

**GENERAL TERMS & CONDITIONS OF THE CONTRACT**

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## 2.1 DEFINITIONS

2.1.1 The following words and expressions shall have the meanings hereby assigned to them:

- a) "Contract" means the Contract Agreement entered into between the Purchaser and the Supplier, together with the Contract Documents referred to therein, including all attachments, appendices, and all documents incorporated by reference therein.
- b) "Contract Documents" means the documents listed in the Contract Agreement, including any amendments thereto.
- c) "Contract Price" means the price payable to the Supplier as specified in the Contract Agreement, subject to such additions and adjustments thereto or deductions there from, as may be made pursuant to the Contract.
- d) "Day" means calendar day.
- e) "Completion" means the fulfilment of the Related Services by the Supplier in accordance with the terms and conditions set forth in the Contract.
- f) "GCC" means the General Conditions of Contract.
- g) "Goods" means all of the commodities, raw material, machinery and equipment, and/or other materials that the Supplier is required to supply to the Purchaser under the Contract.
- h) "Related Services" means the services incidental to the supply of the goods, such as transportation, insurance, installation, training and initial maintenance and other such obligations of the Supplier under the Contract.
- i) "SCC" means the Special Conditions of Contract.
- j) "Subcontractor" means any natural person, private or government entity, or a combination of the above, to whom any part of the Goods to be supplied or execution of any part of the Related Services is subcontracted by the Supplier.
- k) "Supplier" means the natural person, private or government entity, or a combination of the above, whose bid to perform the Contract has been accepted by the Purchaser and is named as such in the Contract Agreement.
- l) Indian Institute of Science Education and Research, Thiruvananthapuram (IISER-TVM) means a society registered under the Travancore Cochin Literary Scientific and Charitable Societies' Registration Act, 1995 (12 of 1955) on 20.02.2008 at Kerala at no. T.342/08.
- m) "The final destination," where applicable, means the place named in the SCC.

## 2.2 CONTRACT DOCUMENTS

2.2.1 Subject to the order of precedence set forth in the Contract Agreement, all documents forming the Contract (and all parts thereof) are intended to be correlative, complementary, and mutually explanatory. The Contract Agreement shall be read as a whole.

## 2.3 FRAUD AND CORRUPTION

2.3.1 The purchaser requires that bidders, suppliers, contractors and consultants, if any, observe the highest standard of ethics during the procurement and execution of such contracts. In pursuit of this policy,

- a) The terms set forth below are defined as follows:
  - i) "Corrupt practice" means the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the action of a public official in the procurement process or in contract execution;

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- ii) "Fraudulent practice" means a misrepresentation or omission of facts in order to influence a procurement process or the execution of a contract;
  - iii) "Collusive practice" means a scheme or arrangement between two or more bidders, with or without the knowledge of the Borrower, designed to establish bid prices at artificial, noncompetitive levels; and
  - iv) "Coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the procurement process or affect the execution of a contract;
- b) the purchaser will reject a proposal for award if it determines that the Bidder recommended for award has, directly or through an agent, engaged in corrupt, fraudulent, collusive or coercive practices in competing for the Contract in question;

## **2.4 JOINT VENTURE, CONSORTIUM OR ASSOCIATION**

- 2.4.1 If the Supplier is a joint venture, consortium, or association, all of the parties shall be jointly and severally liable to the Purchaser for the fulfilment of the provisions of the Contract and shall designate one party to act as a leader with authority to bind the joint venture, consortium, or association. The composition or the constitution of the joint venture, consortium, or association shall not be altered without the prior consent of the Purchaser.

## **2.5 SCOPE OF SUPPLY**

- 2.5.1 The Goods and Related Services to be supplied shall be as specified in the Schedule of Requirements.

## **2.6 SUPPLIERS' RESPONSIBILITIES**

- 2.6.1 The Supplier shall supply all the Goods and Related Services included in the Scope of Supply in accordance with Scope of Supply Clause of the GCC, and the Delivery and Completion Schedule, as per GCC Clause relating to delivery and document.

## **2.7 CONTRACT PRICE**

- 2.7.1 Prices charged by the Supplier for the Goods supplied and the Related Services performed under the Contract shall not vary from the prices quoted by the Supplier in its bid.

## **2.8 COPYRIGHT**

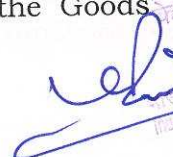
- 2.8.1 The copyright in all drawings, documents, and other materials containing data and information furnished to the Purchaser by the Supplier herein shall remain vested in the Supplier, or, if they are furnished to the Purchaser directly or through the Supplier by any third party, including suppliers of materials, the copyright in such materials shall remain vested in such third party.

## **2.9 APPLICATION**

- 2.9.1 These General Conditions shall apply to the extent that they are not superseded by provisions in other parts of the Contract.

## **2.10 STANDARDS**

- 2.10.1 The Goods supplied and services rendered under this Contract shall conform to the standards mentioned in the Technical Specifications and Schedule of Requirements, and, when no applicable standard is mentioned, to the authoritative standard appropriate to the Goods' country of origin and such

  
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standards shall be the latest issued by the concerned institution.

**2.11 USE OF CONTRACT DOCUMENTS AND INFORMATION**

2.11.1 The Supplier shall not, without the Purchaser's prior written consent, disclose the Contract, or any provision thereof, or any specification, plan, drawing, pattern, sample or information, furnished by or on behalf of the Purchaser in connection therewith, to any person other than a person employed by the Supplier in performance of the Contract.

