



Title: Supply of Safety Important Pneumatic Butterfly  
Valves

Tender Notice No.

I-I/ET-TPT/24003/24-25

<b>Title</b>	<b>Tender No. I-I/ET-TPT/24003/24-25 dated 10-05-2024 for Supply of Safety Important Pneumatic Butterfly Valves</b>
<b>Sub Title</b>	<b>PART-A (III): Terms and Conditions of the Contract</b>

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



Type of document	Tender enquiry Document – PART-A(III)
INDUS number	
References	
Current Document phase	Approved
Current Document Version	1
Version date	10-05-2025
Access Control	-

Written by	Reviewed by	Approved by
ITER-India	ITER-India	ITER-India
Signature/s in sequence	Signature/s in sequence	Signature/s in sequence

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

<http://www.iterindia.in>



## Table of Content

<b>1</b>	<b>TERMS AND CONDITIONS OF THE CONTRACT (TCC) / PURCHASE ORDER .....</b>	<b>6</b>
<b>2</b>	<b>DEFINITIONS AND INTERPRETATIONS .....</b>	<b>6</b>
2.1	DEFINITIONS .....	6
2.2	INTERPRETATIONS.....	8
<b>3</b>	<b>GENERAL PROVISIONS OF THE CONTRACT.....</b>	<b>8</b>
3.1	LANGUAGE .....	8
3.2	GOVERNING LAW .....	8
3.3	JURISDICTION .....	8
3.4	SEVERABILITY .....	8
3.5	EXERCISING THE RIGHTS AND POWERS OF THE PURCHASER .....	9
3.6	PUBLICITY.....	9
3.7	CONFIDENTIALITY AND SECRECY .....	9
<b>4</b>	<b>THE PURCHASER .....</b>	<b>9</b>
4.1	PERMITS, LICENSES OR APPROVALS.....	9
4.2	PURCHASER'S REPRESENTATIVES .....	9
<b>5</b>	<b>THE CONTRACTOR .....</b>	<b>10</b>
5.1	PERMITS, LICENSES OR APPROVALS.....	10
5.2	COMPLIANCE WITH LAW .....	10
5.3	CONTRACTOR'S REPRESENTATIVE .....	10
5.4	GENERAL OBLIGATIONS .....	10
5.5	SUB-CONTRACTING, SUBLETTING OR ASSIGNMENT OF CONTRACT .....	11
5.6	CODES AND STANDARDS .....	11
5.7	MISTAKES IN DRAWINGS, SPECIFICATIONS ETC. ....	11
<b>6</b>	<b>CONTRACT WORK SCOPE AND COMPLETION TIME.....</b>	<b>11</b>
6.1	SCOPE OF WORK, SCOPE OF SUPPLY AND SPECIFICATIONS: .....	11
6.2	DELIVERY DATES AND COMPLETION TIME .....	11
6.3	FREE ISSUE MATERIAL (FIM): .....	12
<b>7</b>	<b>PROVISIONS DURING CONTRACT EXECUTION .....</b>	<b>12</b>
7.1	KICK OFF MEETING .....	12
7.2	PROGRESS MEETING AND APPROVAL OF DOCUMENTS.....	12
7.3	PROGRESS REPORT FOR PROJECT MONITORING .....	12
<b>8</b>	<b>BANK GUARANTEES.....</b>	<b>13</b>
8.2	SECURITY DEPOSIT (SD).....	13
8.3	ADVANCE PAYMENT BANK GUARANTEE (APBG).....	13
8.4	PERFORMANCE BANK GUARANTEE (PBG) .....	13
<b>9</b>	<b>CONTRACT PRICE, PAYMENT AND RECOVERIES .....</b>	<b>14</b>
9.1	TERMS OF PRICES .....	14
9.2	BASIS OF DELIVERY .....	14
9.3	TAXES AND DUTIES.....	14
9.4	MODE OF PAYMENT AND PAYMENT SCHEDULE: .....	15
9.5	RECOVERY OF ADVANCE PAYMENTS IN CASE OF BREACH OF CONTRACT.....	17
9.6	RECOVERY OF SUMS DUE .....	17
<b>10</b>	<b>QUALITY ASSURANCE, INSPECTION AND FACTORY ACCEPTANCE TEST .....</b>	<b>17</b>
10.1	QUALITY ASSURANCE PROGRAM.....	17
10.2	INSPECTION, TESTING AND FACTORY ACCEPTANCE .....	18



<b>11</b>	<b>PACKING, DESPATCH AND DELIVERY .....</b>	<b>18</b>
11.1	PACKING AND HANDLING INSTRUCTIONS .....	18
11.2	MARKING & LABELLING .....	19
11.3	DISPATCH CLEARANCE NOTE .....	19
11.4	DELIVERY DOCUMENTS .....	19
11.5	DELIVERY INSPECTION.....	19
11.6	DEMURRAGE / WHARFAGE.....	19
11.7	TRANSFER OF OWNERSHIP AND TITLE .....	20
11.8	RISK OF LOSS/DAMAGES .....	20
<b>12</b>	<b>DELAY, EXTENSION &amp; POSTPONEMENT .....</b>	<b>20</b>
12.1	EXTENSION OF TIME (DUE TO CONTRACTOR/SUPPLIER) .....	20
12.2	DELAY IN DELIVERY DATES/COMPLETION TIME .....	20
12.3	LIQUIDATED DAMAGES (LD) .....	20
12.4	FORCE MAJEURE.....	21
<b>13</b>	<b>FINAL ACCEPTANCE.....</b>	<b>21</b>
<b>14</b>	<b>WARRANTY .....</b>	<b>21</b>
<b>15</b>	<b>REJECTION OF DEFECTIVE GOODS &amp; CONTRACTOR'S LIABILITY .....</b>	<b>22</b>
15.1	REJECTION AGAINST DAMAGES DURING TRANSIT: .....	22
15.2	REJECTION BEFORE FINAL ACCEPTANCE: .....	22
15.3	CONTRACTOR/SUPPLIER'S FAILURE TO REPAIR/REPLACEMENT OF DEFECTIVE GOODS .....	22
15.4	LIMITATION OF LIABILITY .....	22
15.5	INDEMNITY .....	23
15.6	INSURANCE (AS PER FCA CONTRACTOR'S FACTORY INCOTERMS 2020) .....	24
15.7	STORAGE OF ITEMS AT CONTRACTOR'S PLACE.....	25
<b>16</b>	<b>AFTER SALES SERVICES &amp; AVAILABILITY OF SPARES .....</b>	<b>25</b>
16.1	AFTER SALES SERVICES (AFTER WARRANTY PERIOD).....	25
16.2	AVAILABILITY OF SPARES.....	25
<b>17</b>	<b>CHANGES .....</b>	<b>25</b>
17.1	RIGHT TO VARY.....	25
17.2	CHANGES ORIGINATING FROM PURCHASER.....	26
17.3	CHANGES ORIGINATING FROM CONTRACTOR.....	26
<b>18</b>	<b>SUSPENSION OF WORK .....</b>	<b>27</b>
<b>19</b>	<b>FORECLOSURE OF CONTRACT .....</b>	<b>27</b>
<b>20</b>	<b>CANCELLATION/TERMINATION OF CONTRACT .....</b>	<b>27</b>
20.1	TERMINATION OF CONTRACT FOR DEFAULT.....	27
20.2	TERMINATION OF CONTRACT FOR INSOLVENCY .....	28
20.3	TERMINATION OF CONTRACT FOR CONVENIENCE .....	28
<b>21</b>	<b>INTELLECTUAL PROPERTY RIGHTS (IPR) .....</b>	<b>28</b>
<b>22</b>	<b>SETTLEMENT OF DISPUTES AND ARBITRATION.....</b>	<b>29</b>
22.1	SETTLEMENT OF DISPUTES .....	29
22.2	ARBITRATION.....	29
<b>23</b>	<b>PRECEDENCE.....</b>	<b>29</b>
<b>24</b>	<b>THE CONTRACT .....</b>	<b>29</b>
24.1	COMING INTO FORCE (EFFECTIVE DATE OF CONTRACT) .....	29
24.2	AMENDMENTS.....	29



Title: Supply of Safety Important Pneumatic Butterfly  
Valves

Tender Notice No.  
I-I/ET-TPT/24003/24-25

<b>25</b>	<b>ANNEXURES .....</b>	<b>29</b>
	ANNEXURE-1: BANK GUARANTEE (SECURITY DEPOSIT) .....	30
	ANNEXURE-2: BANK GUARANTEE (ADVANCE PAYMENT) .....	32
	ANNEXURE-3: PERFORMANCE BANK GUARANTEE (PBG) .....	34
	ANNEXURE-4 - INTELLECTUAL PROPERTY RIGHTS PROVISIONS.....	36
	ANNEXURE-5: NON-DISCLOSURE AGREEMENT.....	40
	ANNEXURE -6 : UNDERTAKING FOR STORAGE .....	41
	ANNEXURE – 7 – UNDERTAKING FROM THE CONTRACTOR FOR TERMINATION OF CONTRACT FOR DEFAULT.....	42
	ANNEXURE -8 HINDRANCE REGISTER .....	44

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

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

## 2 Definitions and Interpretations

### 2.1 Definitions

- a. **“BID” or “TENDER” or “QUOTATION”** shall mean the tender offer and quotation in response to the tender notification.
- b. **“BIDDER” or “TENDERER” or “VENDOR”** shall mean the entity who seeks to supply the specified goods by submitting Tender/Bid/Quotation
- c. **“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.
- d. **“CONTRACTOR” or “SUPPLIER”** shall mean the firm or company with whom or with which the Contract for **“Supply of Safety Important Pneumatic Butterfly Valves”** 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.
- e. **“DAY” or “DAYS”** shall mean a Gregorian calendar day or days of twenty-four (24) hours each.
- f. **“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.
- g. **“CONTRACTOR RELEASE NOTE”** shall mean the document issued by purchaser authorizing the Contractor to process for dispatch the items after factory acceptance.
- h. **“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.
- i. **“EFFECTIVE DATE OF CONTRACT” or “COMMENCEMENT DATE OF CONTRACT”** shall mean the date of signing of Contract, on which the Contract shall come into force.
- j. **“FACTORY ACCEPTANCE” or “INSPECTIONS/BASIC TESTS”** shall mean inspections and acceptance of items at Contractor's factory as described in Part-A (II).
- k. **“FCA”** shall mean **Free Carrier** (at designated place). A shipping term as per INCOTERM 2020 which indicates that the Contractor/Seller must deliver the goods, cleared for export, to the carrier nominated by the Purchaser at the named/designated place/airport. The Contractor shall be responsible for delivery until the named place/airport.
- l. **“FINAL ACCEPTANCE”** shall mean acceptance of items at on-site as per “Final Site Acceptance” Part-A (II)
- m. **“INCOTERMS”** shall mean International Commercial Terms 2020.
- n. **“INSPECTOR”** shall mean any representative(s) of the Purchaser to inspect or carry out quality surveillance on supplies, items or work under the Contract.



