



ITER-India
(Institute For Plasma Research)



Title	Tender No. I-I/ET-TPT/23004/23-24 dated 26-09-2023 for Supply of 70kV Thyatron Unit with its Compatible Driver Module for Crowbar Application
Sub Title	PART-A (III): Terms and Conditions of the Contract/Purchase Order

ITER-India, Institute for Plasma Research
Block A, Sangath Skyz, Bhat-Motera Road, Koteswar,
Ahmedabad 380005, Gujarat, INDIA





**Title: Supply of 70kV Thyatron Unit with its Compatible
Driver Module for Crowbar Application**

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Abbreviations

A

ABG · Advance Bank Guarantee

B

BG · Bank Guarantee

H

HDFC · Housing Development Finance Corporation

HP · Hold Point

I

ICICI · Industrial Credit and Investment Corporation of India

IDBI · Industrial Development Bank of India

L

LD · Liquidated Damages

N

NP · Notification Point

P

PBG · Performance Bank Guarantee

PLR · Prime Lending Rate

PM · Project Manager

S

SBI · State Bank of India

T

TDS - Tax Deducted at Source

TRO · Technical Responsible Officer

1 Terms and Conditions of the Contract (TCC) / Purchase Order

Following are the Terms and Conditions of the Contract (TCC) applicable to this tender enquiry. The Contract / Purchase Order resulting from this tender enquiry shall be governed by the terms and conditions given in this TCC. Bidders submitting the bid against this tender enquiry shall be deemed to have read and understood the same in total.

1.1 General provisions of the Contract

1.1.1 Language

- 1.1.1.1 The ruling language of the Contract and language for documentation and communication shall be English.

1.1.2 Governing Law

- 1.1.2.1 The Contract/Purchase Order shall be construed and shall be governed by the laws of India and the Contractor/Supplier shall be required to comply with all the applicable laws with regard to performance of the Contract/Purchase Order.

1.1.3 Jurisdiction

- 1.1.3.1 The Courts in Ahmedabad (Gujarat State, India) only shall have exclusive jurisdiction to deal with and decide all disputes arising out of this Contract/Purchase Order.

1.1.4 Severability

- 1.1.4.1 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 terms & conditions of the Contract.

1.1.5 General obligations

- 1.1.5.1 Each party shall bear their own expenses for visit of their personnel to other party's end concerning execution of the Contract/Purchase Order.

1.1.6 Sub-contracting, subletting or assignment of Contract/Purchase Order

- 1.1.6.1 The Contractor/Supplier shall not sub-contract, sublet, transfer or assign the Contract/Purchase Order or any part thereof, without the prior written consent of the Purchaser (All major sub-contractors are required to be appraised and approved by the Purchaser, before placement of orders by the Contractor/Supplier). However, such consent shall not be unreasonably withheld by the Purchaser, if such items/equipment are not normally manufactured by the Contractor/Supplier. Such assignment or subletting shall not relieve the Contractor/Supplier from any Contractual obligation or responsibility under the Contract/Purchase Order.
- 1.1.6.2 The Contractor/Supplier shall be responsible and accountable for coordination of all activities with his sub-contractors
- 1.1.6.3 In case the Contractor/Supplier sublets, transfers or assigns any part of the Contract/Purchase Order with the prior written consent of the Purchaser, all payments to the Sub-Contractor shall be the responsibility of the Contractor/Supplier and any requests from such Sub-Contractor shall not be entertained by the Purchaser.
- 1.1.6.4 All payment to the sub-contractors shall be made by the Contractor/Supplier only.

1.2 Contract/Purchase Order Work Scope and Completion Time

1.2.1 Scope of Work, Scope of Supply and Specifications:

- 1.2.1.1 Part-A(II) of this tender enquiry specifies the **scope of work, scope of supply, technical specifications and testing** of deliverables to be covered under this Contract/Purchase Order.
- 1.2.1.2 Any tooling or accessories which may not be specifically mentioned in the Specifications but which are necessary for proper and efficient functioning of the items/systems as per the specifications of the tender enquiry shall be included in the price(s) as quoted by the Contractor/Supplier.
- 1.2.1.3 Operation/instruction manual, technical manuals and technical drawings is essential in English to enable the Purchaser to put the Items/system to proper use, so the Contractor shall furnish such manuals along with the Items/Systems as per Part A (II) of the tender.

