

**STANDARD TERMS AND CONDITIONS OF SUPPLY
(INDIGENOUS / IMPORTED CAPITAL ASSETS)**

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CP-1 GENERAL

CP-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.

CP-102

The word 'Contractor / Supplier' 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.

CP-103

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

CP-104

The Contractor / Supplier 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.

CP-105

The Contractor / Supplier 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.

CP-106

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

CP-107

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.

CP-108

The Contractor / Supplier shall unconditionally and free of cost to the Purchaser transfer information on technological developments / innovations / modifications which the Contractor / Supplier 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 Contractor's / Supplier'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 Contractor's / Supplier's Design Department in course of manufacture of equipment ordered by the Purchaser, the Contractor / Supplier shall incorporate such improved versions in the equipment without any extra cost to the Purchaser.

CP-109

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 Contractor / Supplier, the Contractor / Supplier shall quote for and carry out all such modifications to the equipment.

CP-110

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 Contractor / Supplier 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.

CP-111

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 Contractor / Supplier. The detailed procedure for de-preservation prior to commissioning shall also be furnished.

CP-112

The Contractor / Supplier 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 Contractor / Supplier.

CP-113

The Contractor / Supplier shall continue to support the equipment for a minimum period of 10* / 20* years (*strike out whichever is not applicable) from the date of supply by making available spare parts and assemblies of the equipment supplied. Should the Contractor / Supplier decides to discontinue the product, for any reason whatsoever, adequate notice shall be given to the Purchaser to enable procurement of the requisite lifetime spares.

CP-114

Purchase preference in respect of equipment / product and or services of Central Public Enterprises will be applicable for such / similar equipment / product / services on tender as per extant policy promulgated by Department of Public Enterprises, Government of India.

CP-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.

CP-2. Quotations and Order Acceptance Terms:

CP-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 super scribed 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.

CP-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) A) Indigenous Supply Earnest Money Deposit @ 2% of the total bid value by way of Demand Draft drawn in favour of Mazagon Dock Limited or value of Bid Bond as stipulated in the tender, whichever is applicable.
B) Import / overseas Supply 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.

CP-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 in the Yellow coloured Tender Box kept on II floor, Mogul House, before the specified time for closure of Tender.
- b. Outstation / overseas Bidder / Supplier shall forward their offers addressed to Additional General Manager (Materials), Mogul House, Mazagon Dock Limited, Dockyard Road, Mumbai 400 010, 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.

CP-204

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 Contractor / Supplier 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 Contractor / Supplier 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.

CP-205

Purchaser reserves the right at his own discretion and without having to assign any reasons, to consider placement of Purchase Order in part or in full OR increase or decrease the quantities indicated in the Tender documents depending on actual requirement.

CP-206

The Contractor / Supplier 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 failures on the part of Supplier / Vendor to do so is liable for disqualification / debarring of the Supplier / Vendor from all future tender enquiries and or delisting from the list of 'Approved Registered Vendors.'

CP-207

Tenders will be opened on the tender due date after 14.30 Hours in the Purchase Section, II Floor, Mogul House. 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.

CP-208

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 only on submission of original copy of 'Money Receipt' / Bid Bond will be returned within seven days of finalisation of order. EMD, if not claimed within one year from the date of notification to the tenderer for refund, will be forfeited.

CP-209

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 Contractor / Supplier 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. It shall be the responsibility of the Contractor / Supplier 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 Contractor / Supplier 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 Contractor / Supplier shall be a breach of the contract on the part of Contractor / Supplier. 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 Contractor / Supplier. If the Contractor's / Supplier's bid contains any condition 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 Contractor / Supplier by forfeiting the Earnest Money / Bid Security or by invoking the 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.

CP-210 Security Deposit

- a. The successful Tenderer shall submit a Security Deposit @ 5% of the value of the Order in the form of Demand Draft / Pay Order / Bank Guarantee (Annexure - 3) in favour of Purchaser. In the event of failure to execute the order satisfactorily or default by the Contractor / Supplier, the Security Deposit will be forfeited. The Security Deposit will be returned only after the successful execution of the order.
- b. Overseas successful 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 (Annexure - 3) for the same will be provided by the Purchaser. 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 Contractor / Supplier, the Bank Guarantee will be encashed.

