**Bid Specific Additional Terms & Conditions (ATC)**

Note: The bid specific ATC shall have precedence over the Service specific STC and GTC, whenever there are any conflicting provisions.

|  |  |
| --- | --- |
| **GeM Bid No.** | [**GEM/2025/B/6267679**](https://bidplus.gem.gov.in/showbidDocument/7880887) |
| **Title** | **HVPS Tender Part A(III) – Terms & Conditions of Contract for EC MHVPS & IC HVPS** |

**ITER-India, Institute for Plasma Research**

**Block A, Sangath Skyz, Bhat-Motera Road, Koteshwar,**

**Ahmedabad 380005, Gujarat, India**



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# Terms and Conditions of the Contract (TCC)

**WHEREAS,** the requirement is being floated by inviting ONE Tender for complete scope of EC MHVPS and IC HVPS, each of which includes Supply part and Site Supervision part.

In order to have proper execution of this contract, ITER-India, Institute for Plasma Research and the Contractor will sign single Frame work Contract for EC MHVPS and IC HVPS, in case, single bidder is technically qualified lowest for both. Two separate Frame work Contracts can be signed for EC MHVPS and IC HVPS respectively, in case, two bidders are technically qualified lowest for each (EC MHVPS /IC HVPS).

Frame work Contract will be divided in FOUR Contracts as per below details:

* Contract-1A for “Supply of EC MHVPS”
* Contract-1B for “EC MHVPS – Site supervision at PURCHASER’s SITE”
* Contract-2A for “Supply of IC HVPS”
* Contract-2B for “IC HVPS – Site supervision at PURCHASER’s SITE”

Though there will be separate contracts with its own terms and conditions, the total responsibility and guarantee to execute the complete scope of work of EC MHVPS (Contract-1A and 1B) and/or IC HVPS (Contract-2A and 2B) shall remain with the Contractor.

Further, Contractor shall be solely responsible and stand bound to maintain the Performance of the equipment/systems as defined in the Contracts. Award of work in separate Contracts shall not absolve the Contractor from the overall responsibility in timely execution, performance and rectification of defects during defect liability period of the Contracts.

The parties, in order to execute the entire scope of work and meet the targeted time schedule for completion, have agreed to make and sign SEPARATE CONTRACTS.

**NOW, THEREFORE,** the parties have agreed to enter into this “FRAMEWORK CONTRACT FOR EC MHVPS and/or IC HVPS” in order to link all the four contracts with an intention to give overriding effect to the clauses of “FRAMEWORK CONTRACT FOR EC MHVPS and/or IC HVPS”.

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

The Terms and Conditions of the Contract, Scope of Supply, Scope of Work and Technical Specifications (Part-A (II)) including the Annexes hereto, are integral part of the Contract(s) and are complementary to and shall be read in conjunction with each other. These are the documents which have been read and understood by the Contractor. In case there is conflict in specifications, either the stringent one or the requirement as per the Purchaser’s interpretation shall govern. All the rights, discretion and powers of the Purchaser under the Contract shall be exercised by the Purchaser through written communications, which shall be given by the authorized representative of the Purchaser.

## Definitions and Interpretations

1. “BASIC CONTRACT VALUE” or “BASIC CONTRACT PRICE” shall mean the total price as mentioned in the Contract excluding taxes, duties and levies (as mentioned in the price break up)
2. “BID” or “TENDER” or “QUOTATION” shall mean the tender offer and quotation in response to the tender notification.
3. “BIDDER” or” TENDERER” or “VENDOR” shall mean the entity who seeks to supply the specified goods by submitting Tender/Bid/Quotation
4. “COMPLETION” shall mean that all activities specified under the scope of supply and scope of work have been successfully completed to the complete satisfaction of the Purchaser in all aspects and approved & accepted by the Purchaser.
5. “CONTRACTOR” or “SUPPLIER” shall mean the firm or company with whom or with which the Contract for “EC MHVPS, IC HVPS” is placed and shall be deemed to include the Contractor's legal successors and/or assignees (approved by the Purchaser), representatives, heirs, executors and administrators unless excluded by the Contract.
6. “DAY” or “DAYS” shall mean a Gregorian calendar day or days of twenty-four (24) hours each.
7. “DELIVERABLES” shall mean all the Items, Products, Components and Documentation that are part of the scope of work and scope of supply as defined in this Tender.
8. “CONTRACTOR RELEASE NOTE” shall mean the document issued by purchaser authorizing the Contractor to process for dispatch the items after factory acceptance.
9. “DISPATCH CLEARANCE NOTE” shall mean the document issued by purchaser authorizing the Contractor to dispatch the items on satisfactory completion of Pre-dispatch inspection and signing of the contractor release note.
10. “EFFECTIVE DATE OF CONTRACT” or "COMMENCEMENT DATE OF CONTRACT" shall mean the date of award of GeM Contract, on which the Contract shall come into force.
11. “INSPECTOR” shall mean any representative(s) of the Purchaser to inspect or carry out quality surveillance on supplies, items or work under the Contract.
12. “INSPECTIONS/BASIC TESTS” shall mean inspections and acceptance of items at Contractor’s factory as described in Part-A (II) for EC MHVPS & IC HVPS respectively.
13. “ITER-INDIA” is a project of Institute for Plasma Research, Bhat, Gandhinagar and it is Indian Domestic Agency for the execution of ITER Project.
14. “ITEM(S)” or “GOODS” or “MATERIALS” or “PRODUCTS” or “SYSTEMS” or “EQUIPMENT” or “SUPPLIES” or “COMPONENTS” shall mean and include entire scope of supply which Contractor has agreed to supply all the deliverables as specified in the Part-A (II) for EC MHVPS & IC HVPS respectively.
15. “MANUFACTURER” shall mean the natural or legal entity that manufactures the EC MHVPS, IC HVPS under the scope of this technical specification
16. “MILESTONE” shall mean a scheduled or planned event or activity that indicates the completion of a major deliverable event or activity of the Contract that is measurable and observable.
17. “MONTH” shall mean a month according to Gregorian calendar.
18. “PARTY” shall mean either the PURCHASER or the CONTRACTOR
19. “PARTIES” to the Contract are the Contractor and the Purchaser named in the PO.
20. "PERFORMANCE TEST" shall mean all operational checks and tests required to determine the performance parameters including operating characteristics of the items/ system as specified in the Contract.
21. “PRICE” shall mean the prices quoted by the bidder in his bid proposal for the entire scope of supply and scope of work covered under the specifications as defined in Part-A (II) of this tender.
22. “PROJECT DIRECTOR” shall mean Project Director of ITER-India, who is appointed by a competent authority.
23. “PURCHASER” shall mean ITER-India, acting through the Project Director or his authorized representative”
24. “PURCHASER’s SITE” shall mean ITER Organization, Saint–Paul–Lez–Durance, France.
25. “PURCHASE OFFICER” or “COMMERCIAL COORDINATOR” shall mean the person authorized to act as Purchase Officer and he/she is purchaser’s representative for all commercial matters of the contract.
26. “CONTRACT” shall mean the communication or document signed for and on behalf of the Purchaser by an Officer duly authorized confirming the acceptance, for and on behalf of the Purchaser, on the terms and conditions mentioned or referred to in the said communication or document, including all attachments and appendices thereto, while accepting the Bid or Offer of the Contractor for supply of items and any subsequent amendments there to made on the basis of mutual agreement.
27. “SUB-CONTRACTOR” shall mean any person or firm or company on whom execution of any part of the supplies, including supply of any components, carrying out inspection/conformity assessment is subcontracted by the contractor and includes its legal successor or permitted assignees, and unless otherwise stated, all the sub-contractors and Contractors to such person and the term sub-contract shall be construed accordingly.
28. “TOTAL CONTRACT VALUE” or “TOTAL CONTRACT PRICE” shall mean the total price as mentioned in the Contract including taxes, duties and levies (as applicable). The Total Contract value will be revised based on impact of Price Variation.
29. “UNIT RATE” shall mean the rate quoted by the bidder on per unit basis, which will be used for addition or deletion purposes.
30. "WARRANTY PERIOD” shall mean the period during which the Contractor shall remain liable without any extra cost to the Purchaser for repair, replace or rectify any defective item (s) or performance of the ITEMS supplied under the Contract.

## General provisions of the Contract

### Language

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

### Governing Law

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.

### Jurisdiction

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.

### Exercising the Rights and Powers of the Purchaser

All the rights, discretion and powers of the Purchaser under the Contract shall be exercised by the Purchaser through written communications which shall be given by the Project Director or other officers authorized by him for and on behalf of the Purchaser.

### Publicity

No publicity of any kind whatsoever regarding the Contract/Purchase Order shall be given by the CONTRACTOR/SUPPLIER without prior written permission of the Purchaser.

### Confidentiality and Secrecy

#### All information, including but not limited to, specifications, drawings and designs that are imparted to the CONTRACTOR/SUPPLIER, shall at all times, remain the absolute property of the Purchaser. The CONTRACTOR/SUPPLIER shall not use them for purposes other than for which they are provided for, and shall treat all these documents as confidential. These shall not be reproduced in whole or in part for any other purpose.

#### The CONTRACTOR/SUPPLIER shall use his best endeavors to ensure that such information are not divulged to third parties except where needed for the performance of the Contract/Purchase Order by the CONTRACTOR/SUPPLIER with the prior consent of the Purchaser. In such cases, the CONTRACTOR/SUPPLIER shall ensure and obtain similar obligation of confidence, from other parties in question.

