

**GENERAL TERMS & CONDITIONS**

**APPLICABLE TO CONTRACTS  
&  
PURCHASE ORDERS**

**8205350535 Dtd 16<sup>th</sup> August 2012**

## 1. DEFINITIONS & INTERPRETATIONS

- 1.1. **'The Purchaser'** means **"(include company name and address)"** (A Govt. of India Undertaking) incorporated under the Companies Act having its registered office at **"(include address)"** and shall be deemed to include its successors and assignee.
- 1.2. **'Supplier'** means a person having been included in a contract as a Contractor and also means a firm or company with whom the order for supply is placed and shall be deemed to include the Supplier's successors, (approved by BEML Ltd.,) representatives, heirs, executors and administrators. The supplier may also be referred to as the supplier, Contractor or vendor.
- 1.3. **'Parties to the Contract'** shall mean the Supplier and the Purchaser as named in the main body of the Purchase Order.
- 1.4. **'Tender'** means and includes quotation, invitation to tender and all other documents like drawings, specifications, quality plan, etc that form part of the tender document.
- 1.5. **'Acceptance of Tender'** Means the letter of memorandum communicating supplier, the acceptance of the Tender and includes advance acceptance of this tender.
- 1.6. **'Purchase Orders / Contract'** means and includes the invitation to tender, instruction to tenderers, acceptance of tender, Letter of intent / letter of award, the general terms and conditions of purchase order/contract, special conditions of purchase order/contract, particulars, descriptions, specifications, schedule of prices, quantities, quality plan, drawings enclosed and other condition specified in the acceptance of tenders and includes the repeat order which has been accepted or acted upon by / for the supplier for the supply of stores and includes an order for performance of service and includes amendments, if any, that may take place subsequent to the discussions, negotiations, mutual agreement if any.
- 1.7. **'Stores / Materials / Services'** means the goods or services specified in the purchase order which the supplier has agreed to supply under the purchase order.
- 1.8. Words in singular include the plural & vice-versa.
- 1.9. Words Imparting the masculine gender shall be taken to include the feminine gender and words imparting persons shall include any firm, company or associations or body of individuals whether incorporated or not.
- 1.10. The heading of these conditions shall not affect the interpretations or construction thereof of the contract

## **2. 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.

## **3. ACCEPTANCE OF ORDER:**

The Supplier shall send Order Acceptance within two weeks from the date of LOI / LOA / Purchase Order or such other period as specified / agreed by the Purchaser. Purchaser reserves the right to revoke the order placed if the order confirmation differs from the original purchase order placed and the Purchaser shall only be legally bound after it has agreed explicitly in writing to be in agreement with the deviation. The acceptance of deliveries or supplies by Purchaser as well as payments made in this regard shall not imply acceptance of any deviations. The purchase order will be deemed to have been accepted if no communication to the contrary is received within two weeks (or the time limit as specified / agreed by the Purchaser) of the receipt of the order.

## **4. SECURITY DEPOSIT**

4.1 Following amount has to be deposited as interest free security deposit at the time of acceptance of offer.

- For Purchase order value up to Rs. 1 lakh the deposit will be 5% of PO value
- For purchase orders value > Rs. 1 lakhs the deposit will be Rs. 25,000/=

4.2 Wherever raw materials are supplied by BEML Ltd, the value of which is not included in the purchase order for purposes of calculating the security deposit the value of the materials supplied / to be supplied shall also be taken into account . In such cases the maximum security deposit of Rs. 25,000/= shall be enhanced by 5% of such material value.

4.3 BEML reserves the right to accept a bank guarantee from any of the nationalized banks in lieu of cash deposit as security deposit as calculated above at its sole discretion. These bank guarantees shall be valid for the full supply period of the purchase order with a claim period of three months.

