

## **TERMS AND CONDITIONS OF CONTRACT / PURCHASE ORDER**

### **1. Definition applicable for Terms and Conditions:**

- a) The word 'Purchaser' refers to GARDEN REACH SHIPBUILDERS & ENGINEERS LTD (GRSEL), a Company registered under the Indian Companies Act, 1913 and it includes its successors or assigns.
- b) The word 'Sub-contractor / Supplier / Vendor / Seller' means the person / Firm / Company who undertakes to manufacture and or supply and or undertake work of any nature assigned by the Purchaser from time to time and includes its successors or assigns.
- c) The word 'Owner' means the person or authority with whom Garden Reach Shipbuilders & Engineers Limited (Purchaser) has contracted to carry out work in relation to which orders are placed by the Purchaser on the Sub-contractor / Supplier / Vendor / Seller under this contract for supply or manufacture of certain items and would include Department of Defence Production & Supplies, Ministry of Defence, Government of India, the Indian Navy, the Coast Guard and any other specified authority.

### **2. Scope of Supply and SOTR:**

As per NIT.

### **3. Terms of Price/Delivery Terms:**

As per NIT.

### **4. Contractual Delivery Date (CDD):**

As per NIT

### **5. Liquidated Damages:**

- a) In the event that, Sub-contractor / Supplier / Vendor / Seller fails to deliver the equipment / product or documentation meeting the requirement of the Purchase Order on or before dates specified, the buyer (Purchaser) will suffer damages in an amount that is not susceptible to calculation with reasonable certainty. Therefore, any Liquidated Damages set forth in this Purchase Order represent a reasonable determination of the amount of damages that the Purchaser will suffer, and are not penalties. Seller hereby waives any defence to Purchaser's recovery of such Liquidated Damages on the plea that actual damages are ascertainable or that such Liquidated Damages do not represent a reasonable determination of damages suffered by Purchaser or are penalties.
- b) Sub-contractor / Supplier / Vendor / Seller will be liable to pay Liquidated Damages for late delivery of product / documentation as stated in the Purchase Order. Unless otherwise expressly specified, the rate of Liquidated Damages for late delivery of product shall be at the rate of 0.5% of the total price of undelivered product per week (or part thereof) of delay upto a maximum of 10% of the value of undelivered product. Such Liquidated Damages shall be deducted by the Purchaser from any monies due to Sub-contractor / Supplier / Vendor / Seller. Payments made by the Sub-contractor / Supplier / Vendor of Liquidated Damages shall be in addition to any other remedies (other than any other remedy for the recovery of damages) available to the Purchaser, including without limitation the remedy of

cancellation of Order for default. Delivery Date will be considered as per date of Bill of Lading/AWB/Date of receipt of Cargo by GRSE Freight Forwarder in case of Incoterms FOB/FCA/CFR/CIF.

- c) LD for Late submission of Binding Data, Drawing, Documents and QAP: Liquidated Damages @ ½% Value of Binding Data, Drawing, Documents and QAP for per week or part thereof delay in submission of Binding Drawing, Data and QAP beyond schedule date of submission mentioned in SOTR, maximum 5% of Value of Binding Data, Drawing, Documents and QAP shall be imposed.
- d) LD on submission of B&D in ILMS Format: Liquidated Damages @ ½% of Material value for per week or part thereof delay in submission of Binding Drawing, Data and QAP beyond schedule date of submission mentioned in SOTR, maximum 2% of the material value shall be imposed.
- e) The cumulative LD shall not exceed 5% of Total order value.
- f) The LD would be deducted from the invoice of Supplier/Seller at the time of release of the payment. GRSE also reserves right to recover LD by invoking / encashing any Security/BG or by adjusting or set-off against any sum payable to the Contractor/Seller under this or any other Contract with the Company.
- g) In the case of a consortium, the LD would be deducted from the invoice of lead partner/consortium partner at the time of release of the payment.
- h) Supplier/Seller agrees with the Buyer, that the above Liquidated Damages represents a genuine pre-estimate of the damages which the Buyer will suffer on account of delay in the performance of the Contract by Seller and the said amount will be payable by Seller on demand without there being any proof of the actual loss/or damage caused by such breach/delay. The Seller further agrees that Buyer's right to impose LD on account of delay in the performance of the Contract by Seller is without prejudice to any other rights (like Risk Purchase etc.) of Buyer under this Contract.
- i) Sub-contractor / Supplier / Vendor / Seller will be liable to pay Liquidated Damages for late delivery of Manuals, Drawings and Documentation as agreed to by Purchaser and Sub-contractor / Supplier / Vendor / Seller and as stated in the Purchase Order
- j) If the equipment / article or any portion thereof be not delivered by the scheduled delivery date, the Purchaser shall be at liberty, without prejudice to the right of the Purchaser to recover Liquidated Damages as provided for in these conditions or to any other remedy for breach of contract, to terminate the contract either wholly or to the extent of such default. Amounts advanced or part thereof corresponding to the undelivered supply shall be recoverable from the Sub-contractor / Supplier / Vendor / Seller at the prevailing bank rate of interest.
- k) Any failure or delay by any sub-contractor, though their employment may have been sanctioned, shall not be admitted as a ground for any extension of time or for exempting the contractor from liability for any such loss or damage as aforesaid.

## 6. **Billing and Despatch Schedule of Supply Items:**

- a) The bidder shall submit tentative list of Imported Items and Indigenously manufactured (in India) items along with their percentage of total basic price of materials in their Part-I bid.
- b) The firm on receipt of Purchase Order, and by not later within 02 weeks after completion of Design & Engineering or 03 months prior to schedule contractual delivery date, whichever is earlier, shall list out and confirm all deliverables including Main Equipment Accessories, Onboard Spares, Tools Technical Documentations and other items. Each item shall have the firm's part no. and break-up prices. The same is required essentially for incorporating GRSE material code nos. into the Purchase Order and computer systems. GRSE shall issue amendment to Purchase Order incorporating the details received from the firm with GRSE code numbers, individual prices, etc. prior to contractual delivery date. While dispatching, the firm shall identify each item with GRSE code no and the firm's part no. Packing List

should indicate all deliverable items specially mentioning mounted on main equipment or loose items. Each item should be identified with metallic or plastic tag indicating both GRSE code no. and firm's part no. In case of any deviation, GRSE shall not be in any way responsible for delay in issue of receipt inspection report and payment.

- c) Whenever supply of equipment, spares are made in lots/consignments, the number lots/consignments and delivery schedule are to be mentioned in Part-I bids. Material supplied to GRSE on same day on same LR / Bill of Lading / AWB number against a given purchase order shall be treated as one lot/consignment.
- d) All requirement as per STC and SOTR are to be complied.
- e) Indian Supplier / Bidder / Seller, who are bidding in "INR" currency, shall submit percentage of Indigenous Content and Import Content for each line item as per Annexure-XXXIII in Part-I bid. However, payment to Indian Supplier / Bidder / Seller shall be made only in "INR" currency. Please also refer "Taxes & Duties" clause.

**7. Duty to Minimize Delay:**

- a) Each Party shall at all times use all reasonable endeavors to minimize any delay in the performance of the Contract as a result of Force Majeure.
- b) A Party shall give notice to the other Party when it ceases to be affected by the Force Majeure.

**8. Mode of Despatch:**

- a) Road/Rail/Air/Sea/Inland Waterway
- b) Wherever transportation is under scope of Bidder/Seller, Bidder/Seller is required to indicate the mode of dispatch in Part-I bid.

**9. Consignee for Despatch:**

Garden Reach Shipbuilders and Engineers Ltd., 43/46 Garden Reach Road, Kolkata-700024, India.

Note :-

- (i) Consignee (including address of delivery) may change at the time of delivery of goods. It is the obligation of Seller to obtain confirmation from GRSE in regard to consignee address prior to shipment of goods. No price escalation/increase shall be entertained due to change in consignee address.
- (ii) Consignee for B&D Spares shall be finalized during placement of order. However, no price escalation shall be entertained.

**10. Payment Terms:**

As per NIT.

**11. Procedure for Submission of Service Bills (For Indigenous Bidder):**

The OEM / Supplier/ Seller shall raise the invoice/Bill against service provided and submit the same (along with all relevant documents and WDC) to concerned "BTS Counter" i.e. Counter at GRSE Unit where the Service was rendered. Sealed Envelope should be endorsed with GRSE PO No. & Firm's Invoice No and shall be addressed to "Project Leader" of the relevant ship, BTS Counter FOJ/MW/RBD (name of unit), GRSE address as applicable. Sample copy of Work Done Certificate (WDC) is attached as per Annexure-X.

**12. Taxes & Duties:**

**a) For Foreign Vendor / Seller:**

- (i) All taxes, duties, levies etc. as applicable outside India will be borne by firm / vendor.
- (ii) All taxes, duties, levies etc. applicable in India will be borne by GRSE. However, **withholding tax (applicable as per Indian Income Tax law) for provision of Technical Services (like technical assistance, training, license fees, etc.) by Foreign supplier / seller shall be deducted from Service Bill and payment shall be made after deducting the withholding tax amount.** The withholding tax amount so deducted shall be deposited by GRSE to Indian Income Tax Authority. Bidder must include this withholding tax in their Price Bid. **If foreign bidder does not agree with deduction of withholding tax, then tax amount applicable (as per Indian Government's rules) as on tender closing date shall be loaded with price bid for L-1 determination.**
- (iii) The bidder is required to submit HSN code in their Part-I Bid.
- (iv) For clearance of any payment related to the Technical services **(like technical assistance, training, license fees, etc.)** rendered by the foreign supplier, the foreign supplier must submit Permanent Account Number (PAN) of Foreign Supplier under Indian Income Tax Law, Tax Residency Certificate of Foreign Supplier in their country, and/or following documents: -
  - (aa) Name, E-mail ID, Contact Number of Firm.
  - (bb) Address in the country or specified territory outside India of which the deductee is a resident.
  - (cc) A certificate of his being resident in any country or specified territory outside India from the Government of that Country or specified territory if the law of that country or specified territory provides for issuance of such certificates.
  - (dd) Tax identification Number of the deductee in the country or specified territory of his residence and in case no such number is available, then a unique number on the basis of which the deductee is identified by the Government of that country or the specified territory of which he claims to be a resident.
- (v) The Foreign bidder (seller) shall bear and pay Import Duty [Basic custom duty (BCD), IGST, Safeguard Duty, Additional Custom Duty, NCDD, Cess etc.] applicable at Indian Port for replacement against short supply, damaged, defective items of imported equipment. If such duty is paid by GRSE, same shall be recovered by adjusting any payment due to seller.
- (vi) Custom Duty on the value of Container (excluding content of Container) shall not be paid by Purchaser. The shipper / shipping line is required to file required bond in Indian custom department.

