

### Bid Document/ बिड दस्तावेज़

Bid Details/बिड विवरण	
Bid End Date/Time/बिड बंद होने की तारीख/समय	01-06-2024 15:00:00
Bid Opening Date/Time/बिड खुलने की तारीख/समय	01-06-2024 15:30:00
Bid Offer Validity (From End Date)/बिड पेशकश वैधता (बंद होने की तारीख से)	180 (Days)
Ministry/State Name/मंत्रालय/राज्य का नाम	Ministry Of Defence
Department Name/विभाग का नाम	Department Of Defence Production
Organisation Name/संगठन का नाम	Troop Comforts Limited
Office Name/कार्यालय का नाम	*****
Total Quantity/कुल मात्रा	583778
Item Category/मद केटेगरी	TRADE ASSISTANCEF FOR HEAT TREATMENT OF CLIP IRON , TRADE ASSISTANCEF FOR GALVANISATION OF CLIP IRON
MSE Exemption for Years of Experience and Turnover/ अनुभव के वर्षों से एमएसई छूट	No
Startup Exemption for Years of Experience and Turnover/ अनुभव के वर्षों से स्टार्टअप छूट	No
Document required from seller/विक्रेता से मांगे गए दस्तावेज़	Certificate (Requested in ATC),OEM Authorization Certificate,Additional Doc 1 (Requested in ATC),Additional Doc 2 (Requested in ATC),Additional Doc 3 (Requested in ATC) *In case any bidder is seeking exemption from Experience / Turnover Criteria, the supporting documents to prove his eligibility for exemption must be uploaded for evaluation by the buyer
Bid to RA enabled/बिड से रिवर्स नीलामी सक्रिय किया	Yes
RA Qualification Rule	H1-Highest Priced Bid Elimination
Type of Bid/बिड का प्रकार	Two Packet Bid
Primary product category	TRADE ASSISTANCEF FOR HEAT TREATMENT OF CLIP IRON
Time allowed for Technical Clarifications during technical evaluation/तकनीकी मूल्यांकन के दौरान तकनीकी स्पष्टीकरण हेतु अनुमत समय	2 Days
Inspection Required (By Empanelled Inspection Authority / Agencies pre-registered with GeM)	Yes

Bid Details/बिड विवरण	
Inspection to be carried out by Buyers own empanelled agency	Yes
Type Of Inspection	Post Dispatch
Name of the Empanelled Inspection Agency/ Authority	Board of Officers
Auto CRAC Days	20
Estimated Bid Value/अनुमानित बिड मूल्य	297726.78
Evaluation Method/मूल्यांकन पद्धति	Item wise evaluation/

#### EMD Detail/ईएमडी विवरण

Required/आवश्यकता	No
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#### ePBG Detail/ईपीबीजी विवरण

Required/आवश्यकता	No
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#### Splitting/विभाजन

Bid splitting not applied/बोली विभाजन लागू नहीं किया गया.

#### MII Purchase Preference/एमआईआई खरीद वरीयता

MII Purchase Preference/एमआईआई खरीद वरीयता	Yes
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#### Reserved for MSE

Reserved for MSE	Yes
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1. Preference to Make In India products (For bids < 200 Crore):Preference shall be given to Class 1 local supplier as defined in public procurement (Preference to Make in India), Order 2017 as amended from time to time and its subsequent Orders/Notifications issued by concerned Nodal Ministry for specific Goods/Products. The minimum local content to qualify as a Class 1 local supplier is denoted in the bid document. If the bidder wants to avail the Purchase preference, the bidder must upload a certificate from the OEM regarding the percentage of the local content and the details of locations at which the local value addition is made along with their bid, failing which no purchase preference shall be granted. In case the bid value is more than Rs 10 Crore, the declaration relating to percentage of local content shall be certified by the statutory auditor or cost auditor, if the OEM is a company and by a practicing cost accountant or a chartered accountant for OEMs other than companies as per the Public Procurement (preference to Make-in -India) order 2017 dated 04.06.2020. Only Class-I and Class-II Local suppliers as per MII order dated 4.6.2020 will be eligible to bid. Non - Local suppliers as per MII order dated 04.06.2020 are not eligible to participate. However, eligible micro and small enterprises will be allowed to participate.The buyers are advised to refer the OM No.F.1/4/2021-PPD dated 18.05.2023 [OM\\_No.1\\_4\\_2021\\_PPD\\_dated\\_18.05.2023](#) for

compliance of Concurrent application of Public Procurement Policy for Micro and Small Enterprises Order, 2012 and Public Procurement (Preference to Make in India) Order, 2017.

2. Procurement under this bid is reserved for purchase from Micro and Small Enterprises whose credentials are validated online through Udyog Aadhaar for that product category. If the bidder wants to avail the reservation benefit, the bidder must be the manufacturer of the offered product in case of bid for supply of goods. Traders are excluded from the purview of Public Procurement Policy for Micro and Small Enterprises. In respect of bid for Services, the bidder must be the Service provider of the offered Service. Relevant documentary evidence in this regard shall be uploaded along with the bid in respect of the offered product or service.

3. Estimated Bid Value indicated above is being declared solely for the purpose of guidance on EMD amount and for determining the Eligibility Criteria related to Turn Over, Past Performance and Project / Past Experience etc. This has no relevance or bearing on the price to be quoted by the bidders and is also not going to have any impact on bid participation. Also this is not going to be used as a criteria in determining reasonableness of quoted prices which would be determined by the buyer based on its own assessment of reasonableness and based on competitive prices received in Bid / RA process.

#### **4. Inspection of Stores by Nominated Inspection Authority / Agency of buyer or their authorized representatives**

An independent third party Professional Inspection Body can help buyer in mitigating buyer's risk with pre-dispatch/post-dispatch inspection in order to ensure that equipment, components, solutions and documentation conform to contractual requirements. The buyer has a right to inspect goods in reasonable manner and within reasonable time at any reasonable place as indicated in contract. Inspection Fee/ Charges (as pre-greed between buyer and Inspection Agency) would be borne by the buyer as per their internal arrangement but may be recovered from the seller if the consignment failed to conform to contractual specification and got rejected by the Inspection Officer. If so requested and accepted by the seller, initially seller may pay for inspection charges as applicable and get the same reimbursed from buyer if consignment accepted by the Inspecting Officer. For reimbursement seller has to submit proof of payment to Inspection Agency.

Seller/OEM shall send a notice in writing / e-mail to the Inspecting officer / inspection agency specifying the place of inspection as per contract and the Inspecting officer shall on receipt of such notice notify to the seller the date and time when the stores would be inspected. The seller shall, at his own expenses, afford to the Inspecting officer, all reasonable facilities as may be necessary for satisfying himself that the stores are being and or have been manufactured in accordance with the technical particulars governing the supply. The decision of the purchaser representative / inspection authority regarding acceptance / rejection of consignment shall be final and binding on the seller.

The Seller shall provide, without any extra charge, all materials, tools, labour and assistance of every kind which the Inspecting officer may demand of him for any test, and examination, other than special or independent test, which he shall require to be made on the seller's premises and the seller shall bear and pay all costs attendant thereon.

The seller shall also provide and deliver store / sample from consignment under inspection free of charge at any such place other than his premises as the Inspecting officer may specify for acceptance tests for which seller/OEM does not have the facilities or for special/ independent tests.

In the event of rejection of stores or any part thereof by the Inspecting officer basis testing outside owing to lack of test facility at sellers premises, the seller shall, on demand, pay to the buyer the costs incurred in the inspection and/or test. Cost of test shall be assessed at the rate charged by the Laboratory to private persons for similar work.

Inspector shall have the right to put all the stores or materials forming part of the same or any part thereof to such tests as he may like fit and proper as per QAP/governing specification. The seller shall not be entitled to object on any ground whatsoever to the method of testing adopted by the Inspecting officer.

Unless otherwise provided for in the contract, the quantity of the stores or materials expended in test will be borne by seller.

Inspecting officer is the Final Authority to Certify Performance / accept the consignment. The Inspecting officer's decision as regards the rejection shall be final and binding on the seller.

The seller shall if so required at his own expense shall mark or permit the Inspecting officer to mark all the approved stores with a recognised Government or purchaser's mark.