#### The CONTRACTOR/SUPPLIER shall at his own cost procure from his own employees, agents, suppliers or sub-contractors (and agents, suppliers and sub-contractors of such agents, suppliers and sub-contractors) all such acts, deeds and things to cause such employees, agents, suppliers and sub-contractors to whom the confidential information is given, to be bound by similar confidentiality obligations as the CONTRACTOR/SUPPLIER is bound under this Agreement.

#### In the event of any breach of this provision, the CONTRACTOR/SUPPLIER shall indemnify the Purchaser from any liabilities, loss, damage or any other claims whatsoever from any parties claiming from or through him in respect of such breach.

## The Purchaser

### Permits, Licenses or Approvals

The Purchaser may provide, at the request of the Contractor, such reasonable assistance in the form of issue of necessary certificates as required under law so as to allow the Contractor to obtain any permits, licenses or approvals required by the laws of the country, which the contractor is required to obtain. However, no claim can be made by the contractor with respect to this clause. The contractor shall bear all cost charges and expenses for the licenses, permits and approvals required to be obtained by him.

### Purchaser’s representatives

#### The **Project Director**, as mentioned in the Contract/Purchase Order, shall act as an authority who can take all decisions related to this Contract/Purchase Order.

#### The **Project Manager,** as mentioned in the Contract/Purchase Order, shall act as a **Contract Manager** for the Purchaser and execute all such duties assigned to him by the project director for smooth execution of the Contract/Purchase Order.

#### The **Technical Representative Officer,** as mentioned in the Contract/Purchase Order, will be Purchaser’s representative to carry out all technical functions concerning the Contract/Purchase Order including inter-alia review of technical documents, post Contract/Purchase Order technical follow up and such other technical functions with the approval of project manager.

#### **The Purchase Officer** as mentioned in the Contract/Purchase Order is the Purchaser’s representative for all commercial matters of the Contract/Purchase Order and act as a **Commercial Coordinator**.

## The CONTRACTOR/SUPPLIER

### Permits, Licenses or Approvals

The Contractor shall, at his own cost, acquire in its name all permits, approvals and/or licenses from all local, state or national government authorities or public service undertakings that are necessary for the performance of the Contract, including, without limitation, visas for the Contractor’s and sub- contractor’s personnel and any entry permit. The Contractor shall also acquire all other permits, approvals and/or licenses that are not the responsibility of the Purchaser as per clause 1.3.1 (Permits, licenses or approvals) hereof and that are necessary for the performance of the Contract.

### The CONTRACTOR/SUPPLIER shall have carefully examined all tender/Contract documents and obtained clarifications from the Purchaser wherever needed, the quantities and nature of work and material necessary for the completion of the Contract including all necessary information for risks, contingencies and others. The Contract price and the quoted Unit Rates shall, except as otherwise provided, cover all his obligations under the Contract/Order and all matters and things necessary for the proper completion of the supplies & work. The CONTRACTOR/SUPPLIER acknowledges that any failure to acquaint itself with all such data and information shall not relieve its responsibility and accountability for properly estimating the difficulty or cost of successfully supplying the items. No claim on his part which may arise on account of non-examination or misunderstanding of the particulars and/or matter related to tender will, in any circumstances, be considered payable by the Purchaser.

### Compliance with law

The CONTRACTOR/SUPPLIER shall comply with all laws in force in India, in their country where the items/equipment are manufactured and, in the country, where the items/equipment will be installed. The laws will include all local, state, national or other laws that affect the performance of the Contract and bind upon the contractor. The CONTRACTOR/SUPPLIER shall indemnify and hold harmless the Purchaser from and against any and all liabilities, damages, claims, fines, penalties and expenses of whatever nature arising or resulting from the violation of such laws by the contractor or its personnel, including the sub-contractors’ and their personnel.

### CONTRACTOR/SUPPLIER’s representative

#### The CONTRACTOR/SUPPLIER shall appoint the CONTRACTOR/SUPPLIER’s key representatives, who are responsible for execution of managerial, technical and commercial aspects of the Contract/Purchase Order.

#### The CONTRACTOR/SUPPLIER’s representatives shall represent and act for the CONTRACTOR/SUPPLIER at all times during the tenure of the Contract/Purchase Order. All notices, instructions, information and all other communications to be given by the Purchaser to the CONTRACTOR/SUPPLIER under the Contract/Purchase Order shall be given to the CONTRACTOR/SUPPLIER’s representative(s), except as herein otherwise provided.

#### The CONTRACTOR/SUPPLIER shall promptly inform the Purchaser if there is any change in the CONTRACTOR/SUPPLIER’s representative personnel or their designated roles towards this Contract/Purchase Order. In the absence of timely information regarding change of personnel or their designated roles from the CONTRACTOR/SUPPLIER, the resulting damages/liabilities if any, shall not be attributable to the Purchaser.

#### During the Contract/Purchase Order period, to carry out some activities listed in scope of work, the CONTRACTOR/SUPPLIER needs to deploy his manpower at the Purchaser’s office/site at the CONTRACTOR/SUPPLIER’s risk and cost.

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

#### CONTRACTOR/SUPPLIER may subcontract identified portions of work to external parties in consultation with Purchaser.CONTRACTOR/SUPPLIER shall be responsible for all interactions with subcontractors and for the quality of the final product. Such assignment or subletting shall not relieve the CONTRACTOR/SUPPLIER from any Contractual obligation or responsibility under the Contract/Purchase Order.

#### 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.

#### All payment to the sub-contractors shall be made by the CONTRACTOR/SUPPLIER only.

### Alteration in specifications

#### The Purchaser reserves the right to alter specifications and contract milestones, where ever necessary. As from that date, the supplies shall be in accordance with the specifications and milestones so altered which the CONTRACTOR/SUPPLIER is bound to comply with.

#### In the event of such alteration involving a revision in the cost, or delay in the milestone achievement date, the same shall be discussed and mutually agreed to, taking into account the unit rates of similar items in the Contract.

### Codes and Standards

Wherever references are made in the Contract/Purchase Order to codes and standards in accordance with which the Contract/Purchase Order shall be executed, the latest edition or the revised version of such codes and standards shall apply unless otherwise specified. During the Contract/Purchase Order execution, any changes in such codes and standards shall be applied after approval by the Purchaser and shall be treated in accordance with clause **1.25** (Changes).

## Mistakes in drawings, specifications etc.

The Contractor shall be responsible, accountable and liable to make all necessary alterations to the deliverables which are caused due to any discrepancies, errors or omission in the specifications, drawings or particulars submitted by the Contractor irrespective of whether these have been approved by the Purchaser or not. If the Contractor fails to make such alterations, the Purchaser may do so at the risk and cost of the Contractor.

## Contract Work Scope and Completion Time

### Scope of Work, Scope of Supply and Specifications:

#### Refer to *‘Tender Part A(II-1)-Scope of Supply & work, Technical Specification for EC MHVPS*’ and its annexures for the detailed scope of work, scope of supply, testing and technical specifications of deliverables to be covered under this Contract/Purchase Order.

#### Refer to *‘HVPS Tender Part A(II-2)- Supply & work, Technical Specification for IC HVPS*’ and its annexures for the detailed scope of work, scope of supply, testing and technical specifications of deliverables to be covered under this Contract/Purchase Order.

#### 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.

#### 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 technical specifications of the tender.

#### Each party shall bear their own expenses for visit of their personnel to other party’s end concerning execution of the Contract/Purchase Order

### Delivery Dates and Completion Time for EC MHVPS

#### CONTRACTOR/SUPPLIER shall make delivery of all the ordered items at FCA [Supplier’s site] as per Section 10 of *‘Tender Part A(II-1)- Supply & work, Technical Specification for EC MHVPS’*. The installation, commissioning and final/site acceptance of ordered items at purchaser’s site shall be completed as per Section 13 of *‘HVPS Tender Part A(II-2)- Supply & work, Technical Specification for EC MHVPS’*.

#### **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.

#### The date of the “final acceptance notes” issued by the Purchaser after successful completion of Site acceptance tests at purchaser’s site shall be considered as completion date.

### Delivery Dates and Completion Time for IC HVPS

#### CONTRACTOR/SUPPLIER shall make delivery of all the ordered items at FCA [Supplier’s site] as per Section 10 of *‘Tender Part A(II-1)- Supply & work, Technical Specification for IC HVPS*. The installation, commissioning and final/site acceptance of ordered items at purchaser’s site shall be completed as per Section 13 of *‘HVPS Tender Part A(II-2)- Supply & work, Technical Specification for IC HVPS’*.

#### **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.

#### The date of delivery of all ordered Items at FCA [Supplier’s site] shall be considered as completion date for supply part

#### The date of the “final acceptance notes” issued by the Purchaser after successful completion of Site acceptance tests at PURCHASER’s SITE shall be considered as completion date for site supervision part.

## 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.

In case FIM is to be provided by Purchaser, provisions shall be applied & mutually agreed with the CONTRACTOR/SUPPLIER.

## Guarantees

The Performance Security Bank Guarantee and Advance Payment Bank Guarantee shall be submitted by the Contractor as per the details below. All bank charges, if applicable, shall be borne by Contractor only.

### Performance Security Bank Guarantee (PSBG/ ePBG)

##### Public sector enterprises are allowed to submit Corporate guarantee in place of Bank guarantee for the applicable cases.