Disclosure to any such employed person shall be made in confidence and shall extend only so far, as may be necessary for purposes of such performance.

2.11.2 The Supplier shall not, without the Purchaser's prior written consent, make use of any document or information enumerated above except for purposes of performing the Contract.

2.11.3 Any document, other than the Contract itself, enumerated above shall remain the property of the Purchaser and shall be returned (in all copies) to the Purchaser on completion of the Supplier's performance under the Contract if so required by the Purchaser.

**2.12 PATENT INDEMNITY**

2.12.1 The Supplier shall, subject to the Purchaser's compliance with GCC Sub-Clause 12.2, indemnify and hold harmless the Purchaser and its employees and officers from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of any nature, including attorney's fees and expenses, which the Purchaser may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright, or other intellectual property right registered or otherwise existing at the date of the Contract by reason of:

(a) the installation of the Goods by the Supplier or the use of the Goods in India; and

(b) the sale in any country of the products produced by the Goods.

2.12.2 If any proceedings are brought or any claim is made against the Purchaser, the Purchaser shall promptly give the Supplier a notice thereof, and the Supplier may at its own expense and in the Purchaser's name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claims.

**2.13 PERFORMANCE SECURITY**

2.13.1 Within 21 days of receipt of the notification of award/PO, the Supplier shall furnish performance security in the amount specified in SCC, valid till 60 days after the warranty period. Alternatively, the PS may also be submitted at the time of release of final payment in cases where part payment is made against delivery & part on installation. The PS, where applicable, shall be submitted in advance for orders where full payment is to be made on Letter of Credit (LC) or on delivery. In this case, submission of PS at the time of negotiation of documents through Bank would be stipulated as a condition in the LC and the BS should be kept valid till such time the PS is submitted.

2.13.2 The proceeds of the performance security shall be payable to the Purchaser as compensation for any loss resulting from the Supplier's failure to complete its obligations under the Contract.

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- 2.13.3 The Performance Security shall be denominated in Indian Rupees for the offers received for supplies within India and denominated in the currency of the contract in the case of offers received for supply from foreign countries.
- 2.13.4 In the case of imports, the PS may be submitted either by the principal or by the Indian agent and, in the case of purchases from indigenous sources, the PS may be submitted by either the manufacturer or their authorized dealer/bidder.
- 2.13.5 The Performance security shall be in one of the following forms:
- (a) A Bank guarantee or stand-by Letter of Credit issued by a Nationalized/Scheduled bank located in India or a bank located abroad in the form provided in the bidding documents. Or,
  - (b) A Banker's cheque or Account Payee demand draft in favour of the purchaser. Or,
  - (c) A Fixed Deposit Receipt pledged in favour of the Purchaser.
- 2.13.6 The performance security will be discharged by the Purchaser and returned to the Supplier not later than 60 days following the date of completion of the Supplier's performance obligations, including any warranty obligations, unless specified otherwise in SCC, without levy of any interest.
- 2.13.7 In the event of any contract amendment, the supplier shall, within 21 days of receipt of such amendment, furnish the amendment to the performance security, rendering the same valid for the duration of the contract, as amended for further period of 60 days thereafter.
- 2.13.8 The order confirmation should be received within 15 days from the date of notification of award. However, the Purchaser has the powers to extend the time frame for submission of order confirmation and submission of Performance Security (PS). Even after extension of time, if the order confirmation /PS are not received, the contract shall be cancelled and limited tenders irrespective of the value would be invited from the responding firms after forfeiting the bid security of the defaulting firm, where applicable provided there is no change in specifications. In such cases the defaulting firm would not be considered again for re-tendering in the particular case.

#### 2.14. INSPECTIONS AND TESTS

- 2.14.1 The Supplier shall at its own expense and at no cost to the Purchaser carry out all such tests and/or inspections of the Goods and Related Services as are specified in the SCC or as discussed and agreed to during the course of finalization of contract.
- 2.14.2 The Purchaser or its representative shall have the right to inspect and/or to test the Goods to confirm their conformity to the Contract specifications at no extra cost to the Purchaser. The Technical Specifications and SCC shall specify what inspections and tests the Purchaser requires and where they are to be conducted. The Purchaser shall notify the Supplier in writing in a timely manner of the identity of any representatives retained for these purposes
- 2.14.3 The inspections and tests may be conducted on the premises of the Supplier or its subcontractor(s), at the point of delivery and/or at the Goods final destination. If conducted on the premises of the Supplier or its subcontractor(s), all reasonable facilities and assistance, including access to drawings and production data - shall be furnished to the inspectors at no charge to the Purchaser.

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- 2.14.4 Whenever the Supplier is ready to carry out any such test and inspection, it shall give a reasonable advance notice, including the place and time, to the Purchaser. The Supplier shall obtain from any relevant third party or manufacturer any necessary permission or consent to enable the Purchaser or its designated representative to attend the test and/or inspection
- 2.14.5 Should any inspected or tested Goods fail to conform to the specifications, the Purchaser may reject the goods and the Supplier shall either replace the rejected Goods or make alterations necessary to meet specification requirements free of cost to the Purchaser.
- 2.14.6 The Purchaser's right to inspect, test and, where necessary, reject the Goods after the Goods' arrival at final destination shall in no way be limited or waived by reason of the Goods having previously been inspected, tested and passed by the Purchaser or its representative prior to the Goods shipment.
- 2.14.7 The Supplier shall provide the Purchaser with a report of the results of any such test and/or inspection.
- 2.14.8 With a view to ensure that claims on insurance companies, if any, are lodged in time, the bidders and /or the Indian agent shall be responsible for follow up with their principals for ascertaining the dispatch details and informing the same to the Purchaser and he shall also liaise with the Purchaser to ascertain the arrival of the consignment after clearance so that immediately thereafter in his presence the consignment could be opened and the insurance claim be lodged, if required, without any loss of time. Any delay on the part of the bidder/Indian Agent would be viewed seriously and he shall be directly responsible for any loss sustained by the purchaser on the event of the delay.

