



**ITER-India**  
**(Institute for Plasma Research)**


Tender No.

I-ITN21003

<b>Title</b>	<b>High Power RF Amplifier (Driver and Final Stage Amplifier) for ICRF Sources</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**



	<b>PART-A (iii): Terms and Conditions of the Contract (TCC) for <u>High Power RF Amplifier (Driver and Final stage amplifier) for ICRF Sources</u></b>	Tender No.
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Title	<b><u>High Power RF Amplifier (Driver and Final stage amplifier) for ICRF Sources</u></b>
Sub Title	<b>PART-A (iii): Terms and Conditions of the Contract (TCC)</b>

Distribution list	Potential Bidders
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Written by	Reviewed by	Approved by
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Signature/s in sequence	Signature/s in sequence	Signature/s in sequence

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**PART-A (iii): Terms and Conditions of the Contract (TCC) for High Power RF Amplifier (Driver and Final stage amplifier) for ICRF Sources**

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**Abbreviations**

**A**

ABG · *Advance Bank Guarantee*

**B**

BG · *Bank Guarantee*

**H**

HDFC · *Housing Development Finance Corporation*

HP · *Hold Point*

**I**

ICICI · *Industrial Credit and Investment Corporation of India*

IDBI · *Industrial Development Bank of India*

**L**

LD · *Liquidated Damages*

**N**

NP · *Notification Point*

**P**

PBG · *Performance Bank Guarantee*

PLR · *Prime Lending Rate*

PM · *Project Manager*

**Q**


QMP · *Quality Management Table*

**S**

SBI · *State Bank of India*

**T**

TRO · *Technical Responsible Officer*

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## 1 Terms and Conditions of Contract (TCC)

Following are the Terms and Conditions of 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.

### 1.1 Definitions and Interpretations

#### 1.1.1 Definitions

- (a) **“BID” or “TENDER” or “QUOTATION”** shall mean the tender, offer and quotation in response to this notice inviting tender/ enquiry/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 work as per Tender Part-A (ii) have been successfully completed to the complete satisfaction of the Purchaser in all aspects and approved & accepted by the Purchaser.
- (d) **“CONTRACT”** shall mean the communication or document signed by the Purchaser and the Contractor confirming the agreement on the terms and conditions and complete technical details mentioned or referred to in the said communication or document, including all attachments and appendices thereto, for supply of items and scope of work mentioned therein and any subsequent amendments there to made on the basis of mutual agreement.
- (e) **“CONTRACTOR”** shall mean the firm or company with whom or with which the Contract for **“High Power RF Amplifier (Driver and Final stage amplifier) for ICRF Sources”** 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.
- (f) **“CONTRACTOR RELEASE NOTE” (CRN)/ “DISPATCH CLEARANCE NOTE” (DCN)** shall mean the signed document sent by Purchaser’s commercial coordinator authorizing the Contractor to release the Items for shipment.
- (g) **“DAY” or “DAYS”** shall mean a Gregorian calendar day or days of twenty-four (24) hours each.
- (h) **“DELIVERABLES”** shall mean all the Items, Products, Components, Services, Documentation that are part of the scope of supply as defined in this Tender.
- (i) **“EFFECTIVE DATE OF CONTRACT” or “COMMENCEMENT DATE OF CONTRACT”** shall mean the date of signing of Contract by both the Parties, on which the Contract shall come into force.
- (j) **“FACTORY ACCEPTANCE”** shall mean acceptance of items at factory as described in Part-A (ii).
- (k) **“FINAL ACCEPTANCE”** shall mean acceptance of items as per “Conditions for Acceptance”

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described in Annexure-K of PART-A (ii).

- (l) **“INCOTERMS”** shall mean International Commercial Terms 2020.
- (m) **“IO”** shall mean ITER - Organization having its office at Route de Vinon-sur-Verdon, 13067 St Paul Lez Durance, France.
- (n) **“ITER-INDIA (IPR)”** is a project of Institute for Plasma Research, Bhat, Gandhinagar 382428 and it is Indian Domestic Agency for the execution of ITER Project
- (o) **“ITEM(S)” or “GOODS” or “MATERIALS” or “PRODUCTS” or “SUPPLIES”** shall mean and include entire scope of supply and work which the Contractor has agreed to supply and perform as specified in the Contract (as per Part-A(ii) of this tender).
- (p) **“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.
- (q) **“MONTH”** shall mean a month according to Gregorian calendar.
- (r) **“ON SITE”** –ITER-India site at Gandhinagar, Gujarat, India and ITER site, C/o ITER Organization, Route de Vinon-sur-Verdon CS 90 046, 13067 St Paul Lez Durance, Cedex, France as applicable
- (s) **“PARTY”** shall mean either the PURCHASER or the CONTRACTOR
- (t) **“PARTIES”** to the Contract are the Contractor and the Purchaser named in the Contract.
- (u) **“PRICE”** shall mean the prices quoted by the bidder in his bid proposal for the entire scope of supply as per the specifications as defined in Part-A (ii) of this tender.
- (v) **“PROJECT DIRECTOR”** shall mean Project Director of ITER-India, who is appointed by a competent authority.
- (w) **“PROJECT MANAGER” or “PM”** shall mean the person authorized to act as Project Manager (PM) by a competent authority of ITER-India.
- (x) **“PURCHASER”** shall mean ITER-India (IPR), acting through the Project Director or his authorized representative.
- (y) **“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.
- (z) **“QUALITY SURVEILLANCE ENGINEER/INSPECTOR”** shall mean any person appointed by or on behalf of the Purchaser to inspect or carry out quality surveillance on Items/supplies, equipment or work under the Contract or any person deputed by Purchaser for the said purpose.
- (aa) **“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 any manufacturing process/inspection/conformity assessment is subcontracted by the Contractor and includes its



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legal successor or permitted assignees, and unless otherwise stated, all the sub-contractor s and suppliers to such person and the term sub-contract shall be construed accordingly.

- (bb) **“TECHNICAL RESPONSIBLE OFFICER (TRO)”** shall mean the person nominated by the Purchaser to carry out all technical functions concerning the Contract including ITER-India review of technical documents, post Contract technical follow up and such other technical functions with the approval of Project Manager.
- (cc) **“THIRD PARTY”** shall mean the party authorized to carry out the assigned job on behalf of the Purchaser.
- (dd) **“TOTAL CONTRACT VALUE” or “TOTAL CONTRACT PRICE”** shall mean the total price as mentioned in the Contract
- (ee) **“UNIT RATE”** shall mean the rate per unit quoted by the bidder which can 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 for performance of the ITEMS supplied under the Contract.

#### 1.1.2 Interpretations

- (a) In the Contract, except where the context requires otherwise:
- (i) Words indicating one gender include all genders;
  - (ii) Words indicating the singular also include the plural and words indicating the plural also include the singular;
  - (iii) Provisions including the word “agree”, “agreed” or “agreement” require the agreement to be recorded in writing;
  - (iv) The word “tender” is synonymous with “bid”, “tenderer” with “bidder” and “tender documents” with “bidding documents”;
  - (v) “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 & 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.
- (e) **SEVERABILITY:** If any provision or condition of the Contract is prohibited or rendered invalid or unenforceable, such prohibition, invalidity or unenforceability shall not affect the validity or enforceability of any other provisions and terms & conditions of the Contract.

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## 1.2 General provisions of the Contract

### 1.2.1 Language

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

### 1.2.2 Governing Law

- 1.2.2.1 The Contract shall be construed and shall be governed by the laws of India and the Contractor shall be required to comply with all the applicable laws with regard to performance of the Contract.

### 1.2.3 Jurisdiction

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

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

- 1.2.4.1 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.

### 1.2.5 Communication channel

- 1.2.5.1 The Contractor shall not involve themselves in direct communication with IO, France for any matter related to this contract. Any communication with IO, France shall be executed through Purchaser only.

### 1.2.6 Publicity

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

### 1.2.7 Confidentiality and Secrecy

**Refer Annexure-D of Part-A(ii) for Intellectual Property Rights**

### 1.2.8 Management Specifications

**Refer Annexure-A of Part-A(ii) for Management Specifications**

## 1.3 The Purchaser

Roles of Purchaser's representatives are as defined in clause 1.1.1 of Part-A(iii)

### 1.3.1 Permits, Licenses or Approvals

- 1.3.1.1 The Purchaser may provide, at the request of the Contractor, such reasonable assistance in the form of issue of necessary documents 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 for execution of the Contract.

#### 1.4 The Contractor

##### 1.4.1 Permits, Licenses or Approvals

- 1.4.1.1 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 **1.3.1** (Permits, licenses or approvals) hereof and that are necessary for the performance of the Contract.
- 1.4.1.2 The Contractor shall have carefully examined all Contract documents and obtained clarifications from the Purchaser wherever needed, the quantities and nature of work and material necessary for the completion of the Contract including all necessary information for risks, contingencies and others. The Contract price and the quoted Unit Rates shall, except as otherwise provided, cover all his obligations under the Contract and all matters and things necessary for the proper completion of the supplies. 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 and/or matter related to site will, in any circumstances, be considered payable by the Purchaser.

##### 1.4.2 Compliance with law

- 1.4.2.1 The Contractor shall comply with all laws in force in India, in their country where the items/equipment are manufactured and in the country where the items/equipment will be installed. The laws will include all local, state, national or other laws that affect the performance of the Contract and bind upon the contractor. The contractor 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-contractor's and their personnel.

