

ANNEXURE A
General Terms and
Conditions (GTC)
To
Request For Quotation
(R.F.Q.)

Ref: BR01/RRD/6300030246

PROJECT: BMRCL PROJECT-42 CARS

**SCOPE : Manufacture and supply of
4 types of Special Hardware**

TWO BID SYSTEM:

Technical and Commercial Bid Separately.

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1. GLOSSARY, DEFINITIONS & INTERPRETATIONS

Unless otherwise stipulated herein, the following terms shall have the meanings hereby assigned to them:

- a) "Tender" means and includes Offer / Quotation
- b) "Acceptance of Tender" means the letter of memorandum communicating to the supplier, the acceptance of the Tender / offer / quote and includes an advance acceptance of tender.
- c) Equipment/Materials means goods as described in Procurement Technical Specification (P.T.S.) , which is part of tender
- d) P.T.S. means Procurement technical specification provided by the purchaser.
- e) Specification means technical specifications of the Equipment / Material as set forth in Procurement technical specification (PTS) / technical drawings, which is part of tender.
- f) BEML Limited / Company means "BHARAT EARTH MOVERS LIMITED", a company registered under the Companies Act, 1956 ("The Purchaser" / "The employer ").
- g) "Supplier" means and include a Contractor and also means a person, firm or company with whom the order for supply is placed and shall be deemed to include the Supplier's Successors, representatives, heirs, executors and administrators as the case may be unless excluded by the terms of purchase order.
- h) Representative (s) means the person (s) authorized by Supplier to perform the relevant supervision, inspection at the site if required.
- i) "Stores" means the goods and services specified in the Purchase Order.
- j) Words in singular include the plural and vice versa.
- k) Words importing the masculine gender shall be taken to include the feminine gender and words importing persons shall include any firm, company or association or body of individuals whether incorporated or not.
- l) The wording of these conditions shall not affect the interpretation or construction thereof.
- m) F.O.B. / F.D.D. is to be interpreted in accordance with the provisions of INCOTERMS 2010, unless otherwise specified in this Tender Document / Purchase order.
- n) Delivery means the date of arrival of the equipment / materials dispatched by Supplier in accordance with the terms & condition and Procurement technical specification (PTS) attached herewith.
- o) Bank means any nationalized bank in Republic of India/Commercial Bank of supplier's country wherever applicable.
- p) **Purchase Order:**
"Purchase Order" means and includes the invitation to tender, instructions to Tenders, tender, minutes of discussions / negotiations acceptance of tender, contract between purchaser & supplier to be executed in the most approved, substantial and drawings in the quantities set forth in the purchase order on the date or dates specified therein, general terms and conditions of Purchase Order, Special conditions of purchase order, particulars, descriptions, specifications and other conditions specified in the acceptance of tender and includes a repeat order which has been accepted or acted upon by the / for the supplier for supply of stores and includes an order for performance of service and a formal agreement, if executed. Unless otherwise

specified, the equipment / material shall be entirely brand new and of the best quality with workmanship to the satisfaction of the purchaser.

- q) **End-Customer / End-user** means M/s. BMRCL or their representative(s).
- r) **Offer:** An offer is the response from a source to a tender Enquiry. An offer is considered to be valid if it is not a late / regret / unsolicited offer. It refers to the submission of quotation by a firm in the form of price for supplying the item to the required specification and quantity or for a service to be rendered in response to an enquiry along with commercial terms.
- s) **Late Offer:** Any offer / quotation received after closing hours of due date for opening of tender will not to be considered for evaluation purposes.

2. SCOPE OF SUPPLY

The offer / supply should strictly confirm to all the technical /physical parameters indicated in the Procurement Technical Specification (P.T.S.) / Drawings enclosed. The supplier shall supply and deliver the equipment/materials as under:

- a) **In case of foreign Supplier** : F.O.B. (Free on Board) suppliers' nearest port basis.
- b) **In case of Indian Supplier** : F.D.D. (Free Door Delivery), BEML Limited, Bangalore.

Strict compliance with the purchase order and the details of which are as per scope indicated in the purchase order.

3. QUALIFYING REQUIREMENTS OF THE TENDERERS.

The Bidders shall provide satisfactory evidence acceptable to the purchaser to show that:-

- a) The Bidder is a licensed manufacturer, who regularly manufactures the items offered and has adequate technical knowledge with relevant practical experience.
- b) The Bidder has adequate financial stability and status to meet the obligations under the purchase order for which he is required to submit a report from a recognized bank or financial institution.
- c) The Bidder has adequate manufacturing capacity and capability to manufacture and supply the items offered within the agreed delivery schedule.
- d) The Bidder has established quality control systems and organization to ensure adequate control at all stages of the manufacturing process.
- e) In addition to the above, further information regarding his capacity, capability, if required by the purchaser, shall be promptly furnished by the Bidder and would offer all facilities to representatives of the purchaser for assessing capacity , capabilities by actual visit to his work place/office if required.

4. TENDER SUBMISSION CONDITION

- a) Please ensure that offers are submitted against individual items in the tender invitation published through BEML SRM e-procurement platform within the Closing date & time indicated therein.
- b) Offers received after the closing time and date will not be considered.
- c) The quotation should be kept valid for a minimum period of **180 days** from the date of closing the tender.

- d) Please return the drawing(s) / technical specification(s) along with the quotation as otherwise the quotation is liable to be ignored.
- e) The price quoted should be both in figures and words. *In case of any variation, the lower price will be taken for the purpose of tender evaluation.*
- f) Prices should be on F.O.B. (Free on Board) supplier's nearest port basis (**In case of foreign Supplier**) and F.D.D. (Free Door Delivery), BEML Limited, Bangalore (**In case of Indian Supplier**) and prices are to be firm till completion of supplies against the purchase order. Under any circumstances, no increase in price during the execution of the contract is admissible unless other-wise agreed specifically in the contract by the purchaser.
- g) Please indicate the exact Sales Tax, Customs duty, Excise duty and other levies applicable extra / included in the price. Claim for Excise duty should be supported by original and clear Excise duty gate pass.
- h) BEML Limited reserve the right to avail the price offered for full quantity of the tender or part thereof or ignore the offer completely without assigning any reason whatsoever. BEML also reserves the right to increase the order quantity at the same rates and terms and conditions during the pendency of the contract.
- i) Canvassing in any manner, including unsolicited letters after submission of tenders, or post tenders corrections shall render offers liable for rejection.
- j) Each page of the quotation/ offer must be numbered consecutively, should bear the tender number and should be signed by the Bidder at the bottom. A reference to the total number of pages comprising the offer must be made at the top right hand corner of the first page.
- k) The suppliers will be responsible for the material to reach destination intact & the transit insurance should be arranged by them only. Delivery indicated in the tender enquiry is to be adhered to. Delay in delivery will result ***in levy of Liquidated Damage charges at the rate of 0.1% of total value of the amounts apportioned to the affected delivery schedule for each calendar day of delay for first 30 days and 0.25% of the total value of the amounts apportioned to the affected delivery schedule for each calendar day of delay beyond 30 days to the maximum of 10 % of purchase order value.*** The extent of LD applicable is only for the undelivered items.

5. SUBMISSION OF OFFER IN TWO-BID SYSTEM (TECHNICAL & COMMERCIAL OFFER SEPARATELY)

If specified in the tender,

- a) **If specified by the purchaser in RFQ,** the bidder in addition to the compliance for conditions stipulated in Tender Submission Condition (Clause 4) above has to **submit the Quote/offers in two bids in BEML SRM e-procurement platform as under :**
 - i. **Technical bid (without price):** Bidder should have all requisites technical details, with compliance to the Terms and conditions (**Mandate requirement**) including deliveries. Enclosures related to technical and other information deemed appropriate in respect of this tender may be enclosed in C Folder. **Please note that technical bid should not have any prices / price details.**
 - ii. **Commercial Bid:** Should contain only Price and applicable tax details and the same should be uploaded in **BEML SRM e-procurement platform only.**
 - iii. **Firm has to submit the Integrity pact along with bid mandatorily.**
- b) If the item is covered on DGS&D rate contract, it should be confirmed that the prices are same as applicable to DGS&D /Government Departments. The DGS&D rate contract reference should also be indicated, besides giving a copy of the rate contract.