- o. **“ITER-INDIA”** is a project of Institute for Plasma Research, Bhat, Gandhinagar and it is Indian Domestic Agency for the execution of ITER Project.
- p. **“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) of this tender.
- q. **“MANUFACTURER”** shall mean the natural or legal entity that manufactures the Safety Important Pneumatic Butterfly Valves under the scope of this technical specification
- r. **“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.
- s. **“MONTH”** shall mean a month according to Gregorian calendar.
- t. **“ON-SITE”** shall mean ITER Organization, France (IO).
- u. **“PARTY”** shall mean either the PURCHASER or the CONTRACTOR
- v. **“PARTIES”** to the Contract are the Contractor and the Purchaser named in the Contract.
- w. **“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.
- x. **“PRICE”** shall mean the prices (excluding applicable taxes and duties) 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.
- y. **“PROJECT DIRECTOR”** shall mean Project Director of ITER-India, who is appointed by a competent authority.
- z. **“PURCHASER”** shall mean ITER-India, IPR acting through the Project Director or his authorized representative
- aa. **“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.
- bb. **“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.
- cc. **“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.

- dd. **“TOTAL CONTRACT VALUE” or “TOTAL CONTRACT PRICE”** shall mean the total price as mentioned in the Contract excluding taxes, duties and levies (as applicable)
- ee. **“UNIT RATE”** shall mean the rate quoted by the bidder on per unit basis, which will be used for addition or deletion purposes.
- ff. **“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.

## 2.2 Interpretations

- a. In the Contract, except where the context requires otherwise:
- Words indicating one gender include all genders;
  - Words indicating the singular also include the plural and words indicating the plural also include the singular;
  - Provisions including the word “agree”, “agreed” or “agreement” require the agreement to be recorded in writing;
  - The word “tender” is synonymous with “bid”, “tenderer” with “bidder” and “tender documents” with “bidding documents”;
  - “Written” or “in writing” means hand-written, type-written, printed or electronically made, electronic mail resulting in a permanent record.
- b. The marginal words and headings shall not be taken into consideration in the interpretation of these Terms and Conditions of Contract.
- c. PERSONS: Words incorporating persons or parties shall include firms, companies, corporations, government entities and other bodies whether incorporated or not but having legal entity.
- d. ENTIRE AGREEMENT: The Contract constitutes the entire agreement between the Purchaser and Contractor with respect to the subject matter of Contract and includes all written communications, negotiations and agreements of parties with respect thereto made prior to the date of Contract that are included as reference in the Contract.

## 3 General provisions of the Contract

### 3.1 Language

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

### 3.2 Governing Law

- 3.2.1 The Contract 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.

### 3.3 Jurisdiction

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

### 3.4 Severability

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



### 3.5 Exercising the Rights and Powers of the Purchaser

- 3.5.1 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.

### 3.6 Publicity

- 3.6.1 No publicity of any kind whatsoever regarding the Contract shall be given by the Contractor without prior written permission of the Purchaser.

### 3.7 Confidentiality and Secrecy

- 3.7.1 All information, including but not limited to, specifications, drawings and designs that are imparted to the Contractor, shall at all times, remain the absolute property of the purchaser. The Contractor 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.
- 3.7.2 All information, drawings, documents, specifications, datasheets and other related documents forming part of the tender or CONTRACT are property of the Purchaser and shall not be used for any other purpose, except for execution of the CONTRACT. All rights, including rights in the event of grant of a patent and registration of designs are reserved. The technical information, drawings, specifications, records and other documents shall not be copied, transcribed, traced or reproduced in any other form or otherwise in whole and/ or duplicated, modified, divulged and/or disclosed to a third party nor misused in any other form whatsoever, without the Purchaser's prior consent in writing, except to the extent required for the execution of this contract. This technical information, drawings, specifications and other related documents shall be returned to the Purchaser with all approved copies and duplicates, if any, immediately after they have been used for the agreed purpose
- 3.7.3 The Contractor shall use his best endeavours to ensure that such information is not divulged to third parties except where needed for the performance of the Contract by the Contractor with the prior consent of the Purchaser. In such cases, the Contractor shall ensure and obtain similar obligation of confidentiality, from all such involved third parties
- 3.7.4 A confidential/ non-disclosure agreement shall be signed between the Contractor and the Purchaser as per the attached **Annexure-5**.
- 3.7.5 The Contractor shall at his own cost procure from his own employees, agents, Contractors or sub- contractors (and agents, Contractors and sub-contractors of such agents, Contractors and sub- contractors) all such acts, deeds and things to cause such employees, agents, Contractors and sub- contractors to whom the confidential information is given, to be bound by similar confidentiality obligations as the Contractor is bound under this Agreement.
- 3.7.6 In the event of any breach of this provision, the Contractor shall indemnify the Purchaser from any loss, cost or damage or any other claims whatsoever from any parties claiming from or through him in respect of such breach

## 4 The Purchaser

### 4.1 Permits, Licenses or Approvals

- 4.1.1 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.

### 4.2 Purchaser's representatives

- 4.2.1 The Project Manager, as mentioned in the Contract, 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
- 4.2.2 The Technical Representative Officer, as mentioned in the Contract, will be purchaser's representative to carry out all technical functions concerning the Contract including inter-alia review of technical documents, post CONTRACT technical follow up and such other technical functions with the approval of project manager.



- 4.2.3 The Purchase Officer as mentioned in the Contract is the Purchaser's representative for all commercial matters of the Contract and act as a Commercial Coordinator.

## 5 The Contractor

### 5.1 Permits, Licenses or Approvals

- 5.1.1 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 4.1 (Permits, licenses or approvals) hereof and that are necessary for the performance of the Contract.

### 5.2 Compliance with law

- 5.2.1 The Contractor shall comply with all laws in force in India and in the country where the item 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 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.

### 5.3 Contractor's representative

- 5.3.1 The Contractor shall appoint the Contractor's key representatives, who are responsible for execution of managerial, technical and commercial aspects of the Contract. The details of the Contractor representatives including their roles and responsibilities shall be intimated to the Purchaser before signing of the Contract.
- 5.3.2 The Contractor's representatives shall represent and act for the Contractor at all times during the tenure of the Contract. All notices, instructions, information and all other communications to be given by the Purchaser to the Contractor under the Contract shall be given to the Contractor's representative(s), except as herein otherwise provided.
- 5.3.3 The Contractor shall promptly inform the Purchaser if there is any change in the Contractor's representative personnel or their designated roles towards this Contract. In the absence of timely information regarding change of personnel or their designated roles from the Contractor, the resulting damages/liabilities if any, shall not be attributable to the purchaser.

### 5.4 General obligations

- 5.4.1 The Contractor shall carry out design & analysis, prototyping, qualification and procure / manufacture (including associated purchases and/or sub-contracting), supply and deliver the Items with due care and diligence in accordance with the Contract and with the Purchaser's instructions, and shall remedy any defects in the supplies occurring in warranty period.
- 5.4.2 The Items supplied by the Contractor shall be of brand new with the best quality and workmanship and shall comply in all respects with particulars of the scope and Specifications as per the Contract.
- 5.4.3 The Contractor shall be deemed to have carefully examined all tender/Contract documents and obtained clarifications from the Purchaser where needed, the quantities and nature of work and material necessary for the completion of the Contract, all necessary information for risks, contingencies and other. The price quoted in the price-bid format which rate and prices shall, except as otherwise provided, cover all his obligations under the tender/Contract and all matters and things necessary for the proper completion of the supplies and scope of work. The Contractor acknowledges that any failure to acquaint itself with all such data and information shall not relieve its responsibility 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/specifications/scope of work and/or matter related to site will, in any circumstances, be considered payable by the Purchaser.
- 5.4.4 Each party shall bear their own expenses for visit of their personnel to other party's end concerning execution of the Contract.

## 5.5 Sub-contracting, subletting or assignment of Contract

- 5.5.1 The Contractor/Supplier shall not sub-contract, sublet, transfer or assign the Contract or any part thereof, without the prior written consent of the Purchaser (All major sub-contractors are required to be appraised and approved by the Purchaser, before placement of orders by the Contractor/Supplier). However, such consent shall not be unreasonably withheld by the Purchaser, if such items/equipment are not normally manufactured by the Contractor/Supplier. Such assignment or subletting shall not relieve the Contractor/Supplier from any Contractual obligation or responsibility under the Contract. The Contractor/Supplier shall not sub-contract or assign any part of the Contract to any of the suppliers who are blacklisted by ITER Organization. The list of blacklisted suppliers shall be provided at the time of contract.
- 5.5.2 The Contractor/Supplier shall be responsible and accountable for coordination of all activities with his sub-contractors
- 5.5.3 In case the Contractor/Supplier sublets, transfers or assigns any part of the Contract 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.
- 5.5.4 All payment to the sub-contractors shall be made by the Contractor/Supplier only.

## 5.6 Codes and Standards

- 5.6.1 Wherever references are made in the Contract to codes and standards in accordance with which the Contract shall apply. During the Contract execution, any changes in such codes and standards as intimated by the Purchaser shall be applied and shall be treated in accordance with clause 17 (Changes), if applicable.

## 5.7 Mistakes in drawings, specifications etc.

- 5.7.1 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.

## 6 Contract Work Scope and Completion Time

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


- 6.1.1 Part-A(II) of this tender specifies the scope of work, scope of supply, technical specifications, qualification and testing of deliverables to be covered under this Contract.
- 6.1.2 Any tooling/tools, tackles 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.
- 6.1.3 Operation/instruction manual, technical manuals and technical drawings is essential in English and French to enable the Purchaser to put the Items/system to proper use, so the Contractor shall furnish such manuals along with the Items/Systems as per Part A (II) of the Contract.

### 6.2 Delivery Dates and Completion Time

- 6.2.1 The total scope of the contract needs to be completed as described in Table-1.