5. Reverse Auction would be conducted amongst all the technically qualified bidders except the Highest quoting

bidder. The technically qualified Highest Quoting bidder will not be allowed to participate in RA. However, H-1 will also be allowed to participate in RA in following cases:

- If number of technically qualified bidders are only 2 or 3.
- If Buyer has chosen to split the bid amongst N sellers, and H1 bid is coming within N.
- In case Primary product of only one OEM is left in contention for participation in RA on elimination of H-1.
- If L-1 is non-MSE and H-1 is eligible MSE and H-1 price is coming within price band of 15% of Non-MSE L-1
- If L-1 is non-MII and H-1 is eligible MII and H-1 price is coming within price band of 20% of Non-MII L-1

#### Evaluation Method ( Item Wise Evaluation Method )

Contract will be awarded schedulewise and the determination of L1 will be done separately for each schedule. The details of item-consignee combination covered under each schedule are as under:

Evaluation Schedules	Estimated Value	Item/Category	Quantity
Schedule 1	157620.06	Trade Assistancef For Heat Treatment Of Clip Iron	291889
Schedule 2	140106.72	Trade Assistancef For Galvanisation Of Clip Iron	291889

#### TRADE ASSISTANCEF FOR HEAT TREATMENT OF CLIP IRON ( 291889 pieces )

(Minimum 50% and 20% Local Content required for qualifying as Class 1 and Class 2 Local Supplier respectively/क्रमशः श्रेणी 1 और श्रेणी 2 के स्थानीय आपूर्तिकर्ता के रूप में अर्हता प्राप्त करने के लिए आवश्यक)

#### Technical Specifications/तकनीकी विशिष्टियाँ

Buyer Specification Document/क्रेता विशिष्टि दस्तावेज़	<a href="#">Download</a>
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#### Consignees/Reporting Officer/परेषिती/रिपोर्टिंग अधिकारी and/ तथा Quantity/मात्रा

S.No./क्र. सं.	Consignee Reporting/Officer/ परेषिती/रिपोर्टिंग अधिकारी	Address/पता	Quantity/मात्रा	Delivery Days/डिलीवरी के दिन
1	*****	*****KANPUR NAGAR	291889	180

#### TRADE ASSISTANCEF FOR GALVANISATION OF CLIP IRON ( 291889 pieces )

(Minimum 50% and 20% Local Content required for qualifying as Class 1 and Class 2 Local Supplier respectively/क्रमशः श्रेणी 1 और श्रेणी 2 के स्थानीय आपूर्तिकर्ता के रूप में अर्हता प्राप्त करने के लिए आवश्यक)

#### Technical Specifications/तकनीकी विशिष्टियाँ

Buyer Specification Document/क्रेता विशिष्टि दस्तावेज़	<a href="#">Download</a>
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**Consignees/Reporting Officer/परेषिती/रिपोर्टिंग अधिकारी and/ तथा Quantity/मात्रा**

S.No./क्र. सं.	Consignee Reporting/Officer/ परेषिती/रिपोर्टिंग अधिकारी	Address/पता	Quantity/मात्रा	Delivery Days/डिलीवरी के दिन
1	*****	*****KANPUR NAGAR	291889	180

**Buyer added Bid Specific Additional Scope of Work**

S.No.क्र.सं.	Document Title	Description	Applicable/रिवर्स प्रभार के अनुसार जीएसटी i.r.o. Items
1	TERMS & CONDITIONS <a href="#">View</a>	As per above subject, following terms & condition are required for subject trade assistance work, as per attached document	TRADE ASSISTANCE FOR HEAT TREATMENT OF CLIP IRON(291889)
2	TERMS & CONDITIONS <a href="#">View</a>	As per above subject, following terms & condition are required for subject trade assistance work, as per attached document	TRADE ASSISTANCE FOR GALVANISATION OF CLIP IRON(291889)

The uploaded document only contains Buyer specific Additional Scope of Work and / or Drawings for the bid items added with due approval of Buyer's competent authority. Buyer has certified that these additional scope and drawings are generalized and would not lead to any restrictive bidding.

**Buyer Added Bid Specific Terms and Conditions/क्रेता द्वारा जोड़ी गई बिड की विशेष शर्तें****1. Buyer Added Bid Specific ATC**

Buyer Added text based ATC clauses

**NAME OF ITEM:** 1. TRADE ASSISTANCE FOR HEAT TREATMENT OF CLIP IRON

2. TRADE ASSISTANCE FOR GALVANISATION OF CLIP IRON

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**Evaluation Criteria:**

1. The Firms participating in this open tender enquiry should be Indian Manufacturer/ Fabricator. Firm should submit valid documentary proof along with technical bid. MSE firm should declare UAM Number, failing which firm will not be able to avail benefit of MSE.
2. The participating firm is required to be registered for tendered items or the end product Clip iron with OEFC or any other sister factory.
3. Offer of the firms that are not registered for the tendered items or the end product Clip Iron with OEFC or Sister Ordnance Factories on or before tender opening date & time will be ignored.

nored without any further communications.

## **Terms and conditions for Tender Enquiry:**

1. **Technical Bid:** The bidders shall furnish Technical Bid without disclosing the price as per GeM portal.
2. **Quantity Quoted:** Quantity should be quoted as per GeM bid.
3. **Distribution of quantity: 100% on L-1 Bidder (In case there is only suitable bidder). Distribution may vary in view of public procurement policy, Make In India.**
4. **Delivery: FOR:** 100% qty. by 180 Days.
5. **Price Variation Clause** -: not applicable
6. **Delivery and price** -: Delivery & Prices should be on F.O.R destination (OEF Kanpur) basis. Other terms as per GEM General Term and Condition.
7. **Specification: As per GeM.**

**NOTE : THE PARTICIPATING FIRM SHOULD DOWNLOAD THE SPECIFICATION(S) UPLOADED BY BUYER AND SIGNED COPY(IES) OF THE SAME MUST BE UPLOADED IN SELLER SPECIFICATION FIELD(S) AT GeM PORTAL. IN CASE OF ANY VARIATION(S), OFFER(S) OF THE FIRM IS/ARE LIABLE TO REJECTION**

8. **Scope of Supply** – Technical Description/Requirement/Quality requirement etc.: The stores supplied shall be of the best quality and Workmanship, shall be in strict conformity with all the drawings and specifications furnished with the Purchase Orders and shall address the Technical description in all respects. Where tenders are called for in accordance with 'particulars', the seller's tender to supply in accordance with such 'particulars' shall be deemed to be an admission on his part that he has fully acquainted himself with the details thereof and no claim on his part which may arise on account of non-examination or insufficient examination of the 'particulars' will in any circumstances be considered. The items not specifically listed but required for completeness of stores / system deemed to be included. All supplies should be accompanied by Sellers works inspections/ test certificates duly certifying, the Stores are in strict conformity with the drawings/specifications. The final acceptance will be subject to inspection and approval at Buyer's premises. Once the material are rejected and communicated to the Seller, no request shall be entertained for re- inspection or acceptance of the stores. However, Buyer reserves the right to re-inspect the stores and consider acceptance at his discretion.
9. **Packing Conditions:** The stores should be properly packed for tropical storage and for transport by rail, road, sea or air so as to ensure and to protect them against loss, damage, corrosion in transit on arrival at their destination. The packing and marking of packages shall be done by and at the expense of the seller. Each package shall contain a Packing Note quoting Purchase Order number and date showing its contents in detail. Each package shall be properly marked with Purchase Order No., Consignee's name & address, gross weight, package-handling instructions etc. The package shall have adequate provision for handling during transit and at destination. The packing, shipping, storage and processing of the delivery must comply with the prevailing legislation and regulations concerning safety, the environment and working conditions. In case of Imports, items packed with raw/ solid wood packing material should be treated as per ISPM-15 (fumigation) and accompanied by Phytosanitary/ Fumigation certificate. If safety information sheets exist for a delivery or the packaging, the seller must always supply these sheets direct (at the same time). The packing shall allow for easy removal and checking of goods on receipt and comply with carrier's conditions of packing or established trade practices. If any consignment needs special handling instruction, the same shall be clearly marked with standard symbols / instructions. Hazardous material should be notified as such and their packing, transportation and other protection must conform to relevant regulations.