6. PAYMENT

a) APPLICABLE TO FOREIGN BIDDERS

- i. In accordance with BEML Ltd standard practice, payment against any order materializing out of your offer will 100% by an irrevocable Letter of credit in favor of supplier payable within 60 days from the date of shipment.
- ii. Purchaser agrees to establish an irrevocable letter of credit in favor of supplier thirty (30) days prior to shipment for each delivery after the finalization of the Purchase order, covering the partial amount of purchase order Delivery Quantity. The L/C confirmation charge shall be borne by the supplier if a confirmation is needed / insisted by the supplier.
- iii. All bank charges incurred in Republic of India shall be borne by purchaser and all bank charges outside Republic of India shall be borne by the supplier.
- iv. Any amendment to the established LC by BEML on insistence or fault on part of the supplier, all the LC amendment charges are to be borne by the supplier.
- v. The price of the quotation/offer submitted by the Bidder and subsequent purchase order from the purchaser is firm and not subject to any escalation up to the time of fulfillment /completion of the purchase orders by Supplier.

b) APPLICABLE TO THE INDIAN BIDDERS

a. Please note that our terms of payment are 100% on 30th day for MSE & for others 60 days from the date of receipt of material at BEML Stores. Offers not agreeing with these terms are liable for rejection. Please indicate the category of your firm under MICRO/SMALL/MEDIUM/MAJOR INDUSTRIES for our data updating with necessary documentary proof of evidence. All direct payment shall be made by E-payment mode only.

b. Supplier may note that, DLP spares as agreed between Buyer & Supplier must be supplied along with second schedule of the purchase order. In case, if supplier fails to fulfill this, Buyer will hold payment in full for supplies made / executed already. Any delay on account of this will be subjected to LD as per clause no: 19 below.

The payment is further subject to the following:

- i. The Invoice shall be compliant with GST laws.
- ii. GST liability is to be discharged and ensure filing of outward supply details on GSTN portal within timeline prescribed.
- iii. Any debit note/supplementary invoice if any, is to be raised within September month following the respective financial year of filing of annual return by BEML, whichever is earlier.
- iv. Any loss of tax credit due to the reason attributable to supplier shall be recovered from supplier along with applicable interest and penalty.
- v. Bidders to indicate the GST and other levies applicable. GST shall be paid only after confirmation of payment of GST by vendors on GST Website.

7. FIRM PRICE

The prices remain firm for the entire supplies of the purchase order and no escalation shall be entertained under any circumstances. The prices are to be firm & no increase in quoted price will be entertained after awarding contract during the period of Contract for any reasons whatsoever.

8. AUTHORITY OF PERSONS SIGNING DOCUMENT

A person signing the tender or any other document in respect of the Purchase Order shall be deemed to have power to do so on behalf of the Supplier.

9. SECRECY

- a) All the information, know-how, technical data, specification and drawing models or specimens furnished by BEML for the purpose of or in connection with the manufacture and supply of the stores hereby tendered constitute the property of BEML and the supplier shall keep them in strict confidence and he shall not divulge the same to anyone else except under the authority and for the purpose of BEML. All such documents, data, drawing, models and specimens are the property of BEML and shall be returned when done with or when demanded by BEML.
- b) The supplier shall not supply the material ordered by BEML to anyone else other than BEML and shall not disclose any initiations, development or adaptations thereof to anyone else except with the written consent of BEML.
- c) BEML shall be entitled to prevent a breach of the above and to damages in case of breach. In case of non-performance in the PO, BEML will have to take procurement action at you risks and cost apart from levy of liquidated damages.

10. A. Custom Duties (Applicable to Foreign Supplier)

Bangalore Metro Rail project is eligible for the concessional rate of Custom Duty under chapter 98.01 of custom tariff act for project imports. Accordingly the contractor has submitted its revised financial offer, considering the concessional rate of custom duty under chapter 98.01 of custom tariff act, for quoting the bid price. After the award of the contract, the contractor shall register the project for project import with custom authorities. BMRCL shall facilitate the contractor for obtaining sponsoring/recommendation letter from the ministry of urban development (MoUD) or from Government of Karnataka as the case may be for getting the project registered with the custom development for availing project import benefits.

The contractor shall note that, concessional custom duty is applicable only for those items, the price of which is quoted in foreign currency.

B. Passing of Benefits due to waiver / Exemptions.

At present there is 'No' Waiver or exemption from the Governments for custom Duty, Excise Duty, Taxes, Royalties, Duties, Cess, Entry Tax and Levies payable to various authorities. Should there be a partial or complete waiver or exemption for any taxes and duties etc. in full or part thereof during the execution of the project, the contractor shall be obliged to follow and obtain exemption / refund of such taxes, duties, etc. from the concerned authorities and pass on the benefit so obtained to the employer. In case of failure by the contractor to obtain and remit the exemption / concession within reasonable time to the employer (to be decided by the Employer & intimated to the contractor), the same will be recovered by the employer from the amounts due to as payment to the contractor.

C. Deemed Export

At present the BMRCL project does not fall in the definition of "Deemed Export". However, in future date, if Deemed Export benefits is available to BMRCL, the contractor shall be informed in writing and BMRCL shall furnish necessary notification/certificate to the contractor to avail the Deemed Export benefit and the contractor shall make arrangement for claiming the reimbursement of customs duty as applicable. The Deemed Export benefits availed shall be passed on to BMRCL.

11. INSURANCE

APPLICABLE TO FOREIGN SUPPLIER

- i. In case of F.O.B. offers, insurance shall be arranged by the purchaser from supplier port till purchaser destination.
- ii. In case of imports of the materials, although the insurance shall be paid by the purchaser, any loss or damage shall be made goods by the supplier at free of cost, without waiting for the settlement of insurance claim. The purchaser shall reimburse the payment after settlement of insurance claim to the supplier. It will be entirely responsibility of the supplier make good the loss / damage without waiting for the settlement of the insurance claim, so that the material is commissioned within the time specified in the purchase order.

APPLICABLE TO INDIAN SUPPLIER

- iii. In the case of indigenous offer, the purchaser shall not arrange for any transit insurance and the supplier will be responsible till the entire equipment / material ordered for arrive in good condition in destination. Where the Bidder intends to insure the goods, the Bidder may arrange for insurance & pay insurance charges. The Bidder separately in their offer should indicate insurance charges and it shall be paid on the submission of documentary evidence by the Bidder. The consignee will advise the Bidder within 45 (Forty five) days of arrival of goods and it shall be Bidder responsibility to lodge the necessary claim on the carrier and or insurer and peruse the same. The Bidder shall, however at the own cost replace or rectify the goods lost or damaged to the entire satisfaction of the consignee within 30 (Thirty) days from the date of receipt of intimation from the consignee, without waiting for the settlement of the claim.

12. COUNTER TERMS AND CONDITION

- a) Conditional offers will not be acceptable.
- b) When the bidder offers counter terms and conditions of the business, purchaser shall not be deemed to govern by such terms and condition unless written acceptance thereof has been given by purchaser. Terms & conditions noticed of which has not been given in the tender by the bidder and forwarded in subsequent correspondence / after placement of order will not be considered by the purchaser.
- c) ***Only offer accepting BEML Limited' standard payment shall be considered and evaluated. No deviation in payment terms is acceptable and offer(s) indicating such deviant term is liable for rejection & consideration for evaluation purpose. However, BEML Limited reserves complete rights to decide / accept or reject the offer submitted by the supplier for any deviant terms.***

13. OTHER CONDITIONS

- a) M/s. BEML Limited does not bind itself to accept the submitted tender & reserve the right to itself of accepting or rejecting the whole or any part of the tender or the quantity offered in full in part without assigning any reason thereof. Supplier will have the obligation to supply the accepted quantity at the offered rate.
- b) The supplier shall be responsible to bear all taxes, levies, duties on imports arising in his country & payable directly or indirectly in respect of goods ordered on him & shall bear all cost of stamping, painting, marking, port fees, etc., as payable on the port of embarkation.
- c) No representation would be entertained on any error(s) if found in the RFQ. However, vendor(s) shall bring such errors / omissions to notice of BEML Limited for necessary corrective action(s). The vendor's time and expenses has to be borne by vendor(s).

- d) This is a highly confidential document to be circulated only to the participant(s) of the tenders issued by M/s.BEML Limited.

14. ACCEPTANCE & ACKNOWLEDGEMENT.

Within 15 days of receipt of the Order, the Supplier shall forward an acknowledgement in acceptance of purchase order in whole including terms and conditions (As applicable) or otherwise of the same failing which it shall be deemed that the Purchase Order has been accepted in total.

15. QUALITY & WORKMANSHIP

The stores supplied shall be of the best quality and workmanship and shall be in strict conformity with all the drawings and specifications furnished to the supplier either earlier or along with the purchase orders and shall answer to the description in all respects. All supplies should be accompanied by suppliers works inspection / test certificate duly certifying that the stores are in strict conformity with the drawings / specifications / descriptions. However, final acceptance of the stores supplied will be subject to inspection and approval by BEML at their works. Once the materials are rejected and communicated to the supplier, no request shall be entertained for re-inspection or acceptance of the stores. However, BEML reserves the right to re-inspect the stores and consider acceptance at its discretion.

16. IDENTIFICATION OF ITEMS / PIECES

The supplier shall indicate BEML stock number, supplier code number and BEML PO No. and date in all delivery documents, invoices and correspondence. Also he shall emboss / engrave the supplier code no. on each item / piece at a convenient non-machinable place as per drawing, failing which the supplies are liable for rejection.