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

- 1.4.3.1 The Contractor 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). However, such consent shall not be unreasonably withheld by the Purchaser, if such items/equipment are not normally manufactured by the Contractor. Such assignment or subletting shall not relieve the Contractor from any contractual obligation or responsibility under the Contract.
- 1.4.3.2 In case of non-compliance of above clause, action as deemed fit may be initiated

against the Contractor.

1.4.3.3 The Contractor shall be responsible for coordination of all activities with his sub-contractors

1.4.3.4 In case the Contractor sublets, transfers or assigns any part of the Contract with the prior written consent of the Purchaser, all payments to his Sub-Contractor(s) shall be the responsibility of the Contractor and any requests from such Sub-Contractor(s) shall not be entertained by the Purchaser.

1.4.3.5 All payment to the sub-contractor(s) shall be made by the Contractor only.

#### 1.4.4 Alteration of specifications

1.4.4.1 The Purchaser reserves the right to alter specifications, whenever necessary. As from that date, the supplies shall be in accordance with the specifications so altered which the Contractor is bound to comply with.

1.4.4.2 In the event of such alteration involving a revision in the cost, or in the delivery period, the same shall be discussed and mutually agreed to, taking into account the unit rates of similar items in the Contract. In case of disagreement, the decision, in the cost or the delivery period, shall be agreed by and between the Purchaser and the Contractor.

#### 1.4.5 Codes and Standards

Contractor shall execute the Contract as per Codes and standards referred in **section 6.5 of Part-A(ii)**. The version of such codes and standards, one (01) day prior to date of Price bid opening shall apply unless otherwise specified. During the Contract execution, any change(s) in codes and standards shall be applied after approval by the Purchaser and may be treated in accordance with clause **1.14** (Changes).

### 1.5 Contract Work Scope and Completion Time

#### 1.5.1 Scope of Supply and Specifications:

1.5.1.1 Part-A (ii) of this tender specifies the scope of supply, technical specifications of deliverables and scope of work to be covered under this Contract. In case of conflicting requirements specified in various sections of the specifications, either the stringent one or the requirement as per the Purchaser's interpretation shall govern.

1.5.1.2 Any tooling, spares, fasteners, foundation bolts or accessories which might not have been explicitly mentioned in the Specifications but which are necessary for proper, efficient and safe functioning of the systems as per the specifications of the tender shall be supplied by the Contractor without extra charge to the Purchaser; the systems supplied shall be complete in all respects.

1.5.1.3 Preservation of tools & tackles/Jigs & fixtures etc.: In case, the bidder has the tools & tackles/Jigs & fixtures etc. required to execute this contract, the same can be used for Phase 2 & Phase 3 with prior agreement with Purchaser. If

bidder does not have the required tools & tackles/Jigs & fixtures etc., the same need to be developed and manufactured by the contractor without any additional cost to the purchaser. Further, it has to be noted that the Tools & tackles/jigs & fixtures used for site acceptance test of items will be considered as deliverable to the Purchaser and will remain under ownership of Purchaser.

- 1.5.1.4 Operation/instruction manual is essential in English to enable the Purchaser to put the Systems to proper use, so the Contractor shall furnish such operation/instruction manual along with the Systems in duplicate as per **section no. 4.5 of Part A (ii)**.

1.5.1.5 **BAR/PERT CHARTS:**

To be provided as per the requirement of the Purchaser for different activities to execute the Contract.

**1.5.2 Delivery Dates and Completion Time**

- 1.5.2.1 The date of delivery and time for completion stipulated in the Contract shall be deemed to be the essence of the Contract. Delivery and work completion must be accomplished within the dates/durations specified in Delivery Schedule **as per Annexure E of PART A(ii)**. The Contractor has to submit schedules up to L-3 level, complying to overall schedule as indicated.

- 1.5.2.2 Required Delivery Schedule for Items: as per **Annexure E of PART A(ii)**

- 1.5.2.3 Should ITER-India make a duly justified request to postpone the delivery of the whole or part of the Items/System, at least 60 (sixty) calendar days prior to the Contractual delivery or actual delivery date, whichever is later, the Contractor shall provide safe storage, protection and maintenance under its own responsibility for a period of 60 (sixty) calendar days from the Contractual delivery date or actual delivery date, whichever is later, free of charge. ITER-India shall provide the Contractor direction on future safe storage, protection or maintenance requirement no later than the 40th calendar day of the free-of-charge period of 60 (sixty) calendar days in case further postponement of delivery is required. If the period exceeds 60 (sixty) calendar days, the Contractor shall continue to provide safe storage, protection and maintenance. An agreement between the ITER-India and the Contractor will be reached within 15 working days from the free-of-charge period concerning the reimbursement of actual duly documented and justified costs incurred during the period of time in excess of the aforementioned 60 (sixty) calendar days.

**1.5.3 Security Deposit (SD)**

- 1.5.3.1 Within five weeks from the date of signing of Contract, the Contractor shall submit 02 irrevocable Bank Guarantees (BGs). One BG equal to 3% (three percent) of total Contract value for phase -2 (including total price C) and another BG equal to 3% (three percent) of total contract price for **components under table 6 of Part A(ii) of phase-2** on a non-judicial stamp paper, as "Security Deposit" towards satisfactory execution and performance of the Contract.
- 1.5.3.2 Within five weeks from date of clearance provided by Purchaser for start of Phase-3, the Contractor shall submit 02 irrevocable Bank Guarantees (BGs). One BG equal to 3% (three percent) of total Contract value for phase -3 ( including total

price F1/F2) and another BG equal to 3% (three percent) of total contract price for **additional tubes for HPA-2 and HPA-3 of phase-3** on a non-judicial stamp paper, as “Security Deposit” towards satisfactory execution and performance of the Contract.

- 1.5.3.3 In case of BG is issued by a Foreign Bank, it should be from a first-class bank of international repute and acceptance of the same will be subject to confirmation by SBI, in India. The format of the Security Deposit is given in Annexure-1. BG issuing bank is required to send SFMS Confirmation through SWIFT on our SBI bank having SWIFT Code SBININBB209 Account No: 30360272380 and provide intimation of the same on following E-mail ID: accounts@iter-india.org.
- 1.5.3.4 The Bank Guarantee shall remain valid till the expiry of (60) sixty days from the date of final acceptance of items/system under each phase as per the Contract. If need arises, the Contractor shall extend the validity of the Bank Guarantee for suitable period at his expenses.
- 1.5.3.5 If the Contractor fails to provide the Security Deposit, within the period as specified in clause no. [1.5.3.1](#) such failure shall constitute a breach of Contract and action as deemed fit may be initiated by the Purchaser.
- 1.5.3.6 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.
- 1.5.3.7 Where the Contractor fails to maintain the Contractual delivery date/completion time, 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.
- 1.5.3.8 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 .
- 1.5.3.9 No interest shall be payable to the contractor on security deposit amount, till it is retained by Purchaser.

#### 1.5.4 Advance Payment Bank Guarantee

- 1.5.4.1 Wherever, advance payment is involved, it will be made subject to submission of Bank Guarantee (BG) for an equivalent amount from one of the banks mentioned in [1.5.3.2](#). BG for advance payment should be furnished by contractor as per format given in [Annexure-2](#). Advance Bank Guarantees for phase-2 shall remain valid two months beyond the delivery of all ordered items under phase-2 except components under **table 4-3 of Part-(II)**. Advance Bank Guarantees for Phase-3 shall remain valid two months beyond the delivery of all ordered items under phase-3 except additional tubes for HPA-2 & HPA-3. Advance payment bank guarantees shall also be subject to confirmation by Purchaser’s Bank i.e. State Bank of India and issuing bank needs to Confirmation through SWIFT on SBI bank as per details mentioned in clause no. 1.5.3.3

### 1.5.5 Performance Bank Guarantee (PBG)

- 1.5.5.1 The Contractor shall furnish to the Purchaser an interest free Performance Bank Guarantee (PBG) for 3 % (Three percent) by way of providing a Bank Guarantee from one of the banks mentioned in clause [1.5.3.3](#) for the satisfactory performance of the Items supplied against the Contract. The details for submission of PBG are as mentioned below:
- 1.5.5.1.1 PBG@3% of contract value (including total price C) for Phase-2 to be submitted which shall remain valid two months beyond the warranty period of Phase-2 items
- 1.5.5.1.2 PBG for 3% of Total Price for components under **table 6 of Part A(ii)** for phase-2 to be submitted which shall remain valid two months beyond the warranty period of components for phase-2
- 1.5.5.1.3 PBG@3% of contract value (including Price F1/F2) for each unit of phase-3 to be submitted which shall remain valid two months beyond the warranty period of each unit of phase-3.
- 1.5.5.1.4 PBG@3% of contract value for additional tubes for HPA-2 & HPA-3 (01 no. each) to be submitted which shall remain valid two months beyond the warranty period of such additional tubes
- 1.5.5.2 In the event that the Bank Guarantee(s) needs extension, the Contractor shall extend the validity of PBG for suitable period at his expenses. On the performance and completion of all contractual obligations 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**.
- 1.5.5.3 In the event, the Contractor/Supplier fails to fulfil any of the warranty obligations under the Contract/Purchase Order; the Purchaser shall have the right to encash the PBGs.
- 1.5.5.4 Performance bank guarantees shall also be subject to confirmation by Purchaser's Bank i.e. State Bank of India and issuing bank needs to Confirmation through SWIFT on SBI bank as per details mentioned in clause no. 1.5.3.3

### 1.5.6 Bank charges

- 1.5.6.1 All the bank charges within India shall be borne by ITER-India. Similarly, all the charges outside India shall be borne by the Contractor including the charges towards advising amendment commission.