### **10. Inspection and Technical documents requirements:**

- a) The supply made against respective orders will be subject to Buyer inspection at his premises. The Seller shall be responsible for items supplied till the same have been inspected and accepted by Buyer. In case the goods / services are rejected at the time of inspection at Buyer Place or the rejections are noticed at the time of further processing the Seller will be informed of these rejections. On receipt of this information the Seller shall immediately arrange to collect the rejected items at his cost and risk and arrange for the replacement of goods within the shortest possible time. Under no circumstances the Seller shall compel the Buyer to rework the rejected goods. The rejected material will lie in Buyer factory premises at the risk and cost of the Seller, pending receipt of disposal instruction from them. If so desired by the Seller, the rejected materials, for which no payment made by Buyer may be packed and returned to the Seller for arranging replacement /rectification on 'freight to pay' basis at his cost and risk and the dispatch documents will be forwarded to the Seller directly by Buyer to enable him to arrange insurance and take delivery of the same. Wherever payment is already made by Buyer to the Seller, the rejected material will be returned to the Seller against refund of the amount already paid by Buyer / submission of BG for the value of rejected goods. The packing, freight charges etc., on replacement of returned materials shall be borne by the Seller irrespective of the terms in the purchase order, since such charges were already

ady incurred and borne by Buyer on the original consignment, which got rejected and returned to the Seller. In case the rejected materials are not required to be replaced, freight, insurance charges etc., incurred by Buyer on the original consignment shall be recovered from the Seller's bills.

b) Ground Rent: If the material supplied by the vendors is rejected at the factory premises, the vendor is required to lift the rejected material within 30 days of issue of rejection I-Note. Factories have right to recover a charge for the storage space at @1% of the cost of material un-cleared, per week or part thereof, with maximum ceiling of 10% of value of the items. After lapse of 10 weeks, if it is found that firm has not taken any action for lifting of items, the goods may be confiscated and disposed off as per disposal procedure in vogue after sending a notice and giving 30 working days time to the firm. Ground rent shall be calculated from the date of expiry of the period of removal of item. No ground rent should be charged from Central/State Govt/Central PSUs. When the firm fails to pay the applicable ground rent within the prescribed period, factory is entitled to recover the ground rent due and all incidental expenses from EMD/PSD.

c) Buyer or his authorized representative shall be entitled at all reasonable times during execution to inspect, examine and test at the Seller's premises the material and workmanship of all stores to be supplied under the Contract, and if the part of the stores are being manufactured at other premises the Seller shall obtain Buyer's or his authorized representative's concurrence to inspect, examine and test as if the said stores are being manufactured at the Seller's premises. Such inspection, examination and testing, if made shall not release the Seller from any obligation under the Contract. If the defects are not remedied within a reasonable /stipulated time, the purchaser may proceed to rectify the defects at the seller's risk & cost but without prejudice to any other rights which the buyer may have against the Seller in respect of their failure to remedy such defects. All costs related to inspections and re-inspections shall be borne by the Seller. The cost of inspection staff/ third party specified by the Buyer shall be borne by Buyer, unless otherwise specifically agreed. When the Contract provides for tests on the premises of the Seller or any of his Sub- contractor/s, Seller shall be responsible to provide assistance such as, labour, materials, electricity, fuels, stores, apparatus, instruments as may be required and as may be reasonably demanded to carry out such tests efficiently. Cost of any type test or such other special tests shall be borne by the Buyer only if specifically agreed. The Seller shall give the authorized representative of the Buyer reasonable prior notice in writing of the date on and the place at which any stores will be ready for inspection/ testing as provided in the Contract.

11. **Acceptance of Goods:** Material on arrival at Buyer's premises will be inspected by QA/Inspection Department as per appropriate Quality Assurance Plan and their decision in the matter will be final. The test certificate and relevant supporting documents should be sent along with the consignment.

12. **Payment Terms:** The standard payment terms shall be 100% payment against Seller's bill by Account transfer through NEFT/RTGS only for accepted materials within 30 days from the date of receipt of material or submission of bills/documents, whichever is later. Normally no request for Advance Payment is entertained. However, where Advance Payment is considered in select cases, the same may be allowed, subject to furnishing Bank Guarantee(in prescribed format) from a scheduled commercial Bank (other than Cooperative Bank) for an amount equal to 110% of the advance released.

13. **Warranty:**

a) All the Stores supplied shall be warranted against any defect in material, Workmanship, defective design, materials and non-conformance to intended performance, manufacturing defects, or dimension etc., for a period of **nil for Raw material** calendar months from the date they are actually put to use or calendar months from the date of receipt and acceptance of supply in Buyer's place / buyer's designated place, whichever is earlier and the seller shall remedy such defects at his/her own cost or replace free of charge such stores when called upon to do so.

b) The seller cannot absolve their responsibility for warranty of material even though it is inspected & approved by Inspection authority.

c) In case of defective Stores which need to be re-exported for repairs to the manufacturer's works, To & Fro freight, insurance charges & custom duty for replacement have to be borne by the seller.

d) During warrantee period any equipment or component thereof supplied by the seller, suffers due to defective material and or due to improper design and or due to defective drawing or due to faulty workmanship the seller 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 Buyer.

e) In the event Buyer desires to have extension of Warranty period beyond the stipulated period, as above

e, the seller shall quote for the same (on monthly basis) for the period of such extension.

- f) If the defects intimated during the Warranty period are not remedied within a reasonable / stipulated time, the Buyer may proceed to rectify the defects at the seller's risk and cost, but without prejudice to any other rights which the Buyer may have against the Seller in respect of the failure of the Seller to remedy such defects.
- g) In the event of Seller's failure to attend the Warranty defects within a reasonable period of time, the Performance Bank Guarantee will be encashed by the Buyer. The Buyer's decision shall be final and binding on Seller in this regard.
- h) All packing, forwarding, insurance and delivery charges arising against this would be borne by the Seller. The guarantee period would be extended by equivalent period for which the material is not available for the repaired parts, which were repaired & replaced during the Warranty period. The Warranty is subject to proper preservation, maintenance, storage, handling and usage of equipment by Buyer & Buyer's customer and does not covers repairs carried out without the prior consent of the seller / seller rep.
- i) Warranty calls needs to be attended within \_\_\_\_ hrs. Warranty of the stores will be extended by residual period.

#### **14. Option Clause:**

- a) The Buyer reserves the right to place orders for additional quantity up to a maximum of 25% of the originally contracted quantity at the same rate and terms of contract within the original Delivery Period (DP) as well as Re-fixed/Extended DP subject to :
  - i. there being a requirement for the item.
  - ii. incorporation of Option clause in the contract, 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, and
  - iii. if no fruitful result will accrue by floating fresh TE or when the store is urgently required for meeting production targets.
- 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. In multivendor situation, to provide a level playingfield to all the vendors, any bid received without compliance to Option clause, may be considered as unresponsive by concerned TPC.
- d. Option clause may be operated normally on completion of 90% quantity of original supply order (or lesser qty as decided by concerned TPC).

#### **15. Customs Duty:**

- i. In case of imported stores offered against forward delivery, the Bidders shall quote prices exclusive of customs duty, duly specifying separately the CIF Price and the customs duty payable. The Bidder shall also indicate the rate of customs duty applicable along with Indian Customs Tariff Number. Customs duty actually paid shall be reimbursed on production of necessary documents i.e. (1) copy of Bill of Entry, (2) copy of Bill of Lading, (3) foreign Principals invoice. However, if the Bidder imports the stores in question against his own commercial quota Import license, he will also be required to submit in addition to the triplicate copy of bills of entry, etc., a certificate from his Internal Auditor on the bill, to the effect that the following items/ quantity in the bill of entry are related to the stores imported against the Buyers Contract Number ..... dated .....
- ii. Subsequent to the reimbursement of customs duty if the Seller obtains any refund of customs duty, such refund shall immediately be remitted, in full, to the Buyer. In case of failure to do so, the Buyer shall be fully empowered to deduct a sum equivalent to the amount of customs refunded, without any further reference to the Seller, from any of their outstanding bills against the contract or any other pending Government contract and no disputes on this account shall be raised by the Seller.
- iii. Subsequent to the reimbursement of customs duty, the Seller shall submit to the concerned Paying Authority a certificate to the effect that he has not obtained any customs duty refund. In addition, Seller shall also submit to the Paying Authority a certificate, immediately after lapse of the period specified in the Customs Act by which application for refund are to be filed with the Customs Authorities, stating that he has not applied for refund of the customs duty.

#### **16. Pre-contract Integrity Pact: NOT APPLICABLE**



**17. Liquidated Damages (LD):** The time for and the date of delivery of the stores stipulated in the Purchase Order shall be deemed to be the essence of the contract, and delivery must be completed not later than the dates specified therein. Should the Seller fail to deliver the material to our premises or any consignment thereof within the period prescribed for such delivery, Buyer shall be entitled to recover from the Seller agreed liquidated damages, and not by way of penalty a sum of 0.5% per week of delay or part thereof, subject to a maximum of 10% as our claim towards liquidated damages on the undelivered part of the order. The LD will be charged on the basic cost excluding taxes and duties. Imposition, recovery or settlement of this LD shall not affect Buyer's right to performance, compensation and termination of the agreement. Liquidated Damages in contracts with Price Variation formula shall be levied on the price as varied by the operation of the Price Variation clause.