**2.15 PACKING**

- 2.15.1 The Supplier shall provide such packing of the Goods as is required to prevent their damage or deterioration during transit to their final destination as indicated in the Contract. The packing shall be sufficient to withstand, without limitation, rough handling during transit and exposure to extreme temperatures, salt and precipitation during transit and open storage. Packing case size and weights shall take into consideration, where appropriate, the remoteness of the Goods' final destination and the absence of heavy handling facilities at all points in transit.
- 2.15.2 The packing, marking and documentation within and outside the packages shall comply strictly with such special requirements as shall be provided for in the Contract including additional requirements, if any, specified in SCC and in any subsequent instructions ordered by the Purchaser

**2.16 DELIVERY AND DOCUMENTS**

- 2.16.1 Delivery of the Goods and completion and related services shall be made by the Supplier in accordance with the terms specified by the Purchaser in the contract. The details of shipping and/or other documents to be furnished by the supplier are specified in SCC.
- 2.16.2 The terms FOB, FCA, CIF, CIP etc shall be governed by the rules prescribed in the current edition of the Incoterms published by the International Chambers of Commerce, Paris.
- 2.16.3 The mode of transportation shall be as specified in SCC

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**2.17 INSURANCE**

- 2.17.1 Should the purchaser elect to buy on CIF/CIP basis, the Goods supplied under the Contract shall be fully insured in Indian Rupees against any loss or damage incidental to manufacture or acquisition, transportation, storage and delivery in the manner specified in SCC.
- 2.17.2 Where delivery of the goods is required by the purchaser on CIF or CIP basis the supplier shall arrange and pay for Cargo Insurance, naming the purchaser as beneficiary and initiate & pursue claims till settlement, on the event of any loss or damage.
- 2.17.3 Where delivery is on FOB or FCA basis, insurance would be the responsibility of the purchaser.
- 2.17.4 With a view to ensure that claims on insurance companies, if any, are lodged in time, the bidders and /or the Indian agent shall be responsible for follow up with their principals for ascertaining the dispatch details and informing the same to the Purchaser and he shall also liaise with the Purchaser to ascertain the arrival of the consignment after clearance so that immediately thereafter in his presence the consignment could be opened and the insurance claim be lodged, if required, without any loss of time. Any delay on the part of the bidder/Indian Agent would be viewed seriously and he shall be directly responsible for any loss sustained by the purchaser on the event of the delay.

**2.18 TRANSPORTATION**


- 2.18.1 Where the Supplier is required under the Contract to deliver the Goods FOB, transport of the Goods, up to and including the point of putting the Goods on board the vessel at the specified port of loading, shall be arranged and paid for by the Supplier, and the cost thereof shall be included in the Contract price. Where the Supplier is required under the Contract to deliver the Goods FCA, transport of the Goods and delivery into the custody of the carrier at the place named by the Purchaser or other agreed point shall be arranged and paid for by the Supplier, and the cost thereof shall be included in the Contract price.
- 2.18.2 Where the Supplier is required under the Contract to deliver the Goods CIF or CIP, transport of the Goods to the port of destination or such other named place of destination in the Purchaser's country, as shall be specified in the Contract, shall be arranged and paid for by the Supplier, and the cost thereof shall be included in the Contract Price.
- 2.18.3 In the case of supplies from within India, where the Supplier is required under the Contract to transport the Goods to a specified destination in India, defined as the Final Destination, transport to such destination, including insurance and storage, as specified in the Contract, shall be arranged by the Supplier, and the related costs shall be included in the Contract Price.

**2.19 INCIDENTAL SERVICES**

- 2.19.1 The supplier may be required to provide any or all of the services, if any, specified in SCC

**2.20 SPARE PARTS**

- 2.20.1 The Supplier shall be required to provide any or all of the following materials, notifications, and information pertaining to spare parts manufactured or distributed by the Supplier:
- (a) Such spare parts as the Purchaser may elect to purchase from the Supplier, providing that this election shall not relieve the Supplier of any warranty obligations under the Contract; and
- (b) In the event of termination of production of the spare parts:
- (i) Advance notification to the Purchaser of the pending termination, in sufficient time to permit the Purchaser to procure needed requirements; and

  
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(ii) Following such termination, furnishing at no cost to the Purchaser, the blueprints, drawings and specifications of the spare parts, if requested.