**Table 1: List of Major Deliverables with their Contractual Milestone dates**

Sr. No.	Deliverable	Contractual Delivery Date (CDD)	Evidence of the deliverables
1	Successful completion of Phase 1 – Prototype/Reference Design, Manufacturing and Qualification (T1)	T1= T0+12 Months	Approval of test reports by ITER-India/IO after successful qualification and delivery of valves as per Free Door Delivery at Purchase's Site

	<b>Title: Supply of Safety Important Pneumatic Butterfly Valves</b>		Tender Notice No.
			I-I/ET-TPT/24003/24-25
2	Successful completion of Phase 2 – Design, Manufacturing, Inspection, Testing and Supply of BOQ Valves along with mandatory spares (T2)	T2= T1+12 months	Approval of Manufacturing Dossier, issue of CRN and supply of Valves as per FCA Contractor's Factory Incoterms 2020

Note:

1. T0 mentioned in Table-1 is the date of Award of Contract.

### 6.3 Free Issue Material (FIM):

No Free Issue Material (FIM) from Purchaser side is involved for execution of this Contract.

## 7 Provisions during Contract execution

The Purchaser shall designate the Technical Responsible Officer (TRO) on award of the Contract. TRO will be the single point of contact for all the technical matters. The Purchaser shall designate the responsible officers who provide support to the TRO in achieving successful fulfilment of the requirements in key areas of this Contract, such as procurement, quality assurance, safety, planning and scheduling. Any official communication relating to this Contract or to its implementation shall bear the Contract references.

### 7.1 Kick Off Meeting

The Kick-Off Meeting will be held via telephone/video conference between IO, ITER-India and the Contractor.

The Contractor shall present the Quality Plan for delivery of the Contract and the detailed Schedule. IO/ITER-India will review the Quality Plan and the detailed Schedule and provide feedback in the meeting and written feedback (if any) within 5 working days after the Kick Off meeting.

The Contractor shall write the minutes of the Kick-Off Meeting including final agreed input data and submit them to the IO/ITER-India for acceptance. The Quality Plan and detailed Schedule will be modified to address the comments and resubmitted for approval within 5 working days of receiving written comment(s).

### 7.2 Progress Meeting and Approval of Documents

Frequent meetings shall be held during the Contract execution through teleconference/ videoconference/in-person and the frequency of such meetings shall be agreed mutually. Minutes of all such progress meetings shall be prepared by the Contractor and submitted to the Purchaser within 7 (seven) calendar days after the meeting. The Purchaser shall forward to the Contractor any comments within 7 (seven) calendar days of the receipt of the minutes. If no comment is made within this time frame, the minutes shall be deemed to be accepted.

The Purchaser will provide approval to the documents within 14 working days and in case of revisions Purchaser will provide approval within 7 working days.

### 7.3 Progress Report for Project Monitoring

The Contractor shall monitor progress of all the activities specified in the Contract and shall provide to the Purchaser a monthly progress report on all works under this Contract by the 2nd calendar day of each month. The report shall be prepared using the standard template to be obtained from the Purchaser.

## 8 Bank Guarantees

- 8.1.1 The Security Deposit, Advance Payment Bank Guarantee and Performance Bank Guarantee shall be submitted by the Contractor as per the details below. All bank charges including bank guarantee extension charges, if applicable, shall be borne by Contractor only. However, at the time of release of final/last payment against the Contract, applicable Bank guarantee extension charges shall be reimbursed to the Contractor against submission of valid documentary proof from the bank, only in case, such extension(s) is/are attributable to the Purchaser.

### 8.2 Security Deposit (SD)

- 8.2.1 The Contractor shall submit an irrevocable Bank Guarantee (BG) equal to 5% (five percent) of CONTRACT value of each phase within 30 days from the start of each phase on a non-judicial stamp paper, as “Security Deposit” towards satisfactory execution and performance of the Contract from any nationalized/ scheduled commercial bank (as per RBI)
- 8.2.2 The format of the Security Deposit Bank Guarantee is given in **Annexure-1**.
- 8.2.3 The Bank Guarantee for both phases shall remain valid till the expiry of (60) sixty days from the date of final acceptance of all items under this CONTRACT. If need arises, the Contractor shall extend the validity of the Bank Guarantee for suitable period at his expenses.
- 8.2.4 If the Contractor fails to provide the Security Deposit (SD), within the period as specified in clause no. 8.2.1 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.
- 8.2.5 In the event, the Contractor fails to fulfil any of the obligations under the Contract; the Purchaser shall have the right to encash the Security Deposit.
- 8.2.6 Where the Contractor fails to maintain the specified delivery date/completion time or the Contract period is extended, the Contractor shall extend the validity of Bank Guarantee(s) suitably to cover 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.
- 8.2.7 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.
- 8.2.8 No interest shall be payable on security deposit amount till it is retained by Purchaser in terms of CONTRACT.

### 8.3 Advance Payment Bank Guarantee (APBG)

- 8.3.1 The Contractor shall submit Advance Payment Bank Guarantee (APBG) for an equivalent amount against any advance/ progressive payment due to the contractor as per the payment schedule of the Contract. The APBG shall be issued as per the format given in **Annexure-2** on non-judicial stamp paper of appropriate value from any nationalized/ scheduled commercial bank (as per RBI) and shall remain valid until the expiry of 60 (sixty) days from the date of delivery of the deliverables against the contract.
- 8.3.2 In the event that the Bank Guarantee needs extension, the Contractor shall extend the validity of APBG for suitable period at his expenses. On the completion of all the delivery obligations as per CONTRACT, the original APBG shall be returned to the Contractor without any interest on receipt of a request from the Contractor.

### 8.4 Performance Bank Guarantee (PBG)

- 8.4.1 The Contractor shall furnish to the Purchaser an interest free Performance Bank Guarantee (PBG) for 5 % (five percent) of the total CONTRACT value by way of providing a Bank Guarantee on a non-judicial stamp paper of appropriate value from any nationalized/ scheduled commercial bank (as per RBI) for the satisfactory performance of the Items/deliverables supplied against the CONTRACT. The Performance Bank Guarantee (PBG) will be effective from the date of final acceptance and shall remain in force two months beyond the warranty period mentioned in the CONTRACT.



- 8.4.2 In the event that the Bank Guarantee needs extension, the Contractor shall extend the validity of PBG for suitable period at his expenses. On the performance and completion of all the obligations as per CONTRACT including warranty, the original PBG shall be returned to the Contractor without any interest on receipt of a request from the Contractor. The Performance Bank Guarantee format is given in **Annexure-3**.

## 9 Contract Price, Payment and Recoveries

### 9.1 Terms of Prices

- 9.1.1 The price(s) for this Contract shall be **firm with no price variation** during the validity and extended validity of the Contract. The price(s) to be quoted for complete scope of supply and scope of work as per Part-A(II) of tender document. The valves used for the prototyping in Phase-1 shall be supplied free of cost.
- 9.1.2 Price/s is/are required to be quoted according to the units indicated in the Price Bid (Part-B).
- 9.1.3 Cost for travel, accommodation, lodging and other expenses which will be necessary for execution of the Contract i.e. visit of personnel for testing / meeting at other party's site or any other place/lab will be borne by respective parties.

### 9.2 Basis of Delivery

- 9.2.1 The delivery of **Phase-1 prototype/reference valves** shall be based on Free Door Delivery at Purchaser's Address. The address for Free Door Delivery shall be,
- ITER-India Lab Building  
Institute for Plasma Research  
Bhat Village, Near Indira Bridge  
Gandhinagar-382428  
Gujarat – INDIA
- Valves shall be carefully unloaded at predetermined inside location on the Ground Floor of the New Auxiliary Cooling Water Laboratory at the above address.
- 9.2.2 **The delivery of Phase-2 main supply of BOQ valves shall be based on FCA Contractor's factory as per INCOTERMS 2020.** The Contractor is responsible for safe loading/stuffing of the supplies on the vehicle (including container) of the transporter identified by the Purchaser at Contractor's Factory.

### 9.3 Taxes and Duties

- 9.3.1 **The price quoted shall be exclusive of all applicable taxes, levies, duties which are to be mentioned separately in the un-Price Bid format (Annexure-A3 of Part-A(I)) at the prevailing rates.**
- 9.3.2 ITER-India, IPR is working as merchant exporter and intends to export the Phase-2 items/deliverables to ITER Organization, France.
- 9.3.3 GST will be applicable @0.1% (CGST 0.05% and SGST 0.05%) on items/deliverables during the original delivery schedule 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
- 9.3.4 No GST exemption certificate will be issued by Purchaser for concessional rate of GST.
- 9.3.5 **GST registration:** Bidder shall submit a copy of GST Registration certificate along with the bid.
- 9.3.6 Supplier shall be liable to undertake assessment of likely GST impact on the price of the supplies being made to the Purchaser in light of the anti-profiteering provisions being proposed. After completion of such assessment, Supplier shall forthwith inform the Purchaser of the extent of reduction in cost so that the prices may be renegotiated accordingly and amendments can be made in the contracts. In case any deviation is found at subsequent stage, wherein GST impact has not been given effect to the cost for any reasons whatsoever, then any consequences arising thereof shall be borne by the supplier. The Supplier hereto agrees that all liabilities arising out of any default from complying with the aforesaid directions and consequences thereof will be of the Supplier and Purchaser is authorised to recover the same along with interest from the Supplier and/or the same can be deducted from the amount payable to the Supplier.





Title: Supply of Safety Important Pneumatic Butterfly Valves

Tender Notice No.

I-I/ET-TPT/24003/24-25

9.3.7 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.

9.3.8 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.

**9.3.9 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. 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 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, in case the Custom Duty exemption is availed. Any proceeds received on the left-out portion/scrap etc. of goods cleared through customs authority under the custom duty exemption provided by the Purchaser, applicable amount shall be given by the Contractor either to Customs authority or to ITER-India on demand from the Purchaser/customs authority. **All expenses, including applicable GST, except customs duty, towards procurement of the imported materials should be borne by the Contractor.**

**9.3.10 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 will be issued to this effect.

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

**9.4 Mode of Payment and Payment Schedule:**

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

Payment shall be made through RTGS/NEFT in INR within 30 days from the date of delivery/acceptance against each payment milestone as per **Table-2 & Table-3** and on receipt of error free invoice and other required documents complete in all respects. Necessary mandate form for RTGS/NEFT will be provided at the time of Contract/order.