**18. Earnest Money Deposit:**

- a) EMD for a value of Rs. **3% OF THE ESTIMATED TENDER VALUE (IF APPLICABLE IN THE TENDER ENQUIRY)** to be submitted in the form of Account Payee Demand Draft / Fixed Deposit Receipt / Banker's Cheque / Bank Guarantee (in prescribed format) from any of the Commercial banks / payment online (to be specified, on implementation). EMD should be valid for 45 DAYS days beyond the validity of the bid.
- b) EMD shall be submitted in favour of **"TROOP COMFORTS LIMITED"**.
- c) Other condition of EMD as per GEM General Term and Condition.

**19. Performance Security Deposit (PSD):**

- a) The Seller (successful bidder awarded contract) shall deposit 3% of the total value of this order /contract value including taxes & duties as Performance Security Deposit by way of Account Payee Demand Draft/Banker's Cheque/Fixed Deposit Receipt from a Commercial Bank of India/Bank Guarantee in the prescribed format(enclosed) from a Commercial Bank of India (for Indigenous Sellers)/ Bank of International repute for which counter guarantee is given by Indian Bank (for Foreign Sellers) within specified date(not more than 15 days after notification of the award of contract/ date of acceptance). Indemnity Bonds may be accepted as PSD from Central PSUs.
- b) PSD is not necessary for contracts valuing up to ₹5 lakhs.
- c) The PSD/Performance Bank Guarantee should be valid for additional period of 60 days beyond the delivery date of completion of all contractual obligation including Warranty period (if any). In the event of the Contractual delivery period being extended by the Buyer, the Seller shall be responsible to ensure that the validity of the Performance Guarantee is also simultaneously extended/re-validated so that it is valid for additional period of 60 days beyond the new delivery date of completion of all contractual obligation including warranty period (if any).
- d) In the event of non-performance of the item and if Seller fail to attend the defects within reasonable period of time, the PSD will be forfeited /the Performance Bank Guarantee will be encashed. In case any claims or any other contract obligations are outstanding, the Seller shall extend the Performance Bank Guarantee as requested by the Buyer till such time as the Seller settles all claims and completes all contract obligations. The Performance Bank Guarantee shall also be liable for encashment/forfeited if conditions regarding adherence to delivery schedule and other provisions of the contract are not fulfilled by the Seller. The Buyer decision shall be final and binding in this regard.
- e) Performance Security Deposit is initially to be given by the supplier for original supply order quantity without option clause quantity. PSD (without interest except FDR) for the original supply order quantity may be returned after 60 days of fulfilment of all contractual obligations of the original supply order quantity including warranty period (if any). Regarding Option Clause, PSD amount may be worked out based on Option Clause quantity. PSD for Option Clause quantity may be returned after 60 days of fulfilment of all contractual obligations of the Option Clause quantity including warranty period(if any).
- f) PSD will be submitted in favour of "Troop Comforts Limited". The Seller should send original copy of PSD to Factory /Unit concerned first with a copy to "Troop Comforts Limited". After verification/confirmation of genuineness by the relevant Bank, a copy of the same can be forwarded by Factory to Troop Comforts Limited Hqr. Kanpur.
- g) Other terms as per GEM General Term and condition.

**20. Termination Clause :** Buyer reserves the right to cancel the order with 15 days' notice without any financial

ncial liability in the event of any of the following:

- a) When the item offered by the Seller repeatedly fails in the inspection and/or the Seller is not in position to either rectify the defects or offer items conforming to the contracted quality standards.
  - b) When the Seller fails to honour any part of the contract including failure to deliver the contracted stores/ render services in time.
  - c) Adulterated supplies as determined according to Prevention of Food Adulteration Act, 1954 and Rules, 1995 as amended from time to time.
  - d) Supplies inferior to the specified quality.
  - e) Unbranded/deceptively branded / spurious supplies against branded items in the Purchase Order.
  - f) Time expired supplies.
  - g) When the Seller is found to have made any false or fraudulent declaration or statement to get the contract or he is found to be indulging in unethical or unfair trade practices.
  - h) Based on the decision of Arbitration Tribunal.
  - i) The seller is declared bankrupt or become insolvent.
21. **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.
- i. 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.
  - ii. 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.
22. **Appropriation:** Whenever under this contract any sum of money is due or recoverable from Seller or payable by the Seller, Buyer shall be entitled to recover such sum by appropriating in part or whole by deducting any sum then due or which at any time thereafter may become due to the Seller in this or any other contract entered by Buyer as a whole its Divisions and Branch Offices etc., held by him/her alone or in partnership with others. Should this sum be not sufficient to cover the full amount recoverable, the Seller shall pay to Buyer on demand the remaining balance due within 30 days of such written notice. The remaining balance due, if any, will be recovered through due process of law in case seller becomes defaulter.
23. **Applicable Laws/Jurisdiction:** All questions, disputes or differences arising out of or in connection with the contract, if concluded shall be subject to the exclusive jurisdiction of the Court within the local limits whose jurisdiction the place from which the Acceptance of Tender is issued, is situated. This contract shall be governed by and subject to and interpreted and construed in accordance with the Laws of the Republic of India, as may be in force from time to time.
24. **Arbitration:**
- i) Any dispute or difference whatsoever arising between the parties out of relating to the construction, meaning, scope, operation or effect of this contract or the validity or the breach thereof shall be settled by bilateral discussions.
  - ii) Any dispute or difference whatsoever arising between the parties out of or relating to the construction, meaning, scope, operation or effect of this contract or the validity or the breach thereof, which cannot be settled amicably within sixty (60) days or such longer period as may be mutually agreed upon, from the date on which either party informs the other in writing by a notice that such dispute, disagreement or question exists, shall be settled by arbitration.
  - iii) The Arbitration Proceedings shall be conducted in India under the Indian Arbitration and Conciliation Act, 1996 (amended time to time) and the award of such Arbitration shall be enforceable in Indian Court only. The law applicable to an arbitration shall be Indian law. In case of Foreign Seller, Indian law of Foreign law to be decided by contracting parties is applicable.
25. **For Indigenous Seller:** The arbitration tribunal shall be consisting of sole arbitrator. The sole arbitrator shall be nominated by the parties within ninety(90) days of the receipt of the notice mentioned above through mutual discussions and referred to CMD TCL HQRS. for appointment of the Sole Arbitrator with the mutual consent of the parties. The Arbitrator so appointed shall be a Government Servant /Ex Government Servant (with mutual consent) who had not dealt with matters to which this agreement relates and in course of his duties had not expressed views on all or any of the matter in disputes or differences. Failing which the arbitrator shall be nominated under the provision of Indian Arbitration and Conciliation Act, 1996 (amended time to time) at the request of either party or by dispute resolution institutions like Indian Council of Arbitration or ICADR, but said nomination would after consultation with both the parties. The Award of arbitration shall be final and binding on the parties to this contract.

**26. For Foreign Seller:** The arbitration tribunal shall be consisting of sole arbitrator. The arbitrator, who shall not be a citizen or domicile of the country of either of the parties or of any other country unacceptable to any of the parties shall be nominated by the parties within ninety (90) days of the receipt of the notice mentioned above, failing which the arbitrator may be nominated under the provisions of Indian Arbitration and Conciliation Act, 1996 (amended time to time) or by dispute resolution institutions like Indian Council of Arbitration and ICADR. In case, nomination of third arbitrator under Indian Arbitration and Conciliation Act, 1996 (amended time to time) or by dispute resolution institutions like ICA and ICADR are not acceptable to the SELLER, then the sole arbitrator may be nominated by the President of International Chamber of Commerce, Paris, but the said nomination would be after consultation with both the parties and shall preclude any citizen with domicile of any country as mentioned above. The Arbitration Tribunal shall have its seat in India or any suitable place in India as may be decided by the arbitrator. Each party shall bear its own cost of preparing and presenting its case. The cost of arbitration including the fees and expenses of the arbitrator shall be shared equally by the SELLER and the BUYER, unless otherwise awarded by the Arbitration Tribunal. In the event of a vacancy caused in the office of the arbitrator, the parties which nominated such arbitrator shall be entitled to nominate another in his place and the arbitration proceedings shall continue from the stage they were left by the retiring arbitrator. In the event of both parties failing to nominate arbitrator within sixty (60) days of the place of arbitrator falling vacant, then the other party shall be entitled after due notice of at least thirty (30) days to request dispute resolution institutions in India like Indian Council of Arbitration or ICADR to nominate another arbitrator as above. The parties shall continue to perform their respective obligations under this contract during the pendency of the arbitration proceedings except in so far as such obligations are the subject matter of the said arbitrator proceedings. The language(s) of the arbitration shall be English.

"Except as may be required by law, neither a party nor its representatives may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of (all /both) parties."

In case of technical disputes involving confidential matters, the issue shall be referred to a high level technical authority for each party, appointed for this purpose.