**b) For Indigenous Vendors:**

**(aa) Goods and Service Tax (GST):**

- (i) The item being purchased under this contract shall be used for construction of ships in GRSE under chapter heading 8906 of GST HSN codes. As per sl no. 252 of Notification no. 01/2017 CT/IT (Rate) and recent advance rulings, items falling under “Any chapter”, which are parts of goods of heading 8901, 8902, 8904, 8905, 8906, 8907 are to be taxed at 5% rate. Hence Sellers must supply the goods under chapter heading 8906 and charge not more than 5% GST rate in their invoice. GRSE shall be liable to reimburse GST only upto 5% of basic value of goods. In case, Seller raises invoice at GST rate more than 5%, GRSE shall not be liable to pay additional GST over and above 5% of basic value of goods.
- (ii) In case of purchases of goods / services from unregistered dealers under GST Laws, GST will be paid by GRSE under reverse charge mechanism. The amount of GST to be paid by GRSE shall be deducted from vendor's bill.
- (iii) Benefits from reduction in rate of tax / ITC is required to be passed on to consumer. Where “applicable GST” has been quoted as extra, Goods and Service providers (except un-registered dealers under GST Law) have to submit declaration that they have complied with ‘Anti-Profiteering clause’ under GST Law. Such declaration is to be given in technical bid. The calculation of the benefit in the reduction of price should be provided by the vendor.
- (iv) If the vendor is registered under GST, vendor shall mention the HSN code for goods and / or services in their tax invoice, etc. These codes must be in accordance with GST Laws and responsibility of specifying correct HSN codes for goods and / or services is that of the vendor, GRSE shall not be responsible for any error in HSN code for goods and / or services specified by supplier/ contractor. Supplier / Contractor shall pay penalty and / or interest imposed on GRSE or any loss due to delay in availing ITC by GRSE or any loss of ITC to GRSE due to errors by vendors at any stage. GRSE reserves right to recover any such interest, penalty or loss from any amount due to Supplier / Contractor or otherwise.
- (v) If the vendor is registered under GST, the GST registration number (15-digit GSTIN) issued by GOI shall be mandatorily provided by the vendor. Vendor having multiple business verticals within state / at multiple states with separate GST registration numbers shall forward GSTIN of only that vertical which is involved in supply of goods and / or services. Vendor shall mention the same while invoicing and avoid any data entry error on GST portal.
- (vi) If the vendor is registered under GST, vendor shall ensure timely submission of invoice as per the provisions / requirement / timeline promulgated by GOI in relation to GST Law with all required supporting documents to enable GRSE to avail input tax credit promptly. The vendor's invoice inter alia should contain GSTIN of vendor, GSTIN of GRSE, GST tax rate separately, HSN code wise goods or services, place of supply, signature of vendor etc. Original invoice needs to be submitted to Bill Receipt Centre at GRSE and a copy of the invoice should be given to the goods receiving section (GRSE).
- (vii) If the vendor is registered under GST, vendor shall file all applicable returns under GST laws in the stipulated time & any losses of tax credit to GRSE arising due to delay in filing will be recovered from their invoice wherever GRSE is eligible to avail tax credit. Any default towards payment of tax and / or uploading of monthly returns by supplier / contractor, GRSE retains right to withhold payments towards tax portion until the same is corrected and complied by the supplier / contractor with the requirement of GST along with satisfactory evidence.
- (viii) The rate sheet enclosed with the tender will indicate the rates to be entered under each head wherever applicable. Bidders must clearly mention the applicable Taxes & Duties.
- (ix) The Supplier/Seller must submit original tax invoice or debit note to GRSE (Buyer) prior to the expiry of one year from the date of issue of tax invoice relating to such supply in order to avail Input Tax Credit by GRSE (Section 18(2) of CGST Act). Notwithstanding, the Supplier/Seller must submit original tax invoice or debit note for supply of goods or services or both, before the filing

of the Return under Sec 39 of CGST Act for the month of September following the financial year to which such invoice/ debit note pertains. - Section 16(4) of CGST Act. In case of default by Supplier, GRSE reserves the right not to reimburse GST amount of Invoice to supplier.

- (x) Break up of GST shall be indicated by the Seller while raising invoice / bill. While submitting the bill / invoice, Seller shall undertake that the Goods and Services Tax (GST) charged on invoice/bill is not more than what is payable under the provision on the relevant Act or the Rules made there under and that the Goods on which GST are charged have not been exempted under the GST Act or the Rules made there under and the charges on account of GST on these goods are correct under the provision of that Act or the rules made there under.
- (xi) TDS @2 % or as applicable shall be deducted on the payment made or credited to the Supplier where the total value of supply (supply of Goods or Services) under a contract exceed Rs.2,50,000/- excluding GST. However, no deduction shall be made if the location of the Supplier and the place of supply is in a state or Union Territory, which is different from the State, or as the case may be Union Territory of the registration of recipient.

**13. Bank Charges:**

(a) **For Foreign Vendor:**

- (i) All normal bank charges in India will be borne by GRSE and bank charges outside India will be borne by the Supplier/Seller.
- (ii) LC confirmation charge where required, will be borne by the Supplier/Seller.
- (iii) Bank Charges for extension of LC required due to Supplier's fault shall be borne by the Supplier/Seller.
- (iv) All Bank Charges (both Seller's Bank and Buyer's Bank) are to be borne by Supplier/Seller due to discrepancy of documents.

(b) **For Indigenous Vendors:** All applicable Bank Charges shall be borne by Supplier/Seller.

**14. Security Deposit (SD) [Interest free]:**

- a) Security Deposit (interest free) for 5% of total order value (in GRSE format enclosed) is to be submitted within thirty (30) days from the date of placement of Purchase Order in the form of Crossed Demand Draft (in favour of Garden Reach Shipbuilders & Engineers Limited., Kolkata, payable at Kolkata) or Bank Guarantee in approved GRSE format. Security Deposit /SDBG will remain valid till successful execution of purchase order with a claim period of one month.
- b) SD will be demanded from Supplier/Contractors/Sellers who are given free issue material for fabrication job, as also sub-contractors who work without free issue materials.
- c) SD will be deposited afresh by the successful bidder as per terms & conditions mentioned in the purchase order and thereafter the EMD amount / EMD BG refunded.
- d) Failure to deposit SD amount / submission of BG within stipulated time will invite penal interest from the date from which the amount was required to be deposited or BG to be submitted. The rate of interest would be at the rate of 2% per annum above LIBOR (London Inter Bank Offer Rate) (for foreign vendors) and base rate of SBI/MCLR declared by RBI (Median value applicable for public sector Banks) plus 2% (for Indian Vendors) or 6% whichever is higher. The date of reckoning such interest rate shall be date on which Supplier is required to submit BG as per above term 11(a). GRSE shall also have the right to

recover the amount from outstanding dues to the Contractor against any other Purchase Orders placed by GRSE.

- e) In the event of failure to execute the order satisfactorily or default by the Sub-contractor / Supplier / Vendor, the Security Deposit will be forfeited.

**Note: Refer “General Rule of all Bank Guarantee” clause**

**15. Performance Bank Guarantee (PBG):**

- a) Performance Bank Guarantee (in GRSE format enclosed) for 5% of material value of supply items is to be submitted 30 days before dispatch of materials and the same shall remain valid till expiry of Guarantee/Warranty Period with a claim period of 01 month.
- b) In case GRSE desires to place purchase order for Warranty extension (as per provision of Tender), PBG is required to be extended by Seller till the extended warranty period plus 01 month claim period. In case PBG extension is not possible, fresh PBG (having same value as for original PBG) with validity period till extended till warranty period plus 01 month claim period is required to be submitted by Seller.
- c) No interest shall be paid by Purchaser for PBG or Performance Security.
- d) Bank Guarantee is to be sent by your Banker directly to the following address: - Dy. General Manager (Finance - VP), Garden Reach Shipbuilders & Engineers Ltd., GRSE 61 Park unit, 61 Garden Reach Road, Kolkata - 700 024, India.
- e) Bank guarantee to be issued by any reputed scheduled bank as promulgated by RBI (other than cooperative bank) or banks of international repute.
- f) Format provided in GRSE website under the head <https://www.grse.in/CommercialShipBuilding>.

**16. General Rule of all Bank Guarantees:**

- (a) The Bank Guarantee shall be from scheduled Banks (promulgated by RBI) other than Co-operative Banks in approved GRSE format, which means the schedule Bank (promulgated by RBI) shall be guarantor / surety to GRSE.
- (b) It is the distinct condition of the Bank Guarantee that no suit or action for the purpose of enforcing any claim in respect of the Bank Guarantee shall be instituted in any Court other than that situated in Kolkata City, West Bengal State, India and the parties agree to exclusively submit to such jurisdiction.
- (c) Bank Guarantee is to be submitted in currency of order.
- (d) In the event of postponement of completion period or extension of guarantee desired and sought by GRSE, the Bank Guarantee has to be extended till the extended period desired by GRSE.
- (e) The charges for extension of Bank Guarantee shall be payable by the Principal Contractor / Contractor / Seller in case delay in completion of supply/service/works/project is not attributable to GRSE. The Bank Guarantee shall be interest free.
- (f) All Bank Guarantees shall be encashable in Kolkata.
- (g) Bank Guarantee should be executed on a non-judicial stamp paper of Rs.100/- which should be obtained in the name of the executing Banker. In case a single stamp paper of Rs.100/- is not available, stamp paper of multiple denomination is acceptable provided serial no. of such stamp paper are consecutive and are purchased on the same date. Any alteration in the writing is required to be authenticated by the

signatory executing the Bank Guarantee under official seal. Bank Guarantee must be submitted in banker's sealed envelope directly to our Finance department.

- (h) Bank Guarantee should be executed strictly as per GRSE's format.
- (i) All Bank Guarantee is to be sent directly by Seller's Banker in a sealed envelope to the following address. Bank Guarantee may also be forwarded in SWIFT mode through GRSE's banker.