## 1.6 Contract Price, Payment and Recoveries

### 1.6.1 Terms of Prices

- 1.6.1.1 The unit prices for this Contract shall be inclusive of packing, exclusive of applicable French VAT and shall remain **firm** during the validity and extended validity of this Contract. Break-up of price shall be furnished as per price-bid format (Part-B1, B2 and B3). Unit rate/s shall be valid throughout the validity of

Contract period for addition/deletion purposes. The quoted price shall not be subject to price variation. The quoted price shall be firm, fixed and non-revisable during the validity/extended validity of Contract. Moreover, any variation in the scope of supply or work to meet the intent of this specification and to be in line with good engineering practice and manufacturing feasibility during execution of Contract shall not be subject to price change. The Contractor shall issue valid fumigation certificate and/or heat treatment certificate or dangerous cargo certificate, as required without any additional cost to the Purchaser.

- 1.6.1.2 Prices are required to be quoted according to the units indicated in the Price Bid.

#### 1.6.2 Basis of Delivery

- 1.6.2.1 Delivery will be on FCA (nearest international airport in Contractor's country) or DAP ITER-India or DAP ITER Organization basis (as applicable) as per Incoterms 2020. Purchaser will at his own discretion will select any of the delivery basis as stated above

- 1.6.2.2 Taxes and Duties

- 1.6.2.3 The price/s quoted shall be inclusive of all applicable taxes (except French VAT), levies, duties arising in the bidder's/manufacturer's country or any other country/ies except India. Any statutory duty/tax become applicable in India during the pendency of the Contract shall be borne by the Purchaser

- 1.6.2.4 Applicable taxes and duties in Contractor's country (as specified by the Contractor in price bid format) for e.g. French VAT on finished goods (deliverables) will be reimbursed within 30 days after shipment of phase-2/each unit of phase-3 (as applicable). Contractor shall submit Tax invoice along with valid documentary evidence of payment of taxes to the French Government.

- 1.6.2.5 Tax Deducted at Source (TDS) or any other leviable taxes and or duties.

- 1.6.2.5.1 Income tax (TDS, applicable for Indian Contractor) at a prevailing rate as per Income Tax Act will be deducted from the supplier's invoice(s). Certificate of TDS will be issued by the Purchaser.

- 1.6.2.5.2 Tax Deducted at Source (TDS applicable for Foreign Contractor) as applicable under Income tax act will not be deducted from the invoices as raised by the Contractor and no certificate will be issued by the Purchaser in this regard.

#### 1.6.3 Mode of Payment and Payment Schedule:

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

- 1.6.3.1 The payment will be made through wire transfer within 30 days from the date of completion of each payment milestone and against submission of error free documents as per below table-1.
- 1.6.3.2 Release of first advance payment will be, subject to signing of a Contract, furnishing order acknowledgement, submission of Security Deposit and Advance



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payment bank guarantee as specified in the tender documents and Contractor obtaining Export License, if applicable, without any cost to the Purchaser. In case Export License is not required, Contractor shall submit a declaration to this effect along with the Order Acknowledgement.

**1.6.3.3 Payment Schedule**

1.6.3.3.1 The payment to the Contractor will be made as per the following terms (Table-1), on production of the requisite documents:

Table-1: Following is the payment schedule to the contract

<b><u>Phase 2 (Prototype)</u></b>			
<b>Sr. No.</b>	<b>Mile-stone for Payment</b>	<b>% Payment of Total price (A) as in price bid for phase – 2</b>	<b>Documents to be submitted</b>
1	Advance with Contract Award	15%	a. Copy of Security Deposit Bank Guarantee for 3% of total price (A+B+C) as in price bid for phase-2 b. Advance Payment Bank Guarantee of equivalent amount
2	Submission of technical report and updated QMP documents (as per <b>section 4.5.3</b> of tender Part- A(ii)) and approval by the Purchaser	10%	a. Acceptance note from Purchaser for Technical Report and updated QMP documents b. Advance Payment Bank Guarantee of equivalent amount
3	Against shipment (on FCA Geneva international airport or any nearest international airport in Contractor's country) INCOTERMS 2020 basis) of hardware deliverables as per <b>Table 5</b> for Phase 2 of Part- A(ii)	35%	a. Dispatch clearance Note from Purchaser based on approval of FAT report. b. On-board clean Air-way bill c. Invoice in triplicate d. Packing list in triplicate e. Proof of Insurance f. Valid ISPM 15 certificate/Heat Treatment certificate/Dangerous cargo certificate (if applicable)



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4	Assembly, integration and high-power test as per Condition for Acceptance at ITER-India test facility		
(a)	Successful demonstration of two RF chains up to 1.5 MW on matched load & mis-matched load	20%	For a) Acceptance note from Purchaser for successful Demonstration of two RF chains up to 1.5 MW on matched load & mis-matched load
(b)	Submission of SAT document as per section 4.5.3 of Part A(ii) and approval by the Purchaser	10%	For b) Acceptance note from Purchaser for SAT document
(c)	Participation in the successful testing of prototype RF source up to 2.5 MW on matched and mis-matched loads	5%	For c) Note from Purchaser for participation of successful testing of prototype RF source up to 2.5 MW on matched and mis-matched loads, using Contractor's supplied components and Performance Bank Guarantee for 3% total price (A) as in price bid for phase 2
5	Participating in the successful testing of RF source up to 2.5 MW on matched and mis-matched loads and Successful commissioning of components supplied by Contractor at IO site	5%	Final Acceptance note from Purchaser on Successful commissioning of components supplied by Contractor at IO site and Performance Bank Guarantee for 3% total price (C) as in price bid for phase 2
Components for HPA 2			
1	Against shipment on FCA, Geneva international airport (or any nearest international	90% of total price (B), as in price bid for components	a. Dispatch clearance Note from Purchaser based on approval of FAT report.



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	airport in Contractor's country) INCOTERMS 2020 basis of all components under Table 6 for phase-2, Part A(ii)	under Table 6 for phase-2	b. On-board clean Air-way bill c. Invoice in triplicate d. Packing list in triplicate e. Proof of Insurance f. Valid ISPM 15 certificate/Heat-Treatment Certificate/Dangerous cargo certificate (if applicable)
2	Successful Final Acceptance of components as per Table 6 for phase-2 Part A(ii) at ITER-India	10% of total price (B) as in price bid) for components under table 6 for phase-2	a. Acceptance note from Purchaser b. Performance bank guarantee for 3% of total price (B), as in price bid for components under table 6 for phase-2
Phase 3 (Bulk Production) corresponding to the option applicable			
Sr. No.	Mile-stone for Payment	% payment	Documents to be submitted
1	Advance for Phase 3 after clearance from Purchaser for bulk production	5% of total price (D1) or total price (D2) as in price bid for Phase 3	a. Copy of Security Deposit Bank Guarantee for 3% of total price (D1/D2 +E1/E2 + F1/F2) for HPA-2 and HPA-3 for phase-3 b. Advance Payment Bank Guarantee of equivalent amount c. Clearance note for Bulk production from Purchaser for phase 3
2	Submission of updated QMP documents as per section 4.5.4 of Part A(ii) and approval by the Purchaser	5% of total price (D1) or total price (D2) as in price bid for Phase 3	a. Acceptance note from Purchaser for updated QMP documents b. Advance Payment Bank Guarantee of equivalent amount
3	Against shipment* (on FCA Geneva international airport or any nearest international airport in Contractor's country) of		a. Dispatch clearance Note for unit 1 and 01 set of additional tubes from



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	<p>a. Complete ordered items for unit 1</p> <p>b. One set of additional tubes for HPA2 and HPA3</p>	<p>a. 40% of price corresponding to unit 1</p> <p>b. 90% of total price (E1) or total price (E2) as in price bid corresponding to additional tubes (01 no each) for HPA2 and HPA3</p>	<p>Purchaser based on approval of FAT report.</p> <p>b. On-board clean Air-way bill</p> <p>c. Invoice for unit 1 and additional tubes in triplicate</p> <p>d. Packing list in triplicate</p> <p>e. Proof of Insurance</p> <p>f. Valid ISPM 15 certificate/ Heat Treatment certificate / Dangerous cargo certificate</p>
4	<p>Unit 1:</p> <p>Assembly, integration and high-power test as per Condition for Acceptance at ITER-India test facility</p>		
(a)	<p>Demonstration of two RF chains up to 1.5 MW on matched load &amp; mis-matched load</p>	<p>20% of price corresponding to unit 1</p>	<p>For a) Acceptance note from Purchaser for successful Demonstration of two RF chains up to 1.5 MW on matched load &amp; mis-matched load</p>
(b)	<p>Submission of SAT document as per section 4.5.4 of Part A(ii) to ITER-India and subsequent approval by ITER-India for unit 1 and additional tubes</p>	<p>15% of price corresponding to unit 1 and 10% of total price (E1) or total price (E2) as in price bid) corresponding to additional tubes (01 no. each) for HPA2 and HPA3</p>	<p>For b) Acceptance note from Purchaser for SAT document for unit 1 and Performance Bank Guarantee 3% of total price (E1) or total price (E2) of additional tubes (01 no. each) for HPA2 and HPA3</p>
(c)	<p>Participation in successful testing of prototype RF source up to 2.5 MW on matched and mis-matched loads</p>	<p>10% of price corresponding to unit 1</p>	