**27. For CPSUs/DPSUs:**

In the event of any dispute or difference relating to the interpretation and application of the provisions of the contract, such dispute or difference shall be referred by either party for Arbitration to the sole Arbitrator in the Department of Public Enterprises to be nominated by the Secretary to the Government of India in-charge of the Department of Public Enterprises.

The Arbitration and Conciliation Act, 1996 (amended time to time) shall not be applicable to the disputes, provided, however, any party aggrieved by such award may make a further reference for setting aside or revision of the award to be Law Secretary, Department of Legal Affairs, Ministry of Law & Justice, Government of India. Upon such reference the dispute shall be decided by the Law Secretary or the Special Secretary/ Additional Secretary, when so authorized by the Law Secretary, whose decision shall bind the Parties finally and conclusively. The Parties to the dispute will share equally the cost of arbitration as intimated by the Arbitrator. If the Department of Public Enterprises fails to settle the dispute, the same will be referred to the Committee constituted by the Cabinet Secretariat.

**28. Indemnity against Patent rights:** The Seller shall at all times protect, indemnify and save/ keep harmless the Buyer, its successors, assigns, any claim made by a third party against all liability, including costs, expenses, claims, suits or proceedings at law, in equity or otherwise, arising out of, or in connection with, any actual or alleged patent infringement (including process patents, if any), or violation of any license with respect of the stores covered by the order.

**29. Bribes:** The Seller undertakes that he has not given, offered or promised to give, directly or indirectly any gift, consideration, reward, commission, fees brokerage or inducement to any person in service of the Buyer or otherwise in procuring the Contracts or forbearing to do or for having done or for borne to do any act in relation to the obtaining or execution of the Contract or any other Contract with the Government for showing or forbearing to show favour or disfavour to any person in relation to the Contract or any other Contract with the Government. Any breach of the aforesaid undertaking by the seller or any one employed by him or acting on his behalf (whether with or without the knowledge of the seller) or the commission of any offers by the seller or anyone employed by him or acting on his behalf, as defined in Chapter IX of the Indian Penal Code, 1860 or the Prevention of Corruption Act, 1988 or any other Act enacted for the prevention of corruption shall entitle the Buyer to cancel the contract and all or any other contracts with the seller and recover from the seller the amount of any loss arising from such cancellation. A decision of the buyer or his nominee to the effect that a breach of the undertaking had been committed shall be final and binding on the Seller. Giving or offering of any gift, bribe or inducement or any attempt at any such act on behalf of the seller towards any officer/employee of the buyer or to any other person in a position to influence any officer/employee of the Buyer for showing any favour in relation to this or any other contract, shall render the Seller to such

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

**30. Sub-contracting/Sub-letting with the permission of the Buyer:** Seller shall not be entitled without buyer's prior written consent to Sub-contract/Sublet to a third party all or part of the benefits or obligations of the Contract (even by way of change of ownership or control), except as expressly permitted in this Contract if any, to sub-contract any of its rights and interest under this Contract.

**31. Works & Payments during Arbitration:** Work under the Contract shall be continued by the Seller during the arbitration proceeding, unless otherwise directed in writing by the Buyer or unless the matter is such that the work cannot possibly be continued until the decision of the arbitrators is obtained, and save as those which are otherwise expressly provided in the Contract, no payment due or payable by the Buyer shall be withheld on account of such arbitration proceedings, unless it is the subject matter or one of the subject matters thereof.

**32. Fall Clause:** The price quoted shall be in no event exceed the lowest price at which you sell the stores or offer to sell stores of identical description to any person(s) / organization including the purchases by any department of the Govt. of India, the State Govt. or any statutory undertaking of the Govt. of India / State Govt., as the case may be during the period till the completion of the performance of the order placed and during currency of the order. If at any time during the said period, the Seller reduces the sales price, sells or offers to sell such stores to any person/ organization including the Buyer or any department of Central Govt. or any Dept. of State Govt., or any statutory undertaking of the Central or State Govt., as the case may be at a price lower than the price chargeable under the contract, he shall forthwith notify such reduction/sale or offer to sale to the Buyer and the price payable under the contract for the stores supplied after the date of coming in force of such reduction or sale or offer to sale shall stand correspondingly reduced with due allowance for quantities and intervening time period.

**33. Immunity to the Government of India:** It is expressly understood and agreed by and between Seller & buyer that buyer is entering into this contract solely on its own behalf and not on behalf any other person or entity. In particular, it is expressly understood and agreed that Government of India is not a party to this contract and has no liabilities, obligations or right hereunder. It is expressly understood and agreed that buyer is an independent legal entity with power and authority to enter into contracts solely on its own behalf under the applicable laws of India and general principles contract law. Seller expressly agreed acknowledges and understand that buyer is not an agent, representative or delegate to the Government of India. It is further agreed and understood that Government of India is not and shall not be liable for any acts, omissions, commissions, breaches or other wrongs arising out of the contract. Accordingly, Seller hereby expressly waives releases and foregoes any and all actions, including counterclaims, impleader claims or counter claims against the Government of India arising out of this contract and covenants as to any manner, claim cause or action or this whatsoever arising out of or under this contract.

**34. Intellectual Property Rights:**

- a) If any Patent design, trademark, copyright or any other intellectual property rights apply to the delivery or accompanying documentation, Buyer shall be entitled to the legal use thereof free of charge by means of a non-exclusive, worldwide, perpetual license. All intellectual property rights that arise due to the execution of the delivery by the Seller and by its employees or third parties involved by the Seller for performance of the agreement belong to Buyer.
- b) The Seller shall be obligated to do everything necessary to obtain or establish the above mentioned rights. The Seller guarantees that the delivery does not infringe on any of the intellectual property rights of third parties. The Seller shall also be obligated to do everything necessary to obtain or establish the alternate acceptable arrangement pending resolution of any (alleged) claims by third parties. The Seller shall indemnify the Buyer against any (alleged) claims by third parties in this regard and shall reimburse Buyer for any damages suffered as a result thereof.

**35. Amendment & Waiver :**

Any amendment to Purchase Orders / Contracts would be enforceable only if made in writing and duly signed by authorized representatives of the parties hereto. Failure of either Party at any time to enforce any of the provisions of this Contract shall not per se constitute a waiver by that Party of any such provisions nor in any way affect the validity of the Contract or any part hereof.

**36. Classified/Confidentiality:** The conditions are as follows:-

- a) This Contract and its annexure(s) shall be treated as confidential by the Parties and their officers and employees.
- b) Unless otherwise specified herein, neither Party or any of their affiliated companies shall make any ne

ws release, public announcement, advertisement, denial or confirmation, disclose of some or any part of this Contract or transactions contemplated under this Agreement to any third party without the prior consent of the other Party.

c) The Party Disclosing information is termed as Disclosing Party and the Party receiving information is termed as Receiving Party, Each Party undertakes:

- i) to keep the other Party's Confidential Information confidential using the same degree of care as the receiving Party uses to protect its own Proprietary Information against public disclosure but in no case any less degree than reasonable care; and
- ii) not to make any disclosure of the other Party's Confidential Information to any third party and to use the same only for the Purpose; and
- iii) not to make any copies of the other Party's Confidential Information, or translation or transfer of the same to other documents or media nor to disseminate the same within its own organization save as is strictly necessary for the Purpose; and
- iv) Not to assign the rights and obligations of the Parties without their prior written consent thereto.

d) Provided, however, that the foregoing restrictions and obligations shall not apply to any information which it can be shown:

- i.) is already or hereafter becomes published otherwise than through the fault or negligence of the receiving Party; or
- ii.) is lawfully obtained by the recipient from a third party having rights to disclose to the receiving Party, without restrictions as to use or disclosure, or
- iii.) is already known to the receiving Party at the date of receipt of the information pursuant to this Agreement, or
- iv.) is independently developed by the receiving Party.
- v.) is required to be disclosed under any law, judicial order or Government order or regulation provided receiving Party gives disclosing Party timely notice, where possible, of the contemplated disclosure so as to give the disclosing Party an opportunity to intervene to preserve the confidentiality of the information. Or such disclosure is limited to those persons to whom the Receiving Party is legally compelled to disclose the information to; and

e) The technical information provided by SELLER under this Contract shall be treated as confidential by the BUYER and shall be used by BUYER only for purpose intended and shall not be disclosed to any third party.

f) The provisions of this clause shall survive and remain in force notwithstanding the termination or expiry of this Contract.

g) The BUYER shall limit access of technical documentation being provided under this Contract only to such of its employees involved in relevant operations concerning the equipment on a need to know basis.

h) Non-adherence to this Clause by the Seller shall be treated, amongst others, as a material breach of this Contract.