**Table-2: Payment Schedule for Phase-1:**

Sr. No.	Milestone for payment	% of Phase 1	Documents required from the Supplier for release of payment
1	Advance payment against successful completion of MRR and submission of equivalent amount of Advance Bank Guarantee (ABG) with validity of two months beyond delivery date (s) for Phase-1	10%	A. Advance Bank Guarantee for an equivalent amount B. Security Deposit Bank Guarantee for Phase-1 C. Duly certified Pro-forma Invoice in triplicate



**Title: Supply of Safety Important Pneumatic Butterfly Valves**

Tender Notice No.


I-I/ET-TPT/24003/24-25

			D. Acceptance note from Purchaser for successful completion of MRR
2	Successful completion of all Qualification and delivery of Phase 1 valves as per Free Door Delivery at Purchase's Site	90%	<p>A. Approval of qualification of reports by ITER-India/IO and a copy of Purchaser's Approval Note for the Contractor to proceed to Phase 2</p> <p>B. Submission of one hard copy set of all qualification reports and one soft copy in portable SSD</p> <p>C. Duly certified Pro-forma Invoice in triplicate</p> <p>D. Delivery Challan and LR (Lorry receipt) duly inward at security gate of ITER-India Lab, IPR</p>

**Table-3: Payment Schedule for Phase-2:**

Sr. No.	Milestone for payment	% of Phase 2	Documents required from the Supplier for release of payment
1	Start of Phase 2 and submission of equivalent amount of Advance Bank Guarantee (ABG) with validity of two months beyond delivery date (s) for Phase-2	10% (without taxes)	<p>A. Security Deposit Bank Guarantee for Phase-2</p> <p>B. Advance Bank Guarantee for an equivalent amount</p> <p>C. Duly certified Pro-forma Invoice in triplicate</p>
2	Advance Payment against placement of orders for complete requirement of Actuators and submission of equivalent amount of Advance Bank Guarantee (ABG) with validity of two months beyond delivery date (s)	10% (without taxes)	<p>A. Advance Bank Guarantee for an equivalent amount</p> <p>B. Duly certified Pro-forma Invoice in triplicate</p> <p>C. Copy of unpriced purchase order duly accepted by the Subcontractor</p>
3	Advance payment against successful completion of MRR and submission of equivalent amount of Advance Bank Guarantee (ABG) with validity of two months beyond delivery date (s)	10% (without taxes)	<p>A. Advance Bank Guarantee for an equivalent amount</p> <p>B. Duly certified Pro-forma Invoice in triplicate</p> <p>C. Acceptance note from Purchaser for successful completion of MRR</p>
4*	Payment against supply of valves on pro rata basis (maximum 4 partial** deliveries shall be allowed) as per FCA INCOTERMS 2020 at Contractor's Factory	65% (along with 100% taxes of total contract value)	A. Delivery documents as per Clause no. 11.4
5***	Payment against successful completion of Receipt Inspection of valves (including mandatory spares) on pro-rata basis at ITER site in France and submission of Performance bank guarantee	5%	<p>A. Copy of Receipt Inspection Report signed by IO</p> <p>B. Duly Signed Warranty Certificate</p> <p>C. Duly certified Pro-</p>



	<b>Title: Supply of Safety Important Pneumatic Butterfly Valves</b>		Tender Notice No.
			I-I/ET-TPT/24003/24-25
			form Invoice in triplicate  D. Performance Bank Guarantee for 5% of total Contract Value
Total		100%	

\*Payment shall be made against actual supply of items.

\*\*Maximum 04 Partial deliveries shall be based on the priority decided by the Purchaser.

\*\*\*Maximum duration shall be six months from the date of supply of valves (not exceeding 4 lots) for completion of receipt inspection at ITER site.

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

In case the Contractor 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.

#### 9.6 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.

### 10 Quality Assurance, Inspection and Factory Acceptance Test

#### 10.1 Quality Assurance Program

- 10.1.1 The Contractor shall ensure the quality of all items, components, spare and services to meet all requirements given in the Contract (refer Part-A(II)) including associated annexes.
- 10.1.2 Should any question whatsoever arise with respect to the requirements defined in the Contract, the Contractor shall ask the Purchaser for clarification prior to proceeding with the work and the decision of the Purchaser is the final.
- 10.1.3 Quality Plans shall be prepared by the Contractor to describe how they will implement the Purchaser's quality requirements specified in the Contract. The Contractor's quality plans shall be approved by the Purchaser. The Contractor shall not start work on Contract without Quality Plan in place that has been approved by the Purchaser.
- 10.1.4 The Purchaser's inspector shall carry out audit to ensure that proper quality plan, as agreed upon mutually between the Purchaser and the Contractor, is being implemented by Contractor. The Purchaser's inspector will carry out random quality check, for which certain tests/inspections may be required to be repeated, as stipulated in approved Quality Plan. The inspectors may be the Purchaser authorized personnel including ITER-IO personnel or specialized Third Party Inspectors contracted for that purpose by the Purchaser.

10.1.5 Purchaser shall closely monitor the production at the Contractor's/sub-contractor's places. This monitoring shall include Notification Points, Authorization-To-Proceed Points, Witness Points and Hold Points at critical steps in the manufacturing process. The control points shall be indicated on the Contractor's MIPs and integrated into the agreed schedule. If part of said items are being manufactured at other premises (viz. subcontractor/supplier), the Contractor shall obtain permission for the Purchaser's representative to inspect, examine, and test as if the equipment were being manufactured on the Contractor's premises. Refer Part-A(II) for more details.

## 10.2 Inspection, Testing and Factory Acceptance

10.2.1 The Contractor shall give the Purchaser's personnel full opportunity to carry out these activities, including providing access, facilities, permissions and safety equipment. No such activity shall relieve the Contractor from any obligation or responsibility.

10.2.2 The supplies (in part or full) shall be offered by the Contractor for inspection at place of manufacture and/or fabrication yard and/or at such places mutually agreed between the Purchaser and the Contractor at the Contractor's risk, expense and cost. The Contractor shall give notice of readiness of supplies for inspection to the Purchaser and shall perform all tests and inspection in presence of the inspector as per the terms of the Contract and MIPs approved by the Purchaser. In default of such notice, the Purchaser shall be entitled to appraise the quality and extent thereof.

10.2.3 The Contractor agrees that neither the execution of a test and/or inspection of **Safety Important Pneumatic Butterfly Valves** or any part of the supplies nor the attendance by the Purchaser nor the issue of any test certificate shall release the Contractor from any other responsibilities and liabilities under the Contract.

10.2.4 The Purchaser shall not provide any assistance, documents and other information, apparatus, instrument, electricity, equipment, fuel, consumables, labour, materials, compressed air, nitrogen, helium, demineralised water, suitably qualified and experienced staff or other utilities which are necessary to carry out the specified tests efficiently and as per applicable codes, standards, directives and regulations and it is the responsibility of the Contractor to arrange these as required. The Contractor shall agree, with the Purchaser the time and place for the specified testing of materials and any parts of the supplies.

10.2.5 The Purchaser may require the Contractor to carry out any test and/or inspection not explicitly covered in the Contract, provided that the Purchaser feels that the particular test is unavoidable to assess the performance of the equipment more accurately and efficiently at factory. However, if such test and/or inspection impede the progress of work on the supplies and/or the Contractor's performance of its other obligations under the Contract, due allowance will be made in respect of the time for completion.

10.2.6 The items offered for inspection will be subject to inspection and test as may be considered necessary by the quality surveillance engineer of the Purchaser and his decision as regards rejection of supplies shall be final and binding on the Contractor. If any supplies are rejected as aforesaid, without prejudice to the foregoing provision, the Purchaser shall be at liberty to allow the Contractor to resubmit without prejudice to the Purchaser's right to claim and recover liquidated damages as provided in this tender, for the supplies in replacement of those rejected within a time specified by Purchaser, the Contractor bearing the cost of freight & any other charges for such replacement without being entitled to any extra payment thereof.

10.2.7 Quality Surveillance and audits shall be carried out by the Purchaser and/or ITER-IO.

10.2.8 Inspection of the components/equipment will be carried out as agreed in the approved MIP and as per requirements/details mentioned in Part-A(II).

10.2.9 In case of concerns regarding the quality of production, the Purchaser shall have the right to request the Contractor to carry out on-the-spot checks in addition to the checks foreseen in the technical specifications. In such a case, the Purchaser may provide a description of its concerns and the rationale behind such request. Upon receipt of such request, the Contractor shall evaluate the potential impact of such additional spot checks on the production costs and schedule. Based on all these considerations, the Parties shall agree on a course of action to tackle such issues. The actual date(s) of the on-the-spot checks shall be determined by agreement between the Parties.

## 11 Packing, Despatch and Delivery

### 11.1 Packing and handling Instructions

Refer Part-A(II) for more details regarding packing and handling instructions.



## 11.2 Marking & Labelling

Refer Part-A(II) for more details regarding marking and labelling requirements.

## 11.3 Dispatch Clearance Note

Contractor/Supplier shall obtain a Dispatch Clearance Note (DCN) on approval of test/inspection report from ITER-India Commercial Coordinator at each occasion before effecting the dispatch i.e. prior to dispatch of Phase-1 (prototype/reference) and Phase-2 (lot-1 to 4) main supply.

Both the parties mutually agree for pro rata staggered deliveries (not exceeding 4 lots and partial deliveries shall be based on the priority decided by the Purchaser) of Phase -2 valves.

## 11.4 Delivery Documents

11.4.1 The Contractor shall forward in advance to the Purchaser, by rapid Courier Service, following documents pertaining to the delivery of Phase-2 as detailed hereunder:

- a. Original GST Invoice in triplicate
- b. Packing List in triplicate
- c. Delivery Challan in triplicate (For Phase-2 deliverables)
- d. Bill of Lading/Air way bill (For Phase-2 deliverables)
- e. Valid Fumigation Certificate (For Phase-2 deliverables)
- f. Insurance Proof as per FCA Contractor's factory Incoterms 2020 basis
- g. Despatch Clearance Note issued by the Purchaser

11.4.2 The dispatch documents such as Invoice, packing list, delivery challan etc., shall bear the "CONTRACT Number", "CONTRACT Date", "Destination/Delivery address".

11.4.3 Refer Part-A (II) for more details for delivery documentation.

## 11.5 Delivery Inspection

The boxes/packages containing the Phase-1 and Phase-2 deliverable items, received at the ITER-India/ITER site will be unloaded & unpacked by The Purchaser/IO's representative and make a visual inspection of its content to check:

- The integrity of the package, including identifying visible damage;
- The number and type of components contained in the shipment;
- The enclosed documentation;
- The reading of the accelerometers or other sensors;
- The integrity of the components.