1.2.2 Delivery Dates and Completion Time

- 1.2.2.1 Contractor/supplier shall make complete delivery of all the ordered items on free door delivery basis (including packing, forwarding, freight & transit insurance) at ITER-India Lab building, IPR within **9 months** from date of Contract/ Purchase Order. However, a faster delivery is encouraged and much appreciated. The final/site acceptance of ordered items at ITER-India lab shall be completed within **1 month** from the date of receipt of all items at Purchaser's site.
- 1.2.2.2 **The date of delivery and time for completion stipulated in the Contract/Purchase Order shall be deemed to be the essence of the Contract/Purchase Order.** Delivery completion must be accomplished within the dates/durations specified in Delivery Schedule.
- 1.2.2.3 The date of the "final acceptance note" issued by the Purchaser after successful completion of Site acceptance tests at ITER-India Lab shall be considered as completion date.

1.3 Free Issue Material (FIM):

No Free Issue Material (FIM) from Purchaser side is involved for execution of this Contract/Order. Purchaser will provide facilities like electricity, water, space as may be required for final/site acceptance testing of the ordered items.

1.4 Bank Guarantees

1.4.1 Security Deposit (SD)

- 1.4.1.1 No Security Deposit is applicable to this tender

1.4.2 Performance Bank Guarantee (PBG)

- 1.4.2.1 No Performance Bank is applicable to this tender

1.4.3 Bank charges

- 1.4.3.1 All bank charges, if applicable, shall be borne by Contractor/Supplier only.

1.5 Contract/Purchase Order Price, Payment and Recoveries

1.5.1 Terms of Prices

- 1.5.1.1 The price(s) for this Contract/Purchase Order shall be **firm with no price variation** during the validity and extended validity of the Contract/Purchase Order. The price(s) to be quoted for complete scope of work as per Part-A(II) of tender document.
- 1.5.1.2 Price/s is/are required to be quoted according to the units indicated in the Price Bid (Part-B).
- 1.5.1.3 Cost for travel, accommodation, lodging and other expenses which will be necessary for execution of the Contract/Purchase Order i.e. visit of personnel for testing / meeting at other party's site or any other place/lab will be borne by respective parties.

1.5.2 Basis of Delivery

- 1.5.2.1 The price quoted should be inclusive of loading, freight, packing & forwarding and insurance i.e. on Free Door Delivery basis at specified location. Refer to clause no. [1.7.4.2](#) for details of "delivery address".

1.5.3 Taxes and Duties

- 1.5.3.1 **The price quoted should be exclusive of all applicable taxes, levies, duties which are to be mentioned separately in the un-Price Bid format (Annexure-A3 of Part-A(I)) at the prevailing rates.**
- 1.5.3.2 GST as applicable during the original delivery schedule shall be paid against submission of GST compliant invoice. No GST exemption certificate will be issued by Purchaser for concessional rate of GST.
 - 1.5.3.2.1 **GST registration:** Bidder shall submit a copy of GST Registration certificate along with the bid.
 - 1.5.3.2.2 Supplier shall be liable to undertake assessment of likely GST impact on the price of the supplies being made to the Purchaser in light of the anti-profiteering provisions being proposed. After completion of such assessment, Supplier shall forthwith inform the Purchaser of the extent of reduction in cost so that the prices may be renegotiated accordingly and amendments can be made in the contracts. In case any deviation is found at subsequent stage, wherein GST impact has not been given effect to the cost for any reasons whatsoever, then any consequences arising thereof shall be borne by the supplier. The Supplier hereto agrees that all liabilities arising out of any default from complying with the aforesaid directions and consequences thereof will be of the Supplier and Purchaser is authorised to recover the same along with interest from the Supplier and/or the same can be deducted from the amount payable to the Supplier.
 - 1.5.3.2.3 Supplier shall be liable to evaluate compliance requirements under GST and ensure proper mechanism for undertaking the same is put in place so that there is no loss of any kind to the Purchaser due to non-compliance on supplier. The Supplier agrees that in case of any loss arising out of acts of the Supplier or any non-compliance on the part of the Supplier, Purchase is authorized to recover the same along with interest from the Supplier and/or the same can be deducted from the amount payable to the supplier.
 - 1.5.3.2.4 Supplier shall be liable to update GSTN and HSN Code as and whenever applicable to the item(s) supplied on Invoice and any mis-match/rejection due to GSTN/ HSN Code will be on supplier's account and any loss of credit arising due to any non-compliance

by the Supplier will be recovered from Supplier along with interest and / or the same can be deducted from the amount payable to the Supplier.