4.4 No claim shall lie against BEML Ltd., in respect of interest on cash deposits or Govt. Securities depreciation thereof

4.5 BEML Ltd., shall be entitled and it shall be lawful on its part to forfeit the said security deposit 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 in all respect of the purchase order

## **5. VALIDITY PERIOD**

The purchase order is valid for a maximum period of 24 months from the date of issue unless otherwise stated, within which time the supplier should complete the supplies failing which the purchase order shall be treated as cancelled / short closed unless it is revalidated against specific request for reasons acceptable to BEML Ltd.,

## **6. QUALITY AND WORKMANSHIP**

The stores supplied shall be of the best quality and Workmanship shall be in strict conformity with all the drawings and specifications furnished with the Purchase Orders and shall answer to the description in all respects. All supplies should be accompanied by Suppliers works inspections/test certificates duly certifying, the Stores are in strict conformity with the drawings/ specifications. However, final acceptance will be subject to inspection and approval at BEML 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.

## **7. GUARRANTEE / WARRANTY**

### **a. GUARRANTEE:**

Wherever required, and so provided in the specifications / Purchaser Order, the Supplier shall Guarantee that the stores supplied shall comply with the specifications laid down, for materials, workmanship and performance. If within the guarantee period the delivery is found to be non-compliant including those with the stipulations in Clause 10 (Quality and Condition of Delivery) of these Conditions, the Supplier shall, for its own account, replace, repair, or re-execute the delivery at Purchaser's discretion when first requested to do so within two weeks or mutually agreed period, without prejudice to Purchaser's other legal rights. If the Supplier continues to default on its obligations, Purchaser has the right to proceed to replace, repair or re-execute the order at the Supplier's expense, with or without help from third parties besides, Purchasers other legal remedies. Purchaser shall notify the Supplier of the exercise of this right in advance where possible. Unless otherwise specified, guarantee period shall be 18 months after the date of delivery of goods. For capital goods or bought out packages which are intended to be incorporated in installations or systems the Guarantee period shall not start until the time the installations or systems are commissioned, provided always that the period ends no later than 30 months after the date of delivery of the goods. The guarantee period shall be extended by the period during which the goods are not in compliance with the stipulations in Clause 10 (Quality and Condition of Delivery). A guarantee period as described above shall apply afresh to replaced, repaired or re- executed parts of a delivery.

The decision of the Purchaser in regard to the Supplier liability under this clause shall be conclusive and final and will be binding on the supplier.

**b. WARRANTY:**

All the stores supplied shall be warranted against any defect in material, Workmanship, design or dimension etc., for a period of twelve calendar months from the date they are actually put o use or eighteen months from the date of receipt of supply in BEML Limited whichever is earlier and the supplier shall remedy such defects at his/her own cost or replace free of charge such stores when called upon to do so by BEML who shall state in writing in what respect the stores are defective. A single Warranty Certificate shall be furnished by the Supplier in triplicate as under covering the entire supplies to be made against this order within 15 days from the date of order, but before commencement of supplies.

The supplies covered under P.O.No      dated                      be Warranted against all defects in material, workmanship, design dimensions etc., for a period of 12 months from the date they are put to actual use or 18 months from the date of receipt of supply in BEML whichever is earlier and if any defects are found within the above period for any of the reasons stated, they will be replaced at your premises free of cost within a reasonable time.

**8. SUPPLY OF SAMPLE**

Before effecting the bulk supplies, an acceptable sample shall be submitted without any obligation on the part of BEML Ltd., as regards safe custody and 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 No. Should any certified sample be lent by BEML the suppliers shall be responsible for the safe custody and return of the certified sample intact without damage, after the purpose for which it is given is served, without delay or when demanded back. Any clarification regarding submission of sample may be obtained from concerned Senior Manager, Inspection & Quality Control, BEML Ltd. 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

**9. PACKAGING AND DISPATCH:**

The Supplier shall package the deliveries safely and carefully and pack them suitably in all respects considering the peculiarity of the material for normal safe transport by Sea/ Air / Rail/ Road to its destination suitably protected against loss, damage, corrosion in transit and the effect of tropical salt laden atmosphere. The packages shall be provided with fixtures/ hooks and sling marks as may be required for easy and safe handling by mechanical means.