**2.21 WARRANTY**

- 2.21.1 The Supplier warrants that all the Goods are new, unused, and of the most recent or current models, and that they incorporate all recent improvements in design and materials, unless provided otherwise in the Contract.
- 2.21.2 The Supplier further warrants that the Goods shall be free from defects arising from any act or omission of the Supplier or arising from design, materials, and workmanship, under normal use in the conditions prevailing in India.
- 2.21.3 Unless otherwise specified in the SCC, the warranty shall remain valid for twelve (12) months after the Goods, or any portion thereof as the case may be, have been delivered to and accepted at the final destination indicated in the SCC, or for eighteen (18) months after the date of shipment from the port or place of loading in the country of origin, whichever period concludes earlier.
- 2.21.4 The Purchaser shall give notice to the Supplier stating the nature of any such defects together with all available evidence thereof, promptly following the discovery thereof.  
The Purchaser shall afford all reasonable opportunity for the Supplier to inspect such defects.
- 2.21.5 Upon receipt of such notice, the Supplier shall, within a reasonable period of time, expeditiously repair or replace the defective Goods or parts thereof, at no cost to the Purchaser.
- 2.21.6 If having been notified, the Supplier fails to remedy the defect within the reasonable period of time; the Purchaser may proceed to take within a reasonable period such remedial action as may be necessary, at the Supplier's risk and expense and without prejudice to any other rights which the Purchaser may have against the Supplier under the Contract.
- 2.21.7 Goods requiring warranty replacements must be replaced on free of cost basis to the purchaser.

**2.22 TERMS OF PAYMENT**

- 2.22.1 The method and conditions of payment to be made to the Supplier under this Contract shall be as specified in the SCC.
- 2.22.2 The Supplier's request(s) for payment shall be made to the Purchaser in writing, accompanied by an invoice describing, as appropriate, the Goods delivered and the Services performed, and by documents, submitted pursuant to Delivery and document Clause of the GCC and upon fulfillment of other obligations stipulated in the contract.
- 2.22.3 Payments shall be made promptly by the Purchaser but in no case later than thirty (30) days after submission of the invoice or claim by the Supplier.
- 2.22.4 Payment shall be made in currency as indicated in the contract.

**2.23. CHANGE ORDERS AND CONTRACT AMENDMENTS.**

- 2.23.1 The Purchaser may at any time, by written order given to the Supplier pursuant to Clause on Notices of the GCC make changes within the general scope of the Contract in any one or more of the following:
- (a) Drawings, designs, or specifications, where Goods to be furnished under the Contract are to be specifically manufactured for the Purchaser;
  - (b) The method of shipping or packing;
  - (c) The place of delivery; and/or
  - (d) The Services to be provided by the Supplier.
  - (e) The delivery schedule.
- 2.23.2 If any such change causes an increase or decrease in the cost of, or the time required for, the Supplier's performance of any provisions under the Contract, an equitable adjustment shall be made in the Contract Price or delivery schedule, or

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both, and the Contract shall accordingly be amended. Any claims by the Supplier for adjustment under this clause must be asserted within fifteen (15) days from the date of the Supplier's receipt of the Purchaser's change order.

2.23.3 No variation or modification in the terms of the contract shall be made except by written amendment signed by the parties.

**2.24. ASSIGNMENT**

2.24.1 The Supplier shall not assign, in whole or in part, its obligations to perform under the Contract, except with the Purchaser's prior written consent.

**2.25. SUBCONTRACTS**

2.25.1 The Supplier shall notify the Purchaser in writing of all subcontracts awarded under this Contract if not already specified in the bid. Such notification, in the original bid or later, shall not relieve the Supplier from any liability or duties or obligation under the Contract.

**2.26. EXTENSION OF TIME.**

2.26.1 Delivery of the Goods and performance of the Services shall be made by the Supplier in accordance with the time schedule specified by the Purchaser.

2.26.2 If at any time during performance of the Contract, the Supplier or its sub-contractor(s) should encounter conditions impeding timely delivery of the Goods and performance of Services, the Supplier shall promptly notify the Purchaser in writing of the fact of the delay, its likely duration and its cause(s). As soon as practicable after receipt of the Supplier's notice, the Purchaser shall evaluate the situation and may, at its discretion, extend the Supplier's time for performance with or without penalty, in which case the extension shall be ratified by the parties by amendment of the Contract.

2.26.3 Except as provided under the Force Majeure clause of the GCC, a delay by the Supplier in performance of its delivery obligations shall render the Supplier liable to the imposition of penalty pursuant to Penalty Clause of the GCC unless an extension of time is agreed upon pursuant to above clause without the application of penalty clause.

**2.27. PENALTY CLAUSE**

2.27.1 Subject to GCC Clause on Force Majeure, if the Supplier fails to deliver any or all of the Goods or to perform the Services within the period(s) specified in the Contract, the Purchaser shall, without prejudice to its other remedies under the Contract, deduct from the Contract Price, as penalty, a sum equivalent to the percentage specified in SCC of the delivered price of the delayed Goods or unperformed Services or contract value for each week or part thereof of delay until actual delivery or performance, up to a maximum deduction of the Percentage specified in SCC. Once the maximum is reached, the Purchaser may consider termination of the Contract pursuant to GCC. Clause on Termination for Default. The SCC shall also indicate the basis for ascertaining the value on which the penalty shall be applicable

**2.28. TERMINATION FOR DEFAULT**


2.28.1 The Purchaser may, without prejudice to any other remedy for breach of contract, by written notice of default sent to the Supplier, terminate the Contract in whole or part

(a) If the Supplier fails to deliver any or all of the Goods within the period(s) specified in the contract, or within any extension thereof granted by the Purchaser pursuant to GCC Clause on Extension of Time; or

(b) If the Supplier fails to perform any other obligation(s) under the Contract.

(c) If the Supplier, in the judgment of the Purchaser has engaged in corrupt or fraudulent or collusive or coercive practices as defined in GCC Clause on Fraud or Corruption in competing for or in executing the Contract.