##### Within 30 days of award of Contract, the Contractor shall submit an irrevocable Bank Guarantee (BG) equal to 5% (five percent) of total CONTRACT value on a non-judicial stamp paper, as “Performance Security” towards satisfactory execution and performance of the Contract from any nationalized/ scheduled commercial bank (as per RBI). BG issuing Bank is required to send confirmation through SFMS (Structured Financial Messaging System) on our SBI bank having IFSC Code: SBIN0001045 Account No: 30360272380 and provide intimation of the same on following E-mail ID: [accounts@iterindia.in](mailto:accounts@iterindia.in).

##### The format of the PSBG/ ePBG is given in Annexure – A1a: PSBG/ ePBG Bank Guarantee.

##### The Bank Guarantee shall remain valid till two months beyond the completion of Warranty obligations for the items under this CONTRACT. If need arises, the Contractor shall extend the validity of the Bank Guarantee for suitable period at his expenses.

##### If the Contractor fails to provide the PSBG/ ePBG, within the period as specified in clause no. 1.8.1 (b), such failure shall constitute a breach of CONTRACT and the Purchaser shall be entitled to cancel the CONTRACT and make alternate arrangements for the purchase of ordered items from other sources at the risk and expenses of the Contractor and recover from the Contractor the damages arising from such cancellation.

##### In the event, the Contractor fails to fulfil any of the obligations under the Contract; the Purchaser shall have the right to encash the PSBG/ ePBG .

##### Where the Contractor fails to maintain the specified delivery date/completion time, the Contractor shall extend the validity of Bank Guarantee(s) suitably to cover Warranty obligations in line with the extended/expected delivery date or completion time, failing which, the Purchaser shall have the right to invoke the Bank Guarantee(s) without prejudice to the terms and conditions of the CONTRACT.

##### Upon satisfactory execution of the CONTRACT, the original Bank Guarantee (s) shall be returned to the Contractor on receipt of a request from the Contractor.

##### No interest shall be payable on security deposit amount till it is retained by Purchaser in terms of CONTRACT.

### Advance Payment Bank Guarantee (APBG)

##### The Contractor shall furnish to the Purchaser an interest free Advance Payment Bank Guarantee (APBG) from any nationalized/ scheduled commercial bank (as per RBI) for equivalent amount of advance payment by way of providing a Bank Guarantee on a non-judicial stamp paper for the satisfactory performance of the Items supplied against the CONTRACT. The Advance Payment Bank Guarantee (APBG) will remain valid till the date of last delivery (For EC MHPVS/IC HVPS respectively) and claim period shall be two months beyond the validity.

##### In the event that the Bank Guarantees need extension, the Contractor shall extend the validity of APBGs for suitable period at his expenses. On the completion of all the deliveries as per CONTRACT, the original APBGs shall be returned to the Contractor without any interest on receipt of a request from the Contractor. The Advance Payment Bank Guarantee format is given in Annexure – A1b: Bank Guarantee (Advance Payment).

##### BG issuing Bank is required to send confirmation through SFMS (Structured Financial Messaging System) on our SBI bank having IFSC Code: SBIN0001045 Account No: 30360272380 and provide intimation of the same on following E-mail ID: [accounts@iterindia.in](mailto:accounts@iterindia.in) .

## Contract Price, Price Variation, Taxes and Duties and Payment



### Terms of Prices

The price(s) for this Contract/Purchase Order shall be on fixed-firm and lumpsum basis.

Bidder has to quote compulsorily for both parts (Supply part and Site Supervision part) separately for EC MHVPS / IC HVPS as per the format provided in Part B1 & Part B2-Price bid format.

The Price for supply part of EC MHPVS/ IC HVPS shall include design, manufacturing, procurement, Testing and supply on FCA CONTRACTOR/SUPPLIER’s site

The Price for site supervision part of EC MHPVS / IC HVPS shall include site supervision at PURCHASER’s SITE, documentation and its associated gate review.

### Price Variation (PV)

### Price variation shall be applicable for EC MHVPS and IC HVPS separately and based upon their respective events/milestones for price indices. PV shall also be applicable for the pro-rata deliveries.

#### Price Variation Formula for Supply Portion:

The price variation shall be applicable for contractual deliveries with scheduled period exceeding 18 months. The value for price Variation coefficients for the supply part of contract shall be as follows:

Table 1: Price Variation coefficient for the Supply part

|  |  |  |  |
| --- | --- | --- | --- |
| Component | Symbol | Source of  Indices used | Value of  Co-efficient |
| Fixed  Portion | F | - | 0.14 |
| Non-ferrous metals incl. precious metal (M) | a | For the materials, Wholesale Price indices (Base Year: 2011-12) monthly basis as published by Office of the Economic Adviser, Ministry of Commerce & Industry only shall be applicable | 0.27 |
| Mild Steel - Semi Finished Steel (N) | b | 0.20 |
| Other Electronic and Electric Wires and  Cables (O) | c | 0.09 |
| Industrial Labour | lb | Consumer Price Index Nos. for Industrial Workers on Base 2016 = 100 published by Labour Bureau  of Government (Shimla). | 0.30 |

The price variation will be payable as per above coefficients in case of applicability of Contract Price Variation.

The price Variation formula to be applied to the supply part of the contract shall be as follows:

)

Where,

= Final contract price of items/equipment (per unit).

BC = Basic Supply contract price (excluding taxes) of items /equipment (per unit) less Advance payments.

M, N & O = Corresponding published price indices of various materials.

= Co-efficient of labour content in the contract of items/equipment.

L = Labour index.

= Fixed portion of the contract cost of the items/equipment which will not be subject to any Variation.

= Coefficients of major materials involved in the contract cost of the items/equipment’s.

Subscript ‘0’ refers to indices as prevailing on the seventh day prior to the due date of submission of bid [Submission of both Part - I (Technical & Commercial except Price) and Part – II (Price Bid)]. The Contractor will submit authentic copies of relevant published indices as on this date applicable to the tender, along with his offer or any time before opening of Price bid.

Subscript ‘1’ refers to the indices/ exchange rates as on:

1. The expiry of 2/3rd period (in terms of days) from the date of Contract to the date of DRR of unit/s, for labour component and
2. The expiry of 2/3rd period (in terms of days) from the date of Contract to the date of DRR of unit/s, for material component.

**Final Contract Price for Supply part:**

The Final contract price shall be:

In case of deliveries which are delayed beyond the Contractual Delivery Date (as given in Contract) for reasons attributable to the Contractor/Supplier, the provision of Price Variation shall not be available beyond the corresponding Contractual Milestone Date of delivery.

#### Price Variation Formula for Site Supervision portion:

The value for price Variation coefficients for the site supervision part of contract shall be as follows:

Table 2: Price Variation coefficient for the Site Supervision part

|  |  |  |  |
| --- | --- | --- | --- |
| **Component** | **Symbol** | **Source of**  **Indices used** | **Value of**  **Co-efficient** |
| Fixed  Portion | F | - | 0.15 |
| Industrial Labour | lb | Consumer Price Index Nos. for Industrial Workers on Base 2016 = 100 published by Labour Bureau  of Government (Shimla). | 0.85 |

The price Variation formula to be applied to the Site Supervision part of the contract shall be as follows:

)

Where,

= Final contract price (per unit).

BC = Basic Site Supervision contract price (excluding taxes) (per unit) less Advance payments.

= Co-efficient of labour content in the contract.

L = Labour index.

= Fixed portion of the contract cost which will not be subject to any Variation.

Subscript ‘0’ refers to indices as prevailing on the seventh day prior to the due date of submission of bid [Submission of both Part – A (Technical & Commercial except Price) and Part – B (Price Bid)]. The Contractor will submit authentic copies of relevant published indices as on this date applicable to the tender, along with his offer or any time before opening of Price bid.

Subscript ‘1’ refers to the indices as on:

The expiry of 1/2 period (in terms of days) from the date of reporting at site (after first notification of Mobilization) to successful Site Acceptance on per unit basis.

#### Price Variation:

The price Variation for the Supply part of contract will be allowed up-to a ceiling of ± thirty percent (Plus/Minus 30%) of the Basic Price (excluding GST and all other indirect taxes) component in INR. No ceiling applies on the Site Supervision part.

**Price Variation for the Supply part of the Contract will be paid along with the payment for 3rd payment milestone (payment against dispatch) of supply part. Contractor shall submit invoice and proof of indices for release of PV payment.**

**Price Variation for the Supervision part of the Contract will be paid along with the last payment milestone (payment against final Site Acceptance of All units) of supervision part. Contractor shall submit invoice and proof of indices for release of PV payment.**

Refer Annexure – A3: Format for submission of Value of Indices for base indices (Base indices as per Annexure – A3: Format for submission of Value of Indices will be submitted by bidder in their bid)

### Basis of Delivery

#### The delivery will be for complete unit(s) of EC MHVPS/IC HVPS. The price quoted shall be inclusive of packing & forwarding, delivery as per FCA [Contractor’s site] as per Incoterms 2020, including supervision during shifting of material, Assembly/Integration demonstration and site acceptance testing at specified location. Refer to clause no. 1.13.2.2 for details of “delivery address”.

### Taxes and Duties

#### The price quoted should be inclusive of all applicable taxes, levies, duties which are to be mentioned separately in the Part A-1 of the Tender. GST rate for Supply Part to be considered as per the provisions of Notification No. 40/2017-Central Tax (Rate), Notification No. 40/2017-State Tax (Rate) both dated 23rd October, 2017 and Notification No. 41/2017--Integrated Tax (Rate) dated 23rd October, 2017

#### GST for Supervision part will be applicable as per prevailing rate quoted in the bid.

#### No GST exemption certificate will be issued by Purchaser for concessional rate of GST.

##### GST registration: Bidder shall submit a copy of GST Registration certificate along with the bid.

##### . 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 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.

##### 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.

##### 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.

##### Any Taxes and duties originating/applicable outside India will not be paid/reimbursed.

##### 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, except customs duty and applicable GST, towards procurement of the imported materials should be borne by the Contractor.**

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

##### 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.

##### TDS applicable at the prevailing rate as per GST Act will be deducted from the supplier’s invoice(s). A TDS certificate (Form GSTR-7A) will be issued to this effect.

