

Form No. DPS-P-11
GOVERNMENT OF INDIA

DEPARTMENT OF ATOMIC ENERGY

DIRECTORATE OF PURCHASE AND STORES
GENERAL CONDITIONS OF ALL CONTRACTS

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SPECIAL CONDITIONS OF CONTRACT
GOVERNING SUPPLIES OF PLANT AND MACHINERY

APPLICABLE TO THE CONTRACTS
PLACED BY
THE DIRECTORATE OF PURCHASE & STORES

(UNDER GOVERNMENT OF INDIA, DEPARTMENT OF ATOMIC ENERGY)

**GENERAL CONDITIONS OF ALL CONTRACTS APPLICABLE TO CONTRACTS
PLACED BY THE DIRECTORATE OF PURCHASE AND STORES
DEPARTMENT OF ATOMIC ENERGY**

**GOVERNMENT OF INDIA
DEPARTMENT OF ATOMIC ENERGY
DIRECTORATE OF PURCHASE AND STORES**

GENERAL CONDITIONS OF CONTRACT

1. DEFINITIONS

1.1. The term 'Purchaser' shall mean the President of India or his successors or assigns.

1.2. The term Director, Purchase and Stores shall mean the Director, Purchase and Stores for the time being in the administrative charge of the Directorate of Purchase and Stores, of the Department of Atomic Energy and included Joint Director, Purchase and Stores, Deputy Director, Purchase and Stores, Senior Purchase Officer, Purchase Officer or any Assistant Purchase Officer of the said Directorate of Purchase and Stores or any other Officer authorized for the time being to execute contracts relating to the purchase and supplies of stores on behalf of the Purchaser.

1.3. The term 'Inspector' shall mean any person appointed by, or on behalf of the Purchaser to inspect supplies, stores or work under the contract or any person deputed by the Inspector for the purpose.

1.4. The term 'Particulars' shall mean the following:

1.4.1. Specification

1.4.2. Drawing

1.4.3. Sealed pattern denoting a pattern sealed and signed by the Inspector

1.4.4. Proprietary make denoting the produce of an individual firm.

1.4.5. Any other details governing the construction manufacture and/or supply as existing for the contract.

1.5. The term 'Contractor' shall mean, **the person**, firm or Company with whom or with which the order for the supply of stores is placed and shall be deemed to include the Contractor's Successors (approved by the Purchaser), representatives, heirs, executors and administrators unless excluded by the contract.

1.6. The term 'Stores' shall mean, what Contractor agrees to supply under the contract as specified in the Purchase order.

1.7. The term 'Purchase Order' shall mean the communication signed on behalf of the Purchaser by an Officer duly authorized intimating the acceptance on behalf of the Purchaser on the terms and conditions mentioned or referred to in the said communication accepting the Tender or offer of the Contractor for supply of stores or plant, machinery or equipment or parts thereof.

2. CONTRACTS WITH RATE SUBJECT TO CONFIRMATION

2.1. When prices are mentioned in the Purchase Order as being subject to confirmation by

the makers, or subject to variation in the F.O.B. costs at the time of shipment, the Contractor shall before effecting delivery, obtain the required confirmation and communicate the same or full particulars as to variation of the F.O.B. price at the time of shipment, to the Purchaser for his acceptance together with the original invoice on which the rate quoted by the Contractor in his tender was based or any other documents that may be required by the Purchaser and the purchaser reserves the right to have such confirmation or variation checked by any Trade Association of the country of shipment or any organization whether Governmental or otherwise and the Purchaser shall have, upon receipt of such communication as to confirmation or variation as aforesaid further reserves right to cancel the contract without assigning any reason and without being liable to the Contractor for the payment of damages or for any payment on any account whatsoever. If supplies are made before such confirmation and acceptance by the Purchaser except with the express consent of the Purchaser, the Contractor shall be paid at the price mentioned in the Purchase Order.