2.28.2 In the event the purchaser terminates the contract in whole or in part, he may take recourse to any one or more of the following action:

  
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- (a) The Performance Security is to be forfeited;
- (b) The purchaser may procure, upon such terms and in such manner as it deems appropriate, stores similar to those undelivered, and the supplier shall be liable for all available actions against it in terms of the contract.
- (c) However, the supplier shall continue to perform the contract to the extent not terminated.

**2.29 FORCE MAJEURE**

- 2.29.1 Notwithstanding the provisions of GCC Clauses relating to extension of time, penalty and Termination for Default the Supplier shall not be liable for forfeiture of its performance security, liquidated damages or termination for default, if and to the extent that, it's delay in performance or other failure to perform its obligations under the Contract is the result of an event of Force Majeure.
- 2.29.2 For purposes of this Clause, "Force Majeure" means an event or situation beyond the control of the Supplier that is not foreseeable, is unavoidable, and its origin is not due to negligence or lack of care on the part of the Supplier. Such events may include, but not be limited to, acts of the Purchaser in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions, and freight embargoes.
- 2.29.3 If a Force Majeure situation arises, the Supplier shall promptly notify the Purchaser in writing of such conditions and the cause thereof within 21 days of its occurrence. Unless otherwise directed by the Purchaser in writing, the Supplier shall continue to perform its obligations under the Contract as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the Force Majeure event.
- 2.29.4 If the performance in whole or in part or any obligations under the contract is prevented or delayed by any reason of force majeure for a period exceeding 60 days, either party may at its option terminate the contract without any financial repercussions on either side.

**2.30 TERMINATION FOR INSOLVENCY**

- 2.30.1 The Purchaser may at any time terminate the Contract by giving written notice to the Supplier, if the Supplier becomes bankrupt or otherwise insolvent. In this event, termination will be without compensation to the Supplier, provided that such termination will not prejudice or affect any right of action or remedy, which has accrued or will accrue thereafter to the Purchaser.

**2.31 TERMINATION FOR CONVENIENCE**

- 2.31.1 The Purchaser, by written notice sent to the Supplier, may terminate the Contract, in whole or in part, at any time. The notice of termination shall specify that termination is for the Purchaser's convenience, the extent to which performance of the Supplier under the Contract is terminated, and the date upon which such termination becomes effective.
- 2.31.2 The Goods those are complete and ready for shipment within 30 days after the Supplier's receipt of notice of termination shall be accepted by the Purchaser at the Contract terms and prices. For the remaining Goods, the Purchaser may elect:
  - (a) To have any portion completed and delivered at the Contract terms and prices; and/or
  - (b) To cancel the remainder and pay to the Supplier an agreed amount for partially completed Goods and for materials and parts previously procured by the Supplier.

**2.32 SETTLEMENT OF DISPUTES**

- 2.32.1 The Purchaser and the supplier shall make every effort to resolve amicably by direct informal negotiation any disagreement or dispute arising between them under or in connection with the Contract.

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उप कुलसचिव [क्रय एवं भंडार]  
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- 2.32.2 If, after twenty-one (21) days, the parties have failed to resolve their dispute or difference by such mutual consultation, then either the Purchaser or the Supplier may give notice to the other party of its intention to commence arbitration, as hereinafter provided, as to the matter in dispute, and no arbitration in respect of this matter may be commenced unless such notice is given. Any dispute or difference in respect of which a notice of intention to commence arbitration has been given in accordance with this Clause shall be finally settled by arbitration. Arbitration may be commenced prior to or after delivery of the Goods under the Contract.
- 2.32.3 The dispute settlement mechanism/arbitration proceedings shall be concluded as under:
- (a) In case of Dispute or difference arising between the Purchaser and a domestic supplier relating to any matter arising out of or connected with this agreement, such disputes or difference shall be settled in accordance with the Indian Arbitration & Conciliation Act, 1996, the rules there under and any statutory modifications or re-enactments thereof shall apply to the arbitration proceedings. The dispute shall be referred to the Chairman, Board of Governors of IISER TVM and if he is unable or unwilling to act, to the sole arbitration of some other person appointed by him willing to act as such Arbitrator. The award of the arbitrator so appointed shall be final, conclusive and binding on all parties to this order.
  - (b) In the case of a dispute between the purchaser and a Foreign Supplier, the dispute shall be settled by arbitration In accordance with provision of sub-clause (a) above. But if this is not acceptable to the supplier then the dispute shall be settled in accordance with provisions of UNCITRAL (United Nations Commission on International Trade Law) Arbitration Rules.
- 2.32.4 The venue of the arbitration shall be the place from where the purchase order or contract is issued.
- 2.32.5 Notwithstanding any reference to arbitration herein,
- (a) the parties shall continue to perform their respective obligations under the Contract unless they otherwise agree; and
  - (b) the Purchaser shall pay the Supplier any monies due the Supplier.

**2.33 GOVERNING LANGUAGE**

- 2.33.1 The contract shall be written in English language which shall govern its interpretation. All correspondence and other documents pertaining to the Contract, which are exchanged by the parties, shall be written in the English language only.

**2.34 APPLICABLE LAW**

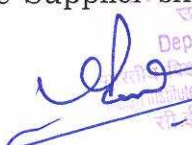
- 2.34.1 The Contract shall be interpreted in accordance with the laws of the Union of India and all disputes shall be subject to place of jurisdiction as specified in SCC.