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

### Mode of Payment and Payment Schedule:

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

#### Payment shall be made through RTGS/NEFT in INR against each payment schedule 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.

#### All bank charges, if applicable, shall be borne by CONTRACTOR/SUPPLIER only.

#### Release of payment shall be subject to:

##### Acceptance of Contract.

##### Submission of error-free Performance Security as per Contract.

##### Submission of error-free Advance Payment Bank Guarantee as specified.

#### Payment Schedule

##### The payment for the Supply Part & Site Supervision works to the CONTRACTOR/SUPPLIER will be made as per the following terms (Table 3 & Table 4 for EC MHVPS and Table 5 & Table 6 for IC HVPS) on production of the requisite documents:

Table 3: EC MHVPS Payment Schedule for Supply Part

|  |  |  |  |
| --- | --- | --- | --- |
| **Sr.** | **Payment milestone** | **% of Contract value (Supply part)** | **Documents for release of payment** |
| 01 | Advance against signing of Contract | 10% of Contract Value | Proforma invoice (Triplicate)  Performance Security Bank Guarantee for 5% of Contract Value  Advance Payment Bank Guarantee for 10% of Contract value |
| 02 | Payment against MRR Closure | 20% of Contract Value | MRR approval note issued by the Purchaser  Proforma invoice (Triplicate)  Advance Payment Bank Guarantee for 20% of Contract value |
| 03 | Payment against delivery | Up to 60% of Contract value along with full taxes, duties, freight and transit insurance charges to be paid against contractor release note and delivery of EC MHVPS unit wise. | A copy of Contractor Release Note issued by Purchaser  Tax Invoice describing the items delivered quantity, unit rate (as applicable), their total value in triplicate (Tax invoice to be raised unit wise at time of despatch of unit(s) from Contractor’s site to PURCHASER’s SITE)  Packing list describing quantities, dimensions and weight |
| 04 | Payment against successful completion of Final Site acceptance at PURCHASER’s SITE of all the deliverables specified in the Contract. | 10 % of Contract Value | A copy of Final Acceptance Note issued by the Purchaser.  Duly Signed Warranty Certificate.  Duly certified Invoice in triplicate.  Extension of Performance Security Bank Guarantee as applicable. |
| Total | | 100% |  |

Table 4: EC MHVPS Payment Schedule for Site Supervision:

|  |  |  |  |
| --- | --- | --- | --- |
| **Sr.** | **Payment milestone** | **% of Contract value (Site Supervision)** | **Documents for release of payment** |
| 01 | Advance against mobilization | 10% of Contract Value | Invoice (Triplicate)  Advance Payment Bank Guarantee for 10% of Contract value |
| 02 | Progress payment against completion of Installation. | Up to 40 % of Contract Value (pro-rata basis). | Completion of Installation/Construction Completion Review (CCR).  Invoice (Triplicate) |
| 03 | Payment against successful completion of Final Site acceptance of the deliverables specified in the Contract. | Up to 40 % of Contract Value (pro-rata basis). | A copy of Final Acceptance Note issued by the Purchaser.  Duly Signed Warranty Certificate.  Invoice in triplicate. |
| 04 | Payment against final documentation | Up to 10% of Contract Value | On approval of final documentation (including Operation and maintenance manuals, Site acceptance test report, as built final design document etc.) and training.  Invoice (Triplicate) |
| Total | | 100% |  |

**Table 5: IC HVPS Payment Schedule for Supply Part**

|  |  |  |  |
| --- | --- | --- | --- |
| **Sr.** | **Payment milestone** | **% of Contract value (Supply Part)** | **Documents for release of payment** |
| 01 | Advance against signing of Contract | 10% of Contract Value | Proforma invoice (Triplicate)  Performance Security Bank Guarantee for 5% of Contract Value  Advance Payment Bank Guarantee for 10% of Contract value |
| 02 | Payment against MRR Closure | 20% of Contract Value | MRR approval note issued by the Purchaser  Proforma invoice (Triplicate)  Advance Payment Bank Guarantee for 20% of Contract value |
| 03 | Payment against delivery | Up to 60% of Contract value along with full taxes, duties, freight and transit insurance charges to be paid against contractor release note and delivery of IC HVPS unit wise. | A copy of Contractor Release Note issued by Purchaser  Tax Invoice describing the items delivered quantity, unit rate (as applicable), their total value in triplicate ((Tax invoice to be raised unit wise at time of despatch of unit(s) from Contractor’s site to PURCHASER’s SITE)  Packing list describing quantities, dimensions and weight |
| 04 | Payment against successful completion of Final Site acceptance at PURCHASER’s SITE of all the deliverables specified in the Contract. | 10 % of Contract Value | A copy of Final Acceptance Note issued by the Purchaser.  Duly Signed Warranty Certificate.  Duly certified Invoice in triplicate.  Extension of Performance Security Bank Guarantee as applicable. |
| Total | | 100% |  |

**Table 6: IC HVPS Payment Schedule for Site Supervision**

|  |  |  |  |
| --- | --- | --- | --- |
| **Sr.** | **Payment milestone** | **% of Contract value (Site Supervision)** | **Documents for release of payment** |
| 01 | Advance against mobilization | 10% of Contract Value | Invoice (Triplicate)  Advance Payment Bank Guarantee for 10% of Contract value |
| 02 | Progress payment against successful completion of Installation. | Up to 40 % of Contract Value (pro-rata basis). | Completion of Installation/Construction Completion Review (CCR).  Invoice (Triplicate) |
| 03 | Payment against successful completion of Final Site acceptance of all the deliverables specified in the Contract. | Up to 40 % of Contract Value (pro-rata basis). | A copy of Final Acceptance Note issued by the Purchaser.  Duly Signed Warranty Certificate.  Invoice in triplicate. |
| 04 | Payment against final documentations | Up to 10% of Contract Value | On approval of final documentation (including Operation and maintenance manuals, Site acceptance test report, as built final design document etc.) and training.  Invoice (Triplicate) |
| Total | | 100% |  |

## Recovery of advance payments in case of breach of contract

In case the CONTRACTOR/SUPPLIER fails to execute the CONTRACT due to reasons not attributable to the Purchaser and which do not fall under force majeure as per the CONTRACT conditions, the outstanding advance payments made shall be recovered Benchmark Prime Lending Rate (BPLR) of State Bank of India as on date of opening of bid. This shall be without prejudice to the other remedies available to the Purchaser under the terms and conditions of this part.

## Recovery of Sums Due

Wherever any claim for the payment of Liquidated Damages or loss suffered by the Purchaser arises in terms of money out of the CONTRACT against the Contractor, the Purchaser shall be entitled to recover such sums from any due payment under the CONTRACT. In the event of this amount being insufficient, then the amount of damages or loss shall be recoverable from the payment that may become due, to the Contractor from this CONTRACT or any other CONTRACT with the Purchaser. Should this sum be not sufficient to cover the amount of damages or loss that may be recoverable, the Contractor shall pay to the Purchaser on demand, amount due. Similarly, if the Purchaser had made any claim against the Contractor under this CONTRACT or any other CONTRACT with the Purchaser, the payment of all sums payable under the CONTRACT to the Contractor shall be withheld to the extent of claims due according to the Purchaser till such claims of the Purchaser are finally paid by the Contractor, pending which the same will be adjusted. Notwithstanding the provision for recovery through adjustment the Purchaser shall be free to recover his claims from the Contractor as per the terms of the CONTRACT.

## Inspection & Dispatch Clearance

### Pre-dispatch Inspection / Factory Acceptance Test

#### The Supplier/Contractor shall complete the Inspection and Testing provided in Technical Specifications (Part-A(II-1) for EC MHVPS, Part-A(II-2) for IC HVPS respectively) and submit the test report for approval of the Purchaser prior to dispatch of ordered items.

#### 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 Technical Specifications (Tender Part-A(II-1) for EC MHVPS, Tender Part-A(II-2) for IC HVPS) for more details.

#### If part of said items/components are being manufactured at other premises (viz. sub-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.

#### If the CONTRACTOR/SUPPLIER choose to conduct the Extended FAT(as outlined in section 7.2 of Tender Part A-(II) of EC MHVPS, IC HVPS) for Unit-1 at the ITER-India lab, then CONTRACTOR/SUPPLIER shall arrange for shipment of all Items for extended FAT at ITER-India Lab. Purchaser shall only facilitate extended FAT, however, accountability and liability of execution of extended FAT and its outcome shall be of CONTRACTOR only. The Facility utilization charges for conduction of extended FAT will be payable to Purchaser by CONTRACTOR/SUPPLIER.

### Dispatch Clearance/Contractor Release Note

#### The Contractor is not allowed to make partial shipment of EC MHVPS units, IC HVPS units without written consent of the Purchaser.

#### CONTRACTOR/SUPPLIER shall obtain Contractor Release note (CRN) on satisfactory component test, factory acceptance test, availability of agreed number of units complete in all aspects, from Purchaser before offering EC MHVPS, IC HVPS units at FCA [Supplier’s site]. Should the ITER-India instructs to postpone the delivery of the whole or part of the Items at least 60 (sixty) calendar days prior to the stipulated date of delivery, the CONTRACTOR/SUPPLIER shall be responsible for providing storage, protection and maintenance for the Items free of charge, for a period up to 60 (sixty) calendar days from the stipulated date.