The packing, shipping, storage and processing of the delivery must comply with the prevailing legislation and regulations concerning safety, the environment and working conditions. Items packed with raw/ solid wood packing material should be treated as per ISPM – 15 (fumigation) and accompanied by Phytosanitary/ Fumigation certificate. If safety information sheets exist for a delivery or the packaging, the Supplier must always supply these sheets direct (at the same time).

The Supplier shall inform the Purchaser one month in advance of likely shipment date/s, the no. of packages, Gross weight & Net weight, Dimensions (LxBxH) of each of the packages. Each such package must be marked with Consignee name, P.O Number, Package No., Gross weight & Net weight, Dimensions (LxBxH) and Supplier's name. The packing shall allow for easy removal and checking of goods on receipt and comply with carrier's conditions of packing or established trade practices. Packing list of goods inside each package with PO item no. & Quantity must also be fixed securely outside the box to indicate the contents. If any consignment needs special handling instruction, the same shall be clearly marked with standard symbols / instructions. Hazardous material should be notified as such and their packing, transportation and other protection must conform to relevant regulations.

## **10. RAW MATERIALS ARRANGEMENT**

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

## **11. IDENTIFYING OF ITEMS / PIECES**

The supplier shall indicate BEML stock number and Supplier Code Number/Vendor Code No. and BEML PO No. in all Delivery documents/ Invoices and correspondence. Also he shall emboss/engrave the Supplier Code No./Vendor Code No. on each item/piece at a convenient non-machinable place, otherwise the supplies are liable for rejections

## **12. DELIVERY**

Except as otherwise indicated in the Purchase Order, delivery shall be FOR destination (BEML). Trade terms such as EXW, FOB, CFR etc., if stipulated in the order shall be construed in accordance with the version of the INCOTERMS applicable at the time of ordering, without prejudice to the provisions contained in these conditions. The delivery date(s) or delivery period(s) as stipulated in the agreement shall be firm and binding and shall apply to the entire delivery for each PO item. Partial shipments may, however, be permitted by the purchaser.

The time and the date of delivery of the stores stipulated in the PO No 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 P.O. 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 thereof within the period prescribed for such delivery, BEML shall be entitled at their option either.

a) 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 comply with the description are not in the opinion of BEML (which shall be final, readily procurable) without cancelling the P.O. in respect of consignments not yet due for delivery.

or

b) To cancel the Purchase Order

In the event of action being taken under (a) or (b) 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 on purchase 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. 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.

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 or loss shall be liable for service charges of 5% of the purchase order value for each extra delivery.

### **13. PLANT & MACHINERY SUPPLY**

In case of a purchase order for supply of Plant & Machinery and supplies requiring inspection and test after erection *and commissioning* at site if the completed Plant if any portion thereof or after it is taken over is found to be defective or fails to fulfill the requirements of the P.O. , BEML shall give the supplier, notice setting forth details of such defects or failures, and the supplier shall forth with make the defective plant good, or alter the same to make it comply with the requirements of the P.O. Should he fail to do so within a reasonable time BEML may reject and replace at the cost of the supplier the whole or any portion of the Plant/Machinery, as the case may be which is defective or fails to fulfill the requirements

### **14. INSPECTION AND TESTING:**

The goods and stores shall be of approved design and each part/ component may be inspected and tested by the Purchaser prior to shipment and shall fully comply with relevant requirements of Purchaser.

Purchaser has the right to inspect the delivery. In the event of rejection, Purchaser shall inform the Supplier accordingly and Purchaser shall be entitled to replacement or repair at its discretion or may proceed to terminate or annul the agreement. All this does not affect Purchaser's right to compensation.

In case the goods / stores are rejected at the time of inspection at BEML or the rejections are notices at the time of further processing the supplier will be informed of these rejections. On receipt of this information the supplier shall immediately arrange to collect the rejected items at his cost and risk and arrange for the replacement of goods within the shortest possible time. Under no circumstances the supplier shall compel the Purchaser to rework the rejected goods.

Wherever the supplier has not collected the rejected items within **60 days** from the date of intimation, BEML shall have the right to dispose the goods and all cost related to the cost of material, statutory levies incurred both in procurement and disposal shall be recovered from the supplier from any of the bills that are due. The supplier shall have no claims whatsoever against the Purchaser for such disposal.