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			For c) Note from Purchaser for participation in successful testing of unit 1 up to 2.5 MW on matched and mis-matched loads, using Contractor's supplied components and Performance Bank Guarantee 3% of price for unit 1 (D1 or D2)
5	Submission of acceptance note received by ITER-India from IO, France, after successful commissioning of components supplied by Contractor at IO site	5% of price corresponding to unit 1	Final Acceptance note from Purchaser on Successful commissioning of components supplied by Contractor of unit 1 at IO France site and Performance Bank Guarantee for 3% total price (F1 or F2) as in price bid for phase 2
6	Unit 2:		Unit 2
(a)	Against delivery of complete ordered items for unit 2 (all hardware) at IO, France	60% of price corresponding to unit 2	a. Dispatch clearance Note for unit 2 from Purchaser based on approval of FAT report. b. Proof of receipt of items at IO, France c. Invoice in triplicate d. Packing list in triplicate e. Proof of Insurance
(b)	Unpack, Physical inspection, assembly and integration of the supplied components at IO site, France	20% of price corresponding to unit 2	For b) Acceptance note from Purchaser for completion of physical inspection, assembly and integration of unit 2 at IO site
(c)	Submission of acceptance note received by ITER-India from IO, France, after participation in successful testing of unit 2 up to 2.5 MW on matched and mis-matched loads and	10% of price corresponding to unit 2	For c) Final Acceptance note from Purchaser on participation in successful testing of unit 2 up to 2.5 MW on matched and mis-matched loads and successful commissioning of components supplied by



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	successful commissioning of components supplied by Contractor at IO site		Contractor of unit 2 at IO France site and Performance Bank Guarantee for 3% of price for unit 2 ((D1 +F1) or D2 +F2))
7	Unit 3:		Unit 3
(a)	Against delivery of complete ordered items for unit 3(all hardware) at IO, France	60% of price corresponding to unit 3	a. Dispatch clearance Note for unit 3 from Purchaser based on approval of FAT report. b. Proof of receipt of items at IO, France c. Invoice in triplicate d. Packing list in triplicate e. Proof of Insurance
(b)	Unpack, Physical inspection, assembly and integration of the Contractor's supplied components at IO site, France	20% of price corresponding to unit 3	For b) Acceptance note from Purchaser for completion of physical inspection, assembly & integration of components supplied by Contractor of unit 3 at IO site
(c)	Submission of acceptance note received by ITER-India from IO, France, after participation in successful testing of unit 3 up to 2.5 MW on matched and mis-matched loads and successful commissioning of components supplied by Contractor at IO site	10% of price corresponding to unit 3	For c) Final Acceptance note from Purchaser on participation in successful testing of unit 3 up to 2.5 MW on matched and mis-matched loads and successful commissioning of components supplied by Contractor of unit 3 at IO France site and Performance Bank Guarantee for 3% of price for unit 3 ((D1 +F1) or D2 +F2))
8	Unit 4:		Unit 4
(a)	Against delivery of complete ordered items for unit 4(all hardware) at IO, France	60% of price corresponding to unit 4	a. Dispatch clearance Note for unit 4 from Purchaser based on approval of FAT report. b. Proof of receipt of items at IO, France c. Invoice in triplicate



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			<p>d. Packing list in triplicate</p> <p>e. Proof of Insurance</p> <p>For b) Acceptance note from Purchaser for completion of physical inspection, assembly and integration of unit 4 at IO site</p> <p>For c) Final Acceptance note from Purchaser on participation in successful testing of unit 4 up to 2.5 MW on matched and mis-matched loads and successful commissioning of components supplied by Contractor of unit 4 at IO France site and Performance Bank Guarantee for 3% of price for unit 4 ((D1 +F1) or D2 +F2))</p>
(b)	Unpack, Physical inspection, assembly and integration of the supplied components at IO site, France	20% of price corresponding to unit 4	
(c)	Submission of acceptance note received by ITER-India from IO, France, after participation in successful testing of unit 4 up to 2.5 MW on matched and mis-matched loads and successful commissioning of components supplied by Contractor at IO site	10% of price corresponding to unit 4	
9	Unit 5:		Unit 5
(a)	Against delivery of complete ordered items for unit 5(all hardware) at IO, France	60% of price corresponding to unit 5	<p>a. Dispatch clearance Note for unit 5 from Purchaser based on approval of FAT report.</p> <p>b. Proof of receipt of items at IO, France</p> <p>c. Invoice in triplicate</p> <p>d. Packing list in triplicate</p> <p>e. Proof of Insurance</p>
(b)	Unpack, Physical inspection, assembly and integration of the supplied components at IO site, France	20% of price corresponding to unit 5	For b) Acceptance note from Purchaser for completion of physical inspection, assembly and integration of unit 5 at IO site
(c)	Submission of acceptance note received by ITER-India from IO, France, after participation in successful testing of unit 5 up to 2.5 MW on matched and mis-matched loads and	10% of price corresponding to unit 5	For c) Final Acceptance note from Purchaser on participation in successful testing of unit 5 up to 2.5 MW on matched and mis-matched loads and



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	successful commissioning of components supplied by Contractor at IO site		successful commissioning of components supplied by Contractor of unit 5 at IO France site and Performance Bank Guarantee for 3% of price for unit 5 ((D1 +F1) or D2 +F2))
10	Unit 6:		Unit 6
(a)	Against delivery of complete ordered items for unit 6(all hardware) at IO, France	60% of price corresponding to unit 6	a. Dispatch clearance Note for unit 6 from Purchaser based on approval of FAT report b. Prrof of receipt of items at IO, France c. Invoice in triplicate d. Packing list in triplicate e. Proof of Insurance
(b)	Unpack, Physical inspection, assembly and integration of the supplied components at IO site, France	20% of price corresponding to unit 6	For b) Acceptance note from Purchaser for completion of physical inspection, assembly and integration of unit 6 at IO site
(c)	Submission of acceptance note received by ITER-India from IO, France, after participation in successful testing of unit 6 up to 2.5 MW on matched and mis-matched loads and successful commissioning of components supplied by Contractor at IO site	10% of price corresponding to unit 6	For c) Final Acceptance note from Purchaser on participation in successful testing of unit 6 up to 2.5 MW on matched and mis-matched loads and successful commissioning of components supplied by Contractor of unit 6 at IO France site and Performance Bank Guarantee for 3% of price for unit 6 ((D1 +F1) or D2 +F2))
11	Unit 7:		Unit 7
(a)	Against delivery of complete ordered items for unit 7(all hardware)	60% of price corresponding to unit 7	a. Dispatch clearance Note for unit 7 from Purchaser based on approval of FAT report b. Proof of receipt of items at IO, France



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(b)	Unpack, Physical inspection, assembly and integration of the supplied components at IO site, France	20% of price corresponding to unit 7	c. Invoice in triplicate d. Packing list in triplicate e. Proof of Insurance  For b) Acceptance note from Purchaser for completion of physical inspection, assembly and integration of unit 7 at IO site
(c)	Submission of acceptance note received by ITER-India from IO, France, after participation in successful testing of unit 7 up to 2.5 MW on matched and mis-matched loads and successful commissioning of components supplied by Contractor at IO site	10% of price corresponding to unit 7	For c) Final Acceptance note from Purchaser on participation in successful testing of unit 7 up to 2.5 MW on matched and mis-matched loads and successful commissioning of components supplied by Contractor of unit 7 at IO France site and Performance Bank Guarantee for 3% of price for unit 7 ((D1 +F1) or D2 +F2))
12	Unit 8:		Unit 8
(a)	Against delivery of complete ordered items for unit 7(all hardware) at IO, France	60% of price corresponding to unit 8	a. Dispatch clearance Note for unit 8 from Purchaser based on approval of FAT report b. Proof of receipt of items at IO, France c. Invoice in triplicate d. Packing list in triplicate e. Proof of Insurance
(b)	Unpack, Physical inspection, assembly and integration of the supplied components at IO site, France	20% of price corresponding to unit 8	For b) Acceptance note from Purchaser for completion of physical inspection, assembly and integration of unit 8 at IO site
(c)	Submission of acceptance note received by ITER-India from IO, France, after participation in successful testing of unit 8	10% of price corresponding to unit 8	For c) Final Acceptance note from Purchaser on participation in successful testing of unit 8 up to 2.5