Refer to Section 7 & 11 of *‘HVPS Tender Part A(II-1)-Scope of Supply & work, Technical Specification for EC MHVPS’* of the contract for further details.

Refer to Section 7 & 11 of *‘HVPS Tender Part A(II-2)- Scope of Supply & work, Technical Specification for IC HVPS’*of the contract for further details.

## Packing, Labelling, Insurance and Delivery Instructions

### Packing and handling Instructions

#### Careful handling, packaging is required to ensure safety of components. The CONTRACTOR/SUPPLIER shall be held responsible, accountable and liable for all loss/damages due to improper or poor packing.

#### Packing should be sturdy and rigid enough to withstand shocks and vibrations during transportation. 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.

#### Any loss/damage to the components 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 components. It is the liability of the supplier to deliver the components in safe and perfect condition to ITER-India. In case of damage to the components during transportation or unloading, the Supplier shall perform an urgent and effective repair or shall guarantee the replacement of the faulty component without any cost to the Purchaser, managing the repair or replacement by means of a proper non-conformity management procedure.

#### The CONTRACTOR/SUPPLIER shall submit a detailed transportation scheme including packing details to the Purchaser in advance for the approval.

#### 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.

### Ultimate Consignee & Delivery Address:

#### 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.](mailto:purchase@iterindia.)in

#### Delivery Address:

ITER Organization,

Route de Vinon sur Verdon, CS 90046, 13067 Saint–Paul–Lez–Durance, France

#### Bill To

Sr. Officer (Purchase & Stores),

ITER-India, Institute for Plasma Research

Block A, Sangath Skyz,

Bhat-Motera Road, Koteshwar,

Ahmedabad 380005

Gujarat, India.

GSTIN: 24AAAAI0348C2ZC

ITER-India, IPR will be the exporter of ordered Items to ITER Organization. The export of Items under the Contract shall be in name of Purchaser.

### Delivery Documents

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

1. Original Tax Invoice in triplicate
2. Delivery Challan in triplicate
3. Packing List

Lorry Receipt (LR)

1. Despatch Clearance Note issued by the Purchaser
2. Contractor Release Note issued by the Purchaser

#### 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”.

### 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.

### Insurance

#### Storage Insurance / Contractor’s All Risk Insurance Policy:

Insurance should cover physical loss or damage to the supplies at storage against All Risks including Terrorism occurring prior to the completion and handing over of supplies.

#### Insurance for Contractor’s Personnel

The Contractor shall effect and maintain insurance against liability for claims, damages, losses and expenses (including legal fees and expenses) arising from injury, sickness, disease or death of any person(s) employed at site by the Contractor or any Contractor’s Personnel.

In accordance with the applicable statutory requirement, the Contractor should take Workmen’s Compensation Insurance for his workmen. The phrase “Purchaser’s interest is protected” shall be endorsed in the Policy.

#### Third Party Liability Insurance

Covering bodily injury or death suffered by Third parties (including Purchaser’s personnel) and loss or damage to the property occurring in connection with the supply.

#### General

In all insurance policies except for Third Party liability insurance and Automobile insurance, the Purchaser shall be named as “Loss Payee”.

The Contractor shall ensure that, where applicable, its sub-Contractor(s) shall take out and maintain in effect adequate insurance policies for their personnel and vehicles and for work executed by them under the Contract, unless such sub-Contractors are covered by the insurance policies taken out by the Contractor.

## Site Supervision Works

### Contractor shall remain present continuously for technical supervision at Purchaser’s site during installation, commissioning and Site Acceptance testing activities being carried out by other Contractor being deployed by the Purchaser

### Mobilization/Demobilization at Purchaser’s site for EC MHVPS

Once the PURCHASER’s SITE is ready for installation, ITER-India will notify the CONTRACTOR/SUPPLIER at least two months in advance to mobilize the resources for supervision works at site. In case CONTRACTOR/SUPPLIER fails to provide the supervision works at Purchaser’s site, CONTRACTOR/SUPPLIER shall indemnify ITER-India for the works that may be carried out in its absence, for performance as required/any loss/damages/failures.

In eventuality where site works need to be temporarily discontinued, ITER-India will notify the CONTRACTOR/SUPPLIER in advance to demobilize the resources from Purchaser’s site.

Mobilization and demobilization of CONTRACTOR/SUPPLIER’s representative includes (but not limited to) travel expenses, deputation expenses, personnel insurance and liabilities etc.

### Mobilization/Demobilization at Purchaser’s site for IC HVPS

Once the PURCHASER’s SITE is ready for installation, ITER-India will notify the CONTRACTOR/SUPPLIER two months in advance to mobilize the resources for supervision works at site. In case CONTRACTOR/SUPPLIER fails to provide the supervision works at Purchaser’s site, CONTRACTOR/SUPPLIER shall indemnify ITER-India for the works that may be carried out in its absence, for performance as required/any loss/damages/failures.

In eventuality where site works need to be temporarily discontinued, ITER-India will notify the CONTRACTOR/SUPPLIER in advance to demobilize the resources from Purchaser’s site.

Mobilization and demobilization of CONTRACTOR/SUPPLIER’s representative includes (but not limited to) travel expenses, deputation expenses, personnel insurance and liabilities etc.

### Acceptance Tests at Purchaser’s Site for EC MHVPS (4 nos.)

Final / Site Acceptance of the Items/components will be subject to the fulfilment of requirements given in *‘Tender Part A(II-1)-* *Scope of Supply & work, Technical Specification for EC MHVPS’*.

Note: The CONTRACTOR/SUPPLIER has to carry out Site Work in a protected area and shall strictly follow Site Security & Safety Protocol during execution of Site Work.

### Acceptance Tests at Purchaser’s Site for IC HVPS (8nos.)

Final / Site Acceptance of the Items/components will be subject to the fulfilment of requirements given in *‘Tender Part A(II-2)- Scope of Supply & work, Technical Specification for IC HVPS*’.

Note: The CONTRACTOR/SUPPLIER has to carry out Site Work in a protected area and shall strictly follow Site Security & Safety Protocol during execution of Site Work.

### Accident liability during onsite work

#### CONTRACTOR/SUPPLIER and his sub-contractors shall insure its own personnel and tools & equipment’s deployed at ITER-India lab in India and/or Purchaser’s site (France) against all risk, such as injuries, loss of life etc. The CONTRACTOR/SUPPLIER will be fully responsible, accountable and liable for payment of compensation to its own personnel.

#### The CONTRACTOR/SUPPLIER shall take all possible precautions and avoid loss/damages to equipment/items/Purchaser’s property during the execution of installation & commissioning/site work. In the event of loss or damage to Purchaser’s property/any item(s)/equipment and/or injury or loss of life to Purchaser’s personnel during the course of onsite work as a result of fault(s) in the items supplied under the Contract/Purchase Order or due to the reasons attributable to the CONTRACTOR/SUPPLIER, then, the CONTRACTOR/SUPPLIER will be fully responsible, accountable and liable for such damages/losses and payment of appropriate compensation. The CONTRACTOR/SUPPLIER agrees to relieve the Purchaser from all the liabilities under this clause. The existing CONSTRUCTION RISK POLICY of ITER shall be utilized to the extent mentioned, refer Reference document “Insurance certificate for IO new contractors (ITER\_D\_3QNYPS\_v1\_3) & “New Insurance scheme for ITER Worksite (ITER\_D\_3QGUSN\_v1\_2)”.

## Transfer of Ownership and Title

Notional transfer of ownership of the items shall occur upon FCA [SUPPLIER’S SITE]. Final Transfer of ownership of the Items shall occur upon successful completion of Final Site Acceptance test.

## Risk of Loss/damages

The CONTRACTOR/SUPPLIER shall be responsible, accountable and liable for risk of any loss or damages to deliverable items at Supplier’s site.

## Delay, Extension & Postponement

### Extension of Time (due to CONTRACTOR/SUPPLIER)

#### In the event, the contractual delivery/completion 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 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 with or without provisions to levy Liquidated Damages(LD) 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.

#### If the CONTRACTOR/SUPPLIER fails to apply and secure extension of Contract/Purchase Order delivery/completion 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/completion dates (clause **1.17.2**).

### Delay in delivery dates

#### Should the CONTRACTOR/SUPPLIER fails to comply with contractual delivery/completion 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:-

##### To receive the deliverable items under the Contract/Purchase Order after prescribed date of delivery with the right to impose LD on the CONTRACTOR/SUPPLIER.

##### To terminate the total Contract/Purchase Order, as per clause **1.27.** However, the Purchaser will inform in writing one month in advance to the CONTRACTOR/SUPPLIER before exercising this clause.

#### The Contractor is required to maintain Hindrance Register for reporting hindrance if any, while executing the work and supply related issues, in an approved format. The Contractor shall get record of hindrances in the Hindrance Register approved / endorsed by the Purchaser’s representative. Such hindrance in the Work or Supply endorsed by the Purchaser’s representative will only be taken into consideration for granting time extension. Format of Hindrance Register is as per Annexure – A2: Hindrance Register.

## Liquidated Damages (LD) for Supply part

Liquidated Damages (LD) for supply part shall be applicable for EC MHVPS, IC HVPS individually and separately.