3. SUBLETTING OF CONTRACT OR BILLS OR ANY BENEFITS ACCRUING THEREFROM

3.1. The Contractor shall not sublet transfer or assign the Contracts or any part thereof or bills or any other benefits accruing therefrom or under the contract without the written permission of the Purchaser and a breach of this condition shall entitle the Purchaser to cancel the contract and to make repurchases at the risk and costs of the Contractor in terms of clause 10.2.3 hereof and/or to recover from the Contractor damages arising from such cancellation.

4. SECURITY DEPOSIT

4.1. On acceptance of tender, the Contractor shall at the option of the Purchaser and within the period specified by him, deposit with him in cash or at the option of the Purchaser in such other form as the Purchaser may determine a Security Deposit not exceeding ten percent of the tendered value of the contract as the Purchaser shall specify.

4.2. If the Contractor is called upon by the Purchaser to deposit Security and the Contractor fails to provide the security within the period specified such failure shall constitute a breach of the Contract and the Purchaser shall be entitled to make other arrangements for the repurchase of the stores Contracted for at the risk and expense of the Contractor in terms of clause 10.2.3 hereof and/or recover from the Contractor damages arising from such cancellation. No claim shall lie against the Purchaser either in respect of interest if any due on Security Deposits or depreciation in value.

5. SPECIFICATION, ETC.

5.1. Quality and Workmanship

5.1.1. The stores shall be of the best quality and workmanship and comply with particulars of the contract and in all respect shall be to the entire satisfaction of the Inspector and the Purchaser.

5.1.2. In particular and without prejudice to the foregoing conditions and in addition thereto when tenders are called for in accordance with 'particulars' Contractor's tender to supply in accordance with such particulars' shall be deemed to be in admission on his part that he has fully acquainted himself with the details thereof and no claim on his part which may arise on account of non-examination of the 'particulars' will in any circumstances be considered by the Purchaser or be recoverable from him.

5.2. Contractor's Liability for Defective Stores

5.2.1. For a period of twelve months after the stores have been accepted by Purchaser the Contractor shall be responsible for any defects that may be discovered therein

notwithstanding that such defects could have been discovered at the time of inspection or any defects therein are found to have developed under proper use, arising from faulty materials, design or workmanship and the Contractor shall remedy all such defects as aforesaid at his own cost provided he is called upon within a period of 14 months from the date of acceptance thereof to do so, by the Purchaser who shall state in writing in what respect the goods are faulty and further if in the opinion of the Purchaser the defects are of such a nature that it is necessary to replace or renew any defective stores, such replacement or renewal shall be made by the contractor without any extra costs to the Purchaser, provided notice informing the Contractor of the defect is given by the Purchaser within the said period of 14 months. The decision of the Purchaser notwithstanding any prior approval or acceptance of the Inspector as to whether or not the stores delivered are defective or any defect has developed within the said period of twelve months or as to whether the nature of defects renewal or replacement shall be final, conclusive and binding on the Contractor.

6. ALTERATION OF SPECIFICATIONS, PATTERNS AND DRAWINGS

6.1. The Purchaser reserves the right to alter from time to time specifications, pattern and drawings as from the date specified by him the stores shall be in accordance with the specifications, patterns and drawings as so altered. In the event of any such alterations involving an alteration in the costs of, or in the period required for production revision of the Contract price and of the item for the delivery shall be made in relation to the stores, the subject of the alteration. The decision of the Purchaser, on the question whether the alteration involves an alteration in the costs of or as to the period of production shall be final and conclusive.

7. SAMPLES

7.1. Samples submitted for any reason shall be supplied without charge and freight paid without any obligation of the Purchaser as regards safe custody or safe-return thereof. All samples submitted must be clearly labelled with the Contractor's name and address and tender number. If the Contractor submits the sample with his tender the same shall not govern the standard of supply except when it has been specifically stated in the Purchase Order that it is accepted instead of any sealed pattern. Should certified samples be lent to the Contractor by the Purchaser, the Contractor is responsible for the return in perfect order of all certified samples with the labels intact.