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	up to 2.5 MW on matched and mis-matched loads and successful commissioning of components supplied by Contractor at IO site		MW on matched and mis-matched loads and successful commissioning of components supplied by Contractor of unit 8 at IO France site and Performance Bank Guarantee for 3% of price for unit 8 ((D1 +F1) or D2 +F2))
Site Acceptance test at IO site, France (as per section 8.1.4 & 8.2.3 of Part A(ii))			
1	Prototype RF source (Phase 2 on matched load)	100% of total price (C ) corresponding to assembly, integration & commissioning of prototype source at IO site	Acceptance note from Purchaser for successful completion of Site Acceptance Test including participation in successful testing up to 2.5 MW on matched and mis-matched loads of prototype RF source at IO site
2	Unit 1 (on matched and mismatched load)	100% of price corresponding to assembly, integration & commissioning of Unit 1 at IO site (F1 or F2)	Acceptance note from Purchaser for successful completion of Site Acceptance Test including participation in successful testing up to 2.5 MW on matched and mis-matched loads of unit 1 at IO site
3	Unit 2 (on matched and mismatched load)	100% of price corresponding to assembly, integration & commissioning of Unit 2 at IO site (F1 or F2)	Acceptance note from Purchaser for successful completion of Site Acceptance Test including participation in successful testing up to 2.5 MW on matched and mis-matched loads of unit 2 at IO site
4	Unit 3 (on matched and mismatched load)	100% of price corresponding to assembly, integration & commissioning of Unit 3 at IO site (F1 or F2)	Acceptance note from Purchaser for successful completion of Site Acceptance Test including participation in successful testing up to 2.5 MW on matched and mis-matched loads of unit 3 at IO site




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5	Unit 4 (on matched and mismatched load)	100% of price corresponding to assembly, integration & commissioning of Unit 4 at IO site (F1 or F2)	Acceptance note from Purchaser for successful completion of Site Acceptance Test including participation in successful testing up to 2.5 MW on matched and mis-matched loads of unit 4 at IO site
6	Unit 5 (on matched and mismatched load)	100% of price corresponding to assembly, integration & commissioning of Unit 5 at IO site (F1 or F2)	Acceptance note from Purchaser for successful completion of Site Acceptance Test including participation in successful testing up to 2.5 MW on matched and mis-matched loads of unit 5 at IO site
7	Unit 6 (on matched and mismatched load)	100% of price corresponding to assembly, integration & commissioning of Unit 6 at IO site(F1 or F2)	Acceptance note from Purchaser for successful completion of Site Acceptance Test including participation in successful testing up to 2.5 MW on matched and mis-matched loads of unit 6 at IO site
8	Unit 7 (on matched and mismatched load)	100% of price corresponding to assembly, integration & commissioning of Unit 7 at IO site (F1 or F2)	Acceptance note from Purchaser for successful completion of Site Acceptance Test participation in successful testing up to 2.5 MW on matched and mis-matched loads of unit 7 at IO site
9	Unit 8 (on matched and mismatched load)	100% of price corresponding to assembly, integration & commissioning of Unit 8 at IO site (F1 or F2)	Acceptance note from Purchaser for successful completion of Site Acceptance Test participation in successful testing up to 2.5 MW on matched and mis-matched loads of unit 8 at IO site

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\*100% delivery charges (including insurance, incidental charges (if applicable)) as per optional prices of delivery INCOTERMS 2020 (if selected by the Purchaser) shall be paid against successful completion of respective shipment of prototype unit of Phase-2 & Unit-1 of Phase-3 and submission of invoice along with valid documentary proof of shipment by the Contractor.

Notes:

1. Price corresponding to unit (e.g unit 1) in the above table will be derived from total price (D1) or total price (D2)
2. Price corresponding to assembly, integration & commissioning of Unit (e.g unit 1) at IO site in the above table is part of total price (F1) or total price (F2) on pro rata basis

#### 1.6.4 Insurance

1.6.4.1 The Contractor must take an appropriate insurance for all the Items of Unit-2 to Unit-8 delivered up to IO, France. The Contractor shall also take appropriate insurance for all other items of Phase-2 (Prototype and other components) and Phase-3 (Unit -1 and additional tubes) delivered as per Incoterms 2020 agreed in the Contract against risk of loss or damage during the transport. Proof of insurance to be submitted to ITER-India along with shipping documents.

#### 1.6.5 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. 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, 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.

### 1.7 Quality Assurance, Inspections, Site activities and Acceptance Tests

Refer Part-A (ii) for more details regarding quality assurance and acceptance test requirements.

#### 1.7.1 Dispatch Clearance

##### Dispatch Clearance Note/ Contractor Release Note

1.7.1.1 Contractor shall obtain approval on Dispatch Clearance Note (DCN)/ Contractor Release Note (CRN) from the commercial coordinator of the Purchaser on satisfactory pre-dispatch inspection of Items/Systems at Contractor's site before affecting the dispatch.



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## 1.8 Packing, Labelling and Dispatch

### 1.8.1 Packing Instructions

- 1.8.1.1 The Contractor shall pack and crate all items/deliverables for air shipment and road transportation in a manner suitable for export to a tropical humid climate, in accordance with internationally accepted export practices and in such a manner so as to protect it from damage and deterioration during transportation. The Contractor shall be held responsible for all damages due to improper or poor packing.
- 1.8.1.2 The Contractor shall provide packing with suitable shock/vibration absorption material to avoid damage during transportation. The packing arrangement shall include (but not limited to) a necessary list of documentation and appropriate packing, markings, labelling, handling provisions for the items. Further, special registers (viz. shock, tilt etc.) that are needed to verify the safe transport of the items in particular for the fragile items shall also be incorporated.
- 1.8.1.3 Packing of the items to be optimized for shipment as per regular air transport norms. The contractor shall submit a detailed transportation scheme including packing details to the purchaser in advance for approval.
- 1.8.1.4 If packing materials are of any kind of plant origin, Phytosanitary Certificate (ISPM 15) or its equivalent issued by an authorized Officer at the Country of Origin of the consignment in the format prescribed under the International Plant Protection Convention of the food and agricultural organization shall be sent along with the shipping documents. This is a mandatory requirement under the law. Deviation from this may result in holding of the consignment at customs causing delay which will be the sole responsibility of Foreign Contractor. In case, the dangerous cargo certificate is required, same needs to be submitted by the Foreign Contractor
- 1.8.1.5 The Contractor shall also ensure that one copy of packing list is enclosed in each box/crate in order to facilitate prompt clearance of deliverables upon arrival.
- 1.8.1.6 The Contractor shall comply with packing requirements as specified in **Section 7 of Part-A(ii)**

### 1.8.2 Marking & Labelling

- 1.8.2.1 All packages shall be clearly, legibly and durably marked for correct identification with uniform block letters (preferably with waterproof paint) on at least three sides with:
- Delivery address (as communicated)
  - Contract Number and date
  - Dimensions
  - Net and gross weights
  - Sign showing 'SIDE UP'
  - Sign showing 'FRAGILE' marks in case of delicate Products
  - Sign showing slinging and sling position as well as tilt and shock indicators
  - Any handling and unpacking instructions, if considered necessary.
  - Identification marks relating them to the appropriate shipping documents
  - In case of spare parts, each spare part shall be clearly marked and labeled on the outside of its packing with its description and catalogue/part number.
- 1.8.2.2 The Contractor shall comply with marking and labelling requirements as specified in **Section 7 of Part-A(ii)**



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### 1.8.3 Ultimate Consignee & Delivery Address:

The ultimate consignee will be the Purchaser.

#### 1.8.3.1 Bill To:

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

#### 1.8.3.2 Delivery Address (On-Site):

For Phase 2 and Unit 1 of Phase 3

ITER-India Lab Building, Institute for Plasma Research  
Near Indira Bridge, Bhat Village,  
Gandhinagar 382428  
Gujarat, India

For Units 2 to 8 of Phase 3

ITER Organization  
**Route de Vinon-sur-Verdon**  
**CS 90 046, 13067 St Paul Lez Durance,**  
**Cedex, France**

### 1.8.4 Mode of Despatch


By Air for Phase-2 and Unit -1 of Phase-3. By road for Unit-2 to Unit-8 of Phase-3.

### 1.8.5 CONTRACTOR'S RESPONSIBILITY REGARDING DISPATCH

In order to facilitate prompt clearance of Systems/Components on arrival in India through Customs, the Contractor shall forward in advance to the Purchaser, by rapid Courier Service, one copy of each of documents as detailed hereunder:

- a) Non-Negotiable Airway Bill(s)
- b) Invoice
- c) Packing list indicating items dispatched
- d) Number of packages with their dimensions and weights
- e) Flight/Vessel details, expected date of arrival at India, insurance policy (if applicable).
- f) Inspection Report (if applicable)
- g) Shipment Clearance Letter
- h) Warranty Certificate
- i) Proof of Insurance/ Insurance Policy (if applicable)
- j) Phytosanitary Certificate

The Contractor shall mention the country of origin of the Systems/Components in the invoice.

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The Contractor shall also intimate the Purchaser by email (scanned copy) the shipping details such as Air Way Bill number, flight number, date of flight, date of arrival at port, number and weight of packages, value of consignments, Contract number and date so that delivery documents can be made preparatory to customs clearance, by the Purchaser.