Purchaser or his authorized representative shall be entitled at all reasonable times during execution to inspect, examine and test at the Supplier's premises the material and workmanship of all stores to be supplied under the Contract, and if the part of the stores are being manufactured at other premises the Supplier shall obtain Purchaser's or his authorized representative's permission to inspect, examine and test as if the said stores are being manufactured at the Supplier's premises. Such inspection, examination and testing, if made shall not release the Supplier from any obligation under the Contract.

All costs related to inspections and re-inspections shall be borne by the Supplier. The cost of inspection staff/ third party specified by the Purchaser shall be borne by Purchaser, unless otherwise specifically agreed. Whether the Contract provides for tests on the premises of the Supplier or any of his Sub-contractor/s, Supplier shall be responsible to provide assistance such as, labour, materials, electricity, fuels, stores, apparatus, instruments as may be required and as may be reasonably demanded to carry out such tests efficiently. Cost of any type test or such other special tests shall be borne by the Purchaser only if specifically agreed.

The Supplier shall give the authorized representative of the Purchaser reasonable prior notice in writing of the date on and the place at which any stores will be ready for inspection/ testing as provided in the Contract

#### **15. QUALITY & CONDITION OF DELIVERY:**

The Supplier guarantees that the delivery is of good quality and free from all defects and in the case of services rendered that they are performed by skilled personnel and that new materials are used.

The Supplier guarantees that the delivery corresponds exactly with the provisions of the agreement, the reasonable expectations of Purchaser regarding the characteristics, quality and reliability of the delivery.

The Supplier guarantees that the delivery is suitable for the purpose for which it is intended by its very nature or which is evident from the specifications listed and from the order

The Supplier guarantees that the delivery complies with legal requirements applicable in India and other (international) Government regulations, as applicable

The Supplier guarantees that the delivery complies with the customary norms and standards in the relevant branch of trade or industry

The Supplier shall be responsible for compliance with applicable technical, safety, quality, environmental requirements and other regulations in relation to his products, packaging, and raw and ancillary materials.

## **16. PAYMENT PROCEDURE**

All bills should be submitted in triplicate to the concerned Accounts Department as per terms of the P.O. whenever the terms of P.O. stipulate for balance payment, a separate bill in triplicate for the balance amount shall be submitted.

Payment shall be recommended / arranged only when supplies are made strictly in line with the supply schedule of the P.O. Requests for piece meal payments after making staggered supplies, deviation from the supply schedule, shall not be entertained.

All direct payment shall be made by E-payment mode only. In case of foreign suppliers payments will be made through bank based on the documentation as called in the relevant purchase order directly to the supplier's banker for credit to supplier's account

## **17. APPROPRIATION**

BEML Ltd., shall be entitled to recover by appropriating in part or full any sum of money payable by the contactor under this contract or any other contract including contracts with other divisions of BEML. Should the sum of amount recovered is not sufficient to cover the total amount due, BEML is entitled to recover such amount from the bills that becomes due or the contractor shall pay BEML the balance due.

## **18. CENTRAL EXCISE**

The supplier shall obtain Central Excise Licenses opting to pay Excise Duty wherever applicable. Central Excise Duty Gate Pass in original shall be forwarded to the Senior Manager Stores, in respect of each consignment along with dispatch documents. When goods are dispatched through Road Transport Carriers, it shall be ensured that the Excise Duty Gate Pass No. and date is endorsed on the GC Note binding the carriers to deliver the Excise Duty Gate Passes in original to our Stores Department along with the consignment. Wherever Excise Duty is payable extra, the same shall be reimbursed at actual against production of qualified Excise Duty gate pass in original as a proof for having paid the duty on the particular consignment. The supplier should ensure that the Gate Pass accompanies each consignment that are sent to us. In addition a photocopy of Gate Pass, in advance along with Invoice to be sent to Purchase Department in case of payment through Bank. If the terms of payment is other than the above, the photo copy of the Gate Pass with the bills etc., shall be sent to concerned Accounts Department. The Excise Duty Gate Pass number and date shall be incorporated in the Invoice, Delivery Challan and all other dispatch documents.