8. PACKING

8.1. The contractor shall be held responsible for the stores being sufficiently and properly packed for transport by rail, road, sea or air so as to ensure their being free from any loss or damages on arrival at their destination. The packing and marking of packages shall be done by and at the expenses of the Contractor. Each package shall contain a Packing Note quoting Purchase Order number and date and showing its contents in detail.

9. CONTRACTOR'S RESPONSIBILITY REGARDING DESPATCH

9.1. Said to contain basis: The contractor shall be responsible for obtaining a clear receipt from the Transport Authorities specifying the goods dispatched, Purchaser shall not pay separately for transit insurance, all risks in transit being exclusively of the Contractor and the Purchaser shall pay for only such stores as are actually received by him in accordance with the Contract.

9.2. Contractor's liability for freight and transport charges: Unless otherwise expressly mentioned in the Purchase Order, the Contractor shall pay and bear all freights and all costs and expenses for transporting the stores to the place of delivery specified in the Purchase Order and the price specified in the Purchase Order shall be inclusive of all such freights,

costs and expenses.

9.3. F.O.R. Station of Despatch: In the case of an 'f.o.r. station of despatch' contract, the stores shall be booked at full wagon rates whenever available and by the most economical route, and failure to do so will render the Contractor liable for the whole or part of any avoidable expenditure, caused to the Purchaser.

10. DELIVERY

- 10.1 Time for and date of delivery, the essence of the Contract: The time for and the date of delivery of the stores stipulated in the purchase order shall be deemed to be the essence of contract, and delivery must be completed not later than the date specified therein.
- 10.2 Failure and Termination: Should the contractor fail to deliver the Stores or any consignment thereof within the period prescribed for such delivery, the Purchaser shall be entitled at his option either:
 - 10.2.1 To recover from the Contractor as agreed liquidated damages and not by way of penalty, a sum of 2% of the price of any stores which the contractor has failed to deliver as aforesaid, for each month or part of a month, during which the delivery of such stores may be in arrears, or
 - 10.2.2 To purchase elsewhere, without notice to the Contractor on the account and at the risk of the Contractor, the stores, not delivered or others of a similar description (where others exactly complying with the particulars are not, in the opinion of the Purchaser readily procurable, such opinion being final) without canceling the contract in respect of the consignment(s) not yet due for delivery, or
 - 10.2.3 To cancel the contract or a portion thereof, and, if so desired, to purchase or authorize the purchase of stores not so delivered or others of similar description (where others exactly complying with the particulars are not, in the opinion of the Purchaser readily procurable, such opinion being final) at the risk and cost of the Contractor.

In the event of action being taken under clause 10.2.2 or 10.2.3 above, the Contractor shall be liable for any loss which the Purchaser may sustain on that account, provided that the repurchase or, if there is an agreement to repurchase then such agreement, is made within six months of the date of such failure. But the contractor shall not be entitled to any gain on such repurchase made against default. The manner and method of such repurchase shall be in the entire discretion of the Purchaser, whose decision shall be final. It shall not be necessary for the Purchaser to serve a notice of such repurchase on the defaulting contractor. This right shall be without prejudice to the rights of the Purchaser to recover damages for breach of contract by the Contractor.

- 10.2.4 Extension of time: As soon as it is apparent that contract dates cannot be adhered to an application shall be sent by the contractor to the Purchaser. If failure on the part of the Contractor to deliver the stores in proper time shall have arisen from any causes which the Purchaser may admit as reasonable ground for an extension of time (and his decision shall be final) he may allow such additional time as he considers it to be justified by circumstances of the case without prejudice to the Purchaser's rights to cover liquidated damages under clause 10 hereof.