17. SUPPLY OF SAMPLE

Before effecting the bulk supplies, an acceptable sample shall be submitted without any obligation on the part of BEML if required / insisted as regards acceptance, payment and safe custody thereof and supplier shall obtain necessary clearance for effecting bulk supplies as per schedule of delivery. Samples so supplied shall be clearly labeled with Supplier's name, address and Purchase Order number. In respect of any certified sample sent by BEML, the supplier shall be responsible for the safe custody and return of the certified sample intact without damage, after the purpose for which it was given is served, without delay or when demanded back. Any clarification regarding submission of sample shall be obtained from concerned Inspection and Quality Control, BEML Limited. If the supplier submits a sample whether with, before or after the tender, the same shall not govern the standard of supply except when it has been so specifically stated in the acceptance of tender.

18. DOCUMENT SUBMISSION CLAUSE

A. APPLICABLE TO FOREIGN SUPPLIER

- a) In accordance with the standard practice of M/s. BEML Limited, the supplier shall make the equipment/material ready for immediate shipment according to the delivery Schedule indicated in the purchase order and hand over the equipment/material to the freight forwarding agent nominated by Purchaser on F.O.B. (Free on Board) supplier's port basis as applicable & specified in the purchase order.
- b) As soon as each shipment is made in line with the delivery schedule specified in the purchase order, the supplier shall send the following shipping documents to Our Banker by courier service.
 - i. Three original inks signed and six copies of signed supplier's invoice.
 - ii. Three original inks signed and six copies of signed inspection/works test certificates.
 - iii. Three original inks signed and six copies of signed packing list indicated with quantity, purchase order number, consignee name.

- iv. Three original inks signed and six copies of certificate of the country of origin issued by the concerned authorities (Chamber Of Commerce of supplier Nation)
 - v. Three original inks signed and six copies of certificate of weight & measurements.
 - vi. Three original inks signed and six copies of signed original negotiable clean on board Bill of Lading (B/L) /Air-way bill issued by the shipper.
 - vii. Three original ink signed and six Copies of certificate issued by supplier as to the compliance of order terms & completeness of supply as per order specification.
 - viii. If wood is used as packing material then six copies of Phytosanitary certificate from the concerned authorities indicating that the wood has been properly treated to be seaworthy.
 - ix. six copies of certificate indicating as under:
 - x. "This Invoice is correct in all respects and no other Invoice except the Pro-forma Invoice has been rendered previously in respect of the articles now charged herein."
- c) The ordered equipment/materials will be required to supply as per the delivery schedule in the purchase order. Deviation in shipment/piece meal will not be entertained, unless otherwise specifically communicated by the purchaser to the supplier.
- d) SHIPPING / Letter of Credit Document Submission: **(Applicable for Foreign Bidders)**
- i. **In-case of Air Shipment:**
One set of photo copy documents indicated in the clause 18.A.b. above should be sent directly by courier through fastest mode / air mail to the following address:

**THE DEPUTY GENERAL MANAGER,
MATERIALS MANAGEMENT DEPARTMENT (METRO PROJECTS),
BEML LIMITED, BANGALORE COMPLEX,
PB NO.7501, NEW THIPPASANDRA POST,
BANGALORE, KARNATAKA, INDIA, POSTAL CODE - 560 075**
 - ii. **In-case of Ocean Shipment:**
One set of Photo copy documents indicated in the clause 18.A.b. above should be sent directly by courier through fastest mode / air to the following address:

**THE ASSISTANT MANAGER,
BEML LIMITED, ERRABALU CHETTY STREET,
CHENNAI, TAMIL NADU, POSTAL CODE - 600 001**
- e) One set of soft copy may also be emailed to metro.rm2@beml.co.in
- f) **NOTE:** The advance documents should reach the port consignee at least 15 days prior to the arrival of the vessel in case of sea shipment. if there is any accrual of demurrage/wharfage charges, either for belated receipt of documents or for wrong physical markings on the packages / bundles, these charges will be to supplier's account.
- g) **CONSIGNEE DETAILS**
- (i) **PORT CONSIGNEE**
The Assistant Manager,
BEML Limited,
Errabalu Chetty Street,
Chennai, Tamil Nadu, Postal Code - 600 001
 - (ii) **ULTIMATE CONSIGNEE**

The Deputy General Manager,
BEML Limited, Bangalore Complex,
PB No.7501, New Thippasandra post,
Bangalore, Karnataka, India,
Postal Code - 560 075

B. APPLICABLE TO INDIAN SUPPLIERS

- a) In accordance of standard practice of M/s. BEML Limited, the supplier shall make the equipment/material ready for immediate shipment according to the purchase order and dispatch the items on F.D.D. (Free Door Delivery), BEML Limited, Bangalore Works.
- b) As soon as each shipment is made in line with the delivery schedule specified in the purchase order, the supplier shall send **one set of Original documents and three (3) sets of photocopies** each of the following documents to the address indicated below by courier service.
- i. Commercial / Retail Invoice
 - ii. Delivery Challan
 - iii. Packing List
 - iv. BEML Limited's Source Inspection Team's Inspection clearance document(s), material test certificates and other applicable quality documents pertaining to the supplies.
 - v. Copy of excise gate pass (As applicable)

Postal Address

The Deputy General Manager,
BEML Limited, Bangalore Complex,
PB No.7501, New Thippasandra post,
Bangalore, Karnataka, India,
Postal Code - 560 075

19. DELIVERY, LIQUIDATED DAMAGES FOR LATE DELIVERY AND RISK PURCHASE CLAUSE

- a) The time for and the date of delivery of the stores stipulated in the PO shall be deemed to be the essence of the Purchase order and delivery must be completed not later than the dates specified therein. The supplier shall strictly adhere to the delivery schedule indicated in the PO. Any supplies made ahead of this schedule are liable for rejection at the discretion of BEML. Should the supplier fail to deliver the stores or any consignment thereon within the period prescribed for such delivery, BEML shall be entitled at their option either:
- i. to accept the delayed supply and to recover from the supplier the liquidated damage charges (i.e.) 0.1% of the total value of any equipment/material not delivered for each calendar day of delay for the first 30 calendar days & 0.25% of the total value of the amount for each calendar day for delays beyond 30 Calendar days subject to maximum of 10 % of the value of the purchase order, which the supplier has failed to deliver as aforesaid for each week or part thereof during which the delivery of such stores may be in arrears
(or)
 - ii. to purchase elsewhere, without notice to the supplier on the account and at the risk and cost of the supplier, the stores not delivered or others of a similar description (where stores exactly complying with the description and readily procurable) without canceling the PO in respect of consignments not due for delivery
(or)
 - iii. To cancel the purchase order by issuance of written notice to supplier for delay in delivery beyond 3 months w.r. t. schedule indicated in PO.
- b) In the event of action being taken under (i) or (ii) the supplier shall be liable for any loss, which BEML may sustain on that account but the supplier shall not be entitled to any gain or purchases made against default. As soon as it is apparent that the scheduled dates cannot be adhered to, an application shall be sent by the supplier to BEML, well before the expiry of the delivery period specified in the purchase order.

- c) Without prejudice to the foregoing rights, if such failure to deliver in proper time as aforesaid shall have arisen from any cause which BEML may admit as a reasonable ground for an extension of the time (and their decision shall be final) they may allow such additional time as they may consider justified by circumstances of the case.
- d) Delivery required to be made in lots shall be made in lots only and any extra deliveries involved either on account of repeated rejections or variance in supply of lots shall be liable for service charges of 5% of the purchase order value for each extra delivery.

20. INSPECTION & CONSEQUENCE OF REJECTION

- a) Maximum care shall be exercised by the supplier to avoid any rejections. Heavy or frequent rejections shall be a ground for termination of the purchase order and BEML shall be entitled for any remedy as provided in **clause-20** of these terms and conditions.
- b) In case the stores get rejected either during the initial inspection stage or during further processing stage, the rejected materials shall be arranged to be collected by the supplier at his own cost within thirty days from the date of intimating such rejection failing which the rejected material shall be disposed off at the discretion of BEML at the risk and cost of supplier. The amount paid to the supplier towards the rejected material including freight, sales tax, excise duty, insurance and any other expenses incurred by BEML in this regard shall be paid by the supplier before collecting the rejected material or the same shall be recovered / recoverable from any of the outstanding / future bills of the supplier. Any amount accrued by disposal or rejected material shall be appropriated towards the cost and expenses incurred in this regard.

21. LAWS APPLICABLE

The P.O. shall be governed by the Laws of India for the time being in force or as amended from time to time. The making of all stores supplied must comply with the requirements of Indian Acts relating to trade and merchandise marks and all the rules made under such acts.

22. INDEMNITY

The supplier shall at all times indemnify BEML against all claims which may be made in respect of the stores for infringement of any right protected by patent, registration of design or trade mark and shall take all risk of accidents or damage which causes a failure of the supply. The supplier shall comply with the provisions of Contract Labour (Regulation and Abolition) Act, 1970 and the Contract Labour (Regulation and Abolition) Central Rules 1971 as modified from time to time wherever applicable and shall also indemnify the Company from and against any claims under the aforesaid Act and the Rules.