### If the CONTRACTOR/SUPPLIER fails to deliver the ordered items (EC MHPVS, IC HVPS) within the time specified (Delivery milestone as per Section 10 of *‘HVPS Tender Part A(II)- Scope of Supply & work, Technical Specification for EC MHVPS, IC HVPS respectively*) and the delay or part thereof is attributable to the CONTRACTOR/SUPPLIER, the Purchaser shall recover from the CONTRACTOR/SUPPLIER as liquidated damages sum of half percent (0.5 percent) of the Contract Supply part (excluding taxes for EC MHVPS/IC HVPS) for each calendar week or part thereof for the delay that is attributable to the Contractor. The total liquidated damages shall not exceed five percent (5%) of Price for Contract supply part (excluding taxes) for EC MHVPS/IC HVPS. The final amended Contract Value based on impact of Price Variation will be taken for LD evaluation

### Items will be deemed to have been delivered only when all its items and component parts are also delivered. If certain items/components are not delivered in time, the items will be considered as delayed until such time as the missing parts are delivered.

### However, the payment of liquidated damages shall not in any way relieve the CONTRACTOR/SUPPLIER from any of its obligations to complete the supplies and work scope or from any other obligations and liabilities of the CONTRACTOR/SUPPLIER under the Contract/Purchase Order.

## Liquidated Damages (LD) for Supervision part

Liquidated Damages (LD) for supervision part shall be applicable for EC MHVPS & IC HVPS individually and separately.

### If the CONTRACTOR/SUPPLIER fails to successfully complete the supervision works as per at Purchaser’s site within the stipulated duration (refer last SAT Milestone as per Section 13 of *‘Tender Part A(II)- Scope of Supply & work, Technical Specification for EC MHVPS/IC HVPS*) and the delay or part thereof is attributable to the CONTRACTOR/SUPPLIER on each or any occasion, the Purchaser shall recover from the CONTRACTOR/SUPPLIER as liquidated damages sum of half percent (0.5 percent) of complete site supervision part (excluding taxes for EC MHVPS/IC HVPS) for each calendar week or part thereof for the delay that is attributable to the Contractor. The total liquidated damages shall not exceed five percent (5%) of complete site supervision part (excluding taxes) for EC MHVPS/IC HVPS. LD will be calculated/applicable per unit basis. The final amended Contract Value based on impact of Price Variation will be taken for LD evaluation.

### Supervision services will be deemed to have been completed only when SAT of all EC MHVPS/IC HVPS units is successfully completed.

### However, the payment of liquidated damages shall not in any way relieve the CONTRACTOR/SUPPLIER from any of its obligations to complete the work scope or from any other obligations and liabilities of the CONTRACTOR/SUPPLIER under the Contract/Purchase Order.

## Force Majeure

### Force Majeure is herein defined as any cause which is beyond the control of the CONTRACTOR/SUPPLIER or the Purchaser, as the case may be which they could not foresee or with a reasonable amount of diligence could not have foreseen and which substantially affects the performance of the Contract/Purchase Order, such as: Natural Phenomena, including but not limited to floods, droughts, earthquakes, and epidemics.

### Acts of any Government, domestic or foreign including but not limited to war-declared or undeclared, priorities, quarantines, embargoes.

### Other Phenomena including but not limited to hostilities riots, civil commotion and declared lock-down in CONTRACTOR/SUPPLIER’s works.

### Provided that Parties shall not be liable for delay in performing its obligations resulting from any Force Majeure causes as referred to/or defined above. The date of completion will subject to hereinafter provided, be extended by reasonable time even though such cause may occur after CONTRACTOR/SUPPLIER’s performance of his obligations has been delayed for other cause. However, the CONTRACTOR/SUPPLIER is not entitled to increase in statutory levies that has come into force during the extended delivery period.

## Rejection of defective goods & CONTRACTOR/SUPPLIER’s Liability

### Rejection against Damages during Transit

If the items/ components or any portion thereof is damaged/lost during transit, the Purchaser shall give notice to the CONTRACTOR/SUPPLIER setting forth particulars of such items/ Components damaged/lost 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.

### 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.

### Limitation of liability

#### 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.

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

## 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.

## Warranty, Defect Liability, Latent defect

### Warranty for the Supplied items/systems

#### The CONTRACTOR/SUPPLIER shall warrant that the items/system i.e. item description 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.

#### The CONTRACTOR/SUPPLIER shall provide a warranty covering repair or replacement of the Items/components as specified in Section 9 of *‘HVPS Contract Part A(II-1) – Scope of Supply & work, Technical Specification for EC MHVPS’.*

#### The CONTRACTOR/SUPPLIER shall provide a warranty covering repair or replacement of the Items/components as specified in Section 9 of *‘HVPS Contract Part A(II-2) – Scope of Supply & work, Technical Specification for IC HVPS’.*

#### 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.

#### 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.

#### 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.

#### Contractor shall remain liable for the performance of the Items supplied at PURCHASER’s SITE till end of warranty period.

### CONTRACTOR/SUPPLIER’s Failure to Repair/Replacement of defective Goods

#### 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:

##### Replace or rectify such defective items and recover the actual costs so involved from the CONTRACTOR/SUPPLIER.

##### 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 **1.23** and **1.21**.

If the CONTRACTOR/SUPPLIER fails to make the required repairs/ replacement within mutually agreed time, then in pursuant to clause **1.23.2.1.1**, 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.

## After Sales Services & Availability of Spares

### 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.

### 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 5 years beyond the warranty period. 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.

## CHANGES

### 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 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.

### 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.

### Notwithstanding Clause **1.25.1** and Clause **1.25.2**, 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.

### If any of the item(s) in addition to the schedule of supply of materials or change in any item(s) 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/modified 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/additional work in the following manner:

### 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.

### 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.

## Settlement of disputes

### Any disputes or difference arising out of or in connection with the CONTRACT shall be to the extent possible settled amicably between the parties involving management from either side within sixty (60) days.

### (a) The Parties shall continue to perform their respective obligations under the CONTRACT for the portion not under dispute

### (b) The Purchaser shall continue to pay any undisputed amount to the Contractor.

## Cancellation/Termination of Contract

### **Termination of Contract for default**

### The Purchaser may, without prejudice to any other remedy for breach of CONTRACT, by written notice of default sent to the Contractor, terminate the CONTRACT in whole or in part in circumstance detailed hereunder:

#### If the Contractor fails to supply/provide any or all of the deliverable items, within the time period(s) specified in the CONTRACT or any extension thereof granted by the Purchaser or within the period till which the maximum LD amount is reached.

#### If the Contractor fails to perform any other obligation(s) under the CONTRACT within the period specified in the CONTRACT or any extension thereof granted by the Purchaser

### In the event the Purchaser terminates the CONTRACT in whole or in part, the Purchaser may take recourse to any one or more of the following actions. However, the Contractor shall continue to perform the CONTRACT to the extent not terminated.

#### Forfeiture of Security Deposit

#### Recovery of Liquidated Damages (LD) as per the CONTRACT.

#### To purchase from elsewhere, after (thirty) 30 days’ notice to the Contractor, on account and the risk and cost of the Contractor, 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 in respect of the consignments not yet due for supply.

#### To cancel the total Contract 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.

### In the event of action being taken under sub-clause 1.27.1(b) above, the Contractor shall be liable for any loss which the Purchaser may sustain on that account. Contractor 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 by the Contractor as provided in the Contract or under the general law.

### If the CONTRACT is terminated as provided in clause 1.27.1(b), the Purchaser in addition to any other rights provided in the clause, may require the Contractor 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, the CONTRACT price of such completed items that are delivered to and accepted by the Purchaser.

### The termination will not relieve the Contractor from submitting the Performance Security Bank Guarantee for the portion not terminated.

### **Termination of Contract for insolvency**

If the Contractor becomes bankrupt or otherwise insolvent or goes into liquidation, the Purchaser may, at any time, terminate the CONTRACT, by giving a written notice to the Contractor, without compensation to the Contractor, provided that such termination will not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to the Purchaser. Purchaser would be ‘Financial Creditors’ for, if any, sums remaining to be recovered after settlement of contract and forfeiture/encashment of SD/ABG/PBG.

### **Termination of Contract for convenience**

After placement of CONTRACT, there may be some unforeseen situations compelling the Purchaser to cancel the CONTRACT. In such a case, the purchaser will send a suitable notice at least one month in advance to the Contractor for cancellation of the CONTRACT, in whole or in part, for Purchaser's convenience, inter alia, indicating the date with effect from which the termination is to become effective. Depending on the merits of the case, the Purchaser suitably compensates the Contractor on mutually agreed terms for terminating the CONTRACT.

## Intellectual Property and Provision

Refer [Annexure – A4: Intellectual Property and Provision](#_Annexure_–_A4:) for details.

## Annexure – A1a: PSBG/ ePBG Bank Guarantee

**ePBG Draft Document**

***"(To be on non-judicial stamp paper of appropriate stamp duty value relevant to the place of execution)"***

**Bank Guarantee Format for Performance Security**

**Beneficiary:**

**Project Director**

**ITER-INDIA, INSTITUTE FOR PLASMA RESEARCH**

**BLOCK A SANGATH SKYZ BHAT-MOTERA ROAD,**

**KOTESHWAR,**

**AHMEDABAD - 380005**

(hereinafter referred to as Beneficiary)

Date: .................. [ date of issue of BG] (To be filled by issuing bank) .....................

PERFORMANCE BANK GUARANTEE No.: .................. [ guarantee number] (To be filled by issuing bank)

PERFORMANCE BANK GUARANTEE Amount: Rs **………. (In words ……………………………)**

Contract No.: **………………….**

Bid Number: **………………….**

**Applicant / Seller:**

[Name & Address of Contractor]

Guarantor: .... [ name and address of the issuing Bank] (To be filled by issuing bank).................

