

## **GENERAL CONDITIONS OF CONTRACT**

### **1. DEFINITIONS**

Unless the context otherwise requires, the following terms whenever used in this Contract have the following meanings:

- a) "Government" means the Government of India.
- b) "Purchase Order will come into effect and will take the form of a contract once it is acknowledged by the supplier/vendor.
- c) "GCC" mean these General Conditions of Contract.
- d) "Local Currency" means the Indian Rupees.
- e) "Foreign Currency" means any currency other than Indian Rupees.
- f) "Third Party" means any person or entity other than the Government, the Client, the Consultant or a Sub-consultant.
- g) "Month" shall mean a calendar month.
- h) The term 'Purchaser' shall mean the President of India or his successors or assigns.
- i) The term Director shall mean the Director, BARC, for the time being as the Head of BARC, or any other Officer authorized for the time being to execute contracts relating to the purchase and supplies of stores/services on behalf of the Purchaser.

### **2. LAW GOVERNING THE CONTRACT:**

The Contract shall be considered and made in accordance with the law of the Republic of India. This Contract shall be governed by and interpreted in accordance with the Laws of Republic India for the time being in force. The marking of all stores/services supplied must comply with the requirements of

Indian Acts relating to Merchandises Marks and all the rules made under such Acts.

### **3. JURISDICTION:**

The courts within the local limit of whose jurisdiction the place from which the Development Contract is issued.

### **4. ARBITRATION:**

- i) All disputes or differences arising out of or in connection with the present contract including the one connected with the validity of the present contract or any part thereof should be settled by bilateral discussions.
- ii) Any dispute, disagreement or question arising out of or relating to this contract or relating to construction or performance (except as to any matter the decision or determination whereof is provided for by these conditions), which cannot be settled amicably, shall within sixty (60) days or such longer period as may be mutually agreed upon, from date on which either party informs the other in writing by a notice that such dispute, disagreement or question exists, will be referred to a sole Arbitrator.
- iii) Within sixty (60) days of the receipt of the said notice, an arbitrator shall be nominated in writing by the authority agreed upon by the parties.
- iv) The sole Arbitrator shall have its seat in Mumbai or such other place in India as may be mutually agreed to between the parties.
- v) The arbitration proceedings shall be conducted under the Indian Arbitration and Conciliation Act, 1996 and the award of such Arbitration Tribunal shall be enforceable in Indian courts only.
- vi) Each party shall bear its own cost of preparing and presenting its case. The cost of arbitration including the fees and expenses shall be shared equally by the parties, unless otherwise awarded by the sole arbitrator.
- vii) The parties shall continue to perform their respective obligations under this contract during the pendency of the arbitration

proceedings except in so far as such obligations are the subject matter of the said arbitration proceedings.

(NOTE: In the event of the parties deciding to refer the dispute/s for adjudication to an Arbitral Tribunal then one arbitrator each will be appointed by each party and the case will be referred to the Indian Council of Arbitration (ICADR) for nomination of the third arbitrator. The fees of the arbitrator appointed by the parties shall be borne by each party and the fees of the third arbitrator, if appointed, shall be equally shared by the buyer and seller).

## **5. PENALTY FOR USE OF UNDUE INFLUENCE:**

The CONTRACTOR undertakes 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 BARC or otherwise in procuring the Contracts or forbearing to do or for having done or forborne to do any act in relation to the obtaining or execution of the present Contract or any other Contract with the Government of India for showing or forbearing to show favour or disfavour to any person in relation to the present Contract or any other Contract with the Government of India. Any breach of the aforesaid undertaking by the CONTRACTOR or any one employed by him or acting on his behalf (whether with or without the knowledge of the CONTRACTOR) or the commission of any offers by the CONTRACTOR or anyone employed by him or acting on his behalf, as defined in Chapter IX of the Indian Penal Code, 1860 or the Prevention of Corruption Act, 1988 or any other Act enacted for the prevention of corruption shall entitle the BARC to cancel the contract and all or any other contracts with the CONTRACTOR and recover from the CONTRACTOR the amount of any loss arising from such cancellation. A decision of the BARC or his nominee to the effect that a breach of the undertaking had been committed shall be final and binding on the CONTRACTOR. Giving or offering of any gift, bribe or inducement or any attempt at any such act on behalf of the CONTRACTOR towards any officer/employee of the BARC or to any other person in a position to influence any officer/employee of the BARC for showing any favour in relation to this or any other contract, shall render the CONTRACTOR to such liability/ penalty as

the BARC may deem proper, including but not limited to termination of the contract, imposition of penal damages, forfeiture of the Bank Guarantee and refund of the amounts paid by the BARC.