1.5.3.2.5 Custom Duty:

ITER-India is exempted from payment of **Customs Duty** as per notification no. 39/96-custom dated 23/07/1996 as amended by notification no. 5/2012-custom dated 07/02/2012 (S. No. 37). Hence, Custom Duty payable in India should not form a part of the bid (**Applicable for import material cleared in India**). The Purchaser will issue the customs duty exemption certificate for materials and bought out items, which are part and deliverables to order ITEMS. Purchaser shall neither issue customs duty exemption certificate nor reimburse the customs duty paid by the Contractor for the machines & tools purchased by the Contractor which are not a part/deliverable of the Contract/Purchase Order. List of materials and bought out items to be imported to India for this tender enquiry shall be submitted by the bidder along with the bid submission. This List should include description of items and tentative quantity. The Contractor shall furnish priced purchase order copy of all items being imported for the Contract/Purchase Order at least **60** days before actual import. Copy of L/C wherever applicable, shall also be furnished by the Contractor if the purchase of such components being imported to India, have been bought through L/C. Contractor has to maintain the list of all the Raw materials purchased, consumed and scrap for this Contract/Purchase Order, in case the Custom Duty exemption is availed. Any proceeds received on the left-out portion/scrap etc. of goods cleared through customs authority under the custom duty exemption provided by the Purchaser, applicable amount shall be given by the Contractor either to Customs authority or to ITER-India on demand from the Purchaser/customs authority. **All expenses, including applicable GST, except customs duty, towards procurement of the imported materials should be borne by the Contractor.**

1.5.3.3 Tax Deducted at Source (TDS) or any other leviable taxes and or duties:

1.5.3.3.1 Income tax (TDS applicable for Supplier) at a prevailing rate will be deducted from the supplier's invoice(s). Certificate of TDS will be issued by the Purchaser.

1.5.3.3.2 TDS applicable at the prevailing rate as per GST Act will be deducted from the supplier's invoice(s). A TDS certificate will be issued to this effect.

1.5.3.4 In case, there is any other applicable taxes and duties, same should be informed by the bidder in the bid.

1.5.4 Mode of Payment and Payment Schedule:

ITER-India is fully funded by Government of India and the normal terms of payment are as follows:

1.5.4.1 Payment shall be made through RTGS/NEFT in INR within 30 days from the date of delivery/acceptance against each payment milestone as per **Table-1** and on receipt of error free invoice and other mentioned documents complete in all respects. Necessary mandate form for RTGS/NEFT will be provided at the time of Contract/order.

Table-1: Payment Schedule:

Sr. No.	Mile-stone for payment	% of contract value	Documents required from the Supplier for release of payment
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01	Payment against complete delivery of ordered items at On-Site address	80% + 100% taxes and duties	<p>A. A copy of Despatch Clearance Note issued by Purchaser</p> <p>B. Tax Invoice in triplicate</p> <p>C. Delivery challan duly inward at Security Gate and signed by ITER India representative as delivery acknowledgement</p> <p>D. Duly consignment receipted copy of Lorry receipt, Courier PoD etc. (if applicable)</p>
02	Final/ Site acceptance of items by the Purchaser	20%	<p>A. Copy of Proforma Invoice in triplicate</p> <p>B. Copy of Final/ Site Acceptance Note issued by the Purchaser</p> <p>C. Warranty Certificate</p> <p>D. Proof of payment of applicable duty to Government authority as mentioned in clause no. 1.5.3.2.5 (custom duty) of this part of the tender (if applicable)</p>
Total		100%	

1.6 Inspections and Dispatch Clearance

Refer Part-A(II) for more details regarding Inspection and acceptance test requirements.