## **19. APPLICABLE LAWS AND JURISDICTION OF COURTS:**

Indian laws both substantive and procedural, for the time being in force including modifications thereto, shall govern Contract. The competent Indian courts shall have sole jurisdiction over disputes between purchaser and the Supplier.

## **20. INTELLECTUAL PROPERTY RIGHTS; LICENSES :**

If any Patent design, trademark or any other intellectual property rights apply to the delivery or accompanying documentation, Purchaser shall be entitled to the legal use thereof free of charge by means of a non-exclusive, worldwide, perpetual license. All intellectual property rights that arise due to the execution of the delivery by the Supplier and by its employees or third parties involved by the Supplier for performance of the agreement belong to Purchaser.

The Supplier shall be obligated to do everything necessary to obtain or establish the above mentioned rights. The Supplier guarantees that the delivery does not infringe on any of the intellectual property rights of third parties. The Supplier shall also be obligated to do everything necessary to obtain or establish the alternate acceptable arrangement pending resolution of any (alleged) claims by third parties. The Supplier shall indemnify the Purchaser against any (alleged) claims by third parties in this regard and shall reimburse Purchaser for any damages suffered as a result thereof.

“The Supplier shall comply with all applicable Labor Laws, particularly Contract Labor (Regulation & Abolition) Act, 1970, ESI Act, Gratuity Act, Payment of Bonus Act, Payment of Minimum Wages Act, Provident Fund Act etc., and Rules framed therein from time –to- time and the Supplier shall indemnify the Company for any loss caused to it by reason of inaction, non-compliance etc., of the provisions of any Law by the Supplier”.

## **21. BRIBES AND GIFTS**

Any bribe, commissions, 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 on 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 Ltd., shall in addition to any criminal liability which the supplier , may incur, subject the supplier to the cancellation of this and all other contracts with BEML and also for payment of any loss or damage resulting from any such cancellation to like extent, as is provided in case of cancellation under Clause -12 hereof. Any question or dispute as to the commissions 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.

## **22. JURISDICTION**

Courts at Bangalore alone shall have jurisdiction to decide any issue/dispute arising out of the Arbitration or this Purchase Order in exclusion of all other Courts. However, jurisdiction of any other court may be accepted by mutual discussion and agreement by and between the Company and the Supplier.

## **23. ARIBITRATION**

Disputes if any, arising between the company and the supplier in connection with this purchase order or any other matters connected herewith, 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 Indian Arbitration and Conciliation Act, 1996 and Rules framed there under. The place of arbitration shall be at Bangalore or any other place mutually decided by and between the company and the supplier and all arbitration proceedings shall be conducted in English language. The award of the sole arbitrator shall be final and binding on all the parties.

## **24. FORCE MAJEURE CLAUSE:**

Notwithstanding anything contained in the Contract, neither the Supplier nor the Purchaser shall be held responsible for total or partial non-execution of any of the contractual obligations, should the obligation become unreasonably onerous or impossible due to occurrence of a 'Force Majeure' conditions which directly affect the obligations to be performed by the Purchaser or the Supplier. Such events include war, military operations of any nature, blockages, revolutions, insurrections, riots, civil commotions, insurgency, sabotage, acts of public enemy, fires, explosion, epidemics, quarantine restrictions, floods, earthquake, or acts of God, restrictions by Govt. authorities over which the Supplier or *the acts on which* the Purchaser has no control.

The party claiming to be affected by Force Majeure shall notify the other party in writing without delay, within two weeks on the intervention and on the cessation of such circumstance. Extension of time sought by the Supplier along with supporting evidence and so granted by the Purchaser for the supply/ work affected, if any, shall not be construed as waiver in respect of remaining deliveries.

Notwithstanding above provisions, Purchaser shall reserve the right to cancel the order/ Contract, wholly or partly, in order to meet the overall delivery schedule and make alternative arrangements including arrangements with third party for completion of deliveries and other schedules. Purchaser may takeover partly processed material at a mutually agreed price.