10.2.5 However, if the contractor fails to apply and secure extension of contract delivery dates before effecting the delivery of the supplies against the contract, acceptance of such stores by the Purchaser will in no way prejudice the rights of the Purchaser to levy the liquidated damages for delayed deliveries nor will it entitle the contractor for payment of statutory levies that come into force after the expiry of the contract delivery dates.

11. INSPECTION AND REJECTION

- 11.1 Inspection and Rejection: The stores shall be tendered by the Contractor for inspection at such places as may be specified by the Inspector, at the Contractor's own risk, expenses and costs and shall lie at such places of inspection at the risk of the Contractor and the stores will be subject to inspection and test as may be considered necessary by the inspector and his decision as regards rejection of goods shall be final and binding on the Contractor. If any goods are rejected as aforesaid, then without prejudice to the foregoing provision, the Purchaser shall be at liberty to:
- 11.1.1 Allow the Contractor to resubmit without prejudice to the Purchaser's right to claim and recover Liquidated damages as provided in clause 10 hereof, stores in replacement of those rejected within a time specified by the Purchaser (which time shall be the essence of the contract), the contractor bearing the cost of freight for such replacement without being entitled to any extra payment, or
- 11.1.2 Buy the quantity of stores rejected or others of a similar nature elsewhere at the risk and cost of the Contractor in accordance with the provisions contained in second paragraph of clause 10.3 hereof without effecting the Contractor's liability as regards the supply of any further consignments due under the Contract, or
- 11.1.3 Terminate the Contract and recover from the Contractor the loss Purchaser thereby incurred.
- 11.2 Removal of rejection: Any stores submitted for inspection and rejected by the Inspector must be removed by the Contractor within fourteen days from the date of receipt of intimation of rejection, provided that in the case of dangerous infected or perishable stores, the Inspector (whose decision shall be final) shall notify the Contractor to remove such stores within 48 hours of receipt of intimation of rejection and it shall be the duty of the Contractor to remove them accordingly: Such rejected stores shall lie at the Contractor's risk from the time of such rejection and if not removed within the aforementioned time, the Purchaser shall have the right either to return the rejected stores to the Contractor at the Contractor's risk by such mode of transport as Purchaser may select or to dispose off or segregate such stores as he thinks fit at the Contractor's risk and on his accounts and to appropriate such portion of the proceeds as may be necessary to cover any loss or expenses incurred by the Purchaser in connection with the said sale. Freight to destination of stores rejected after examination at destination shall be recoverable from the Contractor at the Public Tariff Rate.
- 11.3 Test Certificate and Guarantees: Test Certificate Guarantees, if required by the Inspector shall be obtained and furnished by the Contractor free of costs.

12 RECOVERY OF SUMS DUE

12.1 Whenever any claim for payment of, whether liquidated or not, moneys arises out of or under this contract against the Contractor the Purchaser shall be entitled to recover such 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 sufficient or not security has been taken from the Contractor then the balance or the total sum recoverable, as the case may be, shall be deducted from any sum then due or which at any time thereafter may become due to the Contractor under this or any other contract with the Purchaser, should this sum be not sufficient to cover the full amount recoverable, the Contractor shall pay to the Purchaser on demand the remaining balance due. Similarly, if the Purchaser has or makes any claim, 'whether liquidated or not against the Contractor under any other contract with the Purchaser the payment of all moneys payable under the contract to the contractor including the security deposit shall be withheld till such claims of the Purchaser are finally adjudicated upon and paid by the Contractor.

13 MODES OF PAYMENT

13.1 Unless otherwise agreed to between the parties in writing, payments for the delivery of the stores will be made within a reasonable time on submission of bills in triplicate. Payment for the stores on each delivery will be made to the Contractor at the rates stipulated in the Purchase Order after goods are received and passed after inspection. Normally 30 days will be allowed for inspection after receipt of the stores.

14 LAW GOVERNING THE CONTRACT

14.1 This Contract shall be governed by the laws of India for the time being in force. The marking of all stores supplied must comply with the requirements of India Acts relating to Merchandise Marks and all the rules made under such Acts.