**37. Agents / Agency Clause:** The seller confirms and declares to the buyer that the seller is the original manufacturer or authorized distributor / stockiest of original manufacturer or Govt. Sponsored / Designated Export Agencies (applicable in case of countries where domestic laws do not permit direct export by OEMS) of the stores referred to in this offer / contract / Purchase order and has not engaged any individual or firm, whether Indian or Foreign whatsoever, to intercede, facilitate or in any way to recommend to Buyer or any of its functionaries, whether officially or unofficially, to the award of the contract / purchase order to the Seller; nor has any amount been paid, promised or intended to be paid to any such individual or firm in respect of any such intercession, facilitation or recommendation. The Seller agrees that if it is established at any time to the satisfaction of the Buyer that the present declaration is in any way incorrect or if at a later stage it is discovered by the Buyer that the Seller has engaged any such individual / firm, and paid or intended to pay any amount, gift, reward, fees, commission or consideration to such person, party, firm or institution, whether before or after the signing of this contract / purchase order, the Seller will be liable to refund that amount to the Buyer. The Seller will also be debarred from participating in any RFQ / Tender for new projects / program with Buyer for a minimum period of five years. The Buyer will also have a right to consider cancellation of the Contract / Purchase order either wholly or in part, without any entitlement or compensation to

o the Seller who shall in such event be liable to refund all payments made by the Buyer in terms of the Contract / Purchase order along with interest at the rate of 2% per annum above LIBOR (London Inter Bank Offer Rate) (for foreign vendors) and Base Rate of SBI (State Bank of India) plus 2% (for Indian vendors). The Buyer will also have the right to recover any such amount from any contracts / Purchase order concluded earlier with Buyer.

**38. Force Majeure:**

- a) If at any time during the execution of the supply order, the performance in whole or in part by either Buyer or and by the Seller(s) is / are delayed by any reason of force majeure situations such as acts of civil war, civil commotion, sabotage, hostilities, war, fires, explosions, epidemics, natural calamities like floods, earthquakes, volcanoes, storms, acts of God & laws of respective governments or any other causes beyond the control of either parties, hereinafter referred to as "events", provided notice of the occurrence of such event/s is / are communicated by either party, to the other party within 21 days from the date of occurrence thereof, neither party shall by reason such events be entitled to terminate the contract nor shall either party have any claim for damages against the other in respect of such non performance and or delay in performance of the contract / order. Executions on either side shall be resumed as soon as practicable after such event has come to an end or ceased to exist and the decision of Buyer as to whether activities can resume or not, shall be conclusive and final. Occurrence of the events to be certified by Chamber of Commerce / Indian High Commission or Embassies / Government in that Country.
- b) The performance in whole or in part under the captioned tender / contract is prevented or delayed by reason of any such event for a period exceeding sixty days either party may at its option terminate the contract / further processing of the tender. The relative obligations of both the parties remain suspended during the actual period of force majeure.
- c) The Buyer may extend the delivery schedule as mutually agreed, on receipt of written communication from the Seller regarding occurrence of 'Force Majeure' conditions, but not exceeding six months from the scheduled delivery date. If the 'Force Majeure' conditions extend beyond this period, the Buyer shall have the right to cancel the order without any financial implication to the Buyer or on terms mutually agreed to.

**39. Exit Criteria:** The contract/order may be terminated under the following circumstances:

- a) In the event of unsatisfactory performance by the Seller during the contract period, or any of the information provided by the Seller is found to be untrue, or Seller is found to have attempted to influence any person involved with the contract through unethical means, the contract shall be terminated with month's advance notice without any financial implication to Buyer. Notwithstanding, the foregoing, in cases where it is found that a Seller is engaged in unethical practices, the same shall be barred from participating in the future contracts for a period of ..... years. As per latest guidelines issued by MoD/Govt. of India.
- b) If there is change in Buyer requirement, contract shall be terminated with months advance notice. The liability of Buyer in this case will be agreed mutually. In the event of termination of contract by either party the Seller shall ensure following:-
  - i) IPR's are transferred to Buyer to enable Buyer to proceed on the work with other Seller. Seller also will render all assistance till the other Seller fully take over the balance work.
  - ii) Transfer title and deliver all or any part thereof of the supplies, materials, work-in-progress, finished Products, Tooling, drawings and data produced or acquired by Seller specifically for the Product being terminated.
  - iii) Supply of products and its components / spares at least for a period of years from the date of such termination.
- c) The Seller is declared bankrupt or becomes insolvent.
- d) The delivery of material is delayed due to causes of Force Majeure by more than (months).
- e) Based on the decision of the Arbitration Tribunal.

**40. Cartel Formation:**

- a) Cartel formation or quoting of pool rates or quoting in collusion is against the basic principle of competitive bidding and shall attract penal and punitive measures; including suspension/banning of such Bidders for a specific period as per Procedure for Penal Action in OFs/Units of OFB under the Guidelines of the Ministry of Defence for Penalties in Business Dealings with Entities in vogue, apart from reporting to the Competition Commission of India, other Regulatory Authorities, Chambers / Association of Commerce, etc.
- b) Firms are expected to quote for full quantity or part thereof but not less than 50% of tendered quantity. Offers for quantity less than 50% of tendered quantity will be considered unresponsive and liable to be rejected if CARTEL Formation is suspected. The management (CFA), reserves the right to order any quantity on one or more firms.

- c) Whenever all or most of the approved firms quote equal rates in CARTEL, the purchaser reserves the right to place order on any one or more firms with exclusion of the rest. The selection of firms for placement of order would be based on a pre-determined ranking of the firms.
  - d) The purchaser reserves the right to place order on two or three firms: in such cases tender quantity will be distributed between Rank 1(R1) and Rank 2(R2) firms in the ratio of 60:40 or among R1, R2 and Rank 3(R3) firms in the ratios 50:30:20 respectively.
  - e) The purchaser reserves the right to delete the registered firms who quote in CARTEL from list of approved/registered sources or to debar them for competing for a period to be decided by the purchaser.
  - f) The name of the newly registered firm which enters into CARTEL on getting registered will be summarily deleted from the list of registered suppliers.
  - g) New firms will have to submit an undertaking that they will not be part of a cartel with other vendors and will quote competitive rates in the tenders; otherwise would face expulsion from the list of vendor.
41. **Access to Books of Accounts:** In case it is found to the satisfaction of the Buyer that the Bidder has engaged an Agent or paid commission or influenced any person to obtain the contract as described in clauses relating to Agents/Agency Commission and penalty for use of undue influence, the Bidder, on a specific request of the Buyer, shall provide necessary information / inspection of the relevant financial documents / information.
42. **Non-disclosure:** Except with the written consent of the Buyer/Bidder, the other Party shall not disclose the TE or consequent Contract or any provision, specification, plan, design, pattern, sample or information thereof to any third party.
43. **Applicable Currency:** Domestic Bidders shall quote and be paid only in Indian Rupees (INR). Foreign Bidders may quote in US Dollars or Euros and may be paid in the same currency. If the offer of foreign Bidders includes some portion of the allied work/ services to be undertaken by Indian purchaser (e.g. installation, commissioning, etc.) such portion shall be quoted and paid only in INR. Authorised Indian dealers of foreign OEMs participating in the TE shall quote and be paid only in INR. The foreign exchange rates applied for conversion from one currency to another shall be the exchange rate (BC Selling Rate) notified by the Parliament Street Branch of SBI, New Delhi / RBI on the last date of submission of Bids.
44. **Paying Authority:** The organization of the Local Accounts office OEFC concerned or their subordinate offices or any paying authority authorized to make payment for such procurements will be the Paying Authority. The name, address and contact details of the Paying Authority are: LAO OEFC Kanpur.
45. **Document to be submitted for Effecting Payments:** The Seller submit the requisite documents to the Paying Authority to enable effecting the payment.

**A) Indigenous Sellers:** Payment of bills will be made on submission of the following documents by the Seller to the Paying Authority along with the bill:

- i) Ink-signed copy of Sellers Bill/ Commercial Invoice/ Contingent Bill
- ii) Inspection Note (and User Acceptance, if applicable)
- iii) Copies of Supply Order/ Contract along with all amendments to the Supply Order/ Contract.
- iv) If DP was extended, copy of the amendment (s) to the Supply Order/ Contract duly indicating whether the extension was granted with or without LD
- v) Claim for statutory and other levies to be supported with requisite documents/ proof of payment, like GST Invoice, Excise Duty Challan (wherever applicable), Customs Duty Clearance Certificate, proof of payment for EPF/ ESIC contribution with nominal roll of beneficiaries, etc., as applicable
- vi) Exemption Certificate, if applicable.
- vii) UAM number of MSEs for availing benefits of Procurement Policies for MSEs Order 2012
- viii) Bank Guarantee for advance, if any, paid
- ix) Performance Bank Guarantee/ Indemnity bond (only for PSUs), as applicable
- x) Guarantee / Warranty certificate
- xi) Name and address, Account type, Account number, IFSC code, MICR code (if these details are not incorporated in supply order/contract)
- xii) Any other document / certificate that may be provided for in the consequent Supply Order/ Contract.