Additional General Manager (Finance - VP) / General Manager (Finance)  
GRSE Finance department, 61 Garden Reach Road, Kolkata-700024, India.  
Contact No. (+91) 8336006940

#### **17. Guarantee / Warranty:**

- (a) The equipment/materials are to be guaranteed/warranted for satisfactory performance for the period of 18 months from the date of satisfactory commissioning of the vessel on which the equipment/materials/items are installed OR for the period of 36 months for small ships and 48 months for large ships from the date of final dispatch, whichever expires earlier, against improper design, defective materials and faulty workmanship.
- (b) During guarantee / warranty period, if any item/ materials thereof supplied by the Seller/Contractor, suffers due to defective material and or due to improper design and or due to defective drawing or due to faulty workmanship, the vendor will assume full responsibility of rectification of such defective equipment or component thereof including direct expenses related to removal and re-positioning of the replacement/repaired equipment or component thereof and subsequent test & trial, incurred thereon without any financial implication to GRSE within 07 days (for Indigenous vendors) and 21 days (for Foreign vendors) of notice of such defect. If any items are required to be removed from GRSE for defect repair, then Supplier/Seller shall remove the same after submission of Bank Guarantee amounting equivalent to value of material to be removed and having validity of Bank Guarantee till the time of return of repaired/fresh material to GRSE and regiment to original equipment to GRSE. In case materials are delivered in multiple consignments/lots, last date (actual) of delivery of consignment shall be reckoned for calculation of warranty date.
- (c) If the defects intimated during the Guarantee period are not remedied within stipulated time, the Purchaser may proceed to rectify the defects at the Sub-contractor's / Supplier's / Vendor's risk and cost, but without prejudice to any other rights which the Purchaser may have against the Sub-contractor / Supplier / Vendor in respect of the failure of the Sub-contractor / Supplier / Vendor to remedy such defects.
- (d) In the event of Sub-contractor's / Supplier's / Vendor's failure to attend the Guarantee defects within stipulated period of time, the Performance Bank Guarantee will be encashed by the Purchaser. The Purchaser's decision shall be final and binding on Sub-contractor /Supplier / Vendor in this regard.
- (e) **For items having Shelf Life, the bidder is to mandatorily indicate the shelf life of each item to ascertain the maximum possible warranty period.**
- (f) Issues/Defects related to Guarantee/Warranty shall have to be liquidated at the location of vessel and as desired by the Purchaser / Owner.
- (g) The guarantee period of replaced parts /items shall however be reckoned from the date of replacement.
- (h) **Removal of Defective Material (under Warranty).** In case defective material is required to be removed from GRSE's premise for repair/rectification/replacement to be carried out at Principal Contractor/Contractor/Supplier's Premise/Works, following procedures are to be followed by Principal Contractor/Contractor/Supplier:-

- (i) The Principal Contractor/Contractor / Supplier shall collect the same from the Purchaser's Stores immediately from the date of intimation to the Principal Contractor/Contractor / Supplier of such rejection. All incidental charges are to be borne by Principal Contractor/Contractor (inclusive of Customs Duty, if payable),
- (ii) The Principal Contractor/Contractor / Supplier is required to submit Bank Guarantee equivalent to value of defective material prior to removal of defective material from premise of GRSE.
- (iii) The Supplier is required to submit details as per GRSE's Export Queries form and other relevant documents in supplier's letterhead within 05 days from date of intimation of defect to Supplier. Export Queries form and other documents required for exporting the defective goods shall be forwarded during intimation of defect to Supplier.
- (iv) The Supplier is required to adhere all rules and regulations under Indian Law like Custom Law, GST Law etc. and prepare documentation for Re-Importation (from supplier's country to India after repair/replacement) as per Indian Law.

(i) The vendor / sub-contractor / supplier may, with the consent of Purchaser and after submission of Bank Guarantee for the equivalent cost of equipment or part of equipment, remove from Purchaser's premise / Ship any equipment or part of equipment that are defective if the nature of the defect, and/or any damage to the Ship caused by the defect, is such that repairs cannot be expeditiously carried out at the Purchaser's premise / Ship but become essential in the mean time for construction of Ship / use in Ship, the Vendor / Sub-contractor shall replace at site free of cost to the Purchaser, the defective parts, before the defective parts are removed from Purchaser's premise / Ship.

(j) If the repair, replacement or making good is of such a character that it may affect the efficiency of the Main equipment / Ship, the Purchaser may give to the vendor/sub-contractor a notice requiring that test of defective of Main equipment shall be made by the vendor/sub-contractor immediately upon completion of such remedial work, whereupon the Vendor / Sub-contractor shall carry out such test.

(k) If the Vendor / Sub-contractor / Supplier fails to commence the work necessary to remedy defect or any damage to the Main equipment / Ship caused by such defect within a reasonable time, which shall in no event be considered to be less than fifteen(15) days, the Purchaser may, following notice to the Vendor / Sub-Contractor / Supplier, proceed to do such work, and the reasonable cost incurred by the Purchaser in connection therewith shall be paid to the Purchaser by the Vendor / Sub-contractor / Supplier or may be deducted by the Purchaser from any money due to the Vendor / Sub-contractor or claimed under the Performance Bank Guarantee.

(l) If the Main Equipment or any part thereof cannot be used by reason of such defect and/or making good of such defect, the Guarantee / Warranty period of the Main equipment or such part, as the case may be, shall be extended without any additional financial burden on Buyer by a period equal to the period during which the Main Equipment or such part cannot be used by the Purchaser because of any of the aforesaid reasons.

(m) **Warranty / Guarantee Extension:** Bidder to quote warranty / guarantee extension charges of Main Equipment & OBS -1 year for a period of 02 years. If GRSE desires to extend the warranty / guarantee period after placement of order, the charges for warrantee / guarantee period extension quoted by the Bidder shall be considered on pro-rata basis for the actual extension period. Irrespective of acceptance of the GRSE's warranty / guarantee clause by the Bidders, the quoted warranty / guarantee extension charges applicable for a period of two years will be loaded for deciding the lowest Bidder. In case a Bidder does not quote warranty/ guarantee extension charges in their Part-II Price Bid, the said charges will be considered as 0% (Nil) while ranking of the bid. In such case Bidder has to extend warranty / guarantee if required at no extra cost up to 2 years beyond contractual agreed period. The placement of purchase order for warranty extension shall be at the discretion of GRSE (not obligation) and separate purchase order shall be placed if required by GRSE.

- (n) Supplier shall warrant that they will make available the blue prints of the drawings of the spares if and when required in connection with the main equipment.
- (o) Buyer reserves the right to claim all consequential loss/damage sustained by Buyer because of Supplier's failure to rectify defective equipment or component thereof including direct and to re-position the replaced/repaired equipment or component thereof and to subsequent test & trial etc., within the timeframe stipulated under above para (a) of this clause.
- (p) **Warranty for B&D Spares:** Warranty shall be as per SOTR/TSP. The Warranty for the spares supplied shall be limited to back to back basis and the Warranty obligations flow down to the Indian Navy. This means that if the ship is delivered to Indian Navy by shipyards and at that time the B&D spares warranty exists, then the balance warranty period of the spares shall be extended to Indian Navy.
- (q) GRSE reserves right to reduce initial warranty period of equipment [stipulated at para (a) above] at any time after award of contract. In that case, equipment price shall be reduced proportionately at same rate in which warranty extension charge is quoted by Bidder [refer para (h) above]. Accordingly, excess amount paid on account of equipment price shall be recovered from Bidder.

#### **18. Inspection, Tests and Certification:**

- (a) Inspection for Indigenous Items. (appropriate clause of SOTR/TSP)
- (b) Inspection for Imported Items. (appropriate clause of SOTR/TSP)
- (c) Joint Receipt Inspection (JRI) in INDIA at Buyer's Premise:
  - (i) Preliminary inspection at Seller's works by Inspector shall not prejudice Purchaser's claim for rejection of the equipment on final inspection at Purchaser's premise or claims under warranty provisions.
  - (ii) Joint Receipt Inspection (JRI) will be carried out within 30 days of arrival of equipment at Buyer's premise by Buyer's representative, Buyer's Customer's representative (if applicable) and Supplier's representatives (reps). The Supplier is required to depute their reps at GRSE within 07 days from date of intimation by email for JRI. If supplier is not able to depute reps within 07 days, GRSE will carry out receipt inspection in absence of reps of OEM. The JRI shall be forwarded to Seller within 30 days of date of JRI. Any discrepancies / shortfall found during receipt inspection are to be made good by supplier immediately free of cost. In case equipment manufacturer/ vendor's representatives desire to attend JRI, the bio data of the equipment manufacturer/ vendor's representative will be communicated fifteen (15) days prior to the dispatch of goods to the shipyard for obtaining the necessary security clearance.
- (d) Manufacturer's Test Certificates, Supplier's Guarantee Certificates, Class inspection certificate like LRS, ABS etc. (if applicable) are to be **provided along with delivery of material**, failing which items are liable to be rejected.
- (e) A set of the above certificates are also be forwarded by email (saha.rajen@grse.co.in) and courier to the ordering authority **separately** for record within 02 days of shipment.
- (f) MATERIAL SAFETY DATASHEET (APPLICABLE FOR DANGEROUS CARGO)
- (g) **Third Party Inspection or Class Inspection:** All costs related to inspections and re-inspections shall be borne by the Seller. In case of inspection by GRSE and / or GRSE's customer, the cost of to & fro passage and Boarding & Lodging shall be borne by the Purchaser / Customer, unless otherwise specifically agreed. In case of foreign vendors, the cost of third-party inspection, where called for, shall be deemed to be included in the quoted price. Seller shall be responsible to provide assistance such as

labour, materials, electricity, fuels, stores, apparatus, instruments at his cost, as may be required and as may be reasonably demanded to carry out such tests effectively.

- (h) Pre-Dispatch Inspection/Factory Inspection & Test (FAT): The Seller must intimate **date of Factory Inspection & Test at Seller's premise at least 10 weeks in advance** to enable Buyer's QA personnel and Buyer's Customer's (IN) to be available for inspection.
- (i) For Imported Equipment. After the expiry of the life of goods and support equipment, but not before 25 years from the effective date of the Contract, the Buyer shall have the right at his discretion to dispose of such goods/equipment/spares without reference to the Supplier/Seller except in cases where end-users' certificates have been given by the Government / Buyer / Buyer's Customer.
- (j) Inspection and approval of the equipment or material by the Inspecting Authority/ies does not absolve the Sub-contractor / Supplier / Vendor of the responsibility of guarantee for the equipment / material. It will be the sole responsibility of the Sub-contractor / Supplier / Vendor to ensure that the equipment / material supplied is complete in all respects and performs to its / their designed parameters."

#### **19. Packing Instructions:**

- (a) The materials are to be properly packed to protect against damage in the conditions of land, sea and air transportation, transshipment, storage and weather hazards during transportation, ingress of water & dust, pilferages during transits and to store for a period indicated in SOTR & TSP. All packing/cases should be properly identified and tagged as per SOTR Clause.
- (b) In case of despatch through SEA /AIR, standard Seaworthy / Airworthy Packing (without any additional cost to GRSE) is to be done as applicable.
- (c) The Bidder must mention/confirm following in Part-I (Techno commercial) bid.
  - (i) The type of Cargo whether LCL/FCL/Break Bulk Cargo/Dangerous Cargo/ODC etc.
  - (ii) The type of container (Standard 20 ft/Standard 40 ft/Open top/Flat Rack/. etc.).
  - (iii) Whether container is Shipper Owned Container (SOC) or Shipping Line's Container.
  - (iv) For shipment through sea, Bidder must mention along with Part-1 bid whether weight of any single package is more than 30 MT (Single Package having weight of more than 30 MT is considered as Critical ODC for Sea freight).
  - (v) Approx., weight and dimension, quantity of box etc.
  - (vi) Approx. distance from Vendor's works to Port of Loading.
- (d) In case of Shipper Owned Container (SOC), SOC word is required to be indicated in Bill of Lading.
- (e) Wherever Marine Freight is responsibility of Seller, **Seller must provide container with minimum 30 days' detention free period from the date of delivery at Port of Discharge / Place of Delivery.**
- (f) The Bidder must provide required documents like Material Safety Datasheet (MSDS) etc. for Dangerous Cargo prior to delivery.
- (g) The materials must be adequately packed in all respects for normal transport by Sea/Postal/Air dispatch to India, suitably protected against the effects of a tropical salt laden, atmosphere, in the event of delay at Indian Port, before clearing.
- (h) Each class of material, and particularly electrical equipment should be packed separately and gross weight of individual cases kept under 4480 lbs. Where possible. If more than one case is included in shipment, cases should be numbered 01 and up & the corresponding number should be shown on the

packing list, listing contents therein. Gross weight must be shown on each package to avoid penalty by the local customs. All materials should be properly protected against ocean shipment particularly the possibility of rusting, corrosion or breakage.