## **6. AGENTS / AGENCY COMMISSION:**

The Seller confirms and declares to the Buyer that the Seller is the original manufacturer of the stores/provider of the services referred to in this Contract and has not engaged any individual or firm, whether Indian or foreign whatsoever, to intercede, facilitate or in any way to recommend to the Government of India or any of its functionaries, whether officially or unofficially, to the award of the contract to the Seller; 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 Seller agrees that if it is established at any time to the satisfaction of the Buyer that the present declaration is in any way incorrect or if at a later stage it is discovered by the Buyer that the Seller 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 Seller will be liable to refund that amount to the Buyer. The Seller will also be debarred from entering into any supply Contract with the Government of India for a minimum period of five years. The Buyer will also have a right to consider cancellation of the Contract either wholly or in part, without any entitlement or compensation to the Seller who shall in such an event be liable to refund all payments made by the Buyer in terms of the Contract along with interest at the rate of 2% per annum above LIBOR rate. The Buyer will also have the right to recover any such amount from any contracts concluded earlier with the Government of India.

## **7. INDEMNITY:**

The CONTRACTOR shall at all times (**for their scope of work**) indemnify BARC against all claims which may be made in respect of stores for infringement of any right protected by Patent Registration of design or Trade Mark and shall take all risk of accidents or damage which may cause a failure of

the supply from whatever cause arising and entire responsibility for the sufficiency of all the means used by him for the fulfilment of the contract.

## **8. ACCESS TO BOOKS OF ACCOUNTS:**

In case it is found to the satisfaction of the BARC that the CONTRACTOR 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 penalty for use of undue influence, the CONTRACTOR, on a specific request of the BARC, shall provide necessary information/ inspection of the relevant financial documents/information.

## **9. NON-DISCLOSURE OF CONTRACT DOCUMENTS:**

Except with the written consent of the BARC/ CONTRACTOR, other party shall not disclose the contract or any provision, specification, plan, design, pattern, sample or information thereof to any third party, other than tax or government regulatory authorities.

## **10. NOTICES:**

Any notice required or permitted by the contract shall be written in the English language and may be delivered personally or may be sent by FAX or registered pre-paid mail/airmail, addressed to the last known address of the party to whom it is sent.

## **11. AMENDMENTS:**

No provision of present Contract shall be changed or modified in any way (including this provision) either in whole or in part except by an instrument in writing made after the date of this Contract and signed on behalf of both the parties and which expressly states to amend the present Contract.

## **12. NO LIABILITY CLAUSE:**

All activities would normally be carried out with due professional care and adequate safety precautions would be taken as may be needed in handling of different technologies, instruments, equipment and substances. However, neither BARC nor CONTRACTOR shall claim from the other, compensation for any loss or damage whatsoever, resulting due to implementation of any technology, use of any instrument or equipment or handling of any substance at the premises of BARC/ CONTRACTOR or any other potential user of the system developed under this contract.

## **13. SUB-CONTRACTING**

No subcontracting of this development work or its part is permitted without prior approval by BARC. Any document/ drawing of a part may be handed over to sub-contractor only with written approval of BARC.

All documents/ drawings/ certificates submitted by sub-contractor shall be duly approved by the CONTRACTOR. In any case, CONTRACTOR will be responsible for any work done by the sub-contractor, wherever permitted by BARC.

## **14. FORCE MAJEURE CLAUSE**

- a) Neither party shall bear responsibility for the complete or partial non-performance of any of its obligations (except for failure to pay any sum which has become due on account of receipt of goods under the provisions of the present contract), if the non-performance results from such Force Majeure circumstances as Flood, Fire, Earth Quake and other acts of God as well as War, Military operation, blockade, Acts or Actions of State Authorities or any other circumstances beyond the parties control that have arisen after **signing** of the present contract.

- b) In such circumstances the time stipulated for the performance of an obligation under the present contract is extended correspondingly for the period of time of action of these circumstances and their consequences.

## **15. SECRECY:**

CONTRACTOR shall not disclose any information furnished to them by BARC and the other Information prepared by CONTRACTOR for this project without prior written approval of BARC, whether within and beyond the period of this contract. CONTRACTOR shall take all necessary measures to ensure that the knowledge/data obtained under this contract is not passed or disclosed.