In the case of anomalies, the Purchaser/IO shall make any additional relevant remark on the inspection.

The Purchaser/IO will inspect the accelerometers or other sensors mounted on the boxes. If these accelerometers record shocks above 3g, a thorough inspection of the components shall be performed. A decision on acceptance of the delivery of the components will be made by the Purchaser/IO.

A Declaration of conformity to be signed by the Contractor and enclosed with Packing List.

## 11.6 Demurrage / Wharfage

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

### 11.7 Transfer of Ownership and Title

The ownership of the items under Phase-1 covered under the Contract shall be transferred to the Purchaser upon successful delivery of items under Phase-1 at Purchaser's site. The ownership of the items under Phase-2 under the Contract shall be transferred to the Purchaser upon dispatch of items on FCA Contractor's Factory Incoterms 2020. The transfer of ownership to the Purchaser shall not relieve the Contractor of its obligations under the Contract in case of non-conformities of the items/deliverables for the duration of the warranty period.

### 11.8 Risk of Loss/damages

The Contractor/Supplier shall be responsible and liable for risk of any loss or damages to deliverable items during transportation, till receipt inspection date of Phase-1 deliverables at Purchaser's site. For Phase-2 items, the Contractor/Supplier shall be responsible and liable for risk of any loss or damages till their delivery on FCA Contractor's Factory Incoterms 2020 basis. However, this shall not relieve the Contractor of its obligations under the Contract in case of non-conformities of the items/deliverables for the duration of the warranty period.

## 12 Delay, Extension & Postponement

### 12.1 Extension of Time (due to Contractor/Supplier)

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

12.1.2 If the Contractor/Supplier fails to apply and secure extension of Contract delivery date(s) (before effecting the supply of the items as in the Contract) 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 delivery dates / completion time.

### 12.2 Delay in delivery dates/completion time

12.2.1 Should the Contractor/Supplier fails to comply with contractual delivery dates/completion time (phase wise) and the reasons for such failures are attributed to the Contractor/Supplier, it shall be construed as a breach of the Contract and the Purchaser shall be entitled at his option to the following:-

- a. To receive the deliverable items under the CONTRACT after prescribed date of delivery with the right to recover the Liquidated Damages as per the clause 12.3.
- b. To terminate the total CONTRACT, as per clause 20.1 in case the liquidated damages (as per clause 12.3) recovered from the Contractor reaches maximum value. However, the Purchaser will inform in writing one month in advance to the Contractor before exercising this clause.
- c. 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-8**.

### 12.3 Liquidated Damages (LD)

12.3.1 If the Contractor fails to maintain delivery schedule specified in the CONTRACT for Phase-1 and the delay is attributable to the Contractor, the Purchaser shall recover from the Contractor as liquidated damages sum of half percent (0.5 percent) of the Phase-1 Contract Price 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 the Phase1 contract price.

12.3.2 If the Contractor fails to maintain delivery schedule specified in the CONTRACT for Phase-2 deliverables and the delay is attributable to the Contractor, the Purchaser shall recover from the Contractor as liquidated damages sum of half percent (0.5 percent) of the Phase-2 Contract Price 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 the Phase-2 contract price.

12.3.3 Items under the contract will be deemed to have been delivered only when all its items and components/mandatory spares are also delivered complete in all respect. If certain items/components/spares are not delivered in time, the items will be considered as delayed until such time as the missing parts/spares are delivered.

12.3.4 However, the payment of liquidated damages shall not in any way relieve the Contractor from any of its obligations to complete the supplies and work scope or from any other obligations and liabilities of the Contractor under the Contract.

## 12.4 Force Majeure

Force Majeure is herein defined as any cause which is beyond the control of the Contractor 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, such as:

12.4.1 Natural Phenomena, including but not limited to floods, droughts, earthquakes, and epidemics.

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

12.4.3 Other Phenomena including but not limited to hostilities riots, civil commotion and declared lock-out in Contractor's works.

12.4.4 Provided that Parties shall not be liable for delays 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 Contractors performance of his obligations has been delayed for other cause. However, the Contractor is not entitled to increase in statutory levies that has come into force during the extended delivery period.

## 13 Final Acceptance

Final / Site Acceptance of the Items/components under Phase-2 will be subject to the fulfilment of requirements given in Part-A (II).

## 14 Warranty

- a. The Contractor/Supplier shall warrant that the items i.e. **Safety Important Pneumatic Butterfly Valves** supplied under this Contract 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.
- b. The Contractor shall provide a standard commercial warranty covering repair or replacement up to **03 (three) years**. The warranty period will start from the date of final acceptance of Phase-2.
- c. At the end of warranty Period, the Contractor's shall remain liable for latent defects for the ITEMS including spares for a period of 24 months from the end of Warranty. Latent Defect means a defect, inherently lying within the material or arising out of design/manufacturing deficiency, which do not manifest themselves and/or was not reasonably discovered during warranty/defect liability period but detected within 24 months after warranty/defect liability period.
- d. 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 at his own cost.
- e. 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.



- f. In case, any kind of defect attributable to the Contractor is found in the supplied items (Phase-2) at on-site (ITER Organization, Cadarache, France) during the warranty period, then, the Contractor shall repair/replace the same at On-Site (ITER Organization, Cadarache, France) at his own cost and risk.
- g. If any supplied item is repaired/replaced during the warranty period, the Contractor/Supplier shall warrant all such items for a further period of at least 12 months from the date of repair/replacement, or remaining original warranty period, whichever is longer.
- h. 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, 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.

## 15 Rejection of defective goods & Contractor's Liability

### 15.1 Rejection against Damages during Transit:

If the items or any portion thereof is damaged during transit, the Purchaser shall give notice to the Contractor/Supplier setting forth particulars of such Items/ Components damaged during transit. The replacement of such Components/Items shall be effected by the Contractor/Supplier within a reasonable time to avoid unnecessary delay in the intended usage of the Components/Items. The costs of replaced items covered under Phase-1 shall be borne by the Contractor/Supplier. In case of Phase-2 items, the cost of replaced items shall be borne by the Purchaser, subject to transit damage due to the fault in transportation carried out by the Purchaser. However, in case of transit damage due to improper packing or any other cause(s), then the cost of replaced items shall be borne by the Contractor/Supplier only.

### 15.2 Rejection before final acceptance:

In the event that any of the items/components (Phase-1 & Phase-2) supplied by the Contractor/Supplier are found defective in material or workmanship or not in conformity with the requirements of the Contract 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.

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

15.3.1 If the Contractor/Supplier fails to repair or replace the damaged/defective items within the agreed time period during the warranty period, the Purchaser at his option either:

15.3.1.1 Replace or rectify such defective items and recover the actual costs so involved from the Contractor/Supplier

15.3.1.2 Acquire the defective items/Systems/components at a reduced price considered equitable under the circumstances. The provision of this article shall not prejudice the Purchaser's rights under Clauses 14 and 15.

If the Contractor/Supplier fails to make the required repairs/ replacement within mutually agreed time, then in pursuant to clause 15.3.1.1, 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.

### 15.4 Limitation of liability

- a. Except in cases of criminal negligence or wilful 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 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.
- b. The Purchaser being a research institute, indirect losses, that is loss of production and loss of profit is not applicable.



## 15.5 Indemnity

The Contractor shall warrant and be deemed to have warranted that all items, supplied against this CONTRACT are free and clean of infringement of any patent, copy right or trade mark and shall at all times indemnify the Purchaser against all claims which may be made in respect of the items of infringement of any right protected by Patent, Registration of design or Trade Mark and shall indemnify against risk of accidents or damage which may cause a failure of the supply from whatever cause arising and the entire responsibility for the sufficiency of all the means used by him for the fulfilment of the CONTRACT.

### 15.5.1 Indemnity against loss / damage

- a) The Contractor shall indemnify the Purchaser against any risk of accidents or damage or loss to the supplies till completion of receipt inspection/handing over to the Purchaser.
- b) In case of failure on the part of the Contractor to respect his obligation as per clause 14, Contractor shall indemnify the Purchaser against all latent defects of the ITEMS, for a period of 24 months from the end (satisfactory completion) of the warranty period.
- c) The Contractor shall indemnify and hold harmless the Purchaser and its employees and officers, and their respective agents, against all claims, demands, damages, losses, costs and expenses of whatsoever nature (including legal fees and expenses) in respect of:
  - i. Bodily injury, sickness, disease or death, of any person whatsoever
  - ii. damage to or loss of any property, real or personal (other than the supplies whether accepted or not) arising in connection with design and supply of the items and remedying of any defects, unless attributable to any negligence, willful act or breach of the Contract by the Purchaser, its employees, officers or their respective agents.
- d) The Contractor shall at all times indemnify the Purchaser against all claims, damages or compensation under the provisions of the Payment of The Wages Act, 1936, The Minimum Wages Act, 1948, The Employer's Liability Act, 1938, The Workmen's Compensation Act, 1923, The Industrial Disputes Act, 1947 and The Maternity Benefit Act, 1961 or any modifications thereof or any other law relating thereto and rules made there under from time to time or as a consequence of any accident or injury to any workman or other persons in or about the works, whether in the employment of the Contractor or not, save and except where such accident or injury has resulted from any act of the Purchaser, his agents or servants, and also against all costs, charges and expenses of any suit, action or proceedings arising out of such accident or injury and against all sum or sums which may with the consent of the Contractor be paid to compromise or compound any claim. without limiting his obligations and liabilities as above provided, the Contractor shall insure against all claims, damages or compensation payable under the workmen's compensation act, 1923 or any modification thereof or any other law relating thereto, with specific endorsement in such insurance policies that Purchaser's interest shall be protected.
- e) The Contractor shall pay and indemnify the Purchaser against any liability in respect of any fees or charges payable by him under any act of parliament, state laws, any government instrument, rule or order and any regulations or by-laws of any local authority in respect of the supplies prevailing on the date of submission of tender.
- f) The Contractor shall indemnify and hold the Purchaser harmless from and against all claims, damages and expenses arising out of his failure to obtain all permit and licenses which he is required to comply with in respect of laws, ordinances, and regulations of the central or state government and/or local/public authorities.

### 15.5.2 Indemnity for taxes and duties

15.5.2.1 The Contractor hereby protects, indemnifies and holds harmless the Purchaser from any and all claims or liability for income, customs duties, royalty or any other taxes, duties, penalties etc., assessed or levied by the government of India or by any appropriate authority thereof or by the government of any other country against Contractor or its subcontractor or against the Purchaser for or on account of any payment made to or earned by Contractor or its subcontractor hereunder.