1.6.1 Pre-dispatch Inspection / Factory Acceptance Test

- 1.6.1.1 The Supplier/Contractor shall submit a test/inspection report for approval of the Purchaser prior to dispatch of ordered items.
- 1.6.1.2 The Purchaser's representative or an authorized third Party shall be entitled at all reasonable times during manufacturing to inspect, examine and test the material and workmanship of all items to be supplied / work to be performed under this Contract/Purchase Order at the Contractor/Supplier's /sub-contractor's/supplier's premises. However such inspection, examination and testing by Purchaser shall not release the Contractor/Supplier from his obligation under this Contract/Purchase Order. Refer Part-A(II) for more details.
- 1.6.1.3 If part of said items/components are being manufactured at other premises (viz. subcontractor/supplier), the Contractor/Supplier shall obtain a permission for the Purchaser's representative to inspect, examine, and test as if the equipment were being manufactured on the Contractor/Supplier's premises.

1.6.2 Dispatch Clearance Note

- 1.6.2.1 Contractor/Supplier shall obtain a Dispatch Clearance Note (DCN) on approval of test/inspection report from ITER-India Commercial Coordinator before effecting the dispatch.
- 1.6.2.2 The Contractor is not allowed to make partial shipment without written consent of the Purchaser.

1.7 Packing, Labelling, Insurance and Delivery Instructions

1.7.1 Packing and handling Instructions

- 1.7.1.1 Careful handling, packaging is required to ensure safety of fragile Thyatron Tube with Driver Module. The Contractor/Supplier shall be held responsible and liable for all damages due to improper or poor packing.
- 1.7.1.2 The material should be appropriately packed with one set of documentation (preferably in English). Packing should be sturdy and rigid enough to withstand shocks and vibrations during transportation in and within India. The Contractor/Supplier shall provide suitable packing such as shock/vibration absorption material to avoid damage during transportation. The packing arrangement shall include (but not limited to) a necessary list of documentation and appropriate packing, markings, labelling, handling provisions for the items.
- 1.7.1.3 Any damage to the items during transportation, unloading or due to any other cause, will not be accepted and no compensation shall be paid by ITER-India for the same. The supplier shall take due care regarding packing and forwarding of the items. It is the liability of the supplier to deliver the items in safe and perfect condition to ITER-India. In case of damage to the items during transportation or unloading, the Supplier shall perform an urgent and effective repair or shall guarantee the replacement of the faulty item/component without any cost to the Purchaser, managing the repair or replacement by means of a proper non-conformity management procedure.
- 1.7.1.4 The Contractor/Supplier shall submit a detailed transportation scheme including packing details to the Purchaser in advance for the approval.
- 1.7.1.5 The Contractor shall also ensure that one copy of packing list is enclosed in each box/crate in order to facilitate prompt clearance of deliverables upon arrival.
- 1.7.1.6 Prior information of the material dispatch should be given to ITER-India Sr. Officer (Purchase & Stores)

1.7.2 Marking & Labelling

- 1.7.2.1 All packages shall be clearly, legibly and durably marked for correct identification with uniform block letters (preferably with waterproof paint) on at least three sides with:
 - i. Delivery address (as communicated)
 - ii. Contract/Purchase Order Number and date
 - iii. Net and gross weights
 - iv. Sign showing 'SIDE UP', "FRAGILE"
 - v. Any handling and unpacking instructions, if considered necessary.
 - vi. In case of spare parts, each spare part shall be clearly marked and labeled on the outside of its packing with its description and catalogue/part number.

1.7.3 Insurance

- 1.7.3.1 The items shall be delivered to the purchaser's site (Delivery address given in [1.7.4.2](#)) on free door delivery basis, freight paid and duly insured (covering transit insurance, installation, commissioning till final acceptance). All expenses including the freight, insurance, loading, unloading of items at Purchaser's site, shifting of items within Purchaser's site, installation testing and commissioning are to the account of Contractor/Supplier.