- (i) Every case / package must contain a packing note indicating particulars of the contents.
- (j) All timber used in the packing of the materials is to be free from bark, insects and fungi.
- (k) Gross and Net weight/packing dimension/No of packages mentioned in the Air Way Bill should be strictly in conformity with those stated either of packing List and Invoice.
- (l) Packing list should be drawn up for individual packages clearly mentioning dimension of each package, gross as well as net weight.
- (m) Description of items mentioned in packing list should be in conformity with invoice and our purchase order. GRSE material code corresponding to the Supplier's Material code should be mentioned in packing list.
- (n) Gross weight / Net weight, dimension marked on the packing should be strictly in conformity with the packing list.
- (o) GRSE Material code, PO Item No., PO description must be mentioned in packing list, Material Test certificate and invoice.
- (p) Detailed Packing List in waterproof envelope shall be inserted in the package together with equipment/material. One copy of the detailed packing list shall be fastened outside the package in waterproof envelope and covered by metal cover.
- (q) The container or Packing Box shall also contain copy of following documents in waterproof envelope together with equipment/material.
  - (i) copy of Material Test Certificate
  - (ii) Copy of warranty certificate
  - (iii) copy of invoice
  - (iv) Copy of Third-Party Inspection certificate
- (r) Wood packaging material is required to be treated and marked as per International Standard for Phytosanitary Measure (ISPM) No.15 or supplier is required to dispatch material accompanied by a Phytosanitary certificate with the treatment endorsed.

(s) Labeling / Shipping Marks:

- (i) The Equipment Manufacturer shall mark each package with indelible paint in English language as follows: -

EXPORT

Contract No.

Consignee: GRSE LTD, KOLKATA

Port/Airport of destination: KOLKATA

SELLER -----

Package No. a/b -----

Gross/net weight: kg -----

Overall dimensions/volume: cm/cu m -----The  
Equipment Manufacturer marking,  
Where: a- Serial No. of package;  
b- total number of packages in this consignment.

(ii) **Note: For Imported Material:**

- AA. Letters, figures, marks etc., used for marking shall be stencil printed. Handwriting should be avoided as far as possible. Size of letters shall be optimum for each package dimension.
- BB. In case of bundles or other packages wherever marking cannot be stenciled the same shall be embossed on metal or similar tag and wired securely at minimum two convenient points and both ends shall be suitably protected/covered. In case of loose pipes sticker of above markings should be pasted on inner wall corner of each pipe on both sides.
- (iii) Additional marking such as 'HANDLE WITH CARE', 'THIS SIDE UP', 'FRAGILE' or any other additional indications for protection and safe handling shall be added depending on the type of material. If necessary, each package shall be marked with warning inscriptions:<Top>, "Do not turn over", category of cargo etc.
- (iv) Specific marking with paint for 'SLINGING' and 'CENTRE OF GRAVITY' should be provided for all heavy lifts weighing 5 Tons and above.
- (v) In case of bundles/bags or other packages, wherever marking cannot be stenciled, the same shall be embossed on metal or similar tag and wired securely at two convenient points.
- (t) All Returnable items are to be dispatched separately to enable smooth return after completion of project.
- (u) Items shipped in bundles must be securely tied with steel wire or strapping. Steel reinforcing rods, bars, pipes, structural materials, etc. shall be bundled in uniform lengths and the weight shall be within the breaking strength of the securing wire or strapping.
- (v) All delicate surfaces on equipment/materials should be carefully protected and painted with protective paint/compound and wrapped to prevent rusting and damage.
- (w) All mechanical and electrical equipment and other heavy articles shall be securely fastened to the case bottom.
  - (i) Attachments and spare parts of equipment and all small pieces shall be packed separately in wooden cases with adequate protection inside the case and wherever possible should be sent along with main equipment. Each item shall be suitably tagged with identification of main equipment, item denomination and reference number of respective assembly drawing. Each item of steel structure and equipment shall be identified with two erection markings with minimum lettering height of 15 mm. Such marking will be followed by connection numbers in indelible ink/paint. A copy of the packing list shall accompany the material in each package.
  - (ii) All protrusions shall be suitably protected by providing a cover comprising of tightly bolted wooden discs on the flanges.
  - (iii) Wherever required, equipment/materials/instruments shall be enveloped in polyethylene bags containing silica gel or similar dehydrating compound.
  - (iv) Pipes with threaded or flanged ends shall be protected with suitable caps/covers before packing.
  - (v) The Seller shall be held liable for all damages or breakages to the goods due to the defective or insufficient packing as well as for corrosion due to insufficient protection.

- (vi) Packaged equipment or material showing damage, defects or shortages resulting from improper packaging material or packing procedures or having concealed damage or shortage, at the time of unpacking shall be to the seller's account.
- (x) The packing of the equipment and spares/goods shall conform to the requirements of specifications and standards in force in the territory of the Equipment Manufacturer country.
- (y) Each spare, SMT, STE and accessory shall be packed in separate cartons. A label in English shall be pasted on the carton indicating the under mentioned details of the item contained in the carton. A tag in English with said information shall also be attached to six samples of the item. If quantity contracted is less than six then tag shall be affixed to complete quantity contracted of the item. The cartons shall then be packed in packing cases as required.
  - (i) Part Number:
  - (ii) Nomenclature:
  - (iii) Contract annex number:
  - (iv) Annex serial number:
  - (v) Quantity contracted:
- (z) One copy of the packing list in English shall be inserted in each cargo package, and the full set of the packing lists shall be placed in Case No.1 painted in a yellow colour.
  - (aa) All OBS are to be packed in PIP packing and to be supplied in separate box. The word "OBS" shall be embossed on top of Box. The identification and part number of each OBS are to be tagged as explained above.
  - (bb) Supplier's rep is required to be deputed during receipt inspection of loose items, accessories & spares for easy identification & detection of shortfall. Please refer Inspection clause for detail.

#### **20. PRESERVATION:**

A detailed procedure for long- and short-term preservation of the equipment and periodicity of preservation along with special preservatives, if required, prior to installation of the equipment shall be furnished by the Sub-contractor / Supplier / Vendor. The detailed procedure for de-preservation prior to commissioning shall also be furnished. Should any material require any additional preservation till its final installation / fitment on board the Ship, the materials should be supplied in preserved (sealed or in cocoons) condition for long duration of time as per order. Detailed procedures for subsequent de-preservation / re-preservation are to be stated by Sub-contractor / Supplier / Vendor. The preserved sealed cases / cocoons will not be opened on receipt and same will be opened when the first preservation is due or if required on board earlier. The short fall, discrepancy or damage, if any, found during the inspection after opening these cases will have to be replaced / made good by the supplier free of cost within reasonable period."

#### **21. Way Bill/ Road Permit: (For Indigenous Vendors):**

One ink signed copy of Invoice and ink signed Transporter's L.R copy is to be forwarded by courier / speed post immediately on dispatch for issue of way bill. GRSE shall not be responsible for delay in issue of way bill arising due to delay in receipt of above documents.

**22. Force Majeure Clause:**

Standard Force Majeure Clause as per format approved by the Ministry of Law (given below) and STACs will be applicable. The failure of the sub-contractors of the suppliers shall not be accepted as a Force Majeure Condition. Vendor is to submit relevant proof / document well in time to buyer to inform force majeure condition. Power failure will not be treated as a force majeure condition.

Should any force majeure circumstances arise, each of the contracting party shall be excused for the non-fulfilment or for the delayed fulfilment of any of its contractual obligations, if the affected party within 15 days of its occurrence informs the other party in writing.

Force majeure shall mean fires, floods, natural calamities or other acts such as war, turmoils, strikes (as not limited to be establishment of the seller), sabotage, explosions, quarantine restrictions beyond the control of either party.

It is understood and agreed between the parties hereto that the rights and obligations of the parties shall be deemed to be in suspension during the continuance of the force majeure event as aforesaid and the said rights and obligations shall automatically revive upon the cessation of the intervening force majeure event. The period within which the rights and obligations of the parties shall be in suspension due to force majeure event shall not be considered as a delay with respect to the period of delivery and / or acceptance of delivery under the contract or otherwise to the detriment of either party.

Notwithstanding the provisions of the immediately foregoing clauses it is further understood and agreed between the parties hereto that in the event of any force majeure persisting for an uninterrupted period exceeding 6 (six) months, either party hereto reserves the right to terminate this contract upon giving prior written notice of 30 (thirty) days to the other party of the intention to terminate without any liability other than reimbursement on the terms provided in this agreement for the goods received.

**23. Defaults, Breaches, Termination, Risk Purchase and closure of Contract:**

a) **Termination due to Breach, Default, and Insolvency:**

(i) **Defaults and Breach of Contract**

1. In case the contractor undergoes insolvency or receivership; neglects or defaults, or expresses inability or disinclination to honour his obligations relating to the performance of the contract or ethical standards or any other obligation that substantively affects the Procuring Entity's rights and benefits under the contract, it shall be treated as a breach of Contract. Such defaults could include inter-alia:
2. **Default in Performance and Obligations:** if the contractor fails to deliver any or all of the Goods or fails to perform any other contractual obligations (including Code of Integrity or obligation to maintain eligibility and Qualifications based on which contract was awarded) within the period stipulated in the contract or within any extension thereof granted by the Procuring Entity.
3. **Insolvency:** If the contractor being an individual or if a firm, any partner thereof, shall at any time, be adjudged insolvent or shall have a receiving order or order for the administration of his estate made against him or shall take any proceeding for composition under any Insolvency Act for the time being in force or make any conveyance or assignment of his effects or enter into any assignment or composition with his creditors or suspend payment or if the firm be dissolved under the Partnership Act, or
4. **Liquidation:** if the contractor is a company being wound up voluntarily or by order of a Court or a Receiver, Liquidator or Manager on behalf of the Debenture-holders is appointed, or circumstances shall have arisen which entitle the Court or Debenture-holders to appoint a Receiver, Liquidator or Manager

(ii) **Notice for Default:**

As soon as a breach of contract is noticed, a show-cause 'Notice of Default' shall be issued to the contractor, giving two weeks' notice, reserving the right to invoke contractual remedies. After such a show-cause notice, all payments to the contractor would be temporarily withheld to safeguard needed recoveries that may become due on invoking contractual remedies.

(iii) **Terminations for Default**

1. **Notice for Termination for Default:** In the event of unsatisfactory resolution of 'Notice of Default' within two weeks of its issue as per sub-clause above, the Procuring Entity, if so decided, shall by written Notice of Termination for Default sent to the contractor, terminate the contract in whole or in part, without compensation to the contractor.
2. Such termination shall not prejudice or affect the rights and remedies, including under sub-clause below, which have accrued and/ or shall accrue to the Procuring Entity after that.
3. Unless otherwise instructed by the Procuring Entity, the contractor shall continue to perform the contract to the extent not terminated.
4. All warranty obligations, if any, shall continue to survive despite the termination.