15.5.2.2 The Contractor further protects and holds the Purchaser harmless from all taxes assessed or levied against or on account of wages, salaries or other benefits paid to Contractor's employees or employees of its subcontractor and all taxes assessed or levied against or on the account of any property or equipment of the Contractor.

15.5.2.3 The Contractor shall be responsible for filing all necessary tax returns (including, without limitation, returns for corporate income tax, personal income tax and Goods and Services Tax (GST)) with the relevant government authorities in accordance with all applicable statutory requirements and shall be responsible for providing all information requested by such government authorities.

15.5.2.4 The Contractor shall also ensure that its subcontractors file such returns as stipulated by the relevant government authorities and furnish such information as requested for by the relevant government authorities.

15.5.2.5 In certain situations, a government authority may treat the Purchaser as the representative assessee of the Contractor and/or its subcontractors and recover the taxes due to the government authority by the Contractor or its subcontractors from the Purchaser. In such situations, the Purchaser shall have the following rights:

- a) The Purchaser shall be entitled to recover from the Contractor, the taxes paid on behalf of the Contractor or its subcontractors (together with any costs and expenses incurred by the Purchaser in connection therewith) or to retain the same out of any amounts to be paid to the Contractor or its subcontractors that may be in its possession (whether due under this Contract or otherwise) and shall pay only the balance, if any, to the Contractor; and
- b) If the Purchaser is required to furnish any details or documents in such capacity, the Purchaser shall request the details or documents to be furnished to it by the Contractor and the Contractor shall immediately furnish the same to the Purchaser. If the Contractor fails to comply with the foregoing, any penalty/interest levied on the Purchaser for non-filing or late filing of details or documents in this regard shall be recoverable from the contractor.

## **15.6 Insurance (as per FCA Contractor's Factory INCOTERMS 2020)**

### **15.6.1 General Requirements for Insurances:**

- a) The Contractor shall, "at his own cost", take out and maintain in effect the following Insurance based on reinstatement value during the performance of the Contract and the Purchaser shall be named as co-insured under all insurance policies. All Insurers' rights of subrogation against co-insured shall be waived. Deductibles / excesses if any, under the insurance policies shall be borne by the Contractor. The identity of the insurers and the type of policies shall be subject to the approval of the Purchaser.
- b) Unless otherwise stated, insurances under this sub-clause shall cover all physical loss / damage and third-party liability subject only to minimum compulsory / general exclusions.
- c) Alterations to the terms of insurance shall not be made without the approval of the Purchaser.
- d) The required insurance coverage referred to and set forth in this clause shall in no way affect or limit Contractor's liability with respect to performance of the work or any obligation under the Contract / law.

### **15.6.2 Cargo Insurance:**

Insurance as per Free Door Delivery for Phase-1 and FCA Contractor's Factory (INCOTERMS 2020) for Phase-2, covering all physical loss / damage and third-party liability subject only to minimum compulsory/ general exclusions, for full replacement value of the consignment/cargo from the Contractor's or Sub-contractor's works or Supplies.

### **15.6.3 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.

### **15.6.4 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.



### 15.6.5 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.

### 15.6.6 Automobile Liability Insurance:

The Contractor shall maintain automobile liability insurance covering all owned, non-owned and hired automobiles, trucks and other vehicles used by Contractor or its sub-Contractors in connection with the execution of Contract.

### 15.6.7 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.

### 15.7 Storage of items at Contractor's place

- a) If the Purchaser makes a duly justified request to postpone the supply of the whole or part of the items at least 60 (sixty) calendar days prior to the stipulated date of dispatch of the items, the Contractor shall be responsible for providing storage, protection and maintenance of the Items, free of charge, for a period of 60 (sixty) calendar days from the stipulated date of dispatch. Refer **Annexure-6** for undertaking for storage.
- b) The Purchaser shall provide the Contractor, direction on future storage, protection or maintenance requirements no later than the 40<sup>th</sup> calendar day of the free-of-charge period of 60 (sixty) calendar days. If the period exceeds 60 (sixty) calendar days, the Contractor shall continue to provide storage, protection and maintenance.
- c) An agreement between the Purchaser and the Contractor will be reached concerning the reimbursement of actual duly documented and justified costs incurred by the Contractor during the period of time in excess of the aforementioned 60 (sixty) calendar days.

## 16 After Sales Services & Availability of Spares

### 16.1 After Sales Services (after warranty period)

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

### 16.2 Availability of Spares

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

## 17 CHANGES

### 17.1 Right to vary

- 17.1.1 The Purchaser shall have the right to propose and order the Contractor/Supplier from time to time during the execution of the Contract to make any change, modification, addition or deletion to, in or from the supplies (hereinafter called "Change"), provided that such change falls within the general scope of the supplies and does not constitute unrelated work and that it is technically practicable, taking into account both the state of advancement of the supplies and the technical compatibility of the change envisaged with the nature of the supplies as specified in the Contract.

17.1.2 The Contractor/Supplier may from time to time during its execution of the Contract 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.

17.1.3 Notwithstanding Clause 17.1 and Clause 17.1.2, no change made necessary because of any default of the Contractor/Supplier in the performance of its obligations under the Contract 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 price or the time for completion.

## **17.2 Changes Originating From Purchaser**

17.2.1 If any of the item in addition to the schedule of supply of materials is required during execution of the Contract due to change in specifications, drawings, designs etc., which in the opinion of the Purchaser, if not procured promptly may delay the completion of the supplies, the Contractor/Supplier shall procure the required material as per the specifications to the extent required to keep the progress of work unhindered. The Contractor/Supplier shall be paid for such additional procurement in the following manner:

- a. If the required item/cost for change(s) proposed by the Purchaser is available in the Contract, the same unit rate/rate shall be used as cost for such change.
- b. If the required item/cost for change(s) proposed by the Purchaser is not available in the Contract, 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.

17.2.2 If the Purchaser proposes a Change pursuant to this clause, it shall send to the Contractor a "Deviation Request" (Template will be provided in the Contract) requiring the Contractor to prepare and furnish to the Purchaser as soon as reasonably practicable a "Change Proposal," which shall include the following (as applicable):

- a. Brief description of the Change
- b. Effect on the Contract schedule
- c. Effect on the Contract Price
- d. Effect on Functional Guarantees (if any)
- e. Effect on any other provisions of the Contract.

17.2.3 Within 120 days from the date of receipt of the Change Proposal, the Purchaser and the Contractor shall mutually agree upon all matters therein contained. Within 120 days, the Purchaser shall, if it intends to proceed with the Change, instruct the Contractor to carry out the Change. However, the Contractor shall implement the changes, without waiting for such agreement with the Purchaser on cost and schedule.

17.2.4 If both the Parties do not mutually agree within 120 days from the date of receipt of change proposal, then both the Parties shall mutually agree on a period for reaching such an agreement. If the Purchaser decides not to proceed with the Change for whatever reason, it shall, within the said period of 120 days, notify the Contractor accordingly.

17.2.5 However, if the Parties cannot reach agreement within mutually agreed period, then the provisions of clause no. 22 shall apply.

## **17.3 Changes Originating From Contractor**

17.3.1 If the Contractor proposes a Change pursuant to clause no. 17, the Contractor shall submit to the Purchaser a written Change Proposal (Template will be provided in the Contract) giving reason for the proposed Change and including the information specified in clause no. 17.2.2 and then the provisions of clause 17.2.3, 17.2.4 and clause 17.2.5 shall apply. The changes shall be effected only on receipt of acceptance of Change Proposal by Purchaser.

17.3.2 In case any changes or modifications in the design of any Item(s) arise during manufacturing phase, and provided such changes or modifications have positive cost implication, the same shall be carried out by the Contractor after taking the prior approval of the Purchaser, free of cost i.e. without extra cost to the Purchaser.

## 18 Suspension of work

- a) The Purchaser may, by notice to the Contractor, order the Contractor to suspend performance of any or all of its obligations under the Contract, for any of the following reasons:
  - i. On account of any default of the Contractor with or without impairing safety of the works, or
  - ii. For proper supply of the items or part thereof for reasons other than the default of the Contractor, or
  - iii. For safety of the supplies or part thereof, for reasons other than the default of the Contractor
- b) Such notice shall specify the obligation of which performance is to be suspended, the effective date of the suspension and the reasons. Therefore, the Contractor shall there upon suspend performance of such obligation (except those obligations necessary for the care or preservation of the supplies) until ordered in writing to resume such performance by the Purchaser.
- c) The Contractor shall not be entitled to an extension of time for, or to payment of the cost incurred in consequence of suspension as per sub-clause 18 a)i
- d) The Contractor may be entitled to an extension of time as mutually agreed in consequence of suspension as per sub-clauses 18 a)ii and a)iii

## 19 Foreclosure of Contract

- a) If at any time after acceptance of the tender / during execution of work, the Purchaser shall decide to abandon or reduce the scope of the work for any reason whatsoever and hence not require the whole or any part of the work to be carried out, the Purchaser shall give notice in writing to that effect to the Contractor and the Contractor shall have no claim to any payment of compensation or otherwise whatsoever, on account of any profit or advantage which he might have derived from the execution of the work in full but which he did not derive in consequence of the foreclosure of the whole or part of the contract.
- b) Upon receipt of the notice of foreclosure under sub-clause 19 a), the Contractor shall either immediately or upon the date specified in the notice of foreclosure
  - i) Cease all further work, except for such work as may be specified in the notice of termination for the sole purpose of protecting that part of the items already supplied.
  - ii) Terminate all subcontracts, except those to be assigned to the Purchaser pursuant to sub-clause iv) b) above
  - iii) Stop all further purchasing and/ or subcontracting activities related to work foreclosed.
  - iv) In addition, the Contractor, subject to the payment specified in sub-clause 19 a) shall
    - a. supply to the Purchaser the parts of the items procured by the Contractor up to the date of foreclosure
    - b. to extent legally possible, assign to the Purchaser all right, title and benefit of the Contractor to the supplies and to the plant and equipment as of the date of foreclosure, and, as may be required by the Purchaser, in any subcontracts concluded between the Contractor and its subcontractors.
    - c. Supply to the Purchaser all non-proprietary drawings, specifications and other documents prepared by the Contractor or its subcontractors as at the date of foreclosure in connection with the supplies.
- c) In the event of foreclosure of the Contract under sub-clause 19 a), the Purchaser shall pay to the Contractor the full amount at Contract rates, properly attributable to supplies completed and/or the parts of the items supplied by the Contractor and accepted by the Purchaser as of the date of foreclosure. Both the Parties shall mutually agree on unit rate of such supplies accepted by the Purchaser.