**2.35 NOTICES**

- 2.35.1 Any notice given by one party to the other pursuant to this contract/order shall be sent to the other party in writing or by cable, telex, FAX, e-mail or and confirmed in writing to the other party's address specified in the SCC.
- 2.35.2 A notice shall be effective when delivered or on the notice's effective date, whichever is later.

**2.36 TAXES AND DUTIES**

- 2.36.1 For goods manufactured outside India, the Supplier shall be entirely responsible for all taxes, stamp duties, license fees, and other such levies imposed outside India.
- 2.36.2 For goods Manufactured within India, the Supplier shall be entirely responsible

  
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Continued...12



for all taxes, duties, license fees, etc., incurred till its final manufacture/production.

2.36.3 If any tax exemptions, reductions, allowances or privileges may be available to the Supplier in India, the Purchaser shall make its best efforts to enable the Supplier to benefit from any such tax savings to the maximum allowable extent.

**2.37 RIGHT TO USE DEFECTIVE GOODS**

2.37.1 If after delivery, acceptance and installation and within the guarantee and warranty period, the operation or use of the goods proves to be unsatisfactory, the Purchaser shall have the right to continue to operate or use such goods until rectifications of defects, errors or omissions by repair or by partial or complete replacement is made without interfering with the Purchaser's operation.


**2.38 PROTECTION AGAINST DAMAGE**

2.38.1 The system shall not be prone to damage during power failures and trip outs. The normal voltage and frequency conditions available at site as under:

- (a) Voltage 230 volts - Single phase/ 415 V 3 phase (+\_ 10%)
- (b) Frequency 50 Hz.

**2.39. SITE PREPARATION AND INSTALLATION**

The Purchaser is solely responsible for the construction of the equipment sites in compliance with the technical and environmental specifications defined by the Supplier. The Purchaser will designate the installation sites before the scheduled installation date to allow the Supplier to perform a site inspection to verify the appropriateness of the sites before the installation of the Equipment, if required. The supplier shall inform the purchaser about the site preparation, if any, needed for installation, of the goods at the purchasers' site immediately after notification of award/contract.

  
22/4/16  
**DEPUTY REGISTRAR**  
**[PURCHASE & STORES]**  
के. भास्करा IISERTVM SKARA RAO  
उप कुलसचिव [क्रय एवं भंडार]  
Deputy Registrar [Purchase & Stores]  
भारतीय विज्ञान शिक्षा एवं अनुसंधान संस्थान तिरुवनन्तपुरम  
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**INTEGRITY PACT**

Between

**Indian Institute of Science Education and Research, Thiruvananthapuram (IISER-TVM)** hereinafter referred to as "The Principal".

And

-----  
 herein referred to as "The Bidder/ Contractor."

**Preamble**

The Principal intends to award, under laid down organizational procedures, contract/s for ----- . The Principal values full compliance with all relevant laws of the land, rules, regulations, economic use of resources and of fairness/transparency in its relations with its Bidder(s) and/or Contractor(s).

The Principal will nominate an Independent External Monitor (IEM) by name at the tender stage/will appoint in case of receipt of any reference, from the panel of IEMs, for monitoring the tender process and/or the execution of the contract in order to ensure compliance with the Integrity Pact by all the parties concerned.

**Section 1 – Commitments of the Principal / Purchaser / Employer:**

- (1) The Principal commits itself to take all measures necessary to prevent corruption and to observe the following principles:
  - a) No employee of the Principal, personally or through family members, will in connection with the tender for, or the execution of a contract, demand, takes a promise for or accepts, for self or third person, any material or immaterial benefit which the person is not legally entitled to.
  - b) The Principal will, during the tender process treat all Bidder(s) with equity and reason. The Principal will in particular, before and during the tender process, provide to all Bidder(s) the same information and will not provide to any Bidder(s) confidential/additional information through which the Bidder(s) could obtain an advantage in relation to the tender process or the contract execution.
  - c) The Principal will exclude from the process all known prejudiced persons.
- (2) If the Principal obtains information on the conduct of any of its employees which is a criminal offence under the IPC/PC Act, or if there be a substantive suspicion in this regard, the Principal will inform the Chief Vigilance Officer of IISER-TVM and in addition can initiate disciplinary action.

**Section 2 – Commitments of the Bidder(s)/Contractor(s)**

- (1) The Bidder(s)/Contractor(s) commit himself to take all measures necessary to prevent corruption. He commits himself to observe the following principles during his participation in the tender process and during the contract execution:
  - a. The Bidder(s)/Contractor(s) will not, directly or through any other person or firm, offer, promise or give to any of the Principal's employees involved in the tender process or the execution of the



contract or to any third person any material or other benefit which he/she is not legally entitled to, in order to obtain in exchange any advantage of any kind whatsoever during the tender process or during the execution of the contract or to vitiate the Principal's tender process or contract execution.