CP-3.0 Packing, Shipping, Insurance & Freight details and Delivery:

CP-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 Contractor / Supplier. Each packing shall be plainly marked and numbered upon four sides and the top thereof as directed on the face of 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 put upon the said packages.

- b. The main equipment, accessories and spares shall be separately packed and cases be clearly marked.
- c. 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.

CP-302 Insurance

CP-302.1

In cases where the Contractor / Supplier's offers are for 'Free Delivery to Purchaser,' transit Insurance charges shall be borne by the Contractor / Supplier.

CP-302.2

In case of Ex-works / Ex-Transporter's warehouse or Railway godown offers, the Contractor / Supplier shall give details of materials with despatch particulars and their value to Purchaser's Insurance Company i.e. New India Assurance Company Limited, General Insurance Department, Commerce Centre, First Floor, Tardeo, Mumbai - 400 034, (Fax no.: 91-022-494 8559) under advice to Purchaser immediately after the despatch/es. The Insurance Charges will be borne by Purchaser.

CP-302.3

For overseas supply, Transit Insurance shall be arranged by Purchaser. Contractor / Supplier shall immediately on despatch of the items, inform the despatch details such as 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.

CP-303

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

CP-304

Where so stipulated in the order, the Contractor / Supplier 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 and failure on the part of the Contractor / Supplier to comply with the delivery schedule is inevitable. In such an event the Contractor / Supplier 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 Contractor / Supplier at his cost.

CP-305

The Contractor / Supplier shall arrange despatch of goods by Rail / Road / sea transport to Mumbai as appropriate and consign to Deputy Manager (Goods Receiving Section), Mazagon Dock Limited, Mumbai-400 010. An Advance Copy of the invoice along with copies of other relevant documents shall be forwarded to Purchaser sufficiently in advance to avoid demurrage. In case of door delivery contracts, the Transporter shall be directed to deliver the ordered equipment without insisting for consignee copy of Lorry Receipt.

CP-4.0 Guarantee / Warranty

CP-401

The equipment / material shall be guaranteed for satisfactory performance for the period of 18* / 36* months (strike out whichever is not applicable) from the date of satisfactory commissioning or 36 months from the date of receipt, 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 Door Delivery / CIF basis by the Contractor / Supplier. In case of Warranty, it shall be on-site comprehensive for 12 / 36 months.

CP-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 Contractor / Supplier's risk and cost, but without prejudice to any other rights which the Purchaser may have against the Contractor / Supplier in respect of the failure of the Contractor / Supplier to remedy such defects.

CP-403

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

CP-404

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 Contractor / Supplier in this regard.

CP-5.0 Quality Certification:

CP-501

Purchase preference will be considered in case the Contractor / Supplier is accredited with ISO 9000: 2000 or equivalent International Quality System Standards in respect of equipment / Products and or items on tender.

CP-502

The Contractor / Supplier shall submit as proof, in Part-I of the bid documents, a copy of ISO 9000: 2000 or any equivalent international Quality System Standards certificate valid as of date.

CP-503

The Contractor / Supplier 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 any equivalent international Quality System Standards.

CP-504

In the event the Contractor / Supplier 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.

CP-6.0 Terms of Payment:

CP-601

a) Unless or otherwise mutually agreed upon and stipulated in the order, the terms of payment shall be 90% of Order value within 45 days from the date of receipt of material in acceptable quality / quantity with complete set of documents, Inspection Certificate etc. as applicable.

- i. Three copies of signed invoice showing itemised price along with packing lists.
- ii. Warranty Certificate in triplicate.
- iii. Three copies of Manufacturer's Works Test Certificate.
- iv. Three copies of Certificate of Inspection and approval from nominated Inspection Agency, as applicable.

All the documents shall clearly indicate the MDL Order No. and date.

(b) Balance 10% of Order value shall be released, upon completion of Installation and Commissioning, within 45 days from the date of receipt of complete set of documents, Commissioning Certificate etc. as applicable and against submission of Performance Bank Guarantee for 10% of the Order value in the prescribed format issued with the Order (Annexure 3 - original +2 Xerox copies), from Nationalised / Scheduled Bank only, for equal amount on a Rs. 100/- Stamp Paper valid for 12 months from the date of Commissioning. The Bank Guarantee shall be valid during the currency of the warranty period of the equipment, with an invocation period of one month. In the event of Contractor's / Supplier's failure to attend the Guarantee defects within a reasonable period of time from notification of defect/s, the

Performance Bank guarantee will be encashed by the Purchaser. Purchaser's decision shall be final and binding on Contractor / Supplier in this regard.