1. The Applicant / Seller named above has entered into above referred contract with the Beneficiary for the supply of Goods and / or Services as defined in the said contract. According to the conditions of the Contract, a performance security is required to be furnished by the Seller to the Beneficiary for due performance of the contract.

2. At the request of the Applicant, we as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of **Rs.** **………. (in words: …………………)**, upon receipt by us of the Beneficiary's demand stating that the Applicant is in breach of its obligation(s) under the Contract, without the Beneficiary needing to prove or to show grounds for your demand or the sum specified therein.

3.We do hereby undertake to pay the amount due and payable under this Guarantee without any demur, merely on a demand from the Beneficiary. Any such demand made on the Bank shall be conclusive as regards the amount due and payable by the Bank under this Guarantee. However, our liability under this guarantee shall be restricted to an amount not exceeding **Rs.** **………. (in words: …………………)**

4.We undertake to pay the Beneficiary any money so demanded not withstanding any dispute or disputes raised by Seller(s)in any suit or proceeding pending before any Court or Tribunal relating thereto liability under this present being absolute and unequivocal.

5.The payment so made by us under this Bond shall be a valid discharge of our liability for payment thereunder and the Seller (s) shall have no claim against us for making such payment.

6.We further agree that the Guarantee here in contained shall remain in full force and effect during the period that would be taken for the performance of the said Contract including Guarantee/ Warrantee period and that it shall continue to be enforceable till all the dues of the Beneficiary under or by virtue of the said Contract have been fully paid and its claims satisfied or discharged.

7.We further agree with Beneficiary that the Beneficiary shall have the fullest liberty without our consent and without affecting in any manner our obligations hereunder to vary any of the terms and condition of the said Contractor to extend time of performance by the said Seller(s) from time to time or to postpone any time or from time to time powers exercisable by the Beneficiary against the said Seller(s) and to forbear or enforce any of the terms and condition relating to the said Contract and we shall not be relieved from our liability by reason of any such variation, or only extension being granted to the said Seller(s) or for any forbearance, act or omission on the part of the Beneficiary or any indulgence by the Beneficiary to the said Seller(s) or by any such matter or thing whatsoever which under the law relating to sureties would, but for this provision, have effect of so relieving us.

8.Notwithstanding anything contained herein above our liability under the Guarantee is restricted to **Rs.** **………. (in words: …………………)** and shall remain in force until ………… .

9.This Guarantee will not be discharge due to be change in the constitution of the Bank or the Seller (s).

10.We lastly undertake not to revoke this Guarantee during its currency except with the previous consent of the Beneficiary in writing.

Dated .................

For...........................................................................

(Indicate the name of the Bank)

Signature..................................................................

Name of the Officer.................................................

Designation of the officer .......................................

Code no ...................................................................

Name of the Bank and Branch.................................

## Annexure – A1b: Bank Guarantee (Advance Payment)

**(On non-judicial stamp paper of appropriate value)**

Bank GUARANTEE Reference No.\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ DATE:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

1. WHEREAS on or about the \_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_ 2025 M/s\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a company registered under the companies act and having its registered office at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (hereinafter referred to as “the CONTRACTOR/SUPPLIER”) entered into Contract/Purchase Order bearing No. \_\_\_\_\_\_\_\_\_ date\_\_\_\_\_\_\_ with ITER-India (INSTITUTE FOR PLASMA RESEARCH) Block A, Sangath Skyz, Bhat-Motera Road, Koteshwar, Ahmedabad 380005, Gujarat, India (hereinafter referred to as "The Purchaser") for the supply of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (hereinafter referred to as “the Equipment”)
2. AND WHEREAS under the terms and conditions of the Contract/Purchase Order an amount of Rs. \_\_\_\_\_\_ (Rupees \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_only) representing percent advance payment out of the Contract/Purchase Order value of Rs.\_\_\_\_\_\_\_\_\_ (Rupees \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ only) is to be paid by the Purchaser.
3. AND WHEREAS ITER-India has agreed in pursuance of the said terms and conditions of the Contract/Purchase Order to make an advance payment of Rs. \_\_\_\_\_\_\_\_ (Rupees \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ only) to the CONTRACTOR/SUPPLIER on the CONTRACTOR/SUPPLIER furnishing a Bank Guarantee in the manner herein contained.
4. NOW WE, \_\_\_\_\_\_\_\_\_\_\_\_\_ (Name and Address of the contractor) in consideration of the Purchaser having agreed to pay to the CONTRACTOR/SUPPLIER an advance payment of Rs. \_\_\_\_\_\_ (Rupees \_\_\_\_\_\_\_\_\_\_\_\_Only) do hereby agree and undertake to indemnify the Purchaser and keep the Purchaser indemnified to the extent of a sum not exceeding the said sum of Rs. \_\_\_\_\_\_ (Rupees \_\_\_\_\_\_\_\_\_\_\_\_Only) against any damage or loss that may be suffered by the Purchaser by reason of non-fulfillment of any of the terms and conditions of the Contract/Purchase Order by the CONTRACTOR/SUPPLIER.
5. WE, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (Contractor) do hereby undertake to pay the amount due and payable under this guarantee without recourse to the Contractor and without any demur, or protest or objection, merely on a demand from the Purchaser stating that the amount claimed is due by way of loss or damage caused to or would be caused to or suffered by the Purchaser by reason of breach by the said CONTRACTOR/SUPPLIER(s) of any of the terms and conditions contained in the said Contract/Purchase Order or by reason of the CONTRACTOR/SUPPLIER(s)’s failure to perform the said Contract/Purchase Order. Any such demand made on the Bank shall be conclusive as regards the amount due and payable by the Bank under this guarantee. However, our liability under this guarantee shall be restricted to an amount not exceeding Rs. \_\_\_\_\_\_ (Rupees \_\_\_\_\_\_\_\_\_\_\_\_Only).
6. WE, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (Contractor) undertake to pay to the Purchaser any money so demanded notwithstanding any dispute or disputes raised by the CONTRACTOR/SUPPLIER(s) in any suit or proceeding pending before any Court or Tribunal relating thereto our liability under this present guarantee being absolute an unequivocal. The payment so made by us under this bond shall be a valid discharge of our liability for payment thereunder and the CONTRACTOR/SUPPLIER(s) shall have no claim against us.
7. AND WE, \_\_\_\_\_\_\_\_\_\_\_ (Contractor) hereby further agree that the decision of the said Project Director, ITER-India as to whether the CONTRACTOR/SUPPLIER has committed breach of any such terms and conditions of the Contract/Purchase Order or not and as to amount of damage or loss assessed by the said Project Director as damage or loss suffered by the Purchaser/ITER-India on account of such breach would be final and binding on us.
8. WE\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(Contractor) further agree with the Purchaser that the Purchaser shall have the fullest liberty without our consent and without affecting in any manner our obligations hereunder to vary any of the terms and conditions of the said Contract/Purchase Order or to extend time of performance by the said CONTRACTOR/SUPPLIER(s) from time to time or to postpone for any time or from time to time any of the powers exercisable by the Purchaser against the said CONTRACTOR/SUPPLIER(s) and to forbear or enforce any of the terms and conditions relating to the said Contract/Purchase Order and we shall not be relieved from our liability by reason of any such variation or extension being granted to the said CONTRACTOR/SUPPLIER(s) or for any forbearance, act or commission on the part of the Purchaser or any indulgence by the Purchaser to the said CONTRACTOR/SUPPLIER(s) or by any such matter or thing whatsoever which under the law relating to sureties would, but for this provision, have the effect of relieving us.
9. THIS GUARANTEE will not be discharged due to the change in the constitution of the CONTRACTOR/SUPPLIER(s).
10. OUR GUARANTEE shall remain in force until\_\_\_\_\_\_\_\_\_\_\_ (complete delivery of ordered items) and unless a claim under the guarantee is lodged on or before ………. (specify applicable claim period, minimum 2 months required), all rights of the Purchaser under the guarantee shall be forfeited and we shall be relieved and discharged from all liabilities thereunder.

In witness whereof, we the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_have executed this.

Dated the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_20\_\_\_.

For \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Indicate the name of Bank with Postal address, Fax Number & email address)

Witnesses:

1. Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Signature\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
2. Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Signature\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

## Annexure – A2: Hindrance Register

A Hindrance Register is to be maintained in the enclosed Format to record all hindrances encountered during execution of items/work against the PO/Contract. The items or work affected due to any hindrance shall be clearly recorded in the Hindrance Register and the Purchaser’s representative as well as the Supplier’s/Contractor’s representative will sign on the register against the recorded hindrance(s). In case of encountering multiple hindrances simultaneously over a period of time affecting the same item/work or different items/work, the net period of hindrance will be worked out considering the overlapping period.

Format of Hindrance Register:

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| Sr. No. | Nature of Hindrance | Item or Work which is affected/could not be executed on account of this hindrance | Date of start of hindrance | Date of removal of hindrance (references of communications to resolve) | Overlapping period (if any) | Net Delay in days | Sign/clearance of Purchaser’s representative | Sign/clearance of Contractor’s representative |
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It is to be noted that the delay in individual activities may not be affecting the contractual milestone depending on the available float, if any.