(iv) **Contractual Remedies for Breaches/Defaults or Termination for Default**

If there is an unsatisfactory resolution within this period, the Procuring Entity shall take one; or more of the following contractual remedies.

1. Temporary withhold payments due to the contractor till recoveries due to invocation of other contractual remedies are complete.
2. Call back any loaned property or advances of payment, if any, with the levy of interest at the prevailing rate (MIBID - Mumbai Interbank Bid Rate).
3. Recover liquidated damages and invoke denial clause for delays.
4. Encash and/or Forfeit performance or other contractual securities.
5. Prefer claims against insurances, if any.
6. Terminate contract for default, fully or partially including its right for Risk-and-Cost Procurement as per following sub-clause.
7. **Risk and Cost Procurement:** In addition to termination for default, the Procuring Entity shall be entitled, and it shall be lawful on his part, to procure Goods similar to those terminated, with such terms and conditions and in such manner as it deems fit at the "Risk and Cost" of the contractor. Such 'Risk and Cost Procurement' must be contracted within six months from the breach of Contract. The Contractor shall be liable for any loss which the Procuring Entity may sustain on that account provided the procurement, or, if there is an agreement to procure, such agreement is made. The Contractor shall not be entitled to any gain on such procurement, and the manner and method of such procurement shall be in the entire discretion of the Procuring Entity. It shall not be necessary for the Procuring Entity to notify the contractor of such procurement. It shall, however, be at the discretion of the Procuring Entity to collect or not the security deposit from the firm/ firms on whom the contract is placed at the risk and cost of the defaulted firm.

*Note: Regarding the Goods which are not readily available in the market and where procurement difficulties are experienced, the period for making risk procurement shall be nine months instead of six months provided above.*

8. Initiate proceedings in a court of law for the transgression of the law, tort, and loss, not addressable by the above means.

b) **Frustration of Contract:**

1. **Notice of Frustration Event:** Upon a supervening cause occurring after the effective date of the contract, including a change in law, beyond the control of either party whether as a result of the Force Majeure clause or within the scope of section 56 of the Indian Contract Act, 1872, that makes it impossible to perform the contract within a reasonable timeframe, the affected party shall give a 'Notice of Frustration Event' to the other party giving justification. The parties shall use reasonable efforts to agree to amend the contract, as may be necessary to complete its performance. However, if the parties cannot reach a mutual agreement within 60 days of the initial notice, the Procuring Entity shall issue a 'Notice for Determining the contract' and terminate the contract due to its frustration as in the sub-clause above.
2. However, the following shall not be considered as such a supervening cause.
  - Lack of commercial feasibility or viability or profitability or availability of funds
  - if caused by either party's breach of its obligations under this Contract or failure to act in good faith or use commercially reasonable due diligence to prevent such an event.

c) **Closure of Contract:**

(i) **No Claim Certificate and Release of Contract Securities**

After mutual reconciliations of outstanding payments and assets on either side, the contractor shall submit a 'No-claim certificate' to the Procuring Entity requesting the release of its contractual securities, if any. The Procuring Entity shall release the contractual securities without any interest if no outstanding obligation, asset, or payments are due from the contractor. The contractor shall not be entitled to make any claim whatsoever against the Procuring Entity under or arising out of this Contract, nor shall the Procuring Entity entertain or consider any such claim, if made by the contractor, after he shall have signed a "No Claim" Certificate in favour of the Procuring Entity. The Contractor shall be debarred from disputing the correctness of the items covered by the "No Claim" Certificate (format as per Annexure XXVI) or demanding a clearance to arbitration in respect thereof.

(ii) **Closure of Contract**

The contract shall stand closed upon

1. successful performance of all obligations by both parties, including completion of warrantee obligations and final payment.
2. termination and settlements after that, if any, as per clauses above.

**24. Technical assistance/Service Engineer:**

- a) Technical assistance is to be provided as per the scope mentioned in TSP/SOTR.
- b) Price for Services of Engineers (dedicated independent team for each ship) for the purpose of Installation, STW, HAT, FMT, SAT, Training etc. are to be quoted on Lump sum basis (including TDS/Withholding Tax as per Indian Income Tax Law) in template of "Item Rate BOQ" or Part-II bid. Please also refer Taxes & Duties clause of Special Commercial Terms and Conditions of this NIT. The quoted price should be inclusive of To & Fro travelling expenses, lodging and boarding, local

conveyance, food & incidentals, communication system, medical, insurance, personal Indian Income tax, all incidental charges etc. for each activity as per TSP.

- c) Services of Engineer's cost break in percentage for each of the activity as per TSP, if any, is to be indicated in Part-I bid. Please note that prices are not to be mentioned in Part-I bid.
- d) Please note that it is the sole responsibility of the vendor to complete the trials till SATs & Habitability trials including Final Machinery Trials (FMT) within quoted prices of services of Engineers. The quoted price shall be firm and fixed till completion of all activity as per SOTR. No extra cost (like man-day rate / Sortie rate) shall be provided to supplier/OEM.
- e) Service Engineers are required to be deputed (at GRSE, Kolkata or any other place in India, where ship shall be built/commissioned. Place of deputation shall be confirmed by GRSE during notice of deputation) for attending on board activity against GRSE's call (normally one week notice for foreign bidder, 2-3 days notice for Indian bidder). In case of emergency, bidder may also require to depute their rep at shorter notice. Timely availability of Service Engineers shall be ensured.
- f) Bio-data of the Foreign Engineers / Experts shall be furnished by the Supplier / Seller to the Purchaser for approval sufficiently in advance before their deputation. The Supplier / Seller shall obtain at its own cost, necessary work permits, passports, visas, police permits and expenses for custom duty related to personal and other effects of Experts/Personnel who are non-residents of India, employed or engaged by him for work.
- g) In the event, Expert is not found of required skill/expertise, then Purchaser will have right to send the Expert back at the cost of the Supplier/Seller.
- h) In the event of any of Seller's or OEM's employees suffers loss, injury and damage, in any manner whatsoever, during the course of execution of the work, at Purchaser's Yard or On board ship, the loss and damage incurred on account of thereof, shall be borne by the Seller in conformity with the laws in force.
- i) Supplier/OEM shall forward details checklist/prerequisites separately for each activity like Installation, STW, HAT, FMT, SAT etc. within one month of delivery of equipment to enable GRSE to keep the system ready for that activity.
- j) Timely availability of Service Engineers shall be ensured by Supplier / OEM.
- k) No Extra Man-days charge shall be paid till Sea Acceptance Trial (SAT).

**25. Special Note:**

- a) GRSE Material code, PO Item No., PO Item description must be mentioned in packing list, Material Test certificate and invoice.
- b) For spares, where suppliers are not Original Equipment Manufacturer (OEM), GRSE reserves the right to procure the spares from the OEM/authorized dealer after initial supply. This shall have no bearing on the original warranty terms of the contract.
- c) Non-conformity of description/quantity and other information in the shipping documents shall be deemed as error in the documentation for customs clearance. Your invoice must indicate item wise price as per order.
- d) For Shelf life items, shelf life from the date of production / despatch is to be clearly mentioned. However, goods are to be supplied from latest production batch to avail maximum shelf life. Batch No. & month of production is to be marked on each container.

- e) In case of any statutory documents required to be provided due to change in Statutory rules / regulations in India, the same is required to be provided by the firm, even if the same is not mentioned in the P.O /Contract.
- f) In case of placement of Order, all Description/Quantity/Value to be stated in the invoice strictly as per Purchase Order and **no deviation** whatsoever in respect of above shall be permitted. Invoice must indicate item wise price as per order.
- g) **OEM Certificate.** In case the Seller is not the OEM, the agreement certificate with the OEM for sourcing the spares shall be mandatory. However, where OEMs do not exist, minor aggregates and spares can be sourced from authorized vendors subject to quality certification.

## **26. License, Permits & Certificates:**

- a) The Contractor, if required for execution of Contract, shall obtain and maintain the necessary Export Licence from the competent authorities and shall pay at his cost any fee connected therewith. Failure to obtain and maintain Export Licences shall not be considered as Force Majeure. The bidders shall take into account the period required for obtaining such license while indicating delivery / completion periods for the items /equipment and delays in supplies for non-availability of such licenses are to be accounted for by the bidders.
- b) In case, the Contractor fails to obtain or maintain the licenses, or if the licenses are withdrawn, he shall restore them within two months from date of such cancellation/withdrawal, failing which the Buyer shall have the right to cancel the Contract and the Contractor shall forthwith return to the Buyer all the amounts paid by the Buyer to the Contractor.
- c) The 'End User' certificate if required by the supplier for obtaining the license is to be forwarded by Purchase. The seller must submit draft "End User Certificate" (EUC) in their template duly filled up all information within **02 weeks of award of contract**. Buyer need **02-month time** from date of receipt of draft copy for EUC from seller for issuing signed copy of EUC. Delay in submission of draft copy of EUC (duly filled up with all requisite information) shall be in the account of seller. No delivery date extension shall be entertained in case of delay in submission of draft copy of EUC (duly filled up with all requisite information) by Seller.
- d) Seller shall procure, at his expense, all necessary permits, certificates and licenses required by virtue of all applicable laws, regulations, ordinances and other rules in effect at the place where any of the work is to be performed, and Seller further agrees to hold Purchaser and/or Consultant harmless from liability or penalty which might be imposed by reason of any asserted or established violation of such laws, regulations, ordinances or other rules.

## **27. Progress Monitoring & Review Mechanism:**

- 27.1 The required dates are indicated in tender. On placement of order a kick-off meeting is to be held in GRSE to chalk out the sequence and priority of the activities and the deliverables in line with the prevailing construction status of the ship. In this meeting, a progress monitoring team shall be constituted comprising vendor's representative engineer, GRSE's executives (one each from Planning, Design and Ship Manager). This team shall carry out periodic reviews (initially quarterly followed by monthly reviews) to decide and chalk out the detailed sequence and priority of the completion of work and deliverables. The vendor would have to adhere to the recommendations and decisions of the said team while executing the work.
- 27.2 Wherever Contractual delivery period exceeds more than 06 month from PO/LOA date, OEM/Supplier is required to submit/render following report: -

- a) First Information within 45 days of PO comprising following: -
  - (i) SDBG submission status.
  - (ii) Order execution plan along with percentage progress measurement methodology and bar chart indicating progress milestones.
  - (iii) Documents submission status (Level 1, Binding Data, QAP, etc.).
- b) Quarterly Progress Report commencing first week of quarter following submission of First Information comprising following: -
  - (i) Updated Progress bar chart.
  - (ii) Document submission and approval status.
  - (iii) Ordering Status of major outsourced items and raw materials.
  - (iv) Report on indigenization plan submitted as part of tender.
  - (v) Manufacturing status in own and sub supplier's factory.
  - (vi) Stage Payment Status where applicable.
  - (vii) Bottlenecks/Holdups if any.

27.3 OEM/Seller's representative is required to participate in all review meeting at GRSE as and when required.

27.4 GRSE reserves the right to depute GRSE's nominated officials at the premie of OEM/Seller for assessment of work progress at GRSE's cost.