#### 1.8.6 DEMURRAGE/ WHARFAGE

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

#### 1.8.7 Transfer of Ownership and Title

- Transfer of ownership of the Items shall occur upon delivery of each shipment/shipments as per Incoterms 2020 basis
- Transfer of Ownership of the Consignments as per Incoterms 2020 to the Purchaser shall be on notional basis only i.e. to facilitate custom formalities during transportation to India/ITER Organization, France
- Transfer of Ownership from Contractor to ITER-India as per Incoterms 2020 shall not in any way relieve the Contractor of its responsibilities and liabilities under the Contract till successful completion of all contractual obligations.
- In addition to other remedies under the law and the Contract, the Purchaser shall be the owner of each consignment in respect of which 90% (ninety percent) percent of the Contract price has been paid, to secure refund of such amount in the event the same becomes refundable under the terms of the Contract or under the law and to secure payment of any dues under other Contract or under the law, The responsibility for safe and proper storage, replacement of defective or lost equipment and erection of the Systems/components/ equipment/instruments prior to its final acceptance by the Purchaser shall always remain with the Contractor.

#### 1.8.8 Transfer of Risks

From commencement of the work under the Contract, the Contractor shall be responsible at his own risk for the care and custody including theft, damage due to any reasons, of the Items or any part thereof until their respective delivery as per Incoterms 2020. However, the Contractor shall be responsible and liable for the Items delivered till successful completion of Site Acceptance test.

#### 1.8.9 Site activities at IO

PURCHASER is sole responsible for taking decision on the dates for assembly, integration & commissioning work at ITER-India site as well as IO site related to this contract & the same will be communicated to the contractor before 45 days from the date of commencement of the work.

**Mobilization (initiation of assembly, integration & commissioning) & de-mobilization (i.e. assembly, integration & commissioning work is on hold in between for more than 3 working days) at IO site due to unavoidable situation.**

- a. Assembly, integration & commissioning work at IO site of each RF source will be performed continuously by CONTRACTOR for their supplied components i.e. unpacking of the boxes, assembly of the components, assembly, integration and commissioning as per condition for acceptance.
- b. In case the PURCHASER requests for **de-mobilization** of assembly, integration & commissioning work at IO site during execution of the same due to unavoidable conditions, PURCHASER shall inform the same to the CONTRACTOR at least 5 working days prior to start of **de-mobilization** of such work. The CONTRACTOR shall stop such work from start of **de-mobilization** date for the mutually agreed period and no charges will be applicable for the **de-mobilization** period.
- c. PURCHASER shall inform to the CONTRACTOR at least 5 working days before **mobilization** of assembly, integration & commissioning work at the end of **de-mobilization** period.
- d. If the number of **de-mobilization** occasions exceed more than ten (10) times, then To & Fro travel cost for the CONTRACTOR's personals in between IO site and CONTRACTOR's site will be reimbursed at actuals against valid documentary proof by PURCHASER for anyone of below modes:
  - I. The costs of flights in economy class, with local public transportation including taxi to & fro airport
  - II. Rail fares in first class, with local public transportation including taxi to & fro railway station
  - III. Taxi fare (4 persons/Taxi).

Note: Other charges/expenses of any kind will not be paid/reimbursed except as mentioned above (I,II & III).

## 1.9 Delay, Extension & Postponement

### 1.9.1 Extension of Time (due to Contractor)

- 1.9.1.1 In the event, the contractual delivery dates/completion time cannot be adhered to for any cause(s) attributable to the Contractor, an application for extension of time with sufficient reasons shall be made by the Contractor to the Purchaser. If failure, on the part of the Contractor 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. However, this extension shall be without prejudice to the Purchaser's right to recover liquidated damages (LD) as stipulated in clause [1.9.3](#). The Contractor shall not become entitled to receive additional payment towards escalation or increased statutory levies (if any) beyond the contractual

delivery date / completion time.

- 1.9.1.2 If the Contractor 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 to claim payment on account of escalation or extra payment on account of increase of statutory levies that may be payable at higher rate after the expiry of Contract delivery dates/Contract completion date (clause [1.9.2](#)).

#### 1.9.2 Delay in delivery dates/completion time

- 1.9.2.1 Should the Contractor fails to comply with contractual delivery dates/completion time and the reasons for such failures are attributed to the Contractor, it shall be construed as a breach of the Contract and the Purchaser shall be entitled at his option to the following:-
- 1.9.2.1.1 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 [1.9.3](#).
- 1.9.2.1.2 To terminate the total Contract, as per clause Termination of Contract for default [1.17.1](#) in case the liquidated damages (as per clause [1.9.3](#)) 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.
- 1.9.2.2 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. Such hindrance in the Work or Supply will be taken into consideration for accessing the additional time extension. Format of Hindrance Register will be provided in the Contract.

#### 1.9.3 Liquidated Damages (LD)

- 1.9.3.1 If the Contractor fails to complete the final acceptance of phase-2 (prototype) at ITER-India site within the time (T14<sub>p2</sub>, as in Annexure-E of Part-A(ii)) specified in the original Contract and the delay or part thereof is attributable to the Contractor, the Purchaser shall recover from the Contractor as liquidated damages sum of half percent (0.5 percent) of the total price (A) of phase-2 (prototype) 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 total price (A) of phase-2 (prototype). Applicable taxes, if any, shall be charged, at the rate prevailing at that time, on LD amount.
- 1.9.3.2 If the Contractor fails to complete Assembly, Integration and Testing of components supplied by the Contractor for two RF chains of phase-2 (prototype) at IO site within the time (T19<sub>p2</sub>, as in Annexure-E of Part-A(ii)) specified in the original Contract and the delay or part thereof is attributable to the Contractor, the Purchaser shall recover from the Contractor as liquidated damages sum of half percent (0.5 percent) of the total price (C) of phase-2 (prototype) 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 total price (C) of phase-2 (prototype). Applicable taxes, if any, shall be charged, at the rate prevailing

at that time, on LD amount

- 1.9.3.3 If the Contractor fails to complete the delivery of **Components under table 6 of Part-A(ii)** of phase-2 (prototype) within the time (T1<sub>P2-HPA2</sub> as in Annexure-E of Part-A(ii)) specified in the original Contract and the delay or part thereof is attributable to the Contractor, the Purchaser shall recover from the Contractor as liquidated damages sum of half percent (0.5 percent) of the total price (B) of **Components under table 6 of Part-A(ii)** of phase-2 (prototype) 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 total price (B) of **Components under table 6 of Part-A(ii)** of phase-2 (prototype). Applicable taxes, if any, shall be charged, at the rate prevailing at that time, on LD amount.
- 1.9.3.4 If the Contractor fails to complete the successful site acceptance test of unit-1 of phase-3 at ITER-India site within the time (T11<sub>P3</sub> as in Annexure-E of Part-A(ii)) specified in the original Contract and the delay or part thereof is attributable to the Contractor, the Purchaser shall recover from the Contractor as liquidated damages sum of half percent (0.5 percent) of the price of unit-1 (derived from total price (D1) or total price (D2)) of phase-3 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 price of unit-1 (derived from total price (D1) or total price (D2)) of phase-3. Applicable taxes, if any, shall be charged, at the rate prevailing at that time, on LD amount.
- 1.9.3.5 If the Contractor fails to complete the successful delivery of each unit (units 2 to 8) of phase-3 to IO site within the time (T13<sub>P3</sub> to T19<sub>P3</sub> as in Annexure-E of Part-A(ii)) specified in the original Contract and the delay or part thereof is attributable to the Contractor, the Purchaser shall recover from the Contractor as liquidated damages sum of half percent (0.5 percent) of the price of the applicable unit (derived from total price (D1) or total price (D2)) of phase-3 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 price of the applicable unit (derived from total price (D1) or total price (D2)) of phase-3. Applicable taxes, if any, shall be charged, at the rate prevailing at that time, on LD amount.
- 1.9.3.6 If the Contractor fails to complete the final acceptance of each unit of phase-3 at IO site within the time (T20<sub>P3</sub> to T27<sub>P3</sub> as in Annexure-E of Part-A(ii)) specified in the original Contract and the delay or part thereof is attributable to the Contractor, the Purchaser shall recover from the Contractor as liquidated damages sum of half percent (0.5 percent) of the total price (F1) or total price (F2) on pro-rate basis of each applicable unit of phase-3 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 total price (F1) or total price (F2) on pro-rate basis of each applicable unit of phase-3. Applicable taxes, if any, shall be charged, at the

rate prevailing at that time, on LD amount.

1.9.3.7 If the Contractor fails to complete the successful FAT of additional tubes for HPA-2 and HPA-3 within the time (T<sub>1P3</sub> as in Annexure-E of Part-A(ii)) specified in the original Contract and the delay or part thereof is attributable to the Contractor, the Purchaser shall recover from the Contractor as liquidated damages sum of half percent (0.5 percent) of the total price (E1) or total price (E2) of additional tubes for HPA-2 and HPA-3 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 total price (E1) or total price (E2) of additional tubes for HPA-2 and HPA-3. Applicable taxes, if any, shall be charged, at the rate prevailing at that time, on LD amount.

1.9.3.8 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.

#### 1.9.4 Force Majeure

1.9.4.1 Force Majeure is herein defined as any cause which is beyond the control of the CONTRACTOR or 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-

- (i) War, hostilities or warlike operations (whether a state of war be declared or not), invasion, act of foreign enemy and civil war,
- (ii) Rebellion, revolution, insurrection, mutiny, usurpation of civil or military government, civil commotion,
- (iii) Embargo, import restriction, confiscation, nationalization, mobilization, commandeering or requisition by or under the order of Central, State Government or Local Authority or any other act or failure to act, of any local, state or national/central government,
- (iv) Riot, state/region/country wide transporters strike,
- (v) Earthquake, landslide, volcanic activity, fire, flood or inundation, tidal wave, typhoon or cyclone, hurricane, storm, lightning and pressure waves or other natural disaster,
- (vi) Nuclear event causing nuclear radiation, radioactive contamination.