15 JURISDICTION

15.1 The courts within the local limits of whose jurisdiction the place from which the Purchase Order is issued is stipulated only shall subject to clause 17 hereof have jurisdiction to deal with and decide any matter arising out of this Contract.

16 INDEMNITY

16.1 The Contractor shall at all times indemnify the Purchaser 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 the entire responsibility for the sufficiency of all the means used by him for the fulfillment of the contract.

17 ARBITRATION

Notwithstanding anything contained in clause 15 above, in the event of any question, dispute or difference arising under these conditions or any condition contained in the Purchase Order or in connection with this contract, (except as to any matters the decision of which is specially provided for by these conditions) the same be referred to the sole arbitration of the Directorate of Purchase and Stores or of some other person appointed by him. It will be no objection that the arbitrator is a Government servant, that he had to deal with matters to which the contract relates or that in the course of his duties as a Government servant has expressed views on all or any other matters in disputes or difference. The award of the arbitrator shall be final and binding on the parties to this Contract.

17.2 It is a term of contract:-

17.2.1 If the arbitrator be the Director, Purchase and Stores (i) in the event of his being transferred or vacating his office by resignation or otherwise, it shall be lawful for his successor-in-office either to proceed with the reference himself, or to appoint another person as arbitrator; or (ii) in the event of his being unwilling or unable to act for any reason, it shall be lawful for the Director, Purchase and Stores to appoint another person as arbitrator; or

17.2.2 If the arbitrator be a person appointed by the Director, Purchase and Stores in the event of his dying, neglecting or refusing to act, or resigning or being unable to act for any reason, it shall be lawful for the Director, Purchase and Stores to proceed with the reference himself or to appoint another person as arbitrator in place of the outgoing arbitrator.

17.3 Subject as aforesaid, the Arbitration Act, 1940 and Reconciliation Act 1996 the rule thereunder and any statutory modifications thereof for the time being in force shall be deemed to apply to the arbitration proceedings under this clause. The Arbitrator shall have the power to extend with consent of the Purchaser and the Contractor the time for making and publishing the award. The venue of arbitration shall be the place as the Purchaser in his absolute discretion may determine.

18 EXERCISING THE RIGHTS AND POWERS OF THE PURCHASER

18.1 All the rights, discretions and powers of the Purchase under the contract shall be exercisable by and all notices on behalf of the Purchaser shall be given by the Director, Purchase and Stores, Deputy Director, Purchase and Stores, Purchase Officer, Assistant Purchase Officer of the Directorate of Purchase and Stores or any person or persons authorized to enter into contracts on behalf of the President of India and any reference to "the opinion of the Purchaser" in the terms and conditions contained in these General Conditions of all Contracts shall mean and be construed as reference to the opinion of any of the persons mentioned in this clause.

Special Conditions of Contract Governing Supplies of Plant and Machinery

18.2 In addition to the General Conditions of Contract hereinbefore set out the following special conditions shall apply to contracts for the supply of Plant and Machinery and manufactured equipment. These Special Conditions where they differ from the General Conditions shall over-ride the later.

18.2.1 MISTAKES IN DRAWING

18.2.1.1 The Contractor shall be responsible for and shall pay for an alterations of the works due to any discrepancies, errors or omissions in the drawings or other particulars supplied by him whether such drawings or particulars have been approved by the Purchaser or not.

18.2.2 RESPONSIBILITY FOR COMPLETENESS

18.2.2.1 Any fittings or accessories which may not be specifically mentioned in the specification but for which are usual or necessary, are to be provided by the Contractor without extra charge and the plant must be complete in all respects.