23. BRIBES AND GIFTS

Any bribe, commission, gift or advantage given, promised or offered by or on behalf of the supplier or his partner, agent or servant or anyone on his or their behalf to any officer, servant, representative or agent of BEML or any person on his or their behalf in relation to the obtaining or to the execution of or any other contract with BEML shall in addition to any criminal liability which the supplier may incur, subject the supplier to the cancellation of the PO and all other contracts with BEML and also to payment of any loss or damage resulting from any such cancellation to like extent as is provided in case of cancellation under Clause-20 hereof. Any question or dispute as to the commission of any offence under the present clause shall be settled by BEML in such manner and on such evidence of information as they may think fit and sufficient and their decision shall be final and conclusive.

24. JURISDICTION

The court of Karnataka State only shall have jurisdiction to deal with and decide any legal matter of dispute whatsoever arising out of this Purchase Order.

25. ARBITRATION

All other disputes / differences except as to any matters the decision of which is specially provided for by these conditions or any other special conditions of the P.O. whatsoever arising between the parties out of or relating to the contract meaning and operation or effect of the contract or the breach thereof shall be settled by Arbitration in accordance with the rules of Arbitration of the Indian Council of Arbitration and the award made in pursuance thereof shall be binding on the parties. The place of arbitration shall be 'Bangalore'

The supplies under this purchase order shall, if reasonably possible, continue by mutual agreement during the arbitration proceedings and no payment due to or payable by BEML be withheld only on account of the pendency of such proceedings.

26. FORCE MAJEURE CLAUSE

- a) BEML shall in addition its power under other clauses to determine this Purchase Order have power to terminate its liability there under at any time by giving a notice of reasonable time (Generally 14 days time) in writing to the supplier of the Company's desire to do so and upon the expiration of the notice the Purchase Order shall be determined without prejudice to the rights of the parties accrued to the date of determination.
- b) Further in the event of any situation arising out of or caused by any act which is beyond the control of BEML, which results in stoppage of production, or in the event of any policy decision made in the interest of the Company which may necessitate the short closure of the Purchase Order, the Company by giving a notice of reasonable time (Generally 14 days time) to the supplier, can terminate the purchase order without prejudice to the rights of the parties accrued to the date of termination.
- c) In the event of any unforeseen event directly interfering with the supply of equipment arising during the currency of the purchase order, such as war, hostilities, acts of the public enemy, civil commotion, sabotage, fire, floods, explosions, epidemics, quarantine restrictions, strikes, lockouts or acts of god, the supplier shall, within a week from the commencement thereof, notify the same in writing to the purchaser with reasonable evidence like newspaper cuttings, government press release copy, police complaints copy, letter issued by Chamber of commerce regarding accidents, etc. thereof if the force majeure condition (s) mentioned above be in force for a period of 90 days or more at any time, the purchaser shall have the option to terminate the purchaser order on expiry of 90 days of commencement of such force majeure by giving 14 days communication/ correspondence to the supplier in writing. In case of such termination, no damages shall be claimed by purchaser/ supplier against the other, save & except those, which had occurred under any other clauses of this purchase order prior to termination.

27. RIGHT TO VARY QUANTITIES

- a) In general, BEML Limited reserves the right to increase or decrease up to 50% of the quantity specified in the schedule of requirements without any change in the unit price or other terms and conditions within the agreed delivery schedule.
- b) BEML Limited also reserves right and at its discretion may advice the supplier in writing about increase of the total quantity up to 60 cars worth value of materials. The exact incremental quantity details will be intimated later date, but not later than **March, 2020**. The supplier shall be required to supply increased ordered quantities at the contracted terms & conditions and determined prices as detailed in purchase order.

28. RAW MATERIALS ARRANGEMENT

The supplier shall make his own arrangement to procure all raw materials required and BEML Limited shall not be responsible for any assistance in such procurement or whatsoever.

29. LANGUAGE

All documents in connection with this purchase order shall be made in English only and shall be expressed by metric system (IS System).

30. TAX CLAUSE

- a) Any tax and/or duty, which may hereafter be imposed outside India, shall be on Supplier's account. On the other hand, any tax and/or duty, which may hereafter be imposed in India, shall be on BEML's account. Notwithstanding the foregoing, tax on supervising fee and/or other training fees shall be on Supplier's account, however, it shall be withheld and paid by BEML in India on behalf of Supplier according to provisions of the corporation tax law, the local inhabitant tax law and convention between Republic of India and the respective Suppliers country, for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income.
- b) Where the government of the supplier's country exempts goods in export from any or all of such taxes, levies, duties on imports, the supplier shall charge the purchase price, which are exclusive of and free from such taxes, levies, and duties on imports.
- c) Any downward revision in taxes or duties imposed in supplier's country should be informed and that benefit should be passed on to the BEML.
- d) Any increase in statutory levies during the period wherein supplier has defaulted to effect supplies as per delivery schedule indicated in contract has to be borne by the supplier.
- e) HSN CODE/CHAPTER ID details are to be indicated along the applicable GST rates for the respective items.
- f) TDS (Tax deducted at source) will be applicable for domestic supplies including service purchase orders and will be deducted as per law of land. SAC (Service Account code) shall be indicated for the services /NRC that will be carried out by the supplier. Presently the applicable TDS is 2%.

31. PACKING AND MARKING

- a) The Equipment/Materials shall be packed in seaworthy wooden packing conditions according to international commercial and industrial practice. The wood packaging materials should be Heat treated (HT) or Methyl Bromide (MB) fumigation, and present the mark which certifies the approved treatment on two opposite sides of the WPM. The Supplier shall apply proper anti-erosion and/or anti-rust compounds of coating, protective waterproof wrapping and/or packing, as the case may be. Supplier shall take reasonable precautions to assure that quantities, weights and identification, as stated on packing lists, are correct
- b) Marking shall include the following information in sequence on the frame commensurate with the size of package.

To: M/s. BEML Limited, Bangalore, Karnataka State, India - 560075.

Purchase order number

Shipper's mark

Port of discharge

Package number

Identification number

Origin of equipment

Caution marks, if applicable

Net weight, gross weight and cubic measurement

32. PERFORMANCE BANK GUARANTEE

- a) The supplier shall establish **single performance bank guarantee** in the prescribed format issued by M/s. BEML Limited (**APPENDIX 'C'**) herewith in the amount equal to ten percent (10%) of the purchase order price to guarantee performance of the equipment/ material against purchase order in favor of the Purchaser, to be executed and submitted, which will be valid for the warranty period.
- b) The performance bank guarantee has to be furnished by the supplier as per prescribed format covering the entire supplies to be made against this order within 30 days from the date of receipt of purchase order from BEML Limited but not later than 45 days before commencement of supplies pertaining to first delivery schedule indicated in the purchase order.
- c) In the absence of performance bank guarantee to be submitted by the supplier as per contract terms, BEML Limited will not open Letter of Credit in favor of supplier (**Applicable only to foreign supplier(s)**) pertaining to the shipment / stores to be supplied as per first delivery schedule indicated in the purchase order. Any delay in submission of performance bank guarantee by the supplier, the subsequent delay in opening in Letter of Credit by BEML Limited and supplies to be effected by the supplier are to the account of the supplier, which attracts liquidated damage charges as per contract terms.
- d) The performance bank guarantee will be released automatically after the expiration of warranty period, if there are no defects claims. If successful final acceptance cannot be completed within the validity of the performance bank guarantee bond, the supplier shall be responsible for extending the validity of the bond as advised by BEML Limited.
- e) Bank Guarantee executed by foreign supplier to be counter guaranteed by any Nationalized Public sector bank in India without which the bank guarantee will be treated as invalid. Bank Guarantee can also be executed by supplier through any **Indian Nationalized Public sector Bank directly**.
- f) In case of any performance bank guarantee executed by Indian supplier, the same must be executed only through **any Indian Public sector Bank only**.
- g) In respect of Performance Bank Guarantee, the amount of Guarantee shall be enhanced to include the amount of interest, if any, recoverable from supplier payable to Bank.
- h) No claim shall lie against BEML in respect of interest on Cash Deposits or Govt. Securities or depreciation thereof
- i) BEML shall be entitled to and it shall be lawful on its part to encash the Bank Guarantee in whole or in part in the event of any default, failure or neglect on the part of the supplier in the fulfillment or performance either in full or in part of the Purchase Order. The decision of BEML in this regard shall be final and binding on all concerned.

33. SPARES SUPPORT

- a) Supplier will be required to support the equipments/Materials for a period of ten years from the date of receipt of last supply in respect of supply of spares & accessories.
- b) The supplier has to maintain sufficient number of good quality spares of equipment / component indicated in purchase order (At least 4 cars materials) to immediately replenish the faulty / rejected / short supplies effected to the purchaser as per purchase order.