1.9.4.2 Notice of Force Majeure: If either party is prevented, hindered or delayed from or in performing any of its obligations under the Contract by an event of Force Majeure, then it shall notify the other in writing of the occurrence of such event and the circumstances thereof within fourteen (14) days after the occurrence of such event. A Party shall give notice to the other Party when it ceases to be affected by the Force Majeure.

1.9.4.3 To minimize the effect the party or parties affected by the event of Force Majeure shall use reasonable efforts to mitigate the effect thereof upon its or their performance of the Contract and to fulfill its or their obligations under the Contract.

1.9.4.4 Consequences of Force Majeure: The party who has given notice of Force

Majeure shall be excused from the performance or punctual performance of its obligations under the Contract for so long as the relevant event of Force Majeure continues and to the extent that such party's performance is prevented, hindered or delayed. Extension of time shall be granted accordingly by the other party and hence the Contract shall be amended, even though such Force Majeure event may occur after CONTRACTOR's performance of his obligations has been delayed for other cause.

1.9.4.5 Delay or non-performance by either party hereto caused by the occurrence of any event of Force Majeure shall not

- (i) constitute a default or breach of the Contract,
- (ii) give rise to any claim for damages or additional cost or expense occasioned thereby

## 1.10 Acceptance

### 1.10.1 Factory Acceptance:

All Items will be "Factory Accepted" subject to fulfilment of requirements specified in **Section-8 of Part-A(ii)**.

### 1.10.2 Final Acceptance/ Site Acceptance:

Final Acceptance/ Site Acceptance will be carried out "ON-SITE" as specified in **Annexure-K of Part-A(ii)**.

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

### 1.11.1 Rejection against Damages during Transit:

If the items/Systems/components or any portion thereof is damaged during transit due to improper packing or due to the reason(s) attributable to the Contractor, the Purchaser shall give notice to the Contractor setting forth particulars of such items/Systems/Components damaged during transit. The replacement of such Systems/Components/Items shall be effected by the Contractor within a reasonable time as agreed upon by the Purchaser to avoid unnecessary delay in the intended usage of the Systems/Items. The complete cost of replaced items and the cost of replacement shall be borne by the Contractor and replacement items needs to be delivered on DAP ITER-India/ ITER site as per Incoterms 2020 basis by the Contractor on their cost and risk.

### 1.11.2 Accident Liabilities during onsite work

- 1.11.2.1 Contractor shall insure its own personnel deployed at Purchaser's site against all risk, such as injuries, loss of life etc. The Contractor will be fully responsible and liable for payment of compensation to its own personnel.
- 1.11.2.2 The Contractor shall take all possible precautions and avoid damages to equipment/items during the execution of site work (assembly, integration and site acceptance test) at purchaser's site. In the event of loss or damage to Purchaser's property and/or injury or loss of life to Purchaser's personnel during the course of onsite work as a result of fault(s) in the items supplied under the contract or due to the reasons attributable to the Contractor, in such cases, the Contractor will be fully responsible and liable for such damages/losses and payment

of appropriate compensation. The contractor agrees to relieve the Purchaser from all the liabilities under this clause.

#### 1.11.3 Limitation of liability

Except in cases of criminal negligence or willful misconduct, the aggregate liability of the contractor 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.

#### 1.11.4 Indemnity

The Contractor shall warrant and be deemed to have warranted that all items/systems/components, 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/systems/components of infringement of any right protected by Patent, Registration of design or Trade Mark and shall 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. The Contractor shall indemnify the Purchaser against the risk of accidents or damage on account of system/components supplied by the Contractor.

### 1.12 Warranty, Defect Liability, Latent defect

#### 1.12.1 Warranty

1.12.1.1 The Contractor shall warrant that the items supplied under this Contract comply fully with the specifications laid down, for material, workmanship and performance. The items shall be brand new, unused and free from any defects. The Contractor must guarantee for specified performance of the components supplied by them against the specifications as per Condition for Acceptance (Section 8 of Part ii of this Contract). All the tests will be performed with the specified type of the tubes as per table 4 of Part- A(ii).

1.12.1.2 The Contractor shall provide a warranty covering repair or replacement of the Items supplied by the Contractor (except tubes) up to 2 years after the final acceptance of each unit supplied under phase -2 and phase-3. For all tubes warranty covering repair or replacement, will be up to 2 years from the date of arrival at ITER-India site OR 500 filament hours Free Of Cost (FOC) replacement/5000 filament hours pro-rata credit, whichever will be earlier. If any defects are discovered therein or any defects therein are found to have developed under proper use arising from faulty materials, design or workmanship, Contractor shall remedy such defects at ITER-India site or IO site (as applicable), within a mutually agreed time at his own cost provided he is called upon to do so within the warranty period.

1.12.1.3 The Purchaser may accept the supplies, if it is complete in all respects or alternatively accept the same on such terms as may be considered appropriate. If the supplies, after the acceptance thereof is discovered to have defects, latent or otherwise, notwithstanding that such defects could have been discovered at the time of inspection, or any defects therein are found to have developed during the

warranty/defect liability period, the Purchaser shall be entitled to give a notice to the Contractor, thereafter, setting forth details of such defects or failure and Contractor 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 and within reasonable time limit mutually agreed between both the Parties.

1.12.1.4 A reasonable time limit for replacement of defective item(s) under warranty shall be guaranteed by the Contractor and agreed by the Purchaser.

1.12.1.5 The replacement of items under warranty by the Contractor shall be on **DAP ITER-India/ITER site (as applicable)** basis as per Incoterms 2020. The defective items under warranty has to be collected from the site (ITER-India/ ITER site) by the Contractor at his cost and risk for required repair/replacement.

1.12.1.6 If any supplied item is replaced during the warranty period, the Contractor shall warrant all such items for a further period of at least 12 months from the date of replacement, or remaining original warranty period, whichever is longer.

#### 1.12.2 Contractor's Failure to Replacement of defective Goods

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

1.12.2.1.1 Replace or rectify such defective items and recover the actual costs so involved from the Contractor

1.12.2.1.2 Acquire the defective items at a reduced price considered equitable under the circumstances. The provision of this article shall not prejudice the Purchaser's rights under Clauses [1.12](#) and [1.11](#).

If the Contractor fails to make the required replacement within mutually agreed time, then in pursuant to clause [1.12.2.1.1](#), such 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 to the Purchaser or in case, the same is not agreed by the Contractor, then, the Purchaser shall be entitled to encash the PBG. In such case of repair or replacement, 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 replacement.

#### 1.13 After Sales Services & Availability of Spares

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

1.13.1.1 In case the purchaser desires to avail the contractor's services for repair or maintenance of the supplied items after expiry of warranty period mentioned in the contract, the Contractor shall provide the same on mutual agreement.

The Contractor shall also undertake the supply of additional number (Nos.) of items covered by the Order as considered necessary by the Purchaser at a later date. The actual price to be paid shall be mutually agreed to after negotiations.

##### 1.13.2 Availability of Spares

1.13.2.1 The contractor guarantees to the purchaser, that all the spares for the items supplied under the

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

## 1.14 CHANGES

- 1.14.1 The Purchaser reserves the right to propose to the contractor, any necessary changes/modifications, additions/deletions to the contract specifications and requirements, during the contract period. The contractor shall accept such changes as a part of the contract, after a feasibility assessment and following the procedure specified in the clause [\(1.14.3\)](#).
- 1.14.2 The contractor during the execution of the contract may also propose to the purchaser any change(s) that the contractor considers necessary or desirable. The purchaser may at its discretion approve or reject any such change(s) proposed by the Contractor following the procedure specified in the clause [\(1.14.3\)](#).
- 1.14.3 In either case ( [1.14.1](#) and [1.14.2](#)), the Contractor shall submit within a reasonable time to be agreed upon by both parties, a change proposal as to the effect, if any, of such modifications on the price, performance and the delivery schedule taking into account the unit rates of the similar items in the contract. If both parties agree on such change proposal, the Purchaser will decide whether such modifications is to be introduced or not and will advise the Contractor in writing accordingly. When a modification or other change is so authorized by the Purchaser, the Contractor shall proceed with the action.

## 1.15 Suspension of work

- 1.15.1 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 not more than 6 months, for any of the following reasons:
- (a) On account of any default of the Contractor with or without impairing safety of the works, or
  - (b) For proper supply of the items or part thereof based on purchaser's convenience for reasons other than the default of the Contractor , or
  - (c) For safety of the supplies or part thereof, for reasons other than the default of the Contractor
- 1.15.2 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.

1.15.3 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 [1.15.1\(a\)](#)

1.15.4 The Contractor may be entitled to an extension of time as mutually agreed in consequence of suspension as per sub-clause [1.15.1 \(b and c\)](#).


#### 1.16 Foreclosure of Contract

1.16.1 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.