1.7.4 Ultimate Consignee & Delivery Address:

- 1.7.4.1 The ultimate consignee of the Purchaser is:

The Sr. Officer (Purchase & Stores), ITER-India, Ahmedabad
Phone: +91-79-23 26 96 56 / +91-79-23 26 95 30
E-mail: purchase@iterindia.in

- 1.7.4.2 Delivery Address:

ITER-India Lab building
ECRH Lab
Institute for Plasma Research Campus
Bhat, Gandhinagar-382428
Gujarat, India

- 1.7.4.3 Bill To:

Sr. Officer (Purchase & Stores),
ITER-India, Institute for Plasma Research
Block A, Sangath Skyz,
Bhat-Motera Road, Koteswar,
Ahmedabad 380005
Gujarat, India.
GSTIN 24AAAAI0348C2ZC

1.7.5 Delivery Documents

- 1.7.5.1 The Contractor/Supplier shall forward in advance to the Purchaser, by rapid Courier Service and scanned copies through e-mail, following documents:

- a. Original Tax Invoice in triplicate
- b. Delivery Challan in triplicate
- c. Packing List
- d. Lorry Receipt (LR)
- e. Despatch clearance note issued by the Purchaser

- 1.7.5.2 The dispatch documents such as Invoice, Delivery Challan, Packing list etc., shall bear the "Contract/Purchase Order Number", "Contract/Purchase Order Date", "Destination/Delivery address"

1.7.6 Delivery Inspection

The boxes/packages containing the deliverable items, received at the Purchaser's site will be unpacked in presence (On-line or in-person) of supplier's representative for identifying the item & visually inspection for any loss/damage during transit.

1.8 Demurrage / Wharfage

All demurrage, detention, storage, customs inspection, wharfage and allied expenses incurred by ITER-India, if any, due to delayed clearance of items in view of non-receipt, incomplete or delayed receipt by ITER-India of the shipment documents, mis-declaration/wrong declaration of cargo, errors/difference between materials/items specifications mentioned in shipping documents and physically on the materials/items shall be recovered from the payment due to the Contractor. ITER-India shall inform as soon as possible to contractor of such incidences in writing along with the necessary information.

1.9 Transfer of Ownership and Title

Transfer of ownership of the Items shall occur upon successful completion of Final Site Acceptance test.

1.10 Risk of Loss/damages

The Contractor/Supplier shall be responsible and liable for risk of any loss or damages to deliverable items during transportation, till the Final Acceptance of complete system/deliverables at the Purchaser's site (refer clause No. [1.7.4.2](#)).

1.11 Delay, Extension & Postponement

1.11.1 Extension of Time (due to Contractor/Supplier)

1.11.1.1 In the event, the contractual delivery dates cannot be adhered to for any cause(s) attributable to the Contractor/Supplier, an application for extension of time with sufficient reasons shall be made by the Contractor/Supplier to the Purchaser. If failure, on the part of the Contractor/Supplier to deliver the items/completion of work in scheduled time shall have arisen from any causes which the Purchaser may find as reasonable ground for an extension of time (and his decision shall be final), he may allow such additional time as he may consider justified in the circumstances of the case through a formal notification. The Contractor/Supplier shall not become entitled to receive additional payment towards escalation or increased statutory levies (if any) beyond the contractual delivery date / completion time.

1.11.1.2 If the Contractor/Supplier fails to apply and secure extension of Contract/Purchase Order delivery date(s) (before effecting the supply of the items as in the Contract/Purchase Order) acceptance of such supplies by the Purchaser, shall not entitle the Contractor/Supplier to claim payment on account of escalation or extra payment on account of increase of statutory levies or new statutory levies that may be payable at higher rate after the expiry of Contract/Purchase Order delivery dates / completion date (clause [1.11.2](#)).

1.11.2 Delay in delivery dates/completion time

1.11.2.1 Should the Contractor/Supplier fails to comply with contractual delivery dates and the reasons for such failures are attributed to the Contractor/Supplier, it shall be construed as a breach of the Contract/Purchase Order and the Purchaser shall be entitled at his option to the following:-

- 1.11.2.1.1 To terminate the total Contract/Purchase Order, as per clause [1.19](#). However, the Purchaser will inform in writing one month in advance to the Contractor/Supplier before exercising this clause.

1.12 Liquidated Damages (LD)

- 1.12.1 No Liquidated Damages will be applicable to this tender.

1.13 Acceptance Tests at ITER-India Laboratory /Site Acceptance Tests:

1.13.1 Final Acceptance

Final / Site Acceptance of the Items/components will be subject to the fulfilment of requirements given in Part-A (II).