34. POST-WARRANTY SERVICE

Arrangements for after sales service and maintenance in India onsite during warranty & post warranty period should be clearly indicated providing with name, address, phone, fax, contact person, infrastructure along with spare parts inventory held by your Authorized Technical Service Centre.

35. CHANGES IN THE NAME OF FIRM

- a) Where the supplier is a partnership firm, a new partner shall not be introduced in the firm except with the previous consent in writing of the purchaser, which may be granted only up of the execution of a written undertaking by the new partner to perform the purchase order and accept all liabilities incurred by the firm under the purchase order prior to the date of such undertaking. In the event of the supplier's failure to be compiling with this requirement, it shall be lawful for the purchaser to cancel the purchase order and purchase or authorize the purchase of the materials at the risk and cost of the supplier.
- b) On the death or retirement of any partner of the supplier before complete performance of the purchase order, the purchaser may cancel the purchase order and in such case the supplier shall have no claim whatsoever to compensate against the purchaser.
- c) If the purchase order is not determined as provided in sub point (b) above notwithstanding the retirement of a partner from the firm he shall continue to be liable under the purchase order for acts of the firm until a copy of the public notice given by him under the section 32 of the Indian Partnership Act, has been sent by him to the purchaser by registered post acknowledgement due.
- d) The decision of the purchaser as to any matter or thing concerning or arising out of this sub-clause or on any question whether the supplier or any partner of the Supplier firm has committed a breach of any of the conditions in this sub clause shall be final and binding on the supplier.

36. MODIFICATION, ADDITION AND AMENDMENTS

- a) No modification, addition and/or amendment in the terms hereof shall bind on the purchaser & supplier herewith unless these are expressed in writing and duly agreed upon by the purchaser & supplier herewith.
- b) "Apart from the other changes BEML Limited has the sole right to increase/decrease/Change/delete the quantity of the equipment/material at any point of the execution of the purchase order".

37. ASSIGNMENT OF THIRD PARTY

The supplier shall not be entitled without M/s. BEML Limited consent to assign or transfer to a third party all or part of the benefits or obligations of this tender/purchase order. The purchaser have right to accept / decline any such proposals from the supplier without expressing in writing.

38. INVOLVEMNET OF ANY AGENT AND MIDDLEMEN

- a) No involvement of agents or middlemen in India or abroad, except those accredited by ministry of defense, Government of India, in any capacity whatsoever is permitted at any stage in relation with this tender and the resultant purchase order.
- b) Supplier shall confirm that he has not appointed any agent in India to promote the purchase order and that no commission etc is payable to any such agent in connection with this purchase order. Supplier shall also confirm that he has neither paid nor will pay any commission, free or any such charges to any agent in connection with the award and execution of this purchase order. It should be subsequently proved that such a commission, fees or charges has been paid, contrary to the foregoing, buyer shall be entitled to terminate this purchase order forthwith. The buyer shall also be entitled to recover from the seller an amount equal to the commission, fee or any such charge proved, for have been paid.

39. INFRINGEMENT OF PATENTS

- a) The Supplier shall defend and indemnify the Purchaser against any claims, costs or expenses incurred by reason of any infringement of alleged infringement of any letters, patent, registered design, trademarks or trade name by the use of sale of the equipment/material and against all costs or damages which the Purchaser may undergo in legal action for such infringement or for which the Purchaser may become liable in any such action.
- b) The Supplier is not liable for damages if the infringement is due to Purchaser's instructions, the Purchaser's modification of the delivered equipment/material without Supplier's permission, use in manner not covered by the purchase order or the infringement arises out of combination of the equipment with other components.

40. SUPERVISION, TECHNICAL ASSISTANCE AND SERVICE SUPPORT

- a) When the Supplier is requested by the Purchaser through phone, fax, E-mail & in written letter, the Supplier shall, free of charge immediately as soon as possible send relevant supervisor to supervise, advise and cooperate with staff of Purchaser regarding installation, fitting, normal operation and other necessary technical matters of equipment / Materials (including Saturday and Sunday, if necessary). The firms representative shall bring with him the necessary working implements such as tool, test equipment etc. It is the responsibility of the supplier for training BEML Limited personnel's in Installation, commissioning & testing at free of cost for 2 train sets at BEML, Bangalore as well as at BMRCL Depot, Bangalore
- b) During the execution of the contract by the contractor, if the purchaser ("**BEML Limited**") raises the call for deputation of the representative of the contractor ("**The supplier**") reasoning the investigations pertaining to technical fault of the item supplied / installation problem(s) / rework / repair / short supplies / wrong supplies / materials supplied found to be defective or fails to fulfill the requirements of the PO, BEML Limited shall give the supplier notice setting forth details of such defects or failure, and the supplier shall forth with make the defective as good, or after the same to make it comply with the requirements of the PO. Should he fail to do so within a reasonable time not later than 48 hours from the date & time of official intimation from BEML Limited.
- c) BEML Limited reserves right to take alternative action(s) and may reject and replace at the cost of the supplier whole or any portion of the plant at the risk & cost of supplier, as the case may be which is defective or fails to fulfill the requirements. In this regard, BEML reserves rights to en-cash performance bank guarantee executed by supplier in full or in part(s) to serve the purpose of the equipment / component.
- d) The supplier is responsible for deputation & safety of contractor's representative to BEML Limited's works / designated location(s) with necessary tool / instruments to investigate and rectify the issues informed by BEML Limited. BEML Limited is not responsible and accountable for any charges / cost incurred by the supplier regarding deputation of representative to BEML Limited works.

41. SEVERABILITY

In the event that any one or more of the provisions contained in this Agreement are for any reason held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision or provisions had never been included. The purchaser/ supplier shall, in good faith, amend this Agreement to provide, to the extent possible, each purchaser/ supplier with the benefits provided by such invalid or unenforceable provision.

42. SAFETY ASSURANCE

- a) Safety is defined as freedom from those conditions that can cause death, injury, occupational illness or damage to or loss of equipment or property, or withdraw the train from service. So all equipment & systems including software, affecting train safety & the safety of train crew and passengers & or identified as being "VITAL" shall be designed according to following principles.
- b) Only such components having a high reliability & predictable failure mode shall be used.
- c) Components must be utilized in such a manner that ensures a restrictive condition rather than a permissive condition which will result from component failure.
- d) Circuits shall be designed such that when a normally energized electric circuit is interrupted or de energized, it will cause the controlled function to assume its most restrictive condition.
- e) System safety equipment design must be such that any single independent component or sub-system failure results in a restrictive condition. Failures that are not independent and those failures which in turn, always, cause others must be considered in combination as a single failure and must not cause a permissive condition.
- f) The supplier should carry out Hazard analysis in accordance with EN 50126-1 primarily or any other international standard in area adequately not addressed by former standard. The supplier shall submit Hazard resolving method to BEML Limited for disposal purpose according to Indian Environmental standard.

43. LIMITATION OF LIABILITY AND PRODUCT LIABILITY

- a) Supplier shall assume full responsibility for, indemnify and hold BEML Limited and BEML Limited's sub-contractors harmless from and against any liabilities, product liabilities, action, demand arising out of death of or injury to any person or damage to any property to have resulted from the defects of the ordered parts which are installed in BEML Limited and BEML Limited sub-contractors' rolling stocks either as original equipment or as spare parts and replacement parts under the control of this agreement.
- b) Supplier further agrees to obtain an insurance coverage from reputable insurers in furtherance of this obligations stipulated herein. Supplier shall provide to purchase certificate of such insurance at purchaser's request. In defending any claims or actions, the parties shall consult and cooperate with each other to protect the integrity of the ordered parts. Supplier shall promptly give notice of any claims or actions and investigate accidents involving any defect in the ordered parts to BEML Limited.

44. CONFIDENTIAL AGREEMENTS

In case of placement of purchase order by BEML Limited, the supplier has to execute the CONFIDENTIALITY AGREEMENT and NON-COMPETITION AGREEMENT as per prescribed format by BEML Limited, which will be issued within 15 days from the date of issuance of purchase order from BEML Limited but later on that 30 days before the first delivery schedule indicated in the purchase order.

45. DEFECT LIABILITY PERIOD & SPARES SUPPORT :

- a) Warranty period (Defect Liability) shall be 24 months from the date of commissioning of train sets / metro cars.
- b) The supplier shall enclose the list of D.L.P. Spares with item description and quantity along with the technical bid and the same will be forwarded for to end customer for approval. The List of items approved by end customer are to be stocked at end customer's designated depot during

the warranty period at free of cost so as to use the same by end customer during break down of equipment without binding to BEML . The item which is used by end customer should be replenished by the supplier at free of cost at the earliest as end customer will carry out auditing once in 3 months.

- c) The supplier has to deliver D.L.P spares applicable, as below:

In case of foreign suppliers: DDP Basis & delivered at designated BMRCL depot in Bangalore at free of cost.

In case of Indian suppliers: F.D.D. (Free Door Delivery at designated BMRCL depot in Bangalore at free of cost.)