## 20 Cancellation/Termination of Contract

### 20.1 Termination of Contract for default

- 20.1.1 The Purchaser may, without prejudice to any other remedy for breach of Contract, by written notice of default sent to the Contractor/Supplier, terminate the Contract in whole or in part in circumstance detailed hereunder:
  - a) If the Contractor/Supplier 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.

- b) If the Contractor/Supplier 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
- 20.1.2 In the event the Purchaser terminates the Contract in whole or in part, the Purchaser may take recourse to of the following action. However, the Contractor/Supplier shall continue to perform the Contract to the extent not terminated.
- a) Forfeiture of Security Deposit
  - b) Recovery of Liquidated Damages (LD) as per the CONTRACT.
  - c) To purchase from elsewhere, after (thirty) 30 days' notice to the Contractor/Supplier, at risk and cost of the Contractor/Supplier, the supplies, materials and equipment, not delivered or other items of similar description when such deliverable exactly complying with the particulars are not in the opinion of the Purchaser readily procurable, such opinion being final, without cancelling the Contract in respect of the consignments not yet due for supply.
  - d) 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/Supplier.
- 20.1.3 In the event of action being taken under sub-clause 20.1 above, the Contractor/Supplier shall be liable for any loss which the Purchaser may sustain on that account. Contractor/Supplier shall not however be entitled to gain on such purchase made on account of his default. The manner and method of such alternate purchase shall be at the entire discretion of the Purchaser, whose decision shall be final. This right shall be without prejudice to the right of the Purchaser, to recover the damages for breach of Contract by the Contractor/Supplier as provided in the Contract or under the general law.
- 20.1.4 If the Contract is terminated as provided in clause 20.1, the Purchaser in addition to any other rights provided in the clause, may require the Contractor/Supplier to transfer title and deliver to the Purchaser any completed items that are found to be useful and acceptable to the Purchaser. The Purchaser shall pay to the Contractor/Supplier, the Contract price of such completed items that are delivered to and accepted by the Purchaser
- 20.1.5 The termination will not relieve the Contractor from submitting the Performance Bank Guarantee for the portion not terminated. Refer **Annexure-7** of Part-A(III) for undertaking to be submitted by the Contractor at the time of signing of Contract.

## 20.2 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/APBG/PBG.

## 20.3 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.

## 21 Intellectual Property Rights (IPR)

Detailed intellectual property rights provisions to be adhered by the Contractor are given in **Annexure- 4** of Part-A (III).

## 22 Settlement of disputes and Arbitration

### 22.1 Settlement of disputes

- a) 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 one hundred and twenty(120) days. If amicable settlement cannot be reached within one hundred and twenty (120) days, then all disputed issues shall be settled by Arbitration as per clause 22.2
- b) Notwithstanding any reference to the arbitration as herein before provided (a) the Parties shall continue to perform their respective obligations under the Contract with due diligence, unless they otherwise agree, (b) the Purchaser shall continue to pay any undisputed amount to the Contractor/Supplier.

### 22.2 Arbitration

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

## 23 Precedence

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

## 24 The Contract

### 24.1 Coming into Force (Effective date of Contract)

The Contract shall come in to force from the date of issuance of Letter of Intent (LoI) by the Purchaser.

### 24.2 Amendments

Any amendment to the Contract including its Attachments, Appendices and Annexures which may be necessary will be a result of a mutual agreement between the Parties. It will be established within a reasonable time in the form of an amendment to the CONTRACT, to be signed by both the Parties.

## 25 Annexures

The following annexes shall form an integral part of this Contract

1. Annexure-1: Security Deposit (Bank guarantee)
2. Annexure-2 : Advance Payment Bank Guarantee (Advance Payment)
3. Annexure-3: Performance Bank Guarantee (PBG)
4. Annexure-4: Intellectual Property Rights (IPR) Provisions
5. Annexure-5: Non-Disclosure Agreement
6. Annexure-6: Undertaking for Storage
7. Annexure-7: Undertaking from the Contractor for termination of the Contract for default
8. Annexure-8: Hindrance Register



**Annexure-1: Bank Guarantee (Security Deposit)**

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

BANK GUARANTEE NO. \_\_\_\_\_ DATE: \_\_\_\_\_

THIS DEED OF GURANTEE MADE AT \_\_\_\_\_ this \_\_\_\_\_ day of \_\_ 20XX between \_\_\_\_\_ having its registered office at \_\_\_\_\_ and one of its branches at \_\_\_\_\_ (hereinafter called “the Bank” which expression shall mean and include the said \_\_\_\_\_ and its successors and assigns) of the one part AND ITER-India (INSTITUTE FOR PLASMA RESEARCH) Block A, Sangath Skyz, Bhat-Motera Road, Koteswar, Ahmedabad 380005, Gujarat, INDIA (hereinafter called “the Purchaser” which expression shall mean and include the said ITER – India, AHMEDABAD and its successors and assigns) of the other part.

WHEREAS \_\_\_\_\_ (hereinafter called “the Contractor/Supplier”) having its registered office at \_\_\_\_\_ have entered into a Contract/Purchase Order having Contract/Purchase Order value of INR \_\_\_\_\_ (in words: \_\_\_\_\_ Only) with the Purchaser being Contract/Purchase Order No. \_\_\_\_\_ dated \_\_\_\_\_ for \_\_\_\_\_ in accordance with the terms, specifications and conditions contained therein.

AND WHEREAS under the terms of the aforesaid Contract/Purchase Order, the Contractor/Supplier is to furnish to the Purchaser a Bank guarantee for an amount of INR \_\_\_\_\_ (in words: \_\_\_\_\_ Only) being 5% of the total value of the Contract/Purchase Order by way of security for fulfilment of the Contractual obligations on the part of the Contractor/Supplier there under.

AND WHEREAS the Contractor/Supplier has requested the Bank to guarantee the due payment of the aforesaid amount by the Contractor/Supplier to the Purchaser in case the Contractor/Supplier fails to fulfil any of the aforesaid Contractual obligations.

NOW THIS DEED WITNESSES AS FOLLOWS:

1. The Bank hereby agrees unequivocally and unconditionally to pay within 48 hours, on demand, in writing from the Purchaser or any officer authorised by it in this behalf and without recourse to the Contractor and without any demur, or protest or objection, any amount up to and not exceeding INR \_\_\_\_\_ (in words: \_\_\_\_\_ Only) to the Purchaser on behalf of the Contractor/Supplier.
2. This guarantee is valid and binding upon the Bank till final acceptance of the Items under this Contract/Purchase Order and shall not be terminable or affected by notice of any change in this constitution of the Bank or of the firm of Contractor/Supplier or on account of any reason whatsoever.
3. The liability of the Bank hereunder shall not be impaired or discharged by any extension of time or variations or alterations made or conceded or agreed within or without the knowledge or consent of the Bank or by or between the parties to the said Contract/Purchase Order.





Title: Supply of Safety Important Pneumatic Butterfly  
Valves

Tender Notice No.

I-I/ET-TPT/24003/24-25

4. The liability of the Bank under this deed is restricted to the sum of INR \_\_\_\_\_ (in words: \_\_\_\_\_ Only) and same shall remain in force till successful completion of Final Acceptance of the ordered Items. In case any further extension of the present guarantee is required the same shall be granted on receiving instructions in writing there for from the Contractor/Supplier on whose behalf this guarantee is issued.
5. Unless proceeding for enforcing this guarantee is commenced against the Bank within ..... (specify applicable claim period, minimum 2 months required) from the expiry of the aforesaid period or such extended period or periods as aforesaid all the rights of the Purchaser under this guarantee shall be extinguished and the Bank shall be relieved and discharged from all liabilities hereunder.
6. The neglect or forbearance of the Purchaser in enforcement of any of its rights under the aforesaid Contract/Purchase Order against the Contractor/Supplier shall in no way relieve the Bank of its liability under this deed.
7. OUR GUARANTEE shall remain in force until ..... successful completion of Final acceptance of the Items under this Contract/Purchase Order and unless a claim under the guarantee is lodged on or before the above date, all rights of 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.

This 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-2: Bank Guarantee (Advance Payment)**

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

BANK GUARANTEE NO. \_\_\_\_\_ DATE: \_\_\_\_\_

1. WHEREAS on or about the \_\_\_\_\_ day of \_\_\_\_\_ M/s. \_\_\_\_\_, a company registered under the companies act and having its registered office at \_\_\_\_\_ (hereinafter referred to as “the Contractor”) entered into Contract bearing No. \_\_\_\_\_ date \_\_\_\_\_ with ITER-India (INSTITUTE FOR PLASMA RESEARCH) Block A, Sangath Skyz, Bhat-Motera Road, Koteswar, 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 an amount of Rs. \_\_\_\_\_ (Rupees ..... only) representing .....% (percent) advance payment out of the Contract 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 to make an advance payment of Rs. .... (Rupees ..... only) to the Contractor on the Contractor furnishing a Bank Guarantee in the manner herein contained.
4. NOW WE, \_\_\_\_\_ (Name and Address of the Bank) in consideration of the Purchaser having agreed to pay to the Contractor 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 by the Contractor.
5. WE, \_\_\_\_\_ (Bank) 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(s) of any of the terms and conditions contained in the said Contract or by reason of the Contractor(s)’s failure to perform the said Contract. 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, \_\_\_\_\_ (Bank) undertake to pay to the Purchaser any money so demanded notwithstanding any dispute or disputes raised by the Contractor(s) in any suit or proceeding pending before any Court or Tribunal relating thereto our liability under this present guarantee being absolute and unequivocal. The payment so made by us under this bond shall be a valid discharge of our liability for payment thereunder and the Contractor(s) shall have no claim against us.
7. AND WE, \_\_\_\_\_ (Bank) hereby further agree that the decision of the said Project Director, ITER-India as to whether the Contractor has committed breach of any such terms and conditions of the Contract or not and as to amount of damage or loss assessed by the said Project





Title: Supply of Safety Important Pneumatic Butterfly  
Valves

Tender Notice No.