1.14 Rejection of defective goods & Contractor/Supplier's Liability

1.14.1 Rejection against Damages during Transit:

If the items or any portion thereof is damaged during transit, the Purchaser shall give notice to the Contractor/Supplier setting forth particulars of such items/ Components damaged during transit. The replacement of such Components/Items shall be effected by the Contractor/Supplier within a reasonable time to avoid unnecessary delay in the intended usage of the Components/Items. The costs of replaced items shall be borne by the Contractor/Supplier.

1.14.2 Rejection before final acceptance:

In the event that any of the items/components supplied by the Contractor/Supplier are found defective in material or workmanship or not in conformity with the requirements of the Contract/Purchase Order specifications, before the final acceptance, the Purchaser shall reject the same and request the Contractor/Supplier in writing to repair or to replace the defective items free of cost to the Purchaser within a mutually agreed time period.

1.14.3 Limitation of liability

- 1.14.3.1 Except in cases of criminal negligence or willful misconduct, the aggregate liability of the Contractor/Supplier to the Purchaser, whether under the contract, in tort or otherwise, shall not exceed the total Contract/Purchase Order price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment, or to any obligation of the contractor to indemnify the purchaser with respect to Intellectual Propriety Rights infringement.

- 1.14.3.2 The Purchaser being a research institute, indirect losses, that is loss of production and loss of profit is not applicable.

1.15 Indemnity

The Contractor/Supplier shall at all times indemnify and hold harmless the Purchaser and its employees and officers from and against all claims which may be made in respect of supplies covered by this Contract/Purchase Order against infringement of any right protected by patent registration, law of designs, trademarks, utility model, copyright and other intellectual property rights registered or otherwise existing.

1.16 Warranty, Defect Liability, Latent defect

1.16.1 Warranty

- 1.16.1.1 The Contractor/Supplier shall warrant that the items i.e. **Thyatron Unit with its Compatible Driver Module for Crowbar Application with accessories** supplied under this Contract/Purchase Order comply fully with the specifications laid down, for the items/system, workmanship and performance. The items shall be new, unused and free from any defects.
- 1.16.1.2 The Contractor/Supplier shall provide a warranty covering repair or replacement of the Items/components up to **01 (One) year** from the date of final acceptance at On-Site. Warranty of (OEM) bought out items / procured components (if any), if more than 1 year shall be intimated by the Contractor and will be applicable for all such items.
- 1.16.1.3 The Purchaser may accept the supplies, if it is complete in all respects or alternatively accept the same on such terms as may be considered appropriate. If the supplies, after the acceptance thereof is discovered to have defects, latent or otherwise, notwithstanding that such defects could have been discovered at the time of inspection, or any defects therein are found to have developed during the warranty/defect liability period, the Purchaser shall be entitled to give a notice to the Contractor/Supplier and within 60 days thereafter, setting forth details of such defects or failure and Contractor/Supplier shall forthwith make the defective supplies good or alter the same to make it comply with the requirements of the Contract/Purchase Order at his own cost.
- 1.16.1.4 A reasonable time limit for repair or replacement of defective item(s) under warranty shall be guaranteed by the Contractor/Supplier and agreed by the Purchaser.
- 1.16.1.5 The repair or replacement of items under warranty by the Contractor/Supplier shall be on Free Door Delivery basis at On-Site address as per clause no. [1.7.4.2](#).
- 1.16.1.6 If any supplied item is repaired/replaced during the warranty period, the Contractor/Supplier shall warrant all such items for a further period of at least 12 months from the date of repair/replacement, or remaining original warranty period, whichever is longer.
- 1.16.1.7 Further, if in the opinion of the Purchaser, defects are of such a nature that the same cannot be made good or repaired without impairing the efficiency or workability of the components or if in the opinion of the Purchaser, such opinion being final, the components cannot be repaired or altered to make it comply with the requirements of the Contract/Purchase Order, the Contractor/Supplier shall remove and replace the defective component confirming in all respects to the stipulated specifications at the Contractor/Supplier's own cost.

1.16.2 Contractor/Supplier's Failure to Repair/Replacement of defective Goods

- 1.16.2.1 If the Contractor/Supplier fails to repair or replace the damaged/defective items within the agreed time period during the warranty period, the Purchaser at his option either :
- 1.16.2.1.1 Replace or rectify such defective items and recover the actual costs so involved from the Contractor/Supplier
- 1.16.2.1.2 Acquire the defective items/Systems/components at a reduced price considered equitable under the circumstances. The provision of this article shall not prejudice the Purchaser's rights under Clauses [1.16](#) and [1.14](#).

