered Vendors.'

#### **PE-207 Spares:**

(a) Offers for Testing and tuning / commissioning spares shall be submitted, if not included / forming part of the main equipment, as specified in the Statement of Requirement / Tender enquiry.

(b) The Sub-contractor's / Supplier's / Vendor's offer shall include a list of manufacturer's recommended spares together with itemised prices for -

- One year uninterrupted operation - validity of offer shall be a minimum for 90 days.
- Five year operation - validity of offer shall be a minimum for 180 days. Minimum order quantity against each item, if applicable, may also be indicated.

(c) While the spares for one year are ordered by the Purchaser, the spares for 5 years Operation will be ordered by the Owners or Purchaser. In case of 5 years operation spares, the Sub-contractor / Supplier / Vendor shall indicate a base price applicable to the year of quotation and indicate an acceptable annual escalation formula based on which prices for future requirements could be established during the life cycle of the equipment in service.

In the event of inability to make an offer for these spares at the time of quoting for main equipment, the Sub-contractor / Supplier / Vendor shall commit a date by which such an offer can be made and adhere to it. Non-receipt of offer as committed will render the order for main equipment liable for cancellation without notice from and financial implication to the Purchaser.

#### PE-208

Tenders will be opened on the tender due date after 15.00 Hours in the Project-Commercial Section, Service Block OR Commercial Section, East Yard OR Offshore Commercial Section, Mazdock House, as the case may be. Only authorised representatives of tenderers are permitted to witness the Part I tender opening, in case of Press Tenders only. Tender opening shall neither be delayed nor withheld / postponed on account of absence of any one or more Tenderers. All the envelopes marked as 'PRICE BID' received at the time of Tender opening will be noted and held unopened separately.

#### PE-209

In case of only Press Tenders authorised representatives of technically qualified tenderers, who have submitted EMD / Bid Bond, as applicable, and complied with tender terms, will only be permitted to be present and note the proceedings of the Price Bid - Part II opening in a manner as directed by the tender opening officers. Qualifying tenderers not present during price bid opening will not be parted with information on prices at a later date. EMD of unsuccessful tenderers will be refunded on submission of original copy of 'Money Receipt' / Bid Bond will be returned within seven days of finalisation of order.

#### PE-210

With the acceptance of the successful bidder's offer by the Purchaser, which is as per the Terms and Conditions of the tender, by means of LOI / Purchase Order, the Contract is concluded.

The Sub-contractor / Supplier / Vendor shall, on receipt of the Purchase Order, communicate his unconditional acceptance within two weeks of from the date of mailing / receipt of the same in its entirety by returning a copy of the Purchase Order duly signed by the authorised person and without any qualification. Communicating acceptance of the order subject to any other terms and conditions of the contract on the part of the Sub-contractor / Supplier / Vendor shall not bind the Purchaser in respect of these conditions which are less favourable to the Purchaser as compared with the conditions mutually agreed to and or stipulated in the Purchase Order. It shall be the responsibility of the Sub-contractor / Supplier / Vendor to enumerate specifically any error or discrepancy in the Purchase Order at the time of acceptance. Failure to do so shall make the Purchase Order binding on the Sub-contractor / Supplier / Vendor in all respects.

Any delay in acknowledging the receipt of the Purchase Order within the specified time limit or any qualification or modification of the Purchase Order in the acknowledgement of the Purchase Order by the Sub-contractor / Supplier / Vendor

shall be a breach of the contract on the part of Sub-contractor / Supplier / Vendor. Compensation for the loss caused by the breach will be recovered by the Purchaser by forfeiting the Earnest Money, invoking Bid Security / Bid Bond given by the Sub-contractor / Supplier / Vendor. If the Sub-contractor's / Supplier's / Vendor's bid contains any conditions and any correspondence which are contrary to the Notice Inviting Tender (NIT) then they shall be considered as superseded and void on the acceptance of the bid by the Purchaser.

Recovery of compensation by the Purchaser from the Sub-contractor / Supplier / Vendor by forfeiting the Earnest Money or by invoking the Bid Security / Bid Bond shall be regarded as cancellation of the contract which has come in to existence on the acceptance of the offer by the Purchaser.

#### PE-211 Security Deposit

The successful overseas Tenderer is required to submit Security Deposit @ 5% of the value of the Order in the form of Bank Guarantee by a bank of international repute, drawn in favour of Purchaser. The format for the same will be provided by the Purchaser (Annexure - 3). The Bank Guarantee will be returned only after the successful execution of the order. In the event of failure to execute the order satisfactorily or default by the Sub-contractor / Supplier / Vendor, the Security Deposit will be forfeited.

#### PE-212

Unless otherwise specified in the 'Statement of Requirement' / 'Technical Specifications for Procurement', the supply shall include one set of reproducible Velographs stamped 'Approved' by the Inspecting Authority, micro-films, floppies / CDs and six sets of paper prints. It shall also include 15 sets each of the Operation / Maintenance Manuals, Part Identification List, Comprehensive Part List, Test Certificates / Shop Trial reports etc. of the equipment / article/s supplied.

- a. The binding drawings called for as per the 'Statement of Requirement' / 'Technical Specifications for Procurement' or the Purchase Order shall be supplied within 4 weeks from the date of Order or within stipulated time frame as indicated on the face of Order, free of cost. Failure to comply may lead to cancellation of Order without any financial implications to the Purchaser.
- b. The drawings shall be submitted to Inspecting Authority and or DGQA / NSM / MDL / Classification Society, as appropriate, within 4 weeks from the date of Order.
- c. Wherever applicable, pilot sample shall be submitted to the authorities specified in the Purchase Order within 4 weeks from the date of Order.

### **PE-3.0 Packing, Shipping, Insurance & Freight details and Delivery:**

#### PE-301 Packing

- a. All material shall be strongly and securely packed for shipment / transportation as applicable in minimum cubic space in such a manner as to prevent damage and pilferage in transit from point of shipment to final destination. Metal parts wherever necessary shall be well slushed with preservatives to prevent rusting in transit. Should it be proved that loss and damage has arisen from inadequate packing, the losses shall be borne by Sub-contractor / Supplier / Vendor. Each packing shall be plainly marked and

numbered upon four sides and the top thereof as instructed in the Purchase Order. Letters and numbers shall be atleast 80 mms. high wherever possible. Packing should indicate Case No., Order No., Gross Weight in Kgs., Nett Weight in Kgs. and outside dimensions LxWxH (The information on outside dimensions and weight shall be furnished to Purchaser atleast one (1) month prior to shipment / despatch). No marking other than as directed shall be inscribed on the said packages.

The main equipment, accessories and spares shall be separately packed and cases be clearly marked. (Shipping Instructions are placed at Annexure - 5).

Every package shall contain a packing list in triplicate and the order number, package number, number of cases in the consignment, description and quantity of each item packed shall be clearly shown in the packing list. The description and quantity of each item shall tally with that specified in the order, wherever applicable.

#### PE-302 Insurance

Transit Insurance shall be arranged by Purchaser. Sub-contractor / Supplier / Vendor shall immediately on despatch of the items, inform the despatch details such as Purchase Order number, AWB number, number of packages, value of consignment, invoice number directly to New India Assurance Company Limited, General Insurance Department, Commerce Centre, First Floor, Tardeo, Mumbai - 400 034, Fax no.: 91-022-494 8559 and quoting our air / marine insurance policy number 130500 11 00 00126 dated: 25.08.2000.

#### PE-303

Storage and Demurrage will be claimed from the Sub-contractor / Supplier / Vendor for all shipments that reach MDL without proper despatch documentations and not accompanied by packing lists, invoices etc. The Sub-contractor / Supplier / Vendor shall be responsible for fines due to errors or omissions in description, weight or measurements and for increased handling charges due to improper packing.

#### PE-304

Where so stipulated in the order, the Sub-contractor / Supplier / Vendor shall render such reports from time to time as regards the progress of the contract and in such a form as may be called for by the Purchaser. The Purchaser reserves the right to cancel an order forthwith without any financial implications on either side, if on completion of 50% of the scheduled delivery period the progress of manufacture is not to the satisfaction of Purchaser / Owner and failure on the part of the Sub-contractor / Supplier / Vendor to comply with the delivery schedule is inevitable. In such an event the Sub-contractor / Supplier / Vendor shall repay all the advances together with interest at prevailing bank rates (presently @ 14.5% p.a.) from the date of receipt of such advances till date of repayment. The title of any property delivered to Purchaser will be reverted to the Sub-contractor / Supplier / Vendor at his cost.

#### PE-305

The Purchaser reserves the right to advise the Sub-contractor / Supplier / Vendor at short notice, of Purchaser's intention to airfreight certain items in part or full thereof, if the need arises, in order to meet the criticality of shipbuilding programme. The Sub-contractor / Supplier / Vendor shall make necessary arrangements for airworthy packing and forward the consignments to the Airport without any extra charges to



the Purchaser. Sub-contractor / Supplier / Vendor shall fax the flight details and airmail well in advance all despatch documents in triplicate to the Purchaser.

#### **PE-4.0 Guarantee / Warranty**

##### **PE-401**

The equipment / material shall be Guaranteed / Warranted for satisfactory performance for the period of 48 months from the date of receipt OR 24 months from the date of satisfactory commissioning on board the vessel OR 12 months from the date of satisfactory commissioning of the vessel on which equipment / material are installed, whichever expires earlier, against improper design, defective material and faulty workmanship. During the period all defects arising out of improper design, defective material, faulty workmanship shall be rectified by repairing or replacing part or whole of the equipment, as necessary, free of charge on CIF basis by the Sub-contractor / Supplier / Vendor. In case of Warranty, it shall be on-site comprehensive for 12 / 36 months. In the event Purchaser / Owner desires to have extension of Guarantee beyond the stipulated period, as above, the Sub-contractor / Supplier / Vendor shall quote for the same on monthly basis and period of such extension for which the quote is valid.

##### **PE-402**

If the defects intimated during the Guarantee period are not remedied within a reasonable / stipulated time, the Purchaser may proceed to rectify the defects at the Sub-contractor's / Supplier's / Vendor's risk and cost, but without prejudice to any other rights which the Purchaser may have against the Sub-contractor / Supplier / Vendor in respect of the failure of the Sub-contractor / Supplier / Vendor to remedy such defects.

##### **PE-403**

Inspection and approval of the equipment or material by the Inspecting Authority/ies does not absolve the Sub-contractor / Supplier / Vendor of the responsibility of guarantee for the equipment / material. It will be the sole responsibility of the Sub-contractor / Supplier / Vendor to ensure that the equipment / material supplied is complete in all respects and performs to its / their designed parameters.

##### **PE-404**

Should the articles, or any portion thereof of the equipment be found defective / rejected, the Contractor/ Supplier shall collect the same from the Purchaser's Stores, all incidental charges being borne by him (inclusive of Customs Duty, if payable), within 30 days from the date of intimation to the Contractor / Supplier of such rejection. The Purchaser reserves the right to dispose of the rejected items at the end of a total period of 90 days in any manner to the best advantage to the Purchaser and recover storage charges and any consequential damages, from sale proceeds of such disposal.

The defective / rejected material noticed during receipt inspection stage or at manufacturing stage will be returned to Manufacturer / Supplier, if so desired by him, on FOB basis only and nominate shipping agent to facilitate replacement. In the event Manufacturer / Supplier is not desirous of taking away the rejected material for any reason whatsoever, the applicable customs duty that will become payable shall be paid by / recoverable from the Manufacturer / Supplier.

##### **PE-405**

In the event of Sub-contractor's / Supplier's / Vendor's failure to attend the

Guarantee defects within a reasonable period of time, the Performance Bank Guarantee will be encashed by the Purchaser. The Purchaser's decision shall be final and binding on Sub-contractor / Supplier / Vendor in this regard.

**PE-5.0 Quality Certification:**

PE-501

Purchase preference will be considered in case the Sub-contractor / Supplier / Vendor is accredited with ISO 9000: 2000 or equivalent International Quality System Standards in respect of equipment / Products and or items on tender. PE-502 The Sub-contractor / Supplier / Vendor shall submit as proof, in Part-I of the bid documents, a copy of ISO 9000: 2000 or equivalent international Quality System Standards certificate valid as of date.

PE-503

The Sub-contractor / Supplier / Vendor shall engage sub-contractors and avail supplies from suppliers with prior approval of Purchaser and such sub-contractors and suppliers shall also be accredited with ISO 9000: 2000 or equivalent international Quality System Standards.

PE-504

In the event the Sub-contractor / Supplier / Vendor is not being ISO 9000: 2000 accredited firm, the fact shall clearly be stated and the Quality Assurance / Quality Control organisation of the company be described in detail. Pursuant to scrutiny of such statement / documentation, the Purchaser may decide to accept the offer with pre-conditions specified for acceptance or reject the bid submitted.

**PE-6.0 Terms of Payment:**

PE-601

Unless or otherwise mutually agreed upon and stipulated in the Purchase Order, 90% payment of the Purchase Order value shall be made on collection basis within 30 days on presentation and receipt of the following documents by the Purchaser's Bankers: -

- a. Original and three copies of Clean Bill of Lading / Airway Bill.
- b. Six copies of invoice showing itemwise FOB prices alongwith packing lists.
- c. Certificate confirming that three copies of Invoice, Packing List, Certificate of Origin, Test Certificate and Non-negotiable copy of Bill of Lading / Airway Bill have been airmailed directly to Purchaser immediately on shipment.
- d. Certificate of country of origin, in triplicate, issued by the Chamber of Commerce.
- e. Warranty certificate, in triplicate.
- f. Six copies of Manufacturer's Works Test Certificate / Shop Test Certificate.
- g. Six copies of Certificate of Inspection and Approval from ABS / LRS / DNV/ BV / DOT / NMD or any other nominated Inspection Authority, (whichever is applicable).
- h. Certificate to the effect that copies of Instruction / Operation / Maintenance Manuals have been directly forwarded to the openers of Letter of Credit by the beneficiary.
- i. Certificate to the effect that six copies of 'as built' drawings alongwith three reproducible drawings or in Electronic medium have been directly forwarded to the openers of Letter of Credit by the beneficiary.
- j. Certificate regarding Liquidated Damage / Penalty vis-à-vis delivery schedule.

- k. A performance Bank guarantee of 10% of the order value in the format issued with the Purchase Order (original + 2 Xerox copies). The bank guarantee is to be valid during the currency of the guarantee period for the equipment, with an invocation period of one month.

All the documents clearly indicate the Purchaser's Order number, Import Licence Number, Airway Bill / Bill of Lading Number on Invoice and Packing Lists.

The balance 10% payment shall be made after satisfactory installation and trials / commissioning and as certified by the Purchaser. The Contractor / Supplier shall have to submit the invoice through their bankers for payment on 'Collection Basis' from Purchaser's bankers. The invoice will have to indicate total amount payable as per the Purchase Order, amount received against Letter of Credit, balance amount due, less Liquidated Damages recoverable as per the Purchase Order yielding net payable. Certificate from Purchaser certifying satisfactory commissioning of equipment and a certificate regarding Liquidated Damages amount is to be submitted along with the invoice.

PE-602 Liquidated Damages / Risk Purchase:

PE-602.1 In the event that-

- a. Sub-contractor / Supplier / Vendor (Seller) fails to deliver the equipment / product or documentation meeting the requirement of the Purchase Order on or before dates specified, OR
- b. the equipment / product when tested in accordance with the performance requirement of the Purchase Order, fails to meet those performance parameters, the buyer (Purchaser) will suffer damages in an amount that is not susceptible to calculation with reasonable certainty. Therefore, any Liquidated Damages set forth in this Purchase Order represent a reasonable determination of the amount of damages that the Purchaser will suffer, and are not penalties. Seller hereby waives any defence to Purchaser's recovery of such Liquidated Damages on the plea that actual damages are ascertainable or that such Liquidated Damages do not represent a reasonable determination of damages suffered by Purchaser or are penalties.

PE-602.2

Sub-contractor / Supplier / Vendor will be liable to pay Liquidated Damages for late delivery of product / documentation as stated in the Purchase Order. Unless otherwise expressly specified, the rate of Liquidated Damages for late delivery of product shall be at the rate of 0.5% of the total price of undelivered product per week of delay upto a maximum of 5% of the value of undelivered product. Such Liquidated Damages shall be deducted by the Purchaser from any monies due to Sub-contractor / Supplier / Vendor. Payments made by the Sub-contractor / Supplier / Vendor of Liquidated Damages shall be in addition to any other remedies (other than any other remedy for the recovery of damages) available to the Purchaser, including without limitation the remedy of cancellation of Order for default.

PE-602.3

Sub-contractor / Supplier / Vendor will be liable to pay Liquidated Damages for late delivery of Manuals, Drawings and Documentation as agreed to by Purchaser and Sub-contractor / Supplier / Vendor and as stated in the Purchase Order. The amount

of such damages will be clearly defined in the Purchase Order and may extend upto 5% of the Order value.

#### PE-602.4

If the equipment / article or any portion thereof be not delivered by the scheduled delivery date, the Purchaser shall be at liberty, without prejudice to the right of the Purchaser to recover Liquidated Damages / penalty as provided for in these conditions or to any other remedy for breach of contract, to terminate the contract either wholly or to the extent of such default. Amounts advanced or part thereof corresponding to the undelivered supply shall be recoverable from the Sub-contractor / Supplier / Vendor at the prevailing bank rate of interest (currently @ 14.5% p.a.).

#### PE-602.5

The Purchaser shall be at liberty to purchase, manufacture or supply from stock as it deems fit, other articles of the same or similar description to make good such default and or in the event of the contract being terminated, the balance of the articles of the remaining to be delivered thereunder. Any excess over the purchase price, cost of manufacture or value of any articles supplied from the stock, as the case may be, over the contract price shall be recoverable from the Sub-contractor / Supplier / Vendor.

#### PE-603

The amount under the contract will be paid through a Usance Letter of Credit. However, interest for the usance period will be borne by the Purchaser. This arrangement for credit period of 180 days will be made between the Purchaser's bankers and the Sub-contractor's/ Supplier's / Vendor's bankers. The Sub-contractor / Supplier / Vendor shall furnish the name and the branch of the bank they have dealings with alongwith a no objection letter to avail such a facility by the Purchaser.

### **PE-7.0 Inspection, Testing and Commissioning Assistance:**

#### PE-701

The equipment / items will be inspected by one or more agencies indicated below and an inspection certificate(s) shall accompany the equipment.

Statutory : D. O. T. or N. M. D.  
Regulatory: Classification Society - L. R. S., A. B. S., D. N. V., B. V., etc.  
Specification: Survey, DQAN / CQAE, Classification Society.  
Others: Owners, W. P. S. (Mb), MDL.

#### PE-702

The decision of the inspecting authority or his agent, as the case may be, on any question of the intent, meaning and the scope of specifications / Standards shall be final, conclusive and binding on the Sub-contractor / Supplier / Vendor.

#### PE-703

The Sub-contractor / Supplier / Vendor shall provide the requisite training for the Purchaser's / Owner's Personnel at Sub-contractor's / Supplier's / Vendor's / MDL's premises or on board the vessel where the equipment is installed, in respect of the

equipment received from the Sub-contractor / Supplier / Vendor. The cost of travelling, lodging, boarding etc. shall be borne as mutually agreed to and detailed in the order.

PE-704

The services of the Sub-contractor's / Supplier's / Vendor's Engineers shall be provided free of cost till Guarantee period / extended Guarantee period as required by the Purchaser to assist / supervise the installation, setting to work, commissioning, harbour and sea trials of the equipment supplied by the Sub-contractor / Supplier / Vendor for the periods as mutually agreed upon and as per the terms and conditions of the order.

Should the Purchaser / Owner desire to avail services beyond the free service periods available against the contract, the Sub-contractor / Supplier / Vendor shall quote for the same on hourly / daily rate basis along with other terms and conditions, if any.

PE-705

Conditions of tests and inspection requirements, if not held by the Sub-contractor / Supplier / Vendor are to be obtained from the Inspection Authority. Any / all other technical clarifications may be obtained from Inspection Authority directly, under intimation to Purchaser.

PE-706

The Sub-contractor / Supplier / Vendor shall accord all facilities to Purchaser's Inspectors / Nominated Agency to carry out Inspection / Testing during course of manufacture / final testing.

**PE-8.0 Miscellaneous:**

PE-801 Force Majeure

If at any time during the execution of the supply order, the performance in whole or in part by either Purchaser or and by the Contractors / Suppliers is / are prevented or delayed by any reason of force majeure situations such as acts of public unrest, civil commotion, sabotage, hostilities, war, fires, explosions, epidemics, quarantine restrictions, strikes, lock outs, natural calamities like floods, earthquakes, volcanoes, storms or any other causes beyond the control of either parties, hereinafter referred to as "events", provided notice of the occurrence of such event/s is / are communicated by either party, to the other party within 21 days from the date of occurrence thereof, neither party shall by reason such events be entitled to terminate the contract nor shall either party have any claim for damages against the other in respect of such non performance and or delay in performance of the contract / order. Executions on either side shall be resumed as soon as practicable after such event has come to an end or ceased to exist and the decision of Purchaser as to whether activities can resume or not, shall be conclusive and final.

The performance in whole or in part under the captioned tender / contract is prevented or delayed by reason of any such event for a period exceeding sixty days either party may at its option terminate the contract / further processing of the

tender.

The Purchaser may extend the delivery schedule as mutually agreed, on receipt of written communication from the Contractor / Supplier regarding occurrence of 'Force Majeure' conditions, but not exceeding six months from the scheduled delivery date. If the 'Force Majeure' conditions extend beyond this period, the Purchaser shall have the right to cancel the order without any financial implication to the Purchaser or on terms mutually agreed to.

#### PE-802 Arbitration

Any dispute / differences between the parties arising out of and in connection with the contract shall be settled amicably by mutual negotiations. Unresolved disputes/ differences, if any, shall be settled by Arbitration and the arbitration proceedings shall be conducted at Mumbai (India) in English language, under the Indian Arbitration and Conciliation Act, 1996.

In case of unresolved difference / dispute between Purchaser and Contractor / Supplier, being a Public Sector Enterprise, shall be referred by either party to the Department of Public Enterprises, as per extant guidelines.

#### PE-803 Indemnification

The Contractor / Supplier, his employees, licencees, agents or Sub-Vendor / Sub-contractor, while on site of the Purchaser for the purpose of this contract, shall indemnify the Purchaser against direct damage and or injury to the property and or the person of the Purchaser or that of Purchaser's employees, agents, Sub-Contractors / Suppliers occurring and to the extent caused by the negligence of the Contractor / Supplier, his employees, licencees, agents or Sub-contractor by making good such damages to the property, or compensating personal injury and the total liability for such damages or injury shall be as mutually discussed and agreed to.

#### PE-804 Agents / Agency Commission:

The Contractor / Supplier shall confirm and declare to the Purchaser his genuine status as either the original manufacturer of equipment or as the stockist / supplier of the equipment / machinery / items referred to in this contract and that he has not engaged any individual or firm, whether Indian or foreign whatsoever, to intercede, facilitate or in any way to recommend to the Purchaser or any of its functionaries, whether officially or unofficially, to the award of the contract to the Contractor / Supplier nor has any amount been paid, promised or intended to be paid to any such individual or firm in respect of any such intercession, facilitation or recommendation. The Contractor / Supplier shall agree that if it is established at any time to the satisfaction of the Purchaser that the present declaration is in any way incorrect or if at a later stage it is discovered by the Purchaser that the Contractor / Supplier has engaged any such individual / firm, and paid or intended to pay any amount, gift, reward, fees, commission or consideration to such person, party, firm or institution, whether before or after the signing of this contract, the Contractor / Supplier shall be liable to refund that amount to the Purchaser. The Contractor / Supplier will also be debarred from entering into any supply contract with the Purchaser for a minimum period of five years. The Purchaser will also have a right to consider cancellation of the contract either wholly or in part, without any entitlement or compensation to the Contractor / Supplier who shall in such event be liable to refund all payments made by the Purchaser, along with interest at the rate of 2% per annum above the LIBOR

rate. The Purchaser will also have the right to recover any such amount from any contracts concluded earlier with the Purchaser.

#### PE-805 Use of Undue Influence / Corrupt Practices:

a) The Contractor / Supplier should give an undertaking that he has not given, offered or promised to give, directly or indirectly any gift, consideration, reward, commission, fees, brokerage or inducement to any person in service of the Purchaser or otherwise in procuring the contract or forbearing to do or for having done or forborne to do any act in relation to the obtaining or execution of the Contract with the Purchaser for showing or forbearing to show favour or disfavour to any person in relation to the Contract or any other Contract with the Purchaser. Any breach of the aforesaid undertaking by the Contractor / Supplier or any one employed by him or acting on his behalf (whether with or without the knowledge of the Contractor / Supplier) or the commission of any offence by the Contractor / Supplier or any one employed by him or acting on his behalf, as defined in Chapter IX of the Indian Penal Code, 1980 or the Prevention of Corruption Act, 1947 or any other Act enacted for the prevention of corruption shall entitle the Purchaser to cancel the contract and all or any other contracts with the Contractor / Supplier and recover from the Contractor / Supplier the amount of any loss arising from such cancellation. A decision of the Purchaser or his nominee to the effect that a breach of the undertaking has been committed shall be final and binding on the Contractor / Supplier.

b) The Contractor / Supplier shall not offer or agree to give any person in the employment of Purchaser any gift or consideration of any kind as "Inducement" or "reward" for doing or forbearing to do or for having done or foreborne to do any act in relation to the obtaining or execution of the contract/s. Any breach of the aforesaid condition by the Contractor / Suppliers or any one employed by them or acting on their behalf (whether with or without the knowledge of the Contractor / Suppliers) or the commission of any offence by the Contractor / Suppliers or by any one employed by them or acting on their behalf which shall be punishable under the Indian Penal Code 1980 or the Prevention of Corruption by Public Servants, shall entitle Purchaser to cancel the contract/s and all or any other contracts and then to recover from the Contractor / Supplier the amounts of any loss arising from such contracts' cancellation, including but not limited to imposition of penal damages, forfeiture of Security Deposit, encashment of the Bank Guarantee and refund of the amounts paid by the Purchaser.

c) In case, it is found to the satisfaction of the Purchaser that the Contractor / Supplier has engaged an Agent or paid commission or influenced any person to obtain the contract as described in clauses relating to Agents / Agency Commission and use of undue Influence, the Contractor / Supplier, on a specific request of the Purchaser shall provide necessary information / inspection of the relevant financial document / information.

#### PE-806 Immunity of Government of India Clause

It is expressly understood and agreed by and between M/s. (Contractor / Supplier) and Mazagon Dock Limited, Dockyard Road, Mumbai - 400 010 (the Indian PSU) is entering into this Agreement solely on its own behalf and not on the behalf of any person or entity. In particular, it is expressly understood and agreed that the

Government of India is not a party to this Agreement and has no liabilities, obligations or rights hereunder. It is expressly understood and agreed that Mazagon Dock Limited, Dockyard Road, Mazagon, Mumbai - 400 010 (the Indian PSU) is an independent legal entity with power and authority to enter into contracts solely in its own behalf under the applicable of Laws of India and general principles of Contract Law. The (Contractor / Supplier) expressly agrees, acknowledges and understands that Mazagon Dock Limited, Dockyard Road, Mazagon, Mumbai- 400 010 (the Indian PSU) is not an agent, representative or delegate of the Government of India. It is further understood and agreed that the Government of India is not and shall not be liable for any acts, omissions and commissions, breaches or other wrongs arising out of the contract. Accordingly, (Contractor / Supplier) hereby expressly waives, releases and foregoes any and all actions or claims, including cross claims, impleader claims or counter claims against the Government of India arising out of this contract and covenants not to sue Government of India in any manner, claim, cause of action or thing whatsoever arising of or under this Agreement.

PE-807 Banned or de-listed Contractors:

The bidders shall give a declaration that they have not been banned or de-listed by any Government or quasi Government agencies or PSUs. If a bidder has been banned or de-listed by any Government or quasi Government agencies or PSUs, this fact must be clearly stated and it may not necessarily be a cause for disqualifying him.

PE-808 A Public Grievance Cell headed by General Manager (Design) has been set up in the Company. Members of public having complaints or grievances are advised to contact him on Wednesday between 10.00 hours and 12.30 hours in his office on 3rd floor, Design Complex Building or send their complaints / grievances to him in writing for redressal. His Telephone No. is 373 8152.