- b. The Bidder(s)/Contractor(s) will not enter with other Bidders into any undisclosed agreement or understanding, whether formal or informal. This applies in particular to prices, specifications, certifications, subsidiary contracts, submission or non-submission of bids or any other actions to restrict competitiveness or to introduce cartelization in the bidding process or to vitiate the Principal's tender process or execution of the contract.
- c. The Bidder(s)/Contractor(s) will not commit any offence under the relevant IPC/PC Act; further the Bidder(s)/Contractor(s) will not use improperly, for purposes of competition or personal gain, or pass on to others, any information or document provided by the Principal as part of the business relationship, regarding plans, technical proposals and business details, including information contained or transmitted electronically.
- d. The Bidder(s)/Contractor(s) of foreign origin shall disclose the name and address of the Agents/representatives in India, if any. Similarly the Bidder(s)/Contractor(s) of Indian Nationality shall furnish the name and address of the foreign supplier / contract agency, if any. Further details as mentioned in the "Guidelines on Indian Agents of Foreign Suppliers" / Contract Agencies", shall be disclosed by the Bidder(s)/Contractor(s) wherever applicable. Further, as mentioned in the Guidelines all the payments made to the Indian agent (s)/representative (s) have to be in Indian Rupees only. Copy of the "Guidelines on Indian Agents of Foreign Suppliers/ Contract Agencies" is annexed and marked as Annexure - A.
- e. The Bidder(s)/Contractor(s) will, when presenting his bid, disclose any and all payments he has made or committed to or intends to make to agents, brokers or any other intermediaries in connection with the award of the contract.

(2) The Bidder(s)/Contractor(s) will not instigate third persons to commit offences outlined above or be an accessory to such offences.

**Section 3 – Disqualification from tender process and exclusion from future contracts.**

- (1) A transgression is considered to have occurred, if the Principal after due consideration of the available evidence, concludes that reasonable doubt is possible.
- (2) If the Bidder(s)/Contractor(s), before award of contract or after award of Contract or during execution has committed a transgression through a



violation of Section 2 above or in any other form such as to put his reliability or credibility in question, the Principal is entitled to disqualify the Bidder(s)/Contractor(s) from the tender process or to terminate the Contract, if already awarded or take action as per the procedure mentioned in the "Guidelines on Banning of business dealings". Copy of the "Guidelines on Banning of business dealings" is annexed and marked as Annexure - B

- (3) If the Bidder (s) / Contractor (s) has committed transgression through a violation of any of the terms under Section 2 above or in any other form such as to put his reliability or credibility into question, the Principal is entitled also to exclude the bidder/contractor from future tenders/contract award processes. The imposition and duration of the exclusion will be determined by the Principal keeping in view the severity of the transgression. The severity will be determined by the circumstances of the case, in particular the number of transgression, the position of the transgressors within the company hierarchy of the bidder/contractor and the amount of the damage.
- (4) If it is observed after payment of final bill but before the expiry of validity of Integrity Pact that the contractor has committed a transgression through a violation of any of the terms under Section 2 above during the execution of contract, the Principal is entitled to exclude the contractor from future tenders / contract award processes.
- (5) The exclusion will be imposed for a minimum period of six (6) months and a maximum period of 3 (three) years.
- (6) If the Bidder/Contractor can prove that he has restored/recouped the damage to the Principal caused by him and has installed a suitable corruption prevention system, the Principal may revoke the exclusion before the expiry of the period of such exclusion.

#### **Section 4 - Compensation for Damages**

- (1) If the Principal has disqualified the Bidder(s) from the tender process prior to the award in accordance with Section 3 above, the Earnest Money Deposit (EMD)/Bid Security furnished, if any, along with the offer as per the terms of the Invitation to Tender (ITT) shall be forfeited. This is apart from the disqualification of the Bidder as may be imposed by the Principal as brought out at Section 3 above.
- (2) If the Principal has terminated the contract according to Section 3, or if the Principal is entitled to terminate the contract according to Section 3, the Principal shall be entitled to forfeit the Security Deposit/Performance Bank Guarantee furnished by the Bidder/Contractor or to demand and recover from the Contractor liquidated damages of the contract value or the amount equivalent to Performance Bank Guarantee. This is apart from the disqualification of the Bidder as may be imposed by the Principal as brought out at Section 3 above.



**Section 5 - Previous transgression**

- (1) The Bidder/Contractor declares that no previous transgressions occurred in the last 3 years with any other Company in any country conforming to the anti-corruption approach or with Government/any other Public Sector Enterprise in India that could justify his exclusion from the tender process /contract.
- (2) If the Bidder/Contractor makes incorrect statement on this subject, he can be disqualified from the tender process /contract either it can be terminated for such reason or action can be taken as per the procedure mentioned in "Guidelines on Banning of business dealings."

**Section 6 - Equal treatment of all Bidders / Contractors/ Subcontractors.**

- (1) The Bidder(s)/Contractor(s) undertake(s) to demand from all his Sub-contractors a commitment in conformity with this Integrity Pact, and to submit it to the Principal before seeking permission for such sub-contract signing.
- (2) The Principal will enter into agreements with identical conditions as this one with all Bidders and Contractors.
- (3) The Principal will disqualify from the tender process all bidders who do not sign this Pact or violate its provisions.

**Section 7 - Criminal charges against violating Bidders / Contractors/ Subcontractors.**

If the Principal obtains knowledge of conduct of a Bidder, Contractor, Sub-contractor or of any employee or a representative or an associate of a Bidder/Contractor/Sub-contractor which constitutes corruption, or if the Principal has substantive suspicion in this regard, the Principal will inform the same to Chief Vigilance Officer.