## Annexure – A3: Format for submission of Value of Indices

Data sheet for Price Variation details

Data to be submitted for Price Variation of Item/ Equipment under contract:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Coefficient | Value of Coefficient | Item | Source of Indices used | Value of Indices of material and labour  as on Base Date |
| f | 0.14 | F: Fixed Portion | -- | -- |
| a | 0.27 | Non-ferrous metals incl. precious metal (M) | Wholesale Price indices (Base Year: 2011-12) monthly basis as published by Office of the Economic Adviser, Ministry of Commerce & Industry |  |
| b | 0.20 | Mild Steel - Semi Finished Steel (N) |  |
| c | 0.09 | Other Electronic and Electric Wires and  Cables (O) |  |
| lb | 0.30 | L: Labour | Consumer Price Index Nos. for Industrial Workers on Base 2016 = 100 published by Labour Bureau of Government  (Shimla) |  |

**\*Base date i.e. Indices prevailing ‘7’ days prior to the date of submission of Part-I and Part-II Bid.**

**Stamp and Signature of the Bidder**

## Annexure – A4: Intellectual Property and Provision

1. **General terms & definitions:**

1.1 As defined in Article 1.2 & 1.3 of Annex on Information and Intellectual Property (IIP Annex) of the Agreement on the Establishment of the ITER International Fusion Energy Organization for the Joint Implementation of the ITER Project (ITER Agreement), the following definition applies to information and intellectual property:

* + 1. **Information:**

“Information” shall mean published data, drawings, designs, computations, reports and other documents, documented data or methods of research and development, as well as the description of inventions and discoveries, whether or not protectable, which are not covered by the term Intellectual Property as defined in 1.1.2

“Information” shall also include confidential information like specifications, 3-D models, samples and prototypes.

**1.1.2 Intellectual property (IP):**

“Intellectual Property” shall have the meaning defined in Article 2 of the Convention Establishing the World Intellectual Property Organization, done at Stockholm on July 14, 1967. It may include confidential information such as know-how or trade secrets provided that they are unpublished, and in written or otherwise documented form, and

1. have been held in confidence by their owner,
2. are not generally known or available to the public from other sources, and/or are not generally available to the public in printed publications and/or other readable documents and any form of electronic records
3. have not been made available by their owner to other parties without an obligation concerning confidentiality, and
4. are not available to the receiving party without an obligation concerning confidentiality.
   * 1. **Background Intellectual property:**

“Background Intellectual Property” shall mean Intellectual Property that has been or is acquired, developed or produced, before the entry into force of the Contract, or outside of the scope of this Contract. (Entry into force shall be the date of Letter of Intent (LoI), in case the actual contract is signed after the LoI).

* + 1. **Generated Intellectual Property:**

“Generated Intellectual Property” shall mean Intellectual Property that is generated or acquired with full ownership by ITER-India or by the supplier and its subcontractors, pursuant to and in the course execution of this Contract

1. **Provisions under background Intellectual Property:**
   1. **Declaration of background:**

2.1.1 The Contractor shall declare all Intellectual Property and Information which is held by the Contractor prior to the signature of the Contract or outside its scope and which is needed for carrying out the Contract – this information & Intellectual Property shall be subsequently be referred to as “the background”. The declaration shall provide detailed information on the origin and ownership of the background as well as any legal restrictions relating to its use of which the Contractor is aware. The declaration of the background forms part of the Contract.

2.1.2 The contractor may identify additional background information after the signature of the contract. However, in such a situation, the contractor needs to justify why such a background was not invoked originally into the contract. The use of this Background information shall be authorized only after discussion with ITER-India.

2.1.3 The contractor must clearly identify the use background information that belongs to a third party for which the contractor has a license agreement. Further, he must obtain the rights form third party to allow him to use the background in conformity with 2.1.1 and 2.1.2.

2.1.4 The contractor must clearly identify the Background information that is confidential. ITER-India shall preserve (in a manner agreed mutually with the contractor) the confidentiality of the same.  On transfer of component to IO, the Background confidential information so provided shall be communicated to IO and shall be protected by IO in a manner described in clause 2.2.2.

2.1.5 The background information provided by the contractor shall be owned exclusively by the contractor.

* 1. **Access to Background information:**

2.2.1 The contractor who has incorporated Background Intellectual Property, except confidential information such as know-how and trade secrets into the items supplied to the ITER-India and the background information so provided is required:

● to construct, operate, use or integrate technology for research and development in relation to the IO facilities,

● to maintain or repair the item provided, or

● when deemed necessary by ITER-India, in advance of any public procurement,

shall grant on an equal and non-discriminatory basis an irrevocable, non-exclusive, royalty free license to such Background Intellectual Property to ITER-India, other Members (of IO) and to the IO either directly or through ITER-India, with the right of the IO to sub-license and the right of the ITER-India and other Members (of IO) to sub-license to their research institutes and institutes of higher education within their respective territory for the purposes of publicly sponsored fusion research and development programmes.

2.2.2 The contractor who has incorporated background confidential information into the items provided to ITER-India and the background confidential information is required:

* to construct, operate, use or integrate technology for research and development in relation to the IO facilities,
* to maintain or repair the item,
* when deemed necessary by ITER-India in advance of any public procurement, or
* for safety, for quality assurance and quality control reasons as required by regulatory authorities,

shall ensure that ITER-India and the IO have an irrevocable, non-exclusive, royalty-free license available to use such background confidential information including manuals or instructional training materials for the construction, operation, maintenance and repair of the IO facilities.

The confidential information shall be transmitted maintaining the protection for confidentiality in accordance with section 2.1.4. The recipient for such information shall use it only for the provisions identified above. IO guarantees this protection and compensation for damages arising from the misuse of the background confidential information shall be the responsibility of IO.

2.2.3 The Contractor’s attention is drawn to Article 4.2.4 and 4.2.5 of the IIP Annex of ITER Agreement, whereby the contractor shall use its best efforts to either grant licenses to the background incorporated into the goods supplied under the Contract or to supply such goods to IO Members under the conditions established in Article 4.2.4 and 4.2.5 of the IIP Annex of JIA.

2.2.4 The Contractor is encouraged to make its background incorporated into the goods supplied under the Contract available for commercial purposes under the conditions established in Article 4.2.6 of the IIP Annex of ITER Agreement.

2.2.5 The contractor shall grant on fair and reasonable conditions a license to use the background information & Intellectual Property, applicable to this contract to any third party nominated by ITER-India for the purpose of fulfilling a contract with ITER-India.

1. **Provisions under Generated Intellectual Property**
   1. All Information (defined in 1.1.1 above) provided by or on behalf of ITER-India to the contractor shall remain the property of ITER-India. These shall not be shared without permission from ITER-India.
   2. The background intellectual property provided by ITER-India will continue to be the property of the ITER-India. Any further extension of the IP during the course of execution of the contract will also belong to the ITER-India.
   3. If, during the process of execution of the contract, any improvement, refinement or technical changes and modifications are effected by the contractor to the background Information and IP owned by ITER-India and given to the Contractor for execution, such changes shall not affect the title to the property of the ITER-India and it shall continue to own the modified Information and IP. ITER-India shall have absolute rights to assign, transfer, sublet, use and transmit all such Information and IP to its consultants, agents and collaborators. Contractor shall not have any claim or right whatsoever in respect of the above Information and IP.
   4. Any information and Intellectual property generated during the course of execution of the contract including those generated at the subcontractors end working for this contract shall be communicated to ITER-India immediately and ITER-India shall have the first right to protect such generated intellectual property on its name. The contractor shall take the appropriate legal and administrative measures to enable ITER-India protect it in its own name.
   5. In specific cases ITER-India may waive its right to take protection. In such a situation, the contractor can take the protection of IP in its name and solely at its cost after reimbursing costs incurred by ITER-India (if any) on such a protection. At all times ITER-India shall be entitled to a royalty-free, non-exclusive, worldwide, irrevocable license with the royalty-free right to grant sublicenses on the resulting registered right.
   6. If the contractor or its employees’ desires to claim rights on the generated intellectual property, it shall be ensured that the same is possible, subject to compatibility with the contractor’s obligations under the contract and also ensuring that the rights of ITER-India remain unaffected.
   7. The contractor shall be permitted to use the generated Intellectual Property for his own needs. For this, he needs to obtain license from ITER-India. The terms shall be mutually agreed.
   8. The contractor is made aware of the fact that ITER-India may at its discretion, decide to seek protection of a generated intellectual Property, outside India.
   9. For generated IP where ITER-India, decides to seek protection, the inventors will assign their rights to ITER-India.
   10. ITER-India will seek protection through DAE-IPR Cell.
   11. Should the contractor wish to seek protection of IP generated on the subject matter on the contract within a period of 24 months after conclusion of the contract, the same shall be conveyed to ITER-India. It may be noted that the subject of these IPs shall be considered to be a part of the Generated Intellectual Property (and subject to provision 3.3 above), unless the contractor demonstrates that these have been created outside the scope of the contract.

**4 Indemnities, repair rights and copyrights:**

4.1 In case the contractor needs to use the intellectual property belonging to a third party, the contractor shall indemnify ITER-India from any action for infringement associated with the third-party intellectual property.

4.2 The contractor shall have the first right to attend to repairs for proprietary supplies which incorporate background intellectual property owned by him. However, should the contract not be successful in effecting repairs for such supplies in the first instance, ITER-India shall have the right to effect repairs by whomsoever it may think fit.

4.3 The contractor shall be responsible for obtaining all permits, license and copyrights required for the implementation of the contract, as per laws applicable to the place where the contract is executed. In case of inability to seek the necessary permits, licenses and copyrights, the contract shall inform the same to ITER-India and ITER-India shall decide whether to acquire the rights at costs payable by the contractor or effect a decision to discontinue all or some part of the work.