(Note – A part from above indicative list, the documents relevant to the procurement undertaken through GeM portal shall be submitted).

47. **Quantity Tolerance:** Normally no quantity variation in the supplies under the consequent Contract shall be permitted. However, in justified cases, such excess/ short supplies may be accepted by the Buyer, subject

t to the value of such excess/ short supplies not exceeding five percent of the original value of the contract, and the payment being admitted only for the actually quantity supplied.

**48. Capacity Constraints of L1:** Firms are expected to quote for full quantity or part thereof but not less than 50 % of tendered quantity. The management (CFA), reserves the right to order any quantity on one or more firms. If the L1 Bidder has not quoted for the entire tendered quantity, then the supply order shall be placed for the balance quantity on L2 provided the L2 accepts the L1 rates. If the L2 is not agreeable to the L1 rate or if the L1 and L2 Bidders together cannot meet the tendered requirement, then the order for the balance quantity shall be placed on the next ranking supplier (L3) at the L1 rates provided L3 accepts the L1 rates. If the situation so warrants, this process shall be repeated in the order of the ranking (i.e. L1, L2, L3... so on) till the entire tendered quantity is covered or no Bidder is left.

**49. Distribution of Quantity for Strategic Reasons:** As a strategic requirement the Buyer may need multiple sources, in such cases the Buyer may conclude orders on more than one firm in the order of ranking on financial evaluation (in the distribution ratio clearly specified in the TE Part II). The ratios of splitting may be either (a) 60:40 if two sources are necessary (provided at least three sources were issued tenders and have also quoted). Or (b) 50:30:20 if three sources are necessary (provided at least four sources were issued tenders and have also quoted). The distribution shall be done between L1 and L2 (on the L2 accepting the L1 rates) or between L1, L2 and L3 (on the L2 and L3 accepting the L1 rates) depending on whether 60:40 or 50:30:20 is specified as the distribution ratio. If the L2 or L3 Bidder (s) does not accept the counter-offered L1 rate then such undistributed quantity shall revert back to the L1 Bidder. If the distribution ratio is not specified hereunder then the supply order shall be concluded only on the L1 Bidder.

**50. Acceptable Year of Manufacture:** Unless stated otherwise in the TE, the goods supplied shall be of current manufacture. Quality/ Life certificate will need to be enclosed by the Seller along with the Bill.

**51. Quality:** The quality of the stores offered shall strictly comply with the technical parameters contained in the Technical Specifications & its related standards and shall be new & of current manufacture. The mode of Inspection may be Buyers Inspection/ Joint Inspection/ Self- certification. The inspection of the stores may be Pre-dispatch Inspection (and/ or) Joint Receipt Inspection/Buyers Receipt Inspection to check their compliance with the Technical Specification.

**52. Claims:** Claims may be presented either on (a) quantity of the stores, where the quantity does not correspond to the quantity shown in the Packing List/Insufficiency in packing, or (b) quality of the stores, where quality does not correspond to the quality mentioned in the contract. The time frame for raising claims shall be as follows:

- a) Quantitative Discrepancy: Within ninety days from the date of delivery of the consignment in case of delivery by Air or road and within one hundred and twenty days from date of delivery in case of delivery by Sea.
- b) Qualitative Discrepancy: The warranty should remain valid for twelve months after the goods or any portion thereof, as the case may be, have been delivered to and accepted at the final destination indicated in the contract, or for eighteen months after the date of shipment from the place of loading, whichever period concludes earlier.
- c) Quality Claims on account of Defects or Deficiencies in JRI: The quality claims for defects or deficiencies in quality noticed during the JRI/PDI shall be presented within forty five days of completion of JRI/PDI and acceptance of goods. Quality claims shall be presented for defects or deficiencies in quality noticed during warranty period earliest but not later than forty five days after expiry of the guarantee period.

The quantity and quality claims should be submitted to the seller in the prescribed format enclosed in annexures.

The Seller shall settle the claims within 45 days from the date of receipt of the claim at the Sellers Office, subject to acceptance of the claim by the Seller. In case no response is received during this period the claim will be deemed to have been accepted.

The Seller shall collect the defective or rejected goods from the location nominated by the Buyer and deliver the repaired or replacement goods at the same location under the Sellers arrangement.

Claims may also be settled by reduction of cost of goods under claim from bonds submitted by the Seller or payment of claim amount by Seller through demand draft drawn on an Indian Bank, in favour of Paying Authority.

**53. Public Procurement (Preference to Make in India) Policy :** Provisions contained in Public Procurement (Preference to Make in India), Order 2017 issued by Department for Promotion of Industry and Internal Trade vide letter No. P-45021/2/2017P-(B.E-II) dated 04th June, 2020 shall be followed.

**54. Public Procurement Policy for MSEs Order, 2012 :**



**Note for MSEs (Micro & Small Enterprises)** 1. MSEs (Registered with district Industries centers or Khadi and Village Industries Commission or Khadi and Village industries Board or Coir Board or NSIC or Directorate of Handicrafts and Handloom or any other body specified by Ministry of Micro, Small and Medium Enterprises) Quoting price within price band of L1+15%, shall be allowed to supply a portion of requirement by bringing down their price to L1 price in a situation where L1 price is from someone other than a MSE and such MSE shall be allowed to supply up to 25% of the total value of the quantity to be covered against the TE, subject to submission of valid documentary proof submitted along with technical bid. MSE benefit will only be given to OEMs participating directly in the TE and not to their Sole selling agents/Authorized dealers. The participating firm are required to declare the Udyog Aadhaar Memorandum (UAM) Number failing which firm will not be able to avail the benefits to MSEs as contained in Public Procurement Policy for MSEs order, 2012.

2. In case none of MSE is falling within L-1 &/or L-2 &/or L-3 in pre-determined distribution of quantity, 25% of quantity to be covered and shared equally amongst all the MSEs who have quoted price within price band of L-1 + 15% and accepts L-1 rate as per MSE provisions.

3. 5% & 3% of sub target within 25% of tendered value is earmarked to MSE owned by SC/ST and women entrepreneur respectively provided that in the event of failure of such MSEs to participate in tender process or meet tender requirements and L1 price, 5% & 3% sub target for procurement earmarked for MSEs owned by SC/ST & women entrepreneurs respectively shall be met from other Micro and Small Enterprises. To avail this benefit, firm has to submit their claim along with technical bid.

#### **55. Safeguard while Taking Support from Private Companies in RFP Cases - Conflict of Interest Clause:**

Any company and or their group/associate company who are participating in the < Details of the RFP Proposal issued by the Service HQs>\* will not be eligible to participate in this Tender Enquiry. An undertaking to the effect that the firm or its group associate is not participating in < Details of the RFP Proposal issued by the Service HQs> \* is to be provided by the firm. At any stage during the period of the contract, if the aforesaid undertaking is found to be false the BUYER (OFs/OFB) to take all or any one or more of the following actions, wherever required:-

- (i) To immediately call off the pre-contract negotiations without assigning any reason or giving any compensation to the Bidder. However, the proceedings with the other Bidder(s) would continue
- (ii) The Earnest Money Deposit/Performance Security Deposit/Performance Bond shall stand forfeited either fully or partially, as decided by the Buyer and the Buyer shall not be required to assign any reason therefor.
- (iii) To immediately cancel the contract, if already signed, without giving any compensation to the Bidder.
- (iv) To recover all sums already paid by the Buyer (OFs/OFB), and in case of an Indian Bidder with interest thereon at 2% higher than the prevailing Prime Lending Rate of State Bank of India (or Base Rate of State Bank of India in the absence of Prime Lending Rate), while in case of a Bidder from a country other than India with interest thereon at 2% higher than the LIBOR. If any outstanding payment is due to the Bidder from the Buyer (OFs/OFB) in connection with any other contract for any other defence stores, such outstanding payment could also be utilized to recover the aforesaid sum of interest.
- (v) To encash the advance bank guarantee and performance-bank-warranty bond, if furnished by the Bidder, in order to recover the payments, already made to by the Buyer (OFs/OFB), along with interest.
- (vi) To cancel all or any other Contracts with the Bidder.
- (vii) To ban the Bidder from entering into any bid from the OFB organization and/or MoD and/or other Ministries/Departments of Government of India for a minimum period of five years and not more than ten years at the discretion of the Buyer (OFs/OFB) as per Procedure for Penal Action in OFs/Units of OFB under the Guidelines of the Ministry of Defence for Penalties in Business Dealings with Entities in vogue (or amended time to time).