18.2.3 REJECTION OF DEFECTIVE PLANT

18.2.3.1 If the plant after the acceptance thereof be discovered to be defective, notwithstanding that such defects could have been discovered at the time of inspection, or found to have failed to fulfill the requirements of the contract or developed defects after erection within a period of 12 months from the date of erection, whether such erection is done by the Purchaser or by the Contractor, the Purchaser shall be entitled to give a notice on the contractor setting forth details of such defects or failure and the contractor shall, provided such notice is given within a period of 14 months from the date of such erection or acceptance, forthwith make the defective plant good or alter the same to make it comply with the requirements of

the contract at his own cost and further if in the opinion of the Purchaser, the defects are of such a nature that the defects cannot be made good or required without impairing the efficiency or workability of the plant or if in the opinion of the Purchaser the Plant cannot be repaired or altered to make it comply with the requirements of the Contract, the Contractor shall, provided a notice is given by the Purchaser in this behalf within a period of 14 months from the date of erection or acceptance thereof, remove and replace the same within plant conforming to the stipulated particulars in all respects at the Contractor's own cost. Should he fail to do so within a reasonable time, the Purchaser may reject at the cost of the contractor the whole or any part of the Plant as the case may be which is defective or fails to fulfill the requirements of the contract. Such replacement at the cost of the Contractor shall be carried out by the Purchaser within a reasonable time with plant of the same particulars or when the plant conforming to the stipulated particulars are not in the opinion of the Purchaser readily procurable, such opinion being final, then with the nearest substitutes.

18.2.3.2 In the event of such rejection the Purchaser shall be entitled to use the plant in a reasonable and proper manner for a time reasonably sufficient to enable him to obtain replacement plant as hereinbefore provided.

18.2.4 INSPECTION AND FINAL TESTS.

18.2.4.1 All tests necessary to ensure that the plant complies with the particulars and guarantees shall be carried out at such place or places as may be determined by the inspector. Should, however, it be necessary for the final tests as to performance or guarantees to be held over until the Plant is erected at site they shall be carried out within one month of completion of erection.

18.2.5 TRANSPORT AND RESPONSIBILITY FOR BREAKAGES EN-ROUTE:

18.2.5.1 Unless otherwise specified the Purchaser will take delivery of the plant from the Railway Authorities at the Railway Station named in the purchase order but the contractor will be responsible for any damage which may be caused to the Plant during transit to the site of erection thereof.

18.2.6 INTIMATION ABOUT DELIVERY

18.2.6.1 If the Purchaser shall have notified the Contractor in writing that the former is not ready to take delivery, no plant or materials shall be forwarded until an intimation in writing shall have been given to the Contractor by the Purchaser that he is ready to take delivery.

18.2.7 MODE OF PAYMENT

18.2.7.1 Unless otherwise agreed to in writing between the Purchaser and the Contractor, payment for the delivery of the plant approved by the Inspector will be made as follows:

18.2.7.2 80% of the contract price of each consignment delivered as soon as possible after preliminary inspection.

18.2.7.3 20% of the contract price plus the cost of erection, if any, as soon as possible on final inspection and test.

18.2.7.4 In addition to his other remedies under the law and these conditions, the Purchaser shall have lien on each consignment in respect of which 80% has been paid to secure refund of this amount in the event of the same becoming refundable under the terms of the contract or under the law and to secure payment of any other dues under the contract or under the law.

18.2.8 DELAY IN ERECTION

18.2.8.1 Wherever erection of a plant or machinery is the responsibility of the Contractor as a term of the contract and in case the Contractor fails to carry out the erection as and when called upon as to do within the period specified by the Purchaser, the Purchaser shall have right to get the erection done through any source of his choice. In such an event, the contractor shall be liable to bear any additional expenditure that the Purchaser may incur towards erection. The Contractor shall, however, not be entitled to any gain due to such an action by the Purchaser.

18.2.9 DEFINITION OF PLANT

18.2.9.1 The word "PLANT" wherever, appears in these "Special Conditions of Contract governing supplies of Plants and Machinery" shall mean all machinery, plants, equipments or parts thereof or what the Contractor agrees to supply under contract as specified in the Purchase Order.