46. WARRANTY

All the stores supplied shall be warranted against any defect and/or faults and design, material, workmanship and drawing. The warranty period for each component shall be 40 months from the date of delivery to BEML Limited by the supplier or 24 months from the Commercial operations, whichever is later.

47. Integrity Pact(For total value >1 Crore)

The supplier(s) has to execute INTEGRITY PACT as per prescribed format at APPENDIX "F"

Issued by BEML Limited along with the bid mandatorily, if Tender is two bid system firm has submit the Integrity pact along with Technical Bid only.

APPENDIX "A "

COMPLIANCE REPORT(To be submitted along with Technical Bid)

1) R.F.Q. Reference : BR01/RRD/

2) Firm :

3) Item details :

Sl. No.	Terms / Clause	Complied	Not Complied	Remarks
1.	GLOSSARY, DEFINITIONS & INTERPRETATIONS			
2.	SCOPE OF SUPPLY			
3.	QUALIFYING REQUIREMENTS OF THE TENDERERS			
4.	TENDER SUBMISSION CONDITION			
5.	SUBMISSION OF OFFER IN TWO-BID SYSTEM (TECHNICAL & COMMERCIAL OFFER SEPARATELY)			
6.	PAYMENT			
7.	FIRM PRICE			
8.	AUTHORITY OF PERSONS SIGNING DOCUMENT			
9.	SECRECY			
10.	Custom Duties (Applicable to Foreign Supplier)			
11.	INSURANCE			
12.	COUNTER TERMS AND CONDITION			
13.	OTHER CONDITIONS			
14.	ACCEPTANCE & ACKNOWLEDGEMENT			
15.	QUALITY & WORKMANSHIP			
16.	IDENTIFICATION OF ITEMS / PIECES			
17.	SUPPLY OF SAMPLE			
18.	DOCUMENT SUBMISSION CLAUSE			
19.	DELIVERY, LIQUIDATED DAMAGES FOR LATE DELIVERY AND RISK PURCHASE CLAUSE			
20.	INSPECTION & CONSEQUENCE OF REJECTION			
21.	LAWS APPLICABLE			
22.	INDEMNITY			

23.	BRIBES AND GIFTS			
24.	JURISDICTION			
25.	ARBITRATION			
26.	FORCE MAJEURE CLAUSE			
27.	RIGHT TO VARY QUANTITIES			
28.	RAW MATERIALS ARRANGEMENT			
29.	LANGUAGE			
30.	TAX CLAUSE			
31.	PACKING AND MARKING			
32.	PERFORMANCE BANK GUARANTEE			
33.	SPARES SUPPORT			
34.	POST-WARRANTY SERVICE			
35.	CHANGES IN THE NAME OF FIRM			
36.	MODIFICATION, ADDITION AND AMENDMENTS			
37.	ASSIGNMENT OF THIRD PARTY			
38.	INVOLVEMENT OF ANY AGENT AND MIDDLEMEN			
39.	INFRINGEMENT OF PATENTS			
40.	SUPERVISION, TECHNICAL ASSISTANCE AND SERVICE SUPPORT			
41.	SEVERABILITY			
42.	SAFETY ASSURANCE			
43.	LIMITATION OF LIABILITY AND PRODUCT LIABILITY			
44.	CONFIDENTIAL AGREEMENTS			
45.	DEFECT LIABILITY PERIOD & SPARES SUPPORT			
46.	WARRANTY			
47.	Integrity Pact			
48.	APPENDIX "A " - COMPLIANCE REPORT			
49.	APPENDIX "B " - CONTACT DETAILS OF THE SUPPLIER			
50.	APPENDIX "C " - PERFORMANCE BANK GUARANTEE			
51.	APPENDIX "D " - NON-COMPETITION AGREEMENT			
52.	APPENDIX "E " - CONFIDENTIALITY AGREEMENT			
53.	APPENDIX "F " – INTEGRITY PACT			

Authorized signatory with company seal / stamp

APPENDIX "B "

CONTACT DETAILS OF THE SUPPLIER

(To be filled and submitted by supplier along with the technical bid)

1) Contact Person details in Marketing Office

- (a) Name :
(b) Designation :
(c) Telephone :
(d) Fax :
(e) Mobile :
(f) Email :

2) Head Office :

3) Complete address

Including the website :

4) Details of the proposed plant from

Where item is to be supplied :

5) Complete address of the Plant

Including Website :

6) Contact person details in plant

- (a) Name :
(b) Designation :
(c) Telephone :
(d) Fax :
(e) Mobile :
(f) Email :

7) Bank Details: (Will used during L/C Execution)

- a) Name of the Bank :
b) Full Address of the Bank :
c) Suppliers Account Number and Type :

b) IBAN No :
e) Swift Code :

APPENDIX 'C'

PERFORMANCE BANK GUARANTEE

**M/s. BEML Limited,
Bangalore Complex,
P.B. No. 7501
New Thippasandra,
Bangalore – 560075.**

1. BEML LIMITED, Bangalore Complex, P.B. No. 7501, New Thippasandra, Bangalore – 560018 (hereinafter called as “BEML”) have entered into agreement/Contract/Order No. ----- Dt : ----- (hereinafter called “the said Agreement/the said Contract/the said Order”) with M/S -----, (hereinafter called “the said Contract/Supplier(s)”), for list of parts as enclosed to this Bank Guarantee and as per EDT 1781
2. Whereas under the terms of the said Agreement/Contract/Order, the contract/Supplier is required to furnish a Performance Bank Guarantee for **value _____ (Amount in words)** towards the due fulfillment of the terms and conditions during the agreed time period or extension thereof, and also satisfactory performance of the items supplied to BEML during warranty period as per the warranty terms stipulated in the Agreement/Contract/Order.
3. Accordingly We, **{Banker Name & Address}** (hereinafter referred to as “the Bank”) at the request of M/s. ----- do hereby undertake to pay to BEML Limited an amount not exceeding **value _____ (Amount in words)** on the failure of Contractor / Supplier in performance of their obligations as per the terms and conditions of the Agreement/Contract/Order including the satisfactory performance of the item during warranty period as per the warranty terms stipulated in the Agreement/Contract/Order.
4. We, **{Banker Name & Address}** do hereby unreservedly, irrevocably undertake to pay the amounts due and payable under this guarantee without any demur, merely on demand from BEML, immediately on such demand stating that the amount claimed is due by way of non performance/unsatisfactory performance by the contract with respect to the terms and conditions of the Agreement/Contract/Order including failure in satisfactory performance of the items supplied/services rendered under the warranty terms stipulated in the Agreement/Contract/Order. Any such demand made on the bank shall be conclusive as regards the amount due and payable by the Bank under this guarantee. However, our liability under this guarantee shall be restricted to an amount not exceeding **value _____ (Amount in words)**.
5. We undertake to pay to BEML Limited an amount not exceeding **value _____ (Amount in words)** so demanded notwithstanding any dispute or disputes raised by the contractor(s)/supplier(s) in any suit or proceeding pending before any court or Tribunal relating thereto our liability under this guarantee being absolute and unequivocal.
6. We, **{ Banker Name & Address }** further agree that the guarantee herein contained shall remain in full force and effect during the period that would be taken for the performance of the said Agreement/Contract/Order and that it shall continue to be enforceable till all the dues of BEML Limited under or by virtue of the said Agreement/Contract/Order have been fully paid and its

claims satisfied or discharged or till BEML Limited certifies that the terms and conditions of the said Agreement/Contract/Order have been fully and properly carried out by the said Contractor/Supplier(s) and accordingly discharges this guarantee.

7. We, { **Banker Name & Address** }, further agree with BEML Limited that BEML Limited 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 Agreement or to extend time to performance by the said Contractor/Supplier(s) from time to time or to postpone for any time or from time to time any of the powers exercisable by BEML Limited against the said Contractor/Supplier(s) and to forbear or enforce any of the terms and conditions relating to the said Agreement/Contract/Order and we shall not be relieved from our liability by reason of any such variation, or extension being granted to the said Contractor/Supplier(s) or for any forbearance, act or omission on the part of BEML or any indulgence by BEML Limited to the said Contractor / Supplier(s) or by any such matter or thing whatsoever which under the law relating to sureties would, but for this provision, have effect of so relieving us.
8. We, { **Banker Name & Address** } lastly undertake not to revoke this guarantee during its currency except with the previous consent of BEML Limited in writing and agree that any change in the constitution of the said Contractor(s)/Supplier(s) or the said Bank shall not discharge the Bank of its liability under this deed.
9. The validity of Bank guarantee shall be up to { **Warranty period** } and such date shall cover the period warranty of all the supplies towards the list of items as enclosed to this bank guarantee, also the period of defect liability/warranty period for last batch of supplies. The Bank Guarantee shall remain valid for the period up to which the contractor is obliged for due performance of the said Agreement/Contract/Order including the warranty period.
10. This Bank Guarantee shall be governed by and constitute in accordance with Indian law and shall be subject to exclusive Jurisdiction of Indian Courts.