#### **56. Evaluation Criteria: The broad guidelines for evaluation of Bids will be as follows:**

- a) Only Bids that fulfill all the eligibility & qualifying requirements of the TE, both technically and commercially, shall be considered for evaluation.
- b) In Two-Bid system, the Technical Bids shall be evaluated with reference to the technical requirements of the stores/ service prescribed in the TE. The Buyer may obtain technical clarifications during the evaluation of the Technical Bids. Further, if considered necessary during the course of Technical evaluation, the Buyer may invite the vendors who meet the essential parameters for technical presentation/ clarification.
- c) The Price Bids of only the technically compliant Bidders shall be opened.

- d) The Lowest Bid (L1) will be decided, from out of the Technically & Commercially compliant Bids, based on the lowest price quoted. Consideration of Taxes & Duties in evaluation process shall be as follows:
- i) When competition is only among Indian Suppliers, the F.O.R Prices at destination (Consignee's premises) shall be the basis for ranking of the quotations.
  - ii) If the competition is amongst foreign suppliers, the basis for comparison shall only be the landed price at the destination (designated port).
  - iii) When the competition is amongst indigenous and foreign suppliers, the basic cost (CIF) quoted by the foreign suppliers shall be the basis for comparison with the basic cost offered by the indigenous suppliers, after offloading the GST & Excise Duty (if applicable). Therefore, to enable evaluation of the Bid, it is important for foreign Bidders to ensure that they duly quote, both on, CIF as well as FOB basis. Similarly, it is important for the Indian Bidders to duly indicate the GST & Excise Duty (if applicable) in their quote as separate elements.
- e) The quotes of foreign suppliers in foreign currency shall be brought to a common denomination in Indian Rupees by adopting the exchange rate as BC Selling Rate of the Parliament Street Branch of State Bank of India, New Delhi/RBI on the date of the closing of Bids.
- f) If there is any discrepancy between the unit price and the total price that is obtained by multiplying the unit price and quantity, the unit price will prevail and the total price will be corrected accordingly. If there is a discrepancy between words and figures, the amount in words will prevail for calculation of price.
- g) The Buyer reserves the right to evaluate the offers received by using Discounted Cash Flow (DCF) method. If this method is applied the discounting rate shall be the lending rate of the Government of India on loans given to the State Government as notified annually by the Budget Division of Ministry of Finance. The DCF may be applied for converting differing Payment Terms of Bidders to a common basis and thereby determine L1 status.
- h) The Lowest Acceptable Bid will be considered for placement of contract/ Supply Order, after complete clarifications and price negotiations, if so necessary. The Buyer also reserves the right to award contracts to different Bidders for being lowest in particular items. The Buyer further reserves the right to apportion the quantity, if it is convinced that Lowest Bidder will not be able to supply the full tendered quantity in stipulated time.
- i) Any other criteria as applicable to suit a particular case.

**57.Price Bid Format:** As per GeM.

**ALL THE OTHER TERMS & CONDITIONS AS PER GeM GENERAL TERMS & CONDITIONS / OFB PROCUREMENT MANUAL - 2018**

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**2. Buyer Added Bid Specific ATC**

Buyer uploaded ATC document [Click here to view the file.](#)

**3. Certificates**

Bidder's offer is liable to be rejected if they don't upload any of the certificates / documents sought in the Bid document, ATC and Corrigendum if any.

**4. Inspection**

**Nominated Inspection Agency:** On behalf of the Buyer organization, any one of the following Inspection Agency would be conducting inspection of stores before acceptance:  
Pre-dispatch Inspection at Seller Premises (applicable only if pre-dispatch inspection clause has been selected in ATC):

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Post Receipt Inspection at consignee site before acceptance of stores:  
GENERAL MANAGER OR HIS AUTHORIZED REPRESENTATIVE.

#### 5. **Generic**

**Registration / Empanelment Requirement:** Contract shall be awarded to only such sellers , who are registered / empanelled / approved / enlisted with

ORDNANCE EQUIPMENT FACTORY ( A UNIT OF TCL)

for the required goods / service category on the date of bid opening. Prospective bidders (if not already registered), are advised to get themselves registered with the said registration authority before bid opening date. (It is certified that the registration is granted by the registering agency as per Rule 150 of GFR following a fair, transparent and reasonable procedure.)

#### 6. **Generic**

OPTION CLAUSE: The Purchaser reserves the right to increase or decrease the quantity to be ordered up to 25 percent of bid quantity at the time of placement of contract. The purchaser also reserves the right to increase the ordered quantity by up to 25% of the contracted quantity during the currency of the contract at the contracted rates. Bidders are bound to accept the orders accordingly.

#### 7. **Generic**

Bidders are advised to check applicable GST on their own before quoting. Buyer will not take any responsibility in this regards. GST reimbursement will be as per actuals or as per applicable rates (whichever is lower), subject to the maximum of quoted GST %.

### **Disclaimer/अस्वीकरण**

The additional terms and conditions have been incorporated by the Buyer after approval of the Competent Authority in Buyer Organization, whereby Buyer organization is solely responsible for the impact of these clauses on the bidding process, its outcome, and consequences thereof including any eccentricity / restriction arising in the bidding process due to these ATCs and due to modification of technical specifications and / or terms and conditions governing the bid. If any clause(s) is / are incorporated by the Buyer regarding following, the bid and resultant contracts shall be treated as null and void and such bids may be cancelled by GeM at any stage of bidding process without any notice:-

1. Definition of Class I and Class II suppliers in the bid not in line with the extant Order / Office Memorandum issued by DPIIT in this regard.
2. Seeking EMD submission from bidder(s), including via Additional Terms & Conditions, in contravention to exemption provided to such sellers under GeM GTC.
3. Publishing Custom / BOQ bids for items for which regular GeM categories are available without any Category item bunched with it.
4. Creating BoQ bid for single item.
5. Mentioning specific Brand or Make or Model or Manufacturer or Dealer name.
6. Mandating submission of documents in physical form as a pre-requisite to qualify bidders.
7. Floating / creation of work contracts as Custom Bids in Services.
8. Seeking sample with bid or approval of samples during bid evaluation process. (However, in bids for [attached categories](#), trials are allowed as per approved procurement policy of the buyer nodal Ministries)
9. Mandating foreign / international certifications even in case of existence of Indian Standards without specifying equivalent Indian Certification / standards.
10. Seeking experience from specific organization / department / institute only or from foreign / export experience.
11. Creating bid for items from irrelevant categories.
12. Incorporating any clause against the MSME policy and Preference to Make in India Policy.
13. Reference of conditions published on any external site or reference to external documents/clauses.
14. Asking for any Tender fee / Bid Participation fee / Auction fee in case of Bids / Forward Auction, as the case may be.

Further, if any seller has any objection/grievance against these additional clauses or otherwise on any aspect of this bid, they can raise their representation against the same by using the Representation window provided in the bid details field in Seller dashboard after logging in as a seller within 4 days of bid publication on GeM. Buyer is duty bound to reply to all such representations and would not be allowed to open bids if he fails to reply to such representations.

[This Bid is also governed by the General Terms and Conditions/ यह बिड सामान्य शर्तों के अंतर्गत भी शासित है](#)

In terms of GeM GTC clause 26 regarding Restrictions on procurement from a bidder of a country which shares a land border with India, any bidder from a country which shares a land border with India will be eligible to bid in this tender only if the bidder is registered with the Competent Authority. While participating in bid, Bidder has to undertake compliance of this and any false declaration and non-compliance of this would be a ground for immediate termination of the contract and further legal action in accordance with the laws./जेम की सामान्य शर्तों के खंड 26 के संदर्भ में भारत के साथ भूमि सीमा साझा करने वाले देश के बिडर से खरीद पर प्रतिबंध के संबंध में भारत के साथ भूमि सीमा साझा करने वाले देश का कोई भी बिडर इस निविदा में बिड देने के लिए तभी पात्र होगा जब वह बिड देने वाला सक्षम प्राधिकारी के पास पंजीकृत हो। बिड में भाग लेते समय बिडर को इसका अनुपालन करना होगा और कोई भी गलत घोषणा किए जाने व इसका अनुपालन न करने पर अनुबंध को तत्काल समाप्त करने और कानून के अनुसार आगे की कानूनी कार्रवाई का आधार होगा।

**---Thank You/धन्यवाद---**