**28. Excess Payment clause:**

No Certificates of the Engineer of GRSE or his Representative shall protect the Principal Contractor/Contractor against or prevent the GRSE (Owner) from obtaining repayment, if any, from the Contractor, in case the Engineer of GRSE or his Representative over-certify for payment or over-pay the Contractor on any account.

**29. Interest Clause:**

No claim for interest shall be admissible to the Principal Contractor / Contractor at any stage and in respect of any money or balance or Bank Guarantee, which may be due to the Contractor from the Owner, owing to any dispute or otherwise.

**30. Part Supply / Part Payment:**

Normally part supply, part payment is not allowed. However, part supply is allowed for identifiable line item in order to achieve continuity of the work progress at site. If any deliveries are made in parts/lots, then all the invoices received in that month for the supplies would be clubbed and processed.

[Check applicability of clause]

**31. Option Clause / Repeat Order:**

- (a) The Buyer reserves the right, but without any obligation to do so, to place order for additional quantity upto 100% of originally contracted quantity of any line item (including spares/tools etc.) within original period of contract (to successful bidder/bidders) at same rates and terms of contract subject to :

- (i) There being no downward trend in price (consent of supplier is not necessary) or if there is a downward trend, the supplier agreeing to reduce the price for the enhanced quantity duly matching with the fall in prices.
- (b) The Option clause can be exercised (if necessary more than once) provided the cumulative of the Option clause quantities exercised does not exceed the option clause quantity provided in the contract.
- (c) The Buyer shall also reserve the right, but without any obligation to do so, to decrease the ordered quantity upto a percentage specified therein (or 25% if not specified) at any time, till the final delivery date of the contract, by giving reasonable notice.

**32. Governing Jurisdiction and Compliance with Laws:**

- a) All contracts shall be deemed to have been wholly made in Kolkata and all claims there under are payable in Kolkata City and it is the distinct condition of the order that no suit or action for the purpose of enforcing any claim in respect of the order shall be instituted in any Court other than that situated in Kolkata City, West Bengal State, India and the parties agree to exclusively submit to such jurisdiction.
- b) This Agreement in all respects shall be governed by and construed in accordance with the Indian Laws.

**33. Arbitration:**

**A. ARBITRATION FOR DOMESTIC COMMERCIAL CONTRACTS**

- (i) If at any time, before during or after the contract period, any unsettled claim, question, dispute or difference arises between the parties, upon or in relation to or in connection with or in any way touching or concerning this order, the same shall be settled/adjudicated through Arbitration to be conducted by a Sole Arbitrator, to be appointed by the parties on mutual consent, in accordance with the provisions of the Arbitration and Conciliation Act, 1996.
- (ii) In the event the parties fail to mutually appoint a Sole Arbitrator within 30 days from the receipt of a request by one party from the other, then either of the parties may approach the Hon'ble High Court at Calcutta under the provisions of the Arbitration and Conciliation Act, 1996 for appointment of a Sole Arbitrator by the Hon'ble Court.
- (iii) Such arbitration shall, in all respects, be conducted in accordance with the provisions of the Arbitration and Conciliation Act, 1996 and the rules framed there under or any statutory modification or re-enactment thereof for the time being in force.
- (iv) The Award of the Sole Arbitrator shall be final, conclusive and binding upon the parties.
- (v) In the event of the death or resignation or incapacity or whatsoever of the said Sole Arbitrator if appointed by the parties mutually the said parties may again appoint a suitable Substitute Arbitrator in place of the erstwhile Sole Arbitrator to continue with the proceedings. In the event of appointment of the Sole Arbitrator by the Hon'ble High Court at Calcutta on death or resignation or incapacity or whatsoever of the said Sole Arbitrator, either of the parties in this behalf, may make an application to the Hon'ble High Court at Calcutta for appointment of a Substitute Arbitrator and the Hon'ble Court may pass such orders as it deems fit and proper.
- (vi) Also, in the event an Arbitration award is set aside by a competent court the parties may appoint a Sole Arbitrator mutually or on failing to appoint a Sole Arbitrator mutually within the statutory period then either of the parties may file an application before the Hon'ble High Court at Calcutta under the provisions of the Arbitration and Conciliation Act, 1996 for appointment of a Sole Arbitrator by the Hon'ble Court in accordance with the provisions of the Arbitration and Conciliation Act.

- (vii) The cost of the arbitration, fees of the arbitrator, remuneration of the stenographer and clerk, stamp paper etc. shall be shared equally by the parties, unless otherwise directed by the Sole Arbitrator. The venue of arbitration shall be at Kolkata and unless otherwise decided by the parties or by the Sole Arbitrator himself, the venue shall be the premises of Garden Reach Shipbuilders & Engineers Ltd. located at 43/46, Garden Reach Road, Kolkata 700 024.
- (viii) The language of the proceeding shall be in English.

## **B. ARBITRATION FOR INTERNATIONAL COMMERCIAL CONTRACTS**

- (i) If at any time, before during or after the contract period, any unsettled claim, question, dispute or difference arises between the parties, upon or in relation to or in connection with or in any way touching or concerning this order, the same shall be settled/adjudicated through Arbitration to be conducted by a sole arbitrator under the laws of India
- (ii) The India International Arbitration Centre (IIAC), New Delhi on an application made by either of the parties and addressed to the Chairperson or the Registrar of IIAC, shall appoint a Sole Arbitrator under its applicable Rules. The procedure of the arbitration shall be governed by the applicable Rules of IIAC.
- (iii) Both parties agree and accept IIAC for all arbitral references and have satisfied themselves about the neutrality and eligibility of the IIAC.
- (iv) The Award of the Sole Arbitrator shall be final, conclusive and binding upon the parties.
- (v) In the event of the death, incapacity, resignation or inability for any reason whatsoever of the Sole Arbitrator, the appointing Institution i.e. IIAC, shall, on an application from any of the parties, appoint another fit and competent person as Sole Arbitrator to adjudicate on the issues originally referred in accordance with law.
- (vi) The arbitrator shall be competent to grant interim orders and direct measures for interim protection to the parties.
- (vii) If the arbitration award is set aside by a competent Court and unless the disputed issues are decided or otherwise ordered by the said Court, the appointing institution i.e. IIAC shall, on an application from any of the parties, appoint a new person as Sole Arbitrator to adjudicate such disputes and differences in accordance with laws in force in India.
- (viii) The cost of the Arbitration including the Arbitrator's, remuneration, stenographer and clerk's charges, etc., unless decided otherwise by the Sole Arbitrator, shall be shared equally by the parties.
- (ix) The Administrative costs and expenses of IIAC, if any, shall be borne by the respective parties as per the IIAC Rules, unless otherwise directed by the Sole Arbitrator.
- (x) The seat/venue of the Arbitration unless otherwise decided by the Sole Arbitrator shall be Kolkata, India.
- (xi) The language of the proceeding shall be in English.

### **34. Replacement for Rejection:**

- a) Should the articles, or any portion thereof be rejected, the contractor shall collect the same from the purchaser's yard within 15 days from the date of intimation of such rejection to the supplier/vendor/sub-contractor and replace/rectify the same within 30 days from date of intimation of such rejection. Before

collection of rejected items the supplier/vendor/sub-contractor shall furnish Bank Guarantee/Bank Draft of equivalent amount or accept GRSE holding back payment of their qualifying bills of equivalent amount till deficiencies are made good. The purchaser reserves the right to dispose off the rejected items at the end of a total period of 30 days in a manner to the best advantage to the purchaser and recover storage charges and any consequential damages, from sale proceeds of such disposal. Rejection of materials and also the late delivery will affect further business with GRSE.

- b) The guarantee period of replaced parts /items shall however be reckoned from the date of replacement.
- c) If the defects are not remedied within stipulated time, the purchaser may proceed to rectify the defects at the supplier/vendor/sub-contractor's risk & cost but without prejudice to any other rights which the purchaser may have against the supplier/vendor/sub-contractor in respect of their failure to remedy such defects.
- d) In case any documents, which are required to be submitted along with supply of material by supplier as per contract, are not submitted by supplier within 15 days of delivery date, equipment/material may be rejected at receipt inspection in GRSE. In that case, GRSE reserves right to exercise Risk Purchase clause.

### **35. Marine and Inland Transit Insurance:**

This clause is applicable for CIF/CIP Contract entered with foreign Vendor.

- a) **Wherever Marine Insurance is responsibility of Seller**, the Seller shall buy Marine Cargo Insurance policy as per following:
  - (i) The ultimate beneficiary of Insurance policy shall be Garden Reach Shipbuilders and Engineers Ltd.,43/46, Garden Reach Road, Kolkata-700024, India and Seller.
  - (ii) Insurance Policy is to be taken for minimum 110% of **(C.I.F value of goods plus Custom Duty and IGST applicable in India)**. The rate of Custom duty and GST percentage shall be informed prior to placement of order.
  - (iii) Insurance Policy shall have coverage following clauses.
    - (aa) Institute Cargo Clause-A (2009)
    - (bb) Institute War Clause (Cargo) (Latest version)
    - (cc) Institute Strike Clause (Cargo) (Latest version)
    - (dd) Institute War Clause (Air Cargo) (Latest version)
    - (ee) Institute Cargo Clause (Air) (Latest version)
    - (ff) Institute Strike Clause (Air Cargo) (Latest version)
    - (gg) SRCC clause
    - (hh) Institute Replacement Clause.
  - (iv) The Policy shall be taken out for insurance coverage from warehouse of supplier at supplier's country to warehouse of GRSE at Kolkata (on warehouse to warehouse basis) including customary transshipment, coverage for loading & unloading and also concealed damages.
  - (v) The policy shall cover the imported goods on replacement basis i.e. inclusive of escalation, if any, payable to the foreign suppliers of the Seller and /or exchange rate fluctuations and /or fluctuations of Ocean Freight, Clearing & Forwarding charges, inland freight etc.
  - (vi) Copy of the Insurance policy shall be made available to the Buyer (GRSE) for verification and adequacy of cover before start of shipment. Final copy of policy shall be submitted prior to start of delivery.
  - (vii) The Seller have to produce to Buyer policy of insurance and receipt for payment of the current premium prior to start of shipment of goods.
  - (viii) The Buyer (GRSE) reserves the right to take out whatever policy that is deemed necessary by him if the Seller/Seller fails to buy Policy prior to shipment of goods; or fails to produce the copy of policy prior to start of shipment of goods; or fails to keep the said policy alive and valid at all times during transit of

goods; and/or causes lapses in payment of premium thereby jeopardizing the said policy. The cost of such policy shall be recovered/deducted from the amount payable to Seller.

(ix) **Assignability**

Except as otherwise provided in this Agreement, the Seller shall not assign its rights, title or interest in this Agreement in favour of any Persons whatsoever without prior written consent of the GRSE.

Provided further that nothing contained in this Article shall absolve the seller from its responsibilities to perform/discharge any of its obligations in accordance with the provisions of this Agreement.

(x) **Claim Lodgment:** In all cases the seller shall lodge the claims with the underwriters and also settle the claims. However, the seller shall proceed with the repairs and/or replacement of the damaged equipment/ facilities without waiting for the settlement of the claims. In case seizure of materials by concerned authorities, the seller shall arrange prompt release against bond, securities or Cash as may be required.