## **25. DRAWINGS AND DOCUMENTS:**

Drawings, technical documents or other technical information received by one party shall not, without the consent of the other party, be used for any other purpose than that for which they were provided. They may not, without the

consent of the submitting party, otherwise be used or copied, reproduced, transmitted or communicated to third parties.

The Supplier shall, as per agreed date/s but not later than the date of delivery, provide free of charge information and drawings which are necessary to permit the Purchaser to erect, commission, operate and maintain the product.

All intellectual properties, including designs, drawings and product information etc. exchanged during the formation and execution of the Contract shall continue to be the property of the submitting party.

## **26. NON-DISCLOSURE AND INFORMATION OBLIGATIONS:**

The Supplier shall provide Purchaser with all information pertaining to the delivery in so far as it could be of importance to Purchaser. The Supplier shall not reveal confidential information to its own employees not involved with the tender / Contract & its execution and delivery or to third parties. The Supplier shall not be entitled to use the Purchaser's name in advertisements and other commercial publications without prior written permission from Purchaser.

## **27. PRICE, INVOICING AND PAYMENT:**

The agreed prices are fixed prices in the currency as specified in the Purchase Order. They shall include packing, forwarding, loading and carriage to the place specified by the Purchaser and are inclusive of all applicable taxes, duties etc. except for those specifically agreed between the supplier and Purchaser. The method of invoicing shall be without prejudice to the parties' agreement as to the place of performance. Invoices shall be submitted bearing the Purchase Order number & date, item number/s and supporting documents as called for in the Purchase Order.

## **28. FALL CLAUSE:**

- i. The prices charged for the stores supplied under this P.O by the supplier shall in no event exceed the lowest price at which the supplier sells the stores of identical description to any other BEML Office / Division during the pendency of this purchase order.
- ii. If at any time, during the said period, the supplier reduces the sale price of such stores or sells such stores to any other BEML Office / Division at a price lower than the price chargeable under this P.O and the price payable under this PO for the stores supplied after the date of coming into force of such reduction shall stand correspondingly reduced.
- iii. The supplier shall furnish to the consigned / paying authority concerned for this PO the following certificate under along with the invoice for the supplies effected under this PO. *"I/We certify that the stores of description identical to the stores supplied to the consignee concerned under this PO have not been sold by me/us to any other BEML Office / Division from the commencement of the contract up to the period of completion of delivery at a price lower than the price charged to the consignee concerned of this PO."*

- iv. Failure in submission of the aforesaid certificate by the supplier will result in with holding of the payment of their bills against supply, if any.

## **29. DURING ARBITRATION**

“Supplies under this Purchase Order, if reasonably possible, may continue by mutual agreement during the dispute / Arbitration proceedings”.

## **30. PROGRESS REPORT:**

The supplier shall regularly inform the progress of work and in such form as may be called for by the Purchaser from time to time. The submission and acceptance of such reports shall not prejudice the rights of the Purchaser in any manner.

## **31. CONTRACT VARIATIONS: INCREASE OR DECREASE IN THE SCOPE OF SUPPLY:**

Purchaser may vary the contracted scope. If the supplier is of the opinion that the variation in scope has an effect on the agreed price or delivery period, purchaser shall be informed of this immediately in writing along with technical details, and in the event of additional work, submit a quotation with regards to the price and delivery period and the effect this scope will have on the other contracts under execution by the supplier. The supplier shall not perform additional work/ altered scope of work without the written instructions/amendment to the Purchase Order to that effect. The Purchaser also reserves its rights to decrease the scope of supply placed against Purchase Orders under due intimation to the supplier. Such decrease may be warranted due to defective goods or Policy Decisions of the Management of the Purchaser. And in such an event, the Supplier shall not have any claims or right against the Purchaser.

## **32. PENALTY / LIQUIDATED DAMAGES:**

The time or period of delivery as stipulated in the schedule of delivery shall be deemed to be the essence of the Contract. Should circumstances arise whereby the deadline for an agreed delivery date(s) or period(s) is expected to be exceeded, the Supplier shall inform Purchaser without delay that in such an event the Supplier shall bind himself to any of the terms and conditions that may be imposed by the Purchaser. If delay in delivery is caused by any of the circumstances mentioned is on account of Force Majeure conditions prior to the scheduled / extended delivery or by additional work, if any, or by an act or omission on the part of the Purchaser, the Purchaser shall extend the time for delivery by a period which is reasonable having regard to all the circumstances in the case.