Notwithstanding anything contained herein above:

1. Our liability under this guarantee shall not exceed **value _____ (Amount in words)**
2. This Bank Guarantee shall be valid up to and including { **Warranty period** }
3. We are liable to pay the guaranteed amount or any part thereof under this Bank Guarantee only and only if you serve upon us a written claim or demand on or before the {**Warranty period**}

Date.....

Signature.....

Place Printed

Name.....

Witness.....

(Designation)

.....

(Bank's Common Seal)

APPENDIX “D “

NON-COMPETITION AGREEMENT

(To be executed on Stamp paper of value of Rs. 200/-)

THIS NON COMPETITION AGREEMENT is made and executed on this the.....day ofat Bangalore **BETWEEN** M/s.BEML Ltd, a Government of India undertaking, having its Registered office at No.23/1, “BEML SOUDHA”, 4th Main Road, Sampangiram Nagar, Bangalore – 560 027 (hereinafter called “**BEML**”) and manufacturing units at Kolar Gold Fields, Mysore and Bangalore, which expression shall unless repugnant to the subject or context thereof mean and include its representatives, administrators, successors and assigns etc of the **FIRST PART.**

AND

M/s.....Company, with its Registered Office at..... and manufacturing unit at.....represented by their Shri..... a lawful Attorney, residing at.....(hereinafter called “**VENDOR**”) which expression shall unless repugnant to the subject or context thereof mean and include its representatives, administrators, successors and assigns etc of the **SECOND PART.**

NOW THIS AGREEMENT WITNESSETH AND IT IS AGREED BY AND BETWEEN THE PARTIES HERETO AS UNDER:

Whereas, BEML will place Purchase Order No.....Dated.....on the **VENDOR** for supply of which products are exclusively manufactured to the designs and specifications of BEML.

In pursuance of the placement of the above Purchase Order on M/s.....or M/s.....or any other Authorized Dealer / Distributor of or any person authorized bythe **VENDOR** hereby agree and undertake not to quote or supply.....to any other parties in India and as such the **VENDOR** is prohibited to quote or supply the products specified in the instant Agreement. In contravention of this term, The **VENDOR** or any other Authorized Dealer / Distributor / Agent of or any person authorized by the **VENDOR** were to quote and supplyto any other parties in India and / or abroad, BEML would, **after giving a reasonable opportunity to explain such quote and supply** be entitled to levy a penalty to the extent of loss occasioned to BEML.

This Non-Competition Agreement will be valid for a period of five years from the date of placement of Purchase Order by BEML on the VENDOR and for all Government / Quasi-Government companies in India and all non-Government Companies in India and abroad.

Disputes if any, arising between the parties in connection with this Non-Competition Agreement or any other matters connected therewith, the same will be mutually discussed and settled, failing which, the disputes shall be referred to a Sole Arbitrator to be appointed by BEML. The Arbitration proceedings shall be in accordance with the provisions of Arbitration and Conciliation Act, 1996 and Rules framed thereunder. The place of Arbitration shall be at Bangalore and all Arbitration proceedings shall be conducted in English language and governed by the above said Act and Rules framed thereunder. Courts at Bangalore shall alone have sole jurisdiction to decide any issue arising out of the Arbitration or this Non-Competition Agreement.

IN WITNESS WHEREOF THE PARTIES HERETO HAVE SET THEIR RESPECTIVE HANDS AND SEALS ON THE DAY, MONTH, AND YEAR FIRST ABOVE WRITTEN.

For BEML Limited

For M/s.

WITNESS:

1.

1.

2.

2.

CONFIDENTIALITY AGREEMENT
(To be typed in Rs.100 value document)

This Confidentiality Agreement is made and entered into between M/s BEML Limited, (hereinafter referred to as BEML), a Govt. of India Undertaking under Ministry of Defence, having its Registered Office at BEML Soudha, No.23/1, 4th Main, Sampangirama Nagar, Bangalore – 560 027 and M/s ----- (hereinafter referred as XXXX) having its Registered Office at.....
M/s. BEML, has been patronizing XXXX for components / spares listed in Annexure hereto. A need has been felt to revitalize the business relationship for mutual advantage.

- 1) It is mutually, therefore, agreed that the following shall form part of the terms and conditions for continued business:
 - a) The supplier shall not divulge to anyone else except under the authority and for the purposed of BEML, all information such as technical data, specifications, drawings, models of specimens furnished / supplied by BEML for the purpose of manufacture or in connection with developmental activities, constitute the property of BEML and the supplier shall keep them in strict confidence. This has been explicitly stated in all the details to the supplier through Purchase Order / Drawings etc., released.
 - b) The supplier shall not supply the components / spares exclusively manufactured for BEML Limited with the Technical Data / Specifications / assistance furnished by BEML and shall not disclose my initiations, development of adaptations thereof to anyone else except with the written consent of BEML.
 - c) BEML shall be entitled to prevent breach of the above and to claim damages in case of any breach. It is hereby mutually agreed that for breach of this agreement the Vendor shall pay, without actual proof of damages, a liquidated amount of Rs. 1.00 Crore (Rupees One Crore only).
 - d) **ARBITRATION:** In the event of any question or disputes arising under these conditions or any other terms and conditions of contract or in connection with this contract (except as to any matters the decision of which is specially provided for by these conditions) the same shall be referred to an award of a Sole to be appointed by BEML with the consent of the Contractor / Vendor Supplier and the Arbitration proceedings of Arbitration and Conciliation Act 1996. The Courts in Bangalore alone shall have jurisdiction to deal and decide any legal matter or dispute whatsoever arising out of this Contract.

2) BEML shall be entitled to prevent breach of the above and to claim damages in case of any breach.

3) The Signatories hereto declare that they have the sanction and power to execute and deliver this binding agreement.

IN WITNESS WHEREOF, the parties hereto have set their respective hands to this Confidentiality Agreement on written in the presence of Witness.

For BEML Limited

For M/s. XXXX

WITNESS:

1.

1.

2.

2.

APPENDIX “F”

Annexure J

(To be executed on plain paper and applicable for all tenders of value \geq Rs 1 Crore)

INTEGRITY PACT

Between

BEML Limited (BEML) hereinafter referred to as “The Principal” and

.....hereinafter referred to as “The Bidder/Contractor”

Preamble

The Principal intends to award, under laid down organizational procedures, contract/s forThe Principal values full compliance with all relevant laws of the land, rules, regulations, economic use of resources and of fairness / transparency in its relations with its Bidder(s) and / or Contractor(s).

In order to achieve these goals, the Principal will appoint an independent External Monitor (IEM), who will monitor the tender process and the execution of the contract for compliance with the principles mentioned above.

Section 1 – Commitments of the Principal

- (1) The Principal commits itself to take all measures necessary to prevent corruption and to observe the following principles:
 - a. No employee of the Principal, personally or through family members, will in connection with the tender for, or the execution of a contract, demand, take a promise for or accept, for self or third person, any material or immaterial benefit which the person is not legally entitled to.
 - b. The Principal will, during the tender process treat all Bidder(s) with equity and reason. The Principal will in particular, before and during the tender process, provide to all Bidder(s) the same information and will not provide to any Bidder(s) confidential/ additional information through which the Bidder(s) could obtain an advantage in relation to the tender process or the contract execution.
 - c. The Principal will exclude from the process all known prejudiced persons.
- (2) If the principal obtains information on the conduct of any of its employees which is a criminal offence under the IPC/PC Act, or if there be a substantive suspicion in this regard, the Principal will inform the Chief Vigilance Officer and in addition can initiate disciplinary actions.

Section 2 – Commitment of the Bidder(s)/ contractor(s)

- (1) The Bidder(s)/ Contractor(s) commit themselves to take all measures necessary to prevent corruption. He commits himself to observe the following principles during his participation in the tender process and during the contract execution.
- a. The Bidder(s)/ Contractor(s) will not, directly or through any other person or firm, offer, promise or give to any of the Principal's employees involved in the tender process or the execution of the contract or to any third person any material or other benefit which he/she is not legally entitled to, in order to obtain in exchange any advantage of any kind whatsoever during the tender process or during the execution of the contract.
 - b. The Bidder(s)/ Contractor(s) will not enter with other Bidders into any undisclosed agreement or understanding, whether formal or informal. This applies in particular to prices, specifications, certifications, subsidiary contracts, submission or non-submission of bids or any other actions to restrict competitiveness or to introduce cartelization in the bidding process.
 - c. The Bidder(s)/ Contractor(s) will not commit any offence under the relevant IPC/PC Act; further, the Bidder(s) / Contractor(s) will not use improperly, for purposes of competition or personal gain, or pass on to others, any information or documents provided by the Principal as part of the business relationship, regarding plans, technical proposals and business details, including information contained or transmitted electronically.
 - d. The Bidder(s)/ Contractor(s) of foreign origin shall disclose the name and address of the Agents/ Representatives in India, if any. Similarly, the Bidder(s)/ Contractor(s) of Indian Nationality shall furnish the name and address of the foreign Principals, if any. Further, as mentioned in the "Guidelines on Indian Agents of Foreign Suppliers" shall be disclosed by the Bidder(s)/Contractor(s). Further, as mentioned in the Guidelines all the payments made to the Indian agent/representative have to be in Indian Rupees only. Copy of the "Guidelines on Indian Agents of Foreign Suppliers" is placed at **Annexure J-1**.
 - e. The Bidder(s) / Contractor(s) will, when presenting his bid, disclose any and all payments he has made, is committed to or intends to make to agents, brokers or any other intermediaries in connection with the award of the contract.
- (2) The Bidder(s)/Contractor(s) will not instigate third persons to commit offences outlined above or be an accessory to such offences.

