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4.2 Consignee's Right of Rejection:

(a) Notwithstanding any approval which the Inspecting Officer may have given in respect of the Goods or any materials or other particulars or the work or workmanship involved in the performance of the Contract (whether with or without any test carried out by the Contractor or the Inspecting Officer or under the direction of the Inspecting Officer) and notwithstanding delivery of the Goods where so provided to the interim Consignee, it shall be lawful for the Consignee, on behalf of the Purchaser, to reject the Goods or any part, portion or consignment thereof within a reasonable time after actual delivery thereof to him at the place or destination specified in the Contract if such Goods or part, portion or consignment thereof is not in all respects in conformity with the terms and conditions of the Contract whether on account of any loss, deterioration or damage before dispatch or delivery or during transit or otherwise howsoever.

(b) Provided that where, under the terms of the Contract the Goods are required to be delivered to an interim Consignee for the purpose of dispatch to the Consignee, the Goods shall be at the Purchaser's risk after their delivery to the interim Consignee, but nevertheless it shall be lawful for the Consignee on behalf of the Purchaser to reject the Goods or any part, portion of consignment thereof upon their actual delivery to him at the destination if they are not in all respects in conformity with the terms and conditions of Contract except where they have been damaged or have deteriorated in the