If the Supplier exceeds any agreed delivery date(s) or period(s), Purchaser shall levy LD for such delay @ 0.5 % per week (7 days) and part thereof, subject to a maximum of [REDACTED] of the value of the delayed portion of the Purchase Order.

The Penalty/ LD will be charged on the value of the purchase order excluding statutory levies, freight and insurance wherever not included in the price.

Imposition, recovery or settlement of this LD shall not affect Purchaser's right to performance, compensation and termination of the agreement

### **33. TRANSFER OF OWNERSHIP AND RISK:**

The risk for the delivery remains with the Supplier until the goods are delivered at the agreed place. Title to the delivery shall pass on to Purchaser at the moment of delivery.

Models, stamps, moulds, templates, dies, calipers, drawings and the like procured or manufactured by the Supplier in aid of the delivery, shall be deemed to have been made available to the Supplier by Purchaser at the moment that these articles are delivered to the Supplier or have been manufactured by it. If Purchaser makes items available or is considered to have made items available to the Supplier in aid of the delivery, these shall remain or become the property of Purchaser and the Supplier shall be obliged to clearly mark these items as Purchaser's property and to make a declaration of ownership available if requested to do so. Items created by amalgamation, confusion or otherwise, become Purchaser property at the moment of creation. The Supplier shall be deemed to have created the items for Purchaser and shall retain these new items as Purchaser property and make a declaration of ownership available to Purchaser if requested to do so.

### **34. SHORT SHIPMENT / WARRANTY / GUARANTEE REPLACEMENTS:**

In case of any short shipments during initial supply, subsequently dispatched by the Supplier or as any Guarantee/ Warranty replacement shall be dispatched on "DDP – Delivered Duty Paid BEML Stores" basis for imported items and "FOR – BEML Stores / designated destination" basis for indigenous items.

### **35. EXPORT ADMINISTRATION REGULATIONS:**

If a delivery includes such technology and or supply that is subject to the export regulations, the Supplier shall obtain due permissions, approvals, license etc.

### **36. NON-WAIVER OF DEFAULTS**

If any individual provision of the Contract is invalid the other provisions shall not be affected. The failure of BEML to insist upon performance of the Contract, to enforce any of the terms and conditions of this Contract or to exercise any right or privilege granted to BEML under this Contract or under law, shall not be construed as a waiver and the same shall continue in full force and effect.

### **37. ASSIGNMENT OF RIGHTS AND OBLIGATIONS; SUBCONTRACTING:**

The supplier is not permitted to subcontract the delivery or any part thereof to third parties or to assign the rights and obligations resulting from this agreement in whole or in part to third parties without prior written permission from Purchaser. Any permission or approval given by the Purchaser shall, however, not absolve the supplier of the responsibility of his obligations under the contract.

### **38. INTEGRITY COMMITMENT IN THE EXECUTION OF CONTRACTS:**

#### **Commitment by Purchaser:**

Purchaser commits to take all necessary steps to prevent corruption in connection with the execution of the Contract.

#### **Commitment by the Contractor:**

The Contractor (s) commit (s) to take all measures to prevent corruption and will not directly or indirectly try to influence any decision for the benefit for which he is not legally entitled.

The contractor (s) will not commit any offence under the relevant Acts. The Contractor (s) will not use improperly, for purpose of competition or personal gain or pass on to others, any information or documents provided by Purchaser as part of business relationship.

The Contractor(s) will not enter with other Bidder(s) / Contractors(s) into any undisclosed agreement or understanding or any actions to restrict competition.

If the Contractor(s), before award or during execution of the Contract commit(s) a transgression of the above or in any other manner such as to put his reliability or credibility in question, Purchaser is entitled to disqualify the contractor(s) from the tender process or terminate the contract and / or take suitable actions as deemed fit.

The End