The seller shall submit to the GRSE:

- (aa) Evidence that the insurances described above have been effected and
- (bb) Copies of policies for the insurances described in the clauses have been submitted.
- (cc) When each premium is paid, the Seller shall submit evidence of payment to the Employer.

(xi) The seller shall indemnify and hold harmless the buyer (GRSE), its officers, members, consultants, agents and employees and others from all claims for bodily injury and property damage other than other property insured. The seller shall indemnify the loss including reasonable legal fees, costs and expenses that may arise by the negligent acts and/or act of omissions/commissions of the seller, Sub-Sellers or anyone employed directly or indirectly by any of them or by anyone for whose acts any of them may be liable.

(xii) Notwithstanding anything contained above, the Insurance Policy shall cover following:

- (aa) Policy excess not exceeding 0.10% of consignment value subject to maximum of USD 500 or equivalent per claim.
- (bb) Action taken by the Port Authorities in sending imported consignment to Container Freight Station (CFS) is covered as "incidental transit" under W/W cover.
- (cc) The Duration Clause for all imported equipment/consignments under Marine Transit policy to be extended up to 90 days.
- (dd) Claim Detection period extends up to 40 days from the date of arrival of Consignments at GRSE/designated site.
- (ee) Claim should be payable in India.

b) **Wherever Marine Insurance is not responsibility of Seller**, Seller / Supplier shall forward scan copy of Bill of Lading, Invoice and Packing List to the procurement officer within 01 day of date of shipment (Bill of Lading Date). These documents are required by buyer for buying/arranging Marine Insurance policy from Insurance Company. The Seller shall be liable for any loss/damage caused to Buyer because of Seller's failure in forwarding the document through email within 01 day from date of shipment, thus Buyer's failure in buying/arranging Marine Insurance of equipment shipped by seller.

**36. Insurance:**

This clause is applicable when transit insurance is responsibility of Buyer. If transit insurance is responsibility of purchaser, this clause is not applicable. Transit Insurance shall be arranged by Purchaser. Sub-contractor / Supplier / Vendor shall immediately on despatch of the items, inform the despatch details such as Purchase

Order number, AWB number, number of packages, value of consignment, invoice number directly GRSE for arranging necessary transit insurance.

**37. Specific Instruction:**

The Bidder / Supplier will have to comply with / respond to all the above points. You may note that for any deviation to the above points, GRSE reserves the right to reject your offer as non-responsive. Bidder must respond to GRSE's queries/clarification/response within seven (07) calendar days from date of seeking queries / clarification / response by GRSE.

**38. Severability:**

If any provision or condition of the Contract is prohibited or rendered invalid or unenforceable, such prohibition, invalidity or unenforceability shall not affect the validity or enforceability of any other provisions and conditions of the Contract.

**39. Franking Clause:**

The following Franking Clause will form part of contract placed on successful Bidder/Bidders-

- a) Franking clause in case of Acceptance of Goods "The fact that the goods have been inspected after delivery period and passed by the Inspecting Officer will not have effect of keeping the contract alive. The goods are being passed without prejudice to the rights of the Buyer under the terms and conditions of the contract."
- b) Franking clause in case of Rejection of Goods "The fact that the goods have been inspected after delivery period and rejected by the Inspecting Officer will not bind the Buyer in any manner. The goods are being rejected without prejudice to the rights of the Buyer under the terms and conditions of the contract."

**40. Publicity & Advertising:**

Seller shall not without the written permission of Purchaser make a reference to Purchaser or any Company affiliated with Purchaser or to the destination or the description of goods or services supplied under the contract in any publication, publicity or advertising media.

**41. Base & Depot (B&D) Spares:**

(Should be provided as stipulated in SOTR/TSP)

- a) B&D spares for 5 years exploitation period are to be supplied as per SOTR/TSP.
- b) Bidder's recommended B&D spares list for 8 ships along with Comprehensive Part list (CPL)/Part Identification List (PIL) shall be uploaded in Part-I bid.
- c) These lists should be in excel format with itemized cost breakup in percentage (% upto six decimal) of the total quoted price of B&D per set as per Annexure-XXXII. It is mandatory for bidder to quote for B&D spares in Price Bid(Part-II). Please note that the B&D spare prices are not to be indicated in part –I bid.
- d) The consignee for the B&D spares along with delivery schedule is Material Organisation (MB), Material Organisation (Karwar), Material Organisation (Kochi) and Material Organisation (V) which are the

designated Base Ports for the ASW SWCs as decided by the BUYER's CUSTOMER. Relative distribution of the ordered B&D Spares among the above Base Ports will be indicated by the BUYER's CUSTOMER at the Ranging & Scaling (R&S) stage. Delivery of all B&D Spares is to be completed by SELLER prior delivery of the last VESSEL by the BUYER to its CUSTOMER.

- e) Beyond the delivery dates of B&D spares indicated in tender, bidders shall quote escalation rate on per annum basis for 05 years in percentage of B&D spares basic price (Excluding taxes and duties). However, for first six months no escalation charges shall be applicable. The pro-rata rate will be considered for actual period of postponement. However, this escalation rate is not part of L-1 determination. The Bidder must note that postponement of delivery date is exclusively rights of Buyer, it is not obligation of Buyer.
- f) The list of B&D spares shall be in ILMS format (INCAT databank compatible format) as per Annexure-XXI. Please note that prices are not to be mentioned in Part-I bid.
- g) After ranging & scaling by Navy, order for finalized/approved B&D spares would be placed separately by BUYER on behalf of Indian Navy. Shipyards reserve the right to advance or postpone the delivery of B&D spares by 6 months. The advancement or postponement of the B&D spares delivery by 6 months shall be at no extra cost. The same shall be discussed in the price negotiation meeting prior to placement of order for B&D spares.
- h) The Buyer reserves the right to advance or postpone the delivery of B&D spares by 6 months. The advancement or postponement of the B&D spares delivery by 6 months shall be at no extra cost. The same shall be discussed in the price negotiation meeting prior to placement of order for B&D spares.
- i) The Buyer reserves the right to postpone the delivery of B&D spares over and above the delivery date mentioned in the tender. The same will be discussed prior to placement of order for B&D spares. However, no charges will be applicable for first six months for delivery advancement or postponement of B&D spares.

**42. Product Support:**

Supplier of Equipment shall provide total product support to the Buyer and Buyer's Customer (Indian Navy) in the form of repair maintenance and spare parts for operation at stipulated reliability standards for a period of at least 25 years from the effective date of the contract (excluding electronic equipment for which the period would be 10 years). The SELLER shall provide a notice of 02 years to the BUYER in case the equipment/system/spares supplied by them is unlikely to be manufactured or supported by them so as to enable a Life Time Buy of all spares before closure of the said production line.

**43. Fall Clause:**

The Bidder undertakes that it has not supplied/is not supplying similar products/ systems or subsystems at a price lower than that offered in the present bid in respect of any other Ministry/Department of the Government of India or PSU and if it is found at any stage that similar product/systems or sub systems was supplied by the Bidder to any other Ministry/Department of the Government of India or a PSU at a lower price, then that very price, with due allowance of elapsed time, will be applicable to the present case and the difference in the cost would be refunded by the Bidder to the Principal/Buyer, if the contract has already been concluded.

**44. Insolvency:**

If the Seller enters into liquidation, whether compulsory or voluntary (otherwise than or amalgamation or reconstruction with another party taking over all his rights as well as commitments) or becomes insolvent or suffers a receiver of the whole or part of this asset to be appointed,

- a) shall forthwith notify the same to Buyer and the Buyer shall have the right without prejudice to his other rights or remedies to terminate the unexecuted part of this Contract.
- b) In such an event, the Buyer shall become entitled forthwith to get the refund within 30 days of all the advance payments received by the Seller and expenditure incurred as a part of its obligations under this contract.

**45. Manufacturer's Recommended List of On Board Spares (MRL-OBS):**

The Seller is required to provide Manufacturer's Recommended List of On-Board Spares (MRL-OBS) and the list will be finalized at TNC held with the OEMs attended by Buyer's rep and Owner's rep. The Seller will provide Sufficient Manufacturer's Recommended List of On Board Spares (MRL-OBS) for all equipment. The Seller is required to provide sufficient OBS for equipment in conformity to the requirement of spares, tools and jigs stipulated in the exploitation/ maintenance document of respective equipment/ system. The MRL-OBS has to be recommended based on the likely consumption rate of the spares and on the exploitation pattern of the Equipment. Seller quoting lesser MRL-OBS in terms of range and depth will have to make good deficiency at their cost without any financial responsibility or liability to the Buyer within 60 days of intimation by the Buyer to render equipment operational. Buyer mutually with Seller would also have the option to amend the MRL-OBS proposed by the Seller during the Technical Negotiation of individual equipment to ensure its sufficiency, based on its past experience of exploitation of same/similar equipment. Where feasible, the Seller would either 'Buy Back' the spares rendered surplus or exchange them on cost to cost basis with the spares as required by the Buyer. The said spares would be purchased/replaced by the Seller, based on the prices negotiated in the contract. To this purpose, the Seller is required to provide Manufacturer's Recommended List of On-board Spares (MRL-OBS) in format provided at Annexure-XXII. The Seller shall satisfy himself of the suitability and sufficiency of the MRL-OBS. The Seller shall establish the range and depth of spares required to support the ship level repair and maintenance for the prescribed period. The Seller shall also be fully liable in respect of the quality and quantity of the recommended spares and must supply any shortfall of spares without any financial responsibility or liability to the Buyer.

**46. Recovery Adjustment Provision:**

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

**47. Waiver:**

- a) Subject to Sub-Clause below, no relaxation, forbearance, delay or indulgence by either party (Buyer or Seller) in enforcing any of the terms and conditions of the Contract or the granting of time by either party to the other shall prejudice, affect or restrict the rights of that party under the Contract, nor shall any waiver by either party of any breach of Contract operate as waiver of any subsequent or continuing breach of Contract.

b) Any waiver of a party's rights, powers or remedies under the Contract must be in writing, must be dated and signed by an authorised representative of the party granting such waiver, and must specify the right and the extent to which it is being waived.

**48. Agent of Overseas Suppliers in India and Agency Commission:**

a) Overseas suppliers are to be the original manufacturers of the Store and shall not engage any individual or firm, whether Indian or foreign whatsoever, to intercede, facilitate or in any way to recommend to the Govt. 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 intercession, facilitation or recommendation. The Seller agrees that if it is established at any time to the satisfaction of the buyers 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 the amount to Buyer. The Seller will also be debarred from entering into any supply contract with the Govt. 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 event be liable to refund all payments made by the Buyer in terms of the contract along with the interest at the rate of 2% per annum above, the LIBOR rate, the buyer will also have the right to receive any such amount from any contracts concluded earlier with the Govt. of India.

b) Where regional offices of foreign firms have been authorized and set up within the country, they will not be treated as agents of the foreign firms and the financial dealings with such regional offices will be restricted to the norms stipulated by the RBI for each specific case. Such regional offices form integral part of the foreign vendors and their functions are totally controlled by their corporate office abroad and are hence not entitled to any agency commission.

c) Where Indian / regional offices of foreign firms are to provide post sale services, such as installation, setting to work, execution of warranty operations and post-warranty maintenance etc., such stipulation will explicitly be made in the terms and conditions of the supply order / contract. **Payment on this account will be made in the Indian rupees, except for the cost of spares / services required from abroad for post-warranty maintenance.**

d) It may also be mentioned in the context that the purchase / procurement of goods should preferably be made directly from the manufacturer. Either the Indian agent in terms of para (b), (c) on behalf of the foreign principal or the foreign principal directly could bid / participate in a tender but not both.

e) Again, in case, where an agent in terms of para (b) above participate in a tender on behalf of the foreign manufacturer, they should not be allowed to quote on behalf of another manufacturer along with the first manufacturer in a subsequent / parallel tender for the same item.

f) Notwithstanding the above conditions, the terms of engagement of Agents and payment of Agency commission shall be governed by Ministry of Defence / Govt. of India guidelines / rules issued from time to time.

g) Authorized representative of the foreign firm in India with prior intimation and letter of authorized from the foreign OEM or their principal shall be eligible to participate in TNC, CNC and PNC meeting.