If the Contractor/Supplier fails to make the required repairs/ replacement within mutually agreed time, then in pursuant to clause [1.16.2.1.1](#), such repairs/replacement shall be carried out by the Purchaser, with due information on the actual costs incurred by the Purchaser in carrying out such work in connection therewith, against documentary proof by the Purchaser, shall be paid by the Contractor/Supplier to the Purchaser or recovered by the Purchaser from the payment due to the Contractor/Supplier. In such case, the Purchaser shall be entitled to use the items in a reasonable and proper manner on a mutually agreed basis for such time as sufficient to enable the Purchaser to obtain repair / replacement.

1.17 After Sales Services & Availability of Spares

1.17.1 After Sales Services (after warranty period)

In case the purchaser desires to avail the contractor's services for repair or maintenance of the supplied items after expiry of warranty conditions mentioned in the contract, the contractor shall provide the same on mutually agreed terms and conditions.

1.17.2 Availability of Spares

The contractor guarantees to the purchaser, that all the spares for the items supplied under the contract will be available at least for 10 years from the date of delivery to the purchaser. Notwithstanding the foregoing, in the event that during the period indicated above, the contractor intends to phase out the items or the components or spare parts become obsolete or not available, the contractor shall inform in writing to the purchaser about his intention of the manufacture discontinuance of the items supplied to the purchaser or about such obsolescence well in time.

1.18 CHANGES

- 1.18.1 The Purchaser shall have the right to propose and order the Contractor/Supplier from time to time during the execution of the Contract/Purchase Order to make any change, modification, addition or deletion to, in or from the supplies (hereinafter called "Change"), provided that such change falls within the general scope of the supplies and does not constitute unrelated work and that it is technically practicable, taking into account both the state of advancement of the supplies and the technical compatibility of the change envisaged with the nature of the supplies as specified in the Contract/Purchase Order.
- 1.18.2 The Contractor/Supplier may from time to time during its execution of the Contract/Purchase Order propose to the Purchaser any change that the Contractor/Supplier considers necessary or desirable. The Purchaser may at its discretion approve or reject any change proposed by the Contractor/Supplier.
- 1.18.3 Notwithstanding Clause [1.18.1](#) and Clause [1.18.2](#), no change made necessary because of any default of the Contractor/Supplier in the performance of its obligations under the Contract/Purchase Order and/or for Contractor/Supplier's convenience, shall be deemed to be a change and such change shall not result in any adjustment of the Contract/Purchase Order price or the time for completion.
- 1.18.4 If any of the item in addition to the schedule of supply of materials is required during execution of the Contract/Purchase Order due to change in specifications, drawings, designs etc., which in the opinion of the Purchaser, if not procured promptly may delay the completion of the supplies, the Contractor/Supplier shall procure the required material as per the specifications to the extent required to keep the progress of work unhindered. The Contractor/Supplier shall

be paid for such additional procurement in the following manner:

- 1.18.4.1 If the required item/cost for change(s) proposed by the Purchaser is available in the Contract/Purchase Order, the same unit rate/rate shall be used as cost for such change.
- 1.18.4.2 If the required item/cost for change(s) proposed by the Purchaser is not available in the Contract/Purchase Order, the Purchaser reserves the right to get the detailed break up with valid documentary evidence from the Contractor/Supplier. Contractor/Supplier shall provide the details asked by the Purchaser within the stipulated time. Purchaser and Contractor/Supplier shall mutually agree on such cost for change within 90 days from the date of such change proposed by the Purchaser.