## **16. RECOVERY OF SUMS DUE:**

Whenever any claim for payment of, whether liquidated or not, moneys arises out of or under this contract against the CONTRACTOR the BARC shall be entitled to recover sum by appropriating, in part or whole, the security deposited by the CONTRACTOR, if a security is taken against the Contract. In the event of the security being in sufficient or no security has been taken from the CONTRACTOR then the balance or the total sum or which at any time here after may be come due to the CONTRACTOR under this or any other contract with the BARC, should this sum be not sufficient to cover the full amount recoverable, the CONTRACTOR shall pay to the BARC on demand the remaining balance due. Similarly, if the BARC has or makes any claim, ‘whether liquidated or not against the CONTRACTOR under any other contract with the BARC the payment of all moneys payable under the contract to the contractor including the security deposit shall be withheld till such claims of the BARC are finally adjudicated upon and paid by the CONTRACTOR.

## **17. MODE OF PAYMENT & PAYING AUTHORITY:**

Unless otherwise agreed to between the parties in writing, payments for the delivery of the stores/services will be made **within a month on receipt of bills**. The paying authority shall be “Accounts Officer, BARC”.

## **18. LIQUIDATED DAMAGES:**

In the event of the CONTRACTOR’s failure to submit the Bonds, Guarantees and Documents, supply the stores/services and conduct trials, installation of equipment, training, etc as specified in this contract, the BARC may, at his discretion, withhold any payment until the completion of the contract. The BARC may also deduct from the CONTRACTOR as agreed, liquidated damages to the sum of 0.5% of the contract price of the delayed/undelivered stores/services mentioned above for every week of delay or part of a week, subject to the maximum value of the Liquidated Damages being not higher than 5% of the value of delayed stores/services.

## **19. TERMINATION OF CONTRACT:**

The BARC shall have the right to terminate this Contract in part or in full in any of the following cases:-

- a)** The delivery of the material/services is delayed for causes not attributable to Force Majeure for more than **One month** after the scheduled date of delivery on the recommendation of Project Review Committee subject to the condition that the contract is not extended on mutual agreement.
- b)** The CONTRACTOR is declared bankrupt or becomes insolvent.
- c)** The delivery of material/services is delayed due to causes of Force Majeure by more than **two months** after the scheduled date of delivery on the recommendation of Project Review Committee subject to the condition that the contract is not extended on mutual agreement.
- d)** The BARC has noticed that the CONTRACTOR has utilised the services of any Indian/Foreign agent in getting this contract and paid any commission to such individual/company etc.

- e) As per decision of the Arbitration Tribunal.

## **20. EXERCISING THE RIGHTS AND POWERS OF BARC:**

All the rights, discretions and powers of Purchase under the contract shall be exercisable by and all notices on behalf of BARC shall be given by Director, BARC, mentioned in this clause:

- a) **INSPECTION AND FINAL TESTS: -**

All tests necessary to ensure that the goods complies with the particulars and guarantees shall be carried out at such place or places as may be determined by BARC.

## **21. WARRANTY:**

The following Warranty will form part of the contract placed on the successful Bidder: -

- a) Except as otherwise provided, the CONTRACTOR hereby declares that the services, stores articles sold / supplied to the BARC under this contract shall be of the best quality and workmanship and new in all respects and shall be strictly in accordance with the specification and particulars contained/mentioned in contract. The CONTRACTOR hereby **ensures Guarantee** that the said service/goods would continue to conform to the description and quality aforesaid for a period of 12 months from the date of delivery of the said services/goods to the BARC, if during the aforesaid period of 12 months the said services/stores be discovered not to conform to the description and quality aforesaid not giving satisfactory performance or have deteriorated, and the decision of the BARC in that behalf shall be final and binding on the CONTRACTOR and the BARC shall be entitled to call upon the CONTRACTOR to rectify the services/stores or such portion thereof as is found to be defective by the BARC within **12 months**, or such specified period as may be allowed by the BARC in his discretion on application made thereof by the CONTRACTOR, and in such an event, the

above period shall apply to the services/stores rectified from the date of rectification mentioned in warranty thereof, otherwise the CONTRACTOR shall pay to the BARC such compensation as may arise by reason of the breach of the warranty therein contained.

- b) BARC reserves the right to declare any defect/short comings as critical to the extent that CONTRACTOR will replace the item rather than rectifying.