**49. Hindrance Register:**

All hindrances observed during execution of work shall be recorded. Date of occurrences and removal shall be noted in the Hindrance register. The Hindrance Register shall be signed by reps of both GRSE as well as Supplier / OEM / Vendor.

**50. Payment Against Time-Barred Claims:**

All claims against the Procuring Entity shall be legally time-barred after three years calculated from the date when the payment falls due unless the payment claim has been under correspondence. The Procuring Entity is entitled to, and it shall be lawful for it to reject such claims.

**51. Supply of Products strictly in accordance with the Drawings / Specifications mutually agreed:**

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

**52. Assignment:**

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

**53. Indemnification against claims arising for infringement of any patent / copy rights:**

The Sub-contractor / Supplier / Vendor shall hold harmless and keep the Purchaser indemnified against all claims arising as a result of infringement of any patent / copy rights on account of manufacture, sale or use of articles covered by the order. A clear & quite possession of goods should take place with the passing of the title on execution of order."

**54. Communication:**

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

**55. Technological developments / innovations / modifications of Product:**

- a) The Sub-contractor / Supplier / Vendor shall unconditionally and free of cost to the Purchaser transfer information on technological developments / innovations / modifications which the Sub-contractor / Supplier / Vendor would evolve in future (within 3 years) in relation to the supplied equipment.
- b) To enable this, the Purchaser's address shall be added to the Sub-contractor's / Supplier's / Vendor's mailing list or database or any other document maintained for dissemination of product information and the Purchaser shall be informed of the action taken in this regard. If such improvements / modifications are brought in by the Sub-contractor's / Supplier's / Vendor's Design Department in the course of manufacture of equipment ordered by the Purchaser, the Sub-contractor / Supplier / Vendor shall incorporate such improved versions in the equipment without any extra cost to the Purchaser.
- c) Where the whole or a portion of the equipment has been specifically developed by the Sub-contractor / Supplier / Vendor for the Owner and the latter would through the Purchaser be bearing the entire or part of the development cost incurred by the Sub-contractor / Supplier / Vendor, the design rights for the whole or portion thereof, of the equipment as appropriate, shall vest in the Owners."
- d) Prior approval of the Owner should be obtained before similar articles are sold / supplied to any other party other than the Owner. If such approval is given and sale is effected, the Sub-contractor / Supplier / Vendor shall pay to the Owner royalty at the rate mutually agreed to."

**56. Secrecy:**

All property (such as materials, drawings, documents etc) issued by the Purchaser or any other individual or firm on behalf of the Purchaser in connection with the contract shall remain confidential, being the property of the Purchaser and the Sub-contractor / Supplier / Vendor shall undertake to return all such property so issued and will be responsible for any or all loss thereof and damage thereto resulting from whatever causes and shall reimburse the Purchaser the full amount of loss and damage. All information given to the supplier for the execution of the order is to be treated as SECRET / CONFIDENTIAL. The Technical information, Drawings, Specification and other related Documents forming part of this Enquiry/Order are the property of the Purchaser and shall not be used for any other purpose except for the execution of order. Any information / drawing etc. shall not be copied, transcribed, traced or reproduced in any other form or otherwise in whole / part or duplicated, modified, divulged and / or disclosed to a third party, not misused, used in any other form whatsoever without Purchaser's prior consent in writing except to the extent required for the execution of this order. At the time of tendering, the tenderer has to give an undertaking in favour of GRSE that in the event of any breach of the above provisions, he would make good of any loss /cost/damage / any other claim whatsoever preferred by anybody to GRSE in this respect."

**57. Guidance to Purchaser to set-up testing, repair / maintenance facility:**

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

**58. Examination of Price:**

Where the contract price has not been fixed in effective competition and the contract is not for articles whose prices are controlled, the owner reserves the right to investigate reasonableness of the price paid and negotiate directly with the subcontractor/ supplier/vendor for reduction of price where appropriate. The Owner can also ask for declaration that less basic price is not charged to other customers including Govt. and PSU."

**59. Individuality of Contract:**

In the event of the offer getting converted into an order, the said order shall be treated as an individual contract, shall not allow any general lien to the parties and shall not get prejudiced in execution due to situation arising out of some other contract that the supplier may have with GRSE.

**60. Custom Fine, Penalty, Storage and Demurrage Charges:**

Storage and Demurrage will be claimed from the Sub-contractor / Supplier / Vendor for all shipments that reach GRSEL without proper despatch documentations and not accompanied by packing lists, invoices etc. The Sub-contractor / Supplier / Vendor shall be responsible for fines due to errors or omissions in description, weight or measurements and for increased handling charges due to improper packing. Demurrage, if any, due to wrong / non-availability of shipping documents will borne by supplier/vendor."

**61. Air affreightment in case of urgency:**

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

**62. Access to the Books of accounts:**

In case it is found to the satisfaction of the Buyer that the Seller has engaged an Agent on said 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 Seller on specific request of the Buyer shall provide necessary information/inspection of the relevant financial documents/information."

**63. Indemnification against damage by Supplier:**

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

**64. Use of Undue Influence / Corrupt Practices:**

a) The Contractor / Supplier should give an undertaking that he has not given, offered or promised to give, directly or indirectly any gift, consideration, reward, commission, fees, brokerage or inducement to any person in service of the Purchaser or otherwise in procuring the contract or forbearing to do or for having done or forborne to do any act in relation to the obtaining or execution of the Contract with the Purchaser for showing or forbearing to show favour or disfavour to any person in relation to the Contract or any

other Contract with the Purchaser. Any breach of the aforesaid undertaking by the Contractor / Supplier or any one employed by him or acting on his behalf (whether with or without the knowledge of the Contractor / Supplier) or the commission of any offence by the Contractor / Supplier or any one employed by him or acting on his behalf, as defined in Chapter IX of the Indian Penal Code, 1980 or the Prevention of Corruption Act, 1947 or any other Act enacted for the prevention of corruption shall entitle the Purchaser to cancel the contract and all or any other contracts with the Contractor / Supplier and recover from the Contractor / Supplier the amount of any loss arising from such cancellation. A decision of the Purchaser or his nominee to the effect that a breach of the undertaking has been committed shall be final and binding on the Contractor / Supplier.

- b) The Contractor / Supplier shall not offer or agree to give any person in the employment of Purchaser any gift or consideration of any kind as "Inducement" or "reward" for doing or forbearing to do or for having done or foreborne to do any act in relation to the obtaining or execution of the contract/s. Any breach of the aforesaid condition by the Contractor / Suppliers or any one employed by them or acting on their behalf (whether with or without the knowledge of the Contractor / Suppliers) or the commission of any offence by the Contractor / Suppliers or by any one employed by them or acting on their behalf which shall be punishable under the Indian Penal Code 1980 or the Prevention of Corruption by Public Servants, shall entitle Purchaser to cancel the contract/s and all or any other contracts and then to recover from the Contractor / Supplier the amounts of any loss arising from such contracts' cancellation, including but not limited to imposition of penal damages, forfeiture of Security Deposit, encashment of the Bank Guarantee and refund of the amounts paid by the Purchaser.
- c) In case, it is found to the satisfaction of the Purchaser that the Contractor / Supplier has engaged an Agent or paid commission or influenced any person to obtain the contract as described in clauses relating to Agents / Agency Commission and use of undue Influence, the Contractor / Supplier, on a specific request of the Purchaser shall provide necessary information / inspection of the relevant financial document / information.

#### **65. Immunity of Government of India Clause:**

It is expressly understood and agreed by and between M/s. (Contractor / Supplier) and M/S Garden Reach Shipbuilders & Engineers Ltd. 43/46, Garden Reach Road, Kolkata –700024 (the Indian PSU) is entering into this Agreement solely on its own behalf and not on the behalf of any person or entity. In particular, it is expressly understood and agreed that the Government of India is not a party to this Agreement and has no liabilities, obligations or rights hereunder. It is expressly understood and agreed that Garden Reach Shipbuilders & Engineers Ltd. 43/46, Garden Reach Road, Kolkata 700024 (the Indian PSU) is an independent legal entity with power and authority to enter into contracts solely in its own behalf under the applicable of Laws of India and general principles of Contract Law. The (Contractor / Supplier) expressly agrees, acknowledges and understands that Garden Reach Shipbuilders & Engineers Ltd. 43/46, Garden Reach Road, Kolkata-700024 (the Indian PSU) is not an agent, representative or delegate of the Government of India. It is further understood and agreed that the Government of India is not and shall not be liable for any acts, omissions and commissions, breaches or other wrongs arising out of the contract. Accordingly, (Contractor / Supplier) hereby expressly waives, releases and foregoes any and all actions or claims, including cross claims, impleader claims or counter claims against the Government of India arising out of this contract and covenants not to sue Government of India in any manner, claim, cause of action or thing whatsoever arising of or under this Agreement."

**66. Restriction of information to media:**

No information in respect of contracts/orders shall be released to the national or international media or any one not directly involved in its execution without the express written approval of the Integrated Headquarters, MOD(Navy) [DND/DSP].

**67. Contract Documents and Order of Precedence:**

- a) The following conditions and documents in indicated order of precedence (higher to lower) shall be considered an integral part of the contract / purchase order, irrespective of whether these are not appended/ referred to in it. Any generic reference to 'Contract' /Purchase Order shall imply reference to all these documents as well:
  - (i) Valid and authorized Amendments issued to the contract / purchase order
  - (ii) the Contract / Purchase Order
  - (iii) the Letter of Award (LoA)
  - (iv) Final written submissions made by the contractor during negotiations, if any including Commercial Negotiation Committee (CNC) and Technical Negotiation Committee (TNC) document.
  - (v) Tender Documents
  - (vi) the Contractor's bid
  - (vii) Integrity Pact if any
- b) In the event of a conflict between the conditions of 'this Contract and the Specifications (SOTR) and/or approved Drawings, the Specifications and/ or approved Drawings shall prevail in Design aspects, and the conditions of Contract in other aspects. In the event of a conflict between Specifications and Drawings, the Drawings shall prevail provided the changes in the drawings with respect to specifications have been specifically brought out by the Seller to the Buyer at the time of approval of drawings.