1.19 Cancellation/Termination of Contract/Purchase Order

1.19.1 Termination of Contract/Purchase Order for default

- 1.19.1.1 The Purchaser may, without prejudice to any other remedy for breach of Contract/Purchase Order, by written notice of default sent to the Contractor/Supplier, terminate the Contract/Purchase Order in whole or in part in circumstance detailed hereunder:
 - 1.19.1.1.1 If the Contractor/Supplier fails to supply/provide any or all of the deliverable items, within the time period(s) specified in the Contract/Purchase Order or any extension thereof granted by the Purchaser.
 - 1.19.1.1.2 If the Contractor/Supplier fails to perform any other obligation(s) under the Contract/Purchase Order within the period specified in the Contract/Purchase Order or any extension thereof granted by the Purchaser
- 1.19.1.2 In the event the Purchaser terminates the Contract/Purchase Order in whole or in part, the Purchaser may take recourse to of the following action. However, the Contractor/Supplier shall continue to perform the Contract/Purchase Order to the extent not terminated.
 - 1.19.1.2.1 To purchase from elsewhere, after (thirty) 30 days' notice to the Contractor/Supplier, at risk and cost of the Contractor/Supplier, the supplies, materials and equipment, not delivered or other items of similar description when such deliverable exactly complying with the particulars are not in the opinion of the Purchaser readily procurable, such opinion being final, without cancelling the Contract/Purchase Order in respect of the consignments not yet due for supply.
- 1.19.1.3 To cancel the total Contract/Purchase Order or balance portion thereof, and if so desired, to purchase or authorize the purchase of the supplies, materials and equipment not so delivered or other deliverable of similar description, when such deliverable exactly complying with the particulars are not, in the opinion of the Purchaser, readily procurable, such opinion being final, at the risk and cost of the Contractor/Supplier.
- 1.19.1.4 In the event of action being taken under sub-clause [1.19.1](#) above, the Contractor/Supplier shall be liable for any loss which the Purchaser may sustain on that account. Contractor/Supplier shall not however be entitled to gain on such purchase made on account of his default. The manner and method of such alternate purchase shall be at the entire discretion of the Purchaser, whose decision shall be final. This right shall be without prejudice to the right of the Purchaser, to recover the damages for breach of Contract/Purchase Order by the Contractor/Supplier as provided in the Contract/Purchase Order.
- 1.19.1.5 If the Contract/Purchase Order is terminated as provided in clause [1.19.1](#), the Purchaser in

addition to any other rights provided in the clause, may require the Contractor/Supplier to transfer title and deliver to the Purchaser any completed items that are found to be useful and acceptable to the Purchaser. The Purchaser shall pay to the Contractor/Supplier, the Contract/Purchase Order price of such completed items that are delivered to and accepted by the Purchaser.

1.20 Precedence

In case of Conflict between the parties, the decision of Purchaser shall have precedence over this Tender enquiry.

1.21 Settlement of disputes and Arbitration

1.21.1 Settlement

1.21.1.1 Any disputes or difference arising out of or in connection with the Contract/Purchase Order shall be to the extent possible settled amicably between the parties involving management from either side within one hundred and twenty(120) days. If amicable settlement cannot be reached within one hundred and twenty (120) days, then all disputed issues shall be settled by Arbitration as per clause [1.21.2](#)

1.21.1.2 Notwithstanding any reference to the arbitration as herein before provided (a) the Parties shall continue to perform their respective obligations under the Contract/Purchase Order with due diligence, unless they otherwise agree, (b) the Purchaser shall continue to pay any undisputed amount to the Contractor/Supplier.

1.21.2 Arbitration

- a. All disputes or differences arising out of or in connection with the Contract/Purchase Order including the one connected with the validity of the Contract/Purchase Order or any part thereof, should be settled by bilateral discussions.
- b. The Arbitration shall be conducted, in English, by two Arbitrators, one each nominated by the Purchaser and Contractor/Supplier. In case, the said Arbitrators are not able to settle the dispute by themselves, the matter shall be referred to the Arbitrator mutually nominated by the Purchaser and the Contractor/Supplier and whose decision shall be final and binding on both the parties. The sole Arbitrator shall have its seat in Ahmedabad or such other place in India as may be mutually agreed to between the parties. The arbitration proceedings shall be conducted under the Indian Arbitration and Conciliation (Amendment) Act, 2015 and the award of such Arbitration Tribunal shall be enforceable in Indian Courts only. The Courts of Ahmedabad, Gujarat shall only have exclusive jurisdiction to deal with and decide any legal or dispute arising out of the Contract/Purchase Order.
- c. Each party shall bear its own cost of preparing and presenting its case. The cost of arbitration including the fees and expenses shall be shared equally by the parties, unless otherwise awarded by the sole arbitrator.
- d. The parties shall continue to perform their respective obligations under the Contract/Purchase Order during the pendency of the arbitration proceedings except in so far as such obligations are the subject matter of the said arbitration proceedings.