**Section 8 - Independent External Monitor (s) (IEMs)**

- (1) The Principal appoints competent and credible Independent External Monitor (s) (IEMs) with clearance from Central Vigilance Commission. IEMs reviews independently, the cases referred to him/them to assess whether and to what extent the parties concerned comply with the obligations under this Integrity Pact.
- (2) In case of non-compliance of the provisions of the Integrity Pact, the complaint/non-compliance is to be lodged by the aggrieved party with the Nodal Officer only appointed by Director, IISER-TVM. The Nodal Officer shall refer the complaint/non-compliance so received by him to the IEM, already appointed or to be appointed for that case.
- (3) The Monitor is not subject to instructions by the representatives of the parties and performs his functions neutrally and independently. He reports



to the Director, IISER-TVM.

- (4) The Bidder(s)/Contractor(s) accepts that the Monitor has the right to access without restriction, to all tender/contract documentation of the Principal including that provided by the Bidder/Contractor. The Bidder/Contractor will also grant the Monitor, upon his request and demonstration of a valid interest, unrestricted and unconditional access to his tender/contract documentation. The same is applicable to Sub-contractors also. The Monitor is under contractual obligation to treat the information and documents of the Bidder(s)/Contractor(s)/Sub-contractor(s) with confidentiality.
- (5) The Principal will provide to the Monitor sufficient information about all meetings among the parties related to the tender/contract provided such meetings could have an impact on the contractual relations between the Principal and the Contractor. The parties offer to the Monitor the option to participate in such meetings.
- (6) As soon as the Monitor notice, or believes to notice, a violation of this Integrity Pact, he will so inform the Management of the Principal and request the Management to discontinue or take corrective action, or to take other relevant action. The monitor can in this regard submit non-binding recommendations. Beyond this, the Monitor has no right to demand from the parties that they act in a specific manner, refrain from action or tolerate action.
- (7) The Monitor will submit a written report to the Director, IISER-TVM within 8 to 10 weeks from the date of reference or intimation to him by the Principal and should the occasion arise, submit proposals for correcting problematic situations for the violations or the breaches of the provisions of the agreement noticed by the Monitor.
- (8) Monitor shall be entitled to compensation on the same terms as being extended to/provided to Director IISER-TVM.
- (9) If the Monitor has reported to the Director, IISER-TVM, a substantiated suspicion of an offence under relevant IPC/PC Act, and the Director, IISER-TVM has not, within the reasonable time taken visible action to proceed against such offence or reported it to the Chief Vigilance Officer, the Monitor may also transmit this information directly to the Central Vigilance Commissioner.
- (10) The word 'Monitor' means Independent External Monitor and would include both singular and plural.

### **Section 9 – Pact Duration**

- (1) This Pact begins when both parties have legally signed it. It expires for the Contractor 12 months after the last payment under the contract, and for all other unsuccessful Bidders 6 months after the contract has been awarded.
- (2) If any claim is made/lodged during the valid period of the Integrity Pact,



the same shall be binding and continue to be valid despite the lapse of this pact as specified above, unless it is discharged/determined by Director, IISER-TVM.

**Section 10 – Other provisions**

- (1) This agreement is subject to Indian Law. Place of performance and Jurisdiction is Thiruvananthapuram, Kerala.
- (2) Changes and supplements as well as termination notices need to be made in writing. Side agreements to this Integrity Pact have not been made.
- (3) If the Contractor is a partnership or a consortium, this agreement must be signed by all partners or consortium members or their Authorised Representative (s) by duly furnishing Authorisation to sign Integrity Pact.
- (4) Should one or several provisions of this agreement turn out to be invalid, the remaining part of this agreement remains valid. In this case, the parties will strive to come to an agreement to their original intentions.
- (5) Wherever he or his is indicated in the above sections, the same may be read as he/she or his/her, as the case may be.

(For & On behalf of the Principal)

(For & On behalf of Bidder/Contractor)

(Office Seal)

(Office Seal)

Place.....

Place.....

Date.....

Date.....

Witness 1:  
(Name & Address):

Witness 1:  
(Name & Address):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Witness 2:  
(Name & Address):

Witness 2:  
(Name & Address):

\_\_\_\_\_

\_\_\_\_\_

**MODEL BANK GUARANTEE FORMAT FOR FURNISHING BID SECURITY (BS)**

Whereas ..... (hereinafter called the “tenderer”) has submitted their offer dated.....for the supply of..... (hereinafter called the “tender”) against the Purchaser’s tender enquiry No..... KNOW ALL MEN by these presents that WE.....of ..... having our registered office at.....are bound unto .....(hereinafter called the “Purchaser) in the sum of .....for which payment will and truly to be made to the said Purchaser, the Bank binds itself, its successors and assigns by these presents. Sealed with the Common Seal of the said Bank this..... day of .....20.....

**THE CONDITIONS OF THIS OBLIGATION ARE:**

- 1) If the tenderer withdraws or amends, impairs or derogates from the tender in any respect within the period of validity of this tender.
- 2) If the tenderer having been notified of the acceptance of his tender by the Purchaser during the period of its validity:-
  - a) If the tenderer fails to furnish the performance security for the due performance of the contract.
  - b) Fails or refuses to accept/execute the contract.

We undertake to pay the Purchaser up to the above amount upon receipt of its first written demand, without the purchaser (IISER-TVM) having to substantiate its demand, provided that in its demand the purchaser will note that the amount claimed by it is due to it owing the occurrence of one or both the two conditions, specifying the occurred condition or conditions. This guarantee will remain in force up to and including 45 days after the period of tender validity and any demand in respect thereof should reach the bank not later than the above date.

Signature of the authorized officer of the bank

Name and designation of the officer

Seal, name and address of the Bank and address of the Branch.