1.16.2 Upon receipt of the notice of foreclosure under sub-clause [1.16.1](#), the Contractor shall either immediately or upon the date specified in the notice of foreclosure

- (a) 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.
- (b) Terminate all subcontracts, except those to be assigned to the Purchaser pursuant to sub-clause (d) (ii) below
- (c) Stop all further purchasing and/ or subcontracting activities related to work foreclosed.
- (d) In addition, the Contractor, subject to the payment specified in sub-clause [1.16.3](#) shall
  - (i) Supply to the Purchaser the parts of the items procured by the Contractor up to the date of foreclosure on mutually agreed rate.
  - (ii) to extent legally possible, assign to the Purchaser all right, title and benefit of the Contractor to the Items as of the date of foreclosure, and, as may be required by the Purchaser.
  - (iii) Supply to the Purchaser all non-proprietary drawings, specifications and other documents prepared by the Contractor or its subcontractor as on the date of foreclosure in connection with the supplies.

1.16.3 In the event of foreclosure of the Contract under sub-clause [1.16.1](#), 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 on mutually agreed basis, in case the unit rates are not available in the Contract.

	<b>PART-A (iii): Terms and Conditions of the Contract (TCC) for <u>High Power RF Amplifier (Driver and Final stage amplifier) for ICRF Sources</u></b>	Tender No.
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## 1.17 Cancellation/Termination of Contract

### 1.17.1 Termination of Contract for default

- 1.17.1.1 The Purchaser may, without prejudice to any other remedy for breach of Contract, by written notice of default sent to the Contractor, terminate the Contract in whole or in part in circumstance detailed hereunder:
- If the Contractor fails to supply/provide any or all of the deliverable items, within the time period(s) specified in the Contract or any extension thereof granted by the Purchaser or within the period (10 weeks) till which the maximum LD amount is reached.
  - If the Contractor fails to perform any other obligation(s) under the Contract within the period specified in the Contract or any extension thereof granted by the Purchaser
- 1.17.1.2 In the event the Purchaser terminates the Contract in whole or in part, the Purchaser may take recourse to any one or more of the following actions. However, the Contractor shall continue to perform the Contract to the extent not terminated
- Forfeiture of Security Deposit
  - Recovery of Liquidated Damages (LD) as per the Contract
  - To purchase from elsewhere, after (thirty) 30 days' notice to the Contractor, on the risk and cost of the Contractor, the supplies, materials and equipment, not delivered or other items of similar description when such deliverable exactly complying with the particulars are not in the opinion of the Purchaser readily procurable, such opinion being final, without cancelling the Contract in respect of the consignments not yet due for supply.
- 1.17.1.3 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.
- 1.17.1.4 In the event of action being taken under sub-clause [1.17.1.1](#) above, the Contractor shall be liable for any loss which the Purchaser may sustain on that account. Contractor shall not however be entitled to gain on such purchase made on account of his default. The manner and method of such alternate purchase shall be at the entire discretion of the Purchaser, whose decision shall be final. This right shall be without prejudice to the right of the Purchaser, to recover the damages for breach of Contract by the Contractor as provided in the Contract.
- 1.17.1.5 If the Contract is terminated as provided in clause [1.17.1.2](#), the Purchaser in addition to any other rights provided in the clause, may require the Contractor to transfer title and deliver to the Purchaser any completed items that are found to be useful and acceptable to the Purchaser. The Purchaser shall pay to the Contractor, the Contract price of such completed items that are delivered to and accepted by the Purchaser.
- 1.17.1.6 The termination will not relieve the Contractor from submitting the Performance

Bank Guarantee for the portion not terminated.

#### 1.17.2 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.

#### 1.17.3 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, ITER-India, 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.

### 1.18 Settlement of disputes and Arbitration


#### 1.18.1 Settlement

- 1.18.1.1 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 [1.18.2](#)
- 1.18.1.2 Notwithstanding any reference to the arbitration as herein before provided (a) the Parties shall continue to perform their respective obligations under the Contract with due diligence, unless they otherwise agree, (b) the Purchaser shall continue to pay any undisputed amount to the Contractor.

#### 1.18.2 Arbitration

In the event of any dispute or difference arising under the Contract, the matter shall be referred to Arbitration in accordance to the rules of International Chamber of Commerce. The Arbitration shall be conducted, in English, by two Arbitrators, one each nominated by the Purchaser and Contractor. 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 and whose decision shall be final and binding on both the parties. The Arbitrator shall have its seat in Ahmedabad or such other place in India as may be mutually agreed between the Parties.

Either party may also, without waiving any remedy under this agreement, seek from any court having jurisdiction any interim or provisional relief that is necessary to protect the rights or property of that Party, pending the arbitrator's determination of the merits of the controversy.

	<b>PART-A (iii): Terms and Conditions of the Contract (TCC) for <u>High Power RF Amplifier (Driver and Final stage amplifier) for ICRF Sources</u></b>	Tender No.
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## 1.19 The Contract

### 1.19.1 Signing of Contract:

1.19.1.1 The Contract shall be signed by authorized representatives of Contractor and Purchaser (on non-judicial stamp paper of appropriate value, as applicable)

### 1.19.2 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 and will be an integral part of the Contract.

### 1.19.3 Coming into Force (Effect of Contract)

The Contract shall come into force from the date of signing of Contract.

### 1.19.4 INTELLECTUAL PROPERTY RIGHTS (IPR as in Annexure D of part A (ii))

Intellectual Property Rights (IPR) provisions applicable to this Contract are given in **Annexure– D of Part A(ii)**. (Background information and its amendment as given by the Contractor will be applicable for this Contract).

### 1.19.5 OWNERSHIP AND PROPERTY

Refer applicable provisions as per IPR – **Annexure D of Part-A(ii)**

## 2 Annexures

The Attachments and Annexes referred to in this section shall form an integral part of this collaborative Contract.

1. Annexure-1: Bank Guarantee (Security Deposit)
2. Annexure-2: Advance Payment Bank Guarantee
3. Annexure-3: Performance Bank Guarantee (PBG)



**PART-A (iii): Terms and Conditions of the Contract (TCC) for High Power RF Amplifier (Driver and Final stage amplifier) for ICRF Sources**

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

**(On non-judicial stamp paper (of appropriate value)-For Indian Contractor  
(On bank's letter head) – For Foreign Contractor**

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

THIS DEED OF GUARANTEE MADE AT \_\_\_\_\_ this  
\_\_\_\_\_ day \_\_\_\_\_ of  
\_\_\_\_\_ 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”) having its registered office at \_\_\_\_\_ have entered into a  
Contract having Contract value of INR. \_\_\_\_\_ (In words  
\_\_\_\_\_ ) with the Purchaser being Contract No.  
\_\_\_\_\_ dated \_\_\_\_\_ for \_\_\_\_\_ in accordance  
with the terms, specifications and conditions contained therein.

AND WHEREAS under the terms of the aforesaid Contract, the Contractor is to furnish to the  
Purchaser a Bank guarantee for an amount of INR. \_\_\_\_\_ (Rupees  
\_\_\_\_\_ ) being 3% of the total value of the Contract by way of security for  
fulfilment of the Contractual obligations on the part of the Contractor there under.

AND WHEREAS the Contractor has requested the Bank to guarantee the due payment of the aforesaid  
amount by the Contractor to the Purchaser in case the Contractor 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. \_\_\_\_\_ (Rupees \_\_\_\_\_ ) to the Purchaser on behalf of the  
Contractor.
2. This guarantee is valid and binding upon the Bank till delivery of last consignment under this  
Contract and shall not be terminable or affected by notice of any change in this constitution of the  
Bank or of the firm of Contractor or on account of any reason whatsoever.



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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.
4. The liability of the Bank under this deed is restricted to the sum of INR. \_\_\_\_\_ (Rupees \_\_\_\_\_) and same shall remain in force till successful completion of Final On-Site Acceptance under this Contract. 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 on whose behalf this guarantee is issued.
5. Unless proceeding for enforcing this guarantee is commenced against the Bank within two months 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 against the Contractor shall in no way relieve the Bank of its liability under this deed.
7. OUR GUARANTEE shall remain in force until \_\_\_\_\_ (two months beyond the successful completion of Final On-Site Acceptance under this Contract) 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 \_\_\_\_\_



**PART-A (iii): Terms and Conditions of the Contract (TCC) for High Power RF Amplifier (Driver and Final stage amplifier) for ICRF Sources**

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**Annexure – 2 - Bank Guarantee (Advance Payment)**

**(On non-judicial stamp paper (of appropriate value)-For Indian Contractor  
(On bank's letter head) – For Foreign Contractor**

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

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



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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 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 Contract delivery date) and unless a claim under the guarantee is lodged on or before the above date, all rights of ITER-India 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 \_\_\_\_\_

Name: \_\_\_\_\_ Signature \_\_\_\_\_



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**Anneuxre-3 - Performance Bank Guarantee (PBG)**

**(On non-judicial stamp paper (of appropriate value)-For Indian Contractor  
(On bank's letter head) – For Foreign Contractor**

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 balance \_\_\_\_\_ percent payment 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 delivery or 24 months from the date of Final Acceptance of the said equipment whichever is earlier (Specify as per warranty clause in the Order).
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 or refusal by the Contractor to perform site work activities within the period defined in the 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 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



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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 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 \_\_\_\_\_