Section 3 – Disqualification from tender process and exclusion from future contracts

If the Bidder(s)/Contractor(s), before award or during execution has committed a transgression through a violation of Section 2, above or any other form such as to put his reliability or creditability in question, the Principal is entitled to disqualify the Bidder(s)/Contractor(s) from the tender process or take action as per the procedure mentioned in the "Guidelines on Banning of business dealings".

Section 4 – Compensation for Damages

- (1) If the Principal has disqualified the Bidder(s) from the tender process prior to the award according to Section 3, the Principal is entitled to demand and recover the damages equivalent to Earnest Money Deposit/ Bid Security.
- (2) If the Principal has terminated the contract according to Section 3, or if the Principal is entitled to terminate the contract according to Section 3, the Principal shall be entitled to demand and recover from the Contractor liquidated damages of the contract value or the amount equivalent to Performance Bank Guarantee.

Section 5 – Previous Transgression

- (1) The Bidders declares that no previous transgressions occurred in the last three years with any other Company in any country conforming to the anti corruption approach or with any other Public Sector Enterprises in India that could justify his exclusion from the tender process.
- (2) If the Bidder makes incorrect statement on this subject, he can be disqualified from the tender process or action can be taken as per the procedure mentioned in “Guidelines on Banning of business dealings”.

Section 6 – Equal treatment of all Bidders /Contractors /Sub-contractors

- (1) The Bidder(s)/ Contractor(s) undertaker(s) to demand from all subcontractors a commitment in conformity with this Integrity Pact, and to submit it to the Principal before contract signing.
- (2) The Principal will enter into agreement with identical conditions as this one with all Bidders, Contractors and subcontractors.
- (3) The Principal will disqualify from the tender process all bidders who do not sign this Pact or violate its provisions.

Section 7 – Criminal charges against violating Bidder(s) / Contractor(s) / Subcontractor(s)

If the Principal obtains knowledge of conduct of a Bidder, Contractor or Subcontractor, or of an employee or a representative or an associate of a Bidder, Contractor or Subcontractor which constitutes corruption, or of the Principal has substantive suspicion in this regard, the Principal will inform the same to the Chief Vigilance Officer

Section 8 – Independent External Monitor / Monitors

- (1) The Principal appoints competent and credible Independent External Monitor for this Pact. The task of the Monitor is to review independently and objectively, whether and to what extent the parties comply with the obligations under this agreement.

- (2) The Monitor is not subject to instructions by the representatives of the parties and performs his functions neutrally and independently. It will be obligatory for him to treat the information and documents of the Bidders/Contractors as confidential. He reports to the CMD, BEML.
- (3) The Bidder(s)/ Contractor(s) accepts that the Monitor has the right to access without restriction to all Project documentation of the Principal including that provided by the Contractor. The Contractor will also grant the Monitor, upon his request and demonstration of a valid interest, unrestricted and unconditional access to his project documentation. The same is applicable to Subcontractors. The Monitor is under contractual obligation to treat the information and documents of the Bidder(s)/ Contractor(s) / Subcontractor(s) with confidentiality.
- (4) The Principal will provide to the Monitor sufficient information about all meetings among the parties related to the Project provided such meetings could have an impact on the contractual relations between the Principal and the Contractor. The parties offer to the Monitor the option to participate in such meetings.
- (5) As soon as the Monitor notices, or believes to notice, a violation of this agreement, he will so inform the Management of the Principal and request the Management to discontinue or take corrective action, or to take other relevant action. The monitor can in this regard submit non-binding recommendations. Beyond this, the Monitor has no right to demand from the parties that they act in a specific manner, refrain from action or tolerate action.
- (6) The Monitor will submit a written report to the CMD, BEML, within 8 to 10 weeks from the date of reference or intimation to him by the Principal and, should the occasion arise submit proposals for correcting problematic situations.
- (7) If the Monitor has reported to the CMD, BEML, a substantiated suspicion of an offence under relevant IPC/PC Act, and the CMD, BEML has not, within the reasonable time taken visible action to proceed against such offence or reported it to the Chief Vigilance Officer, the Monitor may also transmit this information directly to the Central Vigilance Commissioner.
- (8) The word '**Monitor**' would include both singular and plural.

Section 9 – Pact Duration

This pact begins when both parties have legally signed it. It expires for the Contractor 12 months after the last payment under the contract, and for all other Bidders 6 months after the contract has been awarded.

If any claim is made/lodged during this time, the same shall be binding and continue to be valid despite the lapse of this pact as specified above, unless it is discharged/ determined by CMD of BEML.

Section 10 – Other provisions

- (1) This agreement is subject to Indian Law. Place of performance and jurisdiction is the Corporate Office of the Principal, i.e. Bangalore.
- (2) Changes and supplements as well as termination notices need to be made in writing. Side agreements have not been made.
- (3) If the Contractor is a partnership or a consortium, this agreement must be signed by all partners or consortium members.
- (4) Should one or several provisions of this agreement turn out to be invalid, the reminder of this agreement remains valid. In this case, the parties will strive to come to an agreement to their original intentions.
- (5) In the event of any contradiction between the Integrity Pact and its Annexure, the Clause in the integrity pact will prevail.

(For & On behalf of the Principal)

(For & On behalf of Bidder/Contractor)

(Office Seal)

(Office Seal)

Place-----
Date -----

Place-----
Date -----

Witness 1:

(Name & Address)

-

-

-

Witness 1:

(Name & Address)

Witness 1:

(Name & Address)

-

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Witness 1:

(Name & Address)

GUIDELINES FOR INDIAN AGENTS OF FOREIGN SUPPLIERS

1.0 There shall be compulsory registration of agents for all Global (Open) Tender and Limited Tender. An agent who is not registered with BEML LTD shall apply for registration in the prescribed Application-Form available on www.bemlindia.com.

1.1 Registered agents will file an authenticated Photostat copy duly attested by a Notary Public/Original certificate of the principal confirming the agency agreement and giving the status being enjoyed by the agent and the commission/remuneration/salary/ retainer ship being paid by the principal to the agent before the placement of order by BEML LTD.

1.2 Wherever the Indian representatives have communicated on behalf of their principals and the foreign parties have stated that they are not paying any commission to the Indian agents, and the Indian representative is working on the basis of salary or as retainer, a written declaration to this effect should be submitted by the party (i.e. Principal) before finalizing the order.

2.0 DISCLOSURE OF PARTICULARS OF AGENTS/ REPRESENTATIVES IN INDIA, IF ANY:

2.1 Tenderers of Foreign nationality shall furnish the following details in their offer:

2.1.1 The name and address of the agents/representatives in India, if any and the extent of authorization and authority given to commit the Principals. In case the agent/representative be a foreign Company, it shall be confirmed whether it is real substantial Company and details of the same shall be furnished.

2.1.2 The amount of commission/remuneration included in the quoted price(s) for such agents/representatives in India.

2.1.3 Confirmation of the Tenderer that the commission/ remuneration if any, payable to his agents/representatives in India, may be paid by BEML LTD in Indian Rupees only.

2.2 Tenderers of Indian Nationality shall furnish the following details in their offers:

2.2.1 The name and address of the foreign principals indicating their nationality as well as their status, i.e., whether manufacturer or agents of manufacturer holding the Letter of Authority of the Principal specifically authorizing the agent to make an offer in India in response to tender either directly or through the agents/representatives.

2.2.2 The amount of commission/remuneration included in the price (s) quoted by the Tenderer for himself.

2.2.3 Confirmation of the foreign principals of the Tenderer that the commission/remuneration, if any, reserved for the Tenderer in the quoted price (s), may be paid by BEML LTD in India in equivalent Indian Rupees on satisfactory completion of the Project or supplies of Stores and Spares in case of operation items.

2.3 In either case, in the event of contract materializing, the terms of payment will provide for payment of the commission /remuneration, if any payable to the agents/representatives in India in Indian Rupees on expiry of 90 days after the discharge of the obligations under the contract.

2.4 Failure to furnish correct and detailed information as called for in paragraph-2.0 above will render the concerned tender liable to rejection or in the event of a contract materializing, the same liable to termination by BEML LTD. Besides this there would be a penalty of banning business dealings with BEML LTD or damage or payment of a named sum.