I-I/ET-TPT/24003/24-25

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 \_\_\_\_\_ (Bank) 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 or to extend time of performance by the said Contractor(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(s) and to forbear or enforce any of the terms and conditions relating to the said Contract and we shall not be relieved from our liability by reason of any such variation or extension being granted to the said Contractor(s) or for any forbearance, act or commission on the part of the Purchaser or any indulgence by the Purchaser to the said Contractor(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 Bank or the Contractor(s).
10. OUR GUARANTEE shall remain in force until \_\_\_\_\_ (two months beyond the delivery of last consignment under respective phase of this Contract) and unless a claim under the guarantee is lodged on or before the above date, 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-3: Performance Bank Guarantee (PBG)**

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

BANK GUARANTEE NO. \_\_\_\_\_ DATE: \_\_\_\_\_

1. WHEREAS on or about the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_ M/s \_\_\_\_\_, a company registered under the Companies and having its registered office at \_\_\_\_\_ (hereinafter referred to as "the Contractor") entered into an Contract bearing No. \_\_\_\_\_ dated \_\_\_\_\_ (hereinafter referred to as "The Contract") with ITER-India (INSTITUTE FOR PLASMA RESEARCH) Block A, Sangath Skyz, Bhat-Motera Road, Koteswar, 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 an amount of INR \_\_\_\_\_ (Rupees ..... only) representing 5% percent payment (pro-rata basis) out of the total value of the contract of INR \_\_\_\_\_ (Rupees ..... only) is to be paid to the Contractor on the successful completion of Final On-Site Acceptance under this Contract and on the Contractor furnishing a bank guarantee in a manner herein contained towards satisfactory performance of the equipment during warranty period, viz. 36 months from the date of final acceptance/receipt inspection of Phase-2 deliverable (specify lot no...).
3. NOW WE, \_\_\_\_\_ (Name and Address of the Bank) in consideration of the promises and the payment of said sum of INR..... (Rupees ..... Only) by the Purchaser to the Contractor do hereby agree and undertake to pay to the Purchaser the amount due and payable under the 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 suffered by the Purchaser by reason of unsatisfactory performance of the equipment during the warranty period. 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 no exceeding Rs \_\_\_\_\_ (Rupees \_\_\_\_\_ only).
4. WE, \_\_\_\_\_ (Bank) undertake to pay to ITER-India any money so demanded notwithstanding any dispute or disputes raised by the Contractor(s), in any suit or proceeding pending before any Court or Tribunal relating thereto, our liability under this present guarantee bond being absolute and unequivocal. The payment so made by us under this bond shall be a valid discharge of our liability for payment thereunder and the Contractor(s) shall have no claim against us for making such payment.
5. WE, \_\_\_\_\_ (Bank) hereby further agree that the decision of the Project Director, ITER-India as to whether the said equipment is giving satisfactory performance or not during the warranty period and as to the amount of damages suffered by the Purchaser on account of the unsatisfactory performance of the said equipment shall be final and binding on us.
6. AND WE, the \_\_\_\_\_ (Bank) do hereby agree that our liability hereunder shall not be discharged by virtue of any Agreement/Contract/Purchase Order between the Purchaser and the



Title: Supply of Safety Important Pneumatic Butterfly  
Valves

Tender Notice No.

I-I/ET-TPT/24003/24-25

Contractor whether with or without our knowledge and/or consent or by reason of the Purchaser showing any indulgence or forbearance to the Contractor whether as to payment, time for performance, or any other matter whatsoever relating to the contract which but for this provision would amount to discharge of the surety under the law.

7. THIS GUARANTEE will not be discharged due to the change in the constitution of the Bank or the Contractor(s).
8. OUR GUARANTEE shall remain in force until \_\_\_\_\_ (two months beyond the Contract warranty period) and unless a claim under the guarantee is lodged with us on or before the above date, all rights of the Purchaser under the guarantee shall be forfeited and we shall be relieved and discharged from all our 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-4 - INTELLECTUAL PROPERTY RIGHTS PROVISIONS

### 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:

##### 1.1.1 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

- (a) have been held in confidence by their owner,
- (b) 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
- (c) have not been made available by their owner to other parties without an obligation concerning confidentiality, and
- (d) are not available to the receiving party without an obligation concerning confidentiality.

##### 1.1.3 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).

##### 1.1.4 Generated Intellectual Property:

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

#### 2. Provisions under background Intellectual Property:

##### 2.1 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.

## **2.2 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 programme.
- 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.

### **3. Provisions under Generated Intellectual Property**

3.1 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.

3.2 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.

3.3 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.

3.4 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 appropriate legal and administrative measures to enable ITER-India protect it in its own name.

3.5 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.

- 3.6 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.
- 3.7 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.
- 3.8 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.
- 3.9 For generated IP where ITER-India, decides to seek protection, the inventors will assign their rights to ITER-India.
- 3.10 ITER-India will seek protection through DAE-IPR Cell.
- 3.11 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 Contractor 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 Contractor 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

**Signed and delivered by**

Purchaser  
(Official Seal)

Contractor  
(Official Seal)





Title: Supply of Safety Important Pneumatic Butterfly  
Valves

Tender Notice No.

I-I/ET-TPT/24003/24-25

### Annexure-5: Non-Disclosure Agreement

CONTRACTOR agrees following points to maintain non-disclosure of proprietary and/or confidential information that are presented/referred in the ITER-India Contract for “\_\_\_\_\_” vide Contract No.\_\_\_\_\_.

1. Any information from the referred documents will not be disclosed to any other third party or person for making any kind of references without the prior permissions from ITER-India.
2. In case information are to be revealed to a sub-contractor/ consortium partner, CONTRACTOR will sign similar ‘Mutual Non-Disclosure Agreement’ with the sub-contractor/ consortium partner and will submit a copy of the same to ITER-India for conforming the compliance of this ‘Mutual Non-Disclosure Agreement’.
3. Any information from the referred documents of this tender will not be used or published for any purposes other than necessary for the present Contract.

CONTRACTOR will take all necessary steps to protect the secrecy of the proprietary and/or confidential Information provided along with the Contract.

Date:

CONTRACTOR

(Name and signature of responsible officer with SEAL)





### Annexure -6 : Undertaking for Storage

(On Non-Judicial stamp paper of appropriate value)

We,------(Contractor), give an undertaking as follows, as prerequisite to receive milestone payment as per clause no.----- of Contract.

- The Contractor shall store Items (To specify) free of cost till shipment from Contractor's factory.
- The Contractor will store Items (To specify) in such a way that it will not deteriorate the packed components including its packing as per the Contract.
- The Contractor will be liable and responsible for any loss and/or damage to Items (To specify) during storage at Contractor's end.
- The Purchaser along with insurance surveyor (if applicable) will inspect the Items (To specify) before transportation and if any damage(s)/discrepancies/non-conformance are found in the packing of the Items during the inspection, the Contractor shall rectify the damage(s)/discrepancies/non-conformance at their factory without any financial impact to the Purchaser.
- The Purchaser along with insurance surveyor (if applicable) will inspect the components before transportation and if any damage(s)/discrepancies/non-conformance are found in the Items during the inspection, the Contractor shall rectify the damage(s)/discrepancies/non-conformance at their factory within the prescribed time-limit by the Purchaser.
- This Undertaking is valid till -----.

Date:

CONTRACTOR

(Name and signature of responsible officer with SEAL)

**Annexure – 7 – UNDERTAKING FROM THE CONTRACTOR FOR TERMINATION  
OF CONTRACT FOR DEFAULT**

(On Non-judicial Stamp Paper of appropriate value)

The Contractor agrees to the clause 20.1 of Part-A(III) as elaborated below under the Contract No. ----  
-----dated -----for “-----”

In case of abnormal delays (beyond the maximum late delivery period as per Penalty clause) in supplies or non-fulfilment of any other terms and conditions given in the Contract, the Purchaser may cancel the Contract in full or part thereof, and may also make the purchase of such Item(s)/material from elsewhere / alternative source at the risk and cost of the Contractor. The Purchaser will take all reasonable steps to get the material/Item(s) from alternate source at optimum cost. This will be without prejudice to any other right of the Purchaser under the Contract. Termination for Default Clause (clause no. 21.1.5 of Part-A(III)), in line with Terms and Conditions of Contract, may be invoked in any of the following cases:

1. Contractor's poor progress of the work vis-à-vis execution timeline as stipulated in the Contract, backlog attributable to Contractor including unexecuted portion of work/ supply does not appear to be executable within balance available period (#) considering its performance of execution.
2. Withdrawal from or abandonment of the work by Contractor before completion of the work as per contract.
3. Non completion of work/ Non-supply by the Contractor within scheduled completion/delivery period as per Contract or as extended from time to time, for the reason(s) attributable to the Contractor
4. Termination of Contract on account of any other reason (s) attributable to Contractor
5. Assignment, transfer, subletting of Contract without Purchaser's written permission resulting in termination of Contract or part thereof by the Purchaser
6. Non-compliance to any contractual terms & conditions or any other default attributable to Contractor.

#In-case inputs from the Purchaser are likely to be delayed or are actually delayed, this delay may also be taken into account while considering balance period available for execution of Contract.

Risk and Cost against Balance Supply/Work (subject to Value B not paid by the Purchaser, in case, B is paid, it will be added to below formulat):

Risk & Cost Amount=  $[(A-B) + (A \times H/100)]$

Where, A= Value of Balance scope of Work/ Supply (\*) as per rates of new contract

B= Value of Balance scope of Work/ Supply (\*) as per rates of old contract being paid to the contractor at the time of termination of contract.

H = Overhead Factor to be taken as 15%



Title: Supply of Safety Important Pneumatic Butterfly  
Valves

Tender Notice No.

I-I/ET-TPT/24003/24-25

In case (A-B) is less than 0 (zero), value of (A-B) shall be taken as 0 (zero).

\*(Balance scope of work/ supply) Difference of Contract Quantities and Executed Quantities as on the date of issue of Letter for 'Termination of Contract', shall be taken as balance scope of Work/ Supply for calculating risk & cost amount. Contract quantities are the quantities as per original contract. If, Contract has been amended, quantities as per amended Contract shall be considered as Contract Quantities. Substitute/ extra items which have been executed but rates have not been approved, would also form part of contract quantities for this purpose and rates of such items shall be determined in line with contractual provisions.

NOTE: In case portion of work is being withdrawn, contract quantities pertaining to portion of work withdrawn shall be considered as 'Balance scope of work/supply' for calculating Risk & Cost amount.

Date:

CONTRACTOR

(Name and signature of responsible officer with SEAL)



Title: Supply of Safety Important Pneumatic Butterfly  
Valves

Tender Notice No.

I-I/ET-TPT/24003/24-25

### Annexure -8 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 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

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.