- i. MDL's unqualifying Inspection / commissioning reports on Installation and Commissioning of the equipment/items on order.
- ii. Complete set of spares as per the Order.
- iii. Complete set of Operation / Maintenance / Instruction Manuals (inclusive of in electronic medium) as per the Order.
- iv. Complete set of Parts Identification List / Composite Parts List as per the order.

CP-602

Octroi Duty will be re-imbursed by Purchaser at actual against submission of 'Original Octroi paid money receipt' and copy of Form 'B'. Octroi receipts are to be issued in the name of 'Mazagon Dock Limited.'

CP-603

In case of orders of import origin, 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 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 with recorded CDs, 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 (Annexure - 4) 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 tenure 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.

CP-604

Works Contract Tax, wherever applicable, will have to be borne by Contractor / Supplier. In addition, Employees State Insurance premium, Provident Fund, Service Tax and other statutory dues of workers deployed at Purchaser's premises by Contractor / Supplier will have to be borne by him.

CP-605

The Sales Tax Registration Number and Central / State Sales Tax Number are to be quoted on all invoices. Invoices shall be accompanied by a certificate to the effect that the Contractor's / Supplier's registration certificate was in force on the day the sale was effected.

CP-606

Unless otherwise stated Excise Duty, Sales Tax and any other statutory levies will be payable extra at actuals. However, the Contractor / Supplier shall submit the proof of having paid the duties / levies along with the Invoices / Bills.

- a. For supplies from States outside of Maharashtra, Form 'C' will be issued.
- b. Form 'C' can also be issued to suppliers within Maharashtra State for items manufactured outside Maharashtra State for covering the sales on transfer of Lorry Receipt / Railway Receipt (LR / RR). In such cases the Contractor / Supplier is required to endorse LR / RR in favour of Purchaser.

CP-607

During the currency of the contract, if any sum of money is payable by the Contractor / Supplier, the same shall be deducted from any sum then due or thereafter may become due to the Contractor / Supplier under the contract or any other contract with the Purchaser. Payment made under one Purchase Order shall not be assigned or adjusted to any other Purchase Order except to the extent agreed upon in writing by the Purchaser.

CP-608 Liquidated Damages / Risk Purchase:

CP-608.1 In the event that-

- a. Contractor / Supplier (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 the 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.

CP-608.2

Contractor / Supplier (Seller) will be liable to pay Liquidated Damages for late delivery of product 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 undelivered product. Such Liquidated Damages shall be deducted by the Purchaser from any monies due to Contractor / Supplier (Seller). Payments made by the Contractor / Supplier (Seller) 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.

CP-608.3

Contractor / Supplier (Seller) will be liable to pay Liquidated Damages for late delivery of Manuals, Drawings and Documentation as agreed to by Purchaser and Contractor / Supplier (Seller) 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.

CP-608.4

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 Contractor / Supplier at the prevailing bank rate of interest (currently @ 14.5% p.a.).

CP-608.5

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 Contractor / Supplier.

CP-7.0 Inspection, Testing and Commissioning Assistance:

CP-701

The equipment will be inspected either by Classification Society / Nominated Agency

and or by Inspection Officer nominated by Purchaser at stages defined in the Purchase Order or as agreed to be defined subsequently in terms of the Purchase Order.

CP-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 Contractor / Supplier.

CP-703

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 Custom 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.

CP-704

The services of the Contractor's / Supplier's Engineers shall be provided free of cost as required by the Purchaser to assist / supervise the installation, setting to work, commissioning of the equipment supplied by the Contractor / Supplier. The Contractor / Supplier shall provide the requisite training for the Purchaser's Personnel at Contractor's / Supplier's / MDL's premises where the equipment is installed, in respect of the equipment received from the Contractor / Supplier. The cost of travelling, lodging, boarding etc. shall be borne as mutually agreed to and detailed in the order.

CP-705

Conditions of tests and inspection requirements, if not held by the Contractor / Supplier, are to be obtained from the Inspection Authority.

CP-706

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

CP-8.0 Miscellaneous:

CP-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.

CP-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.

CP-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.

CP-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.

CP-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 forbore 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.

CP-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.

CP-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.

CP-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.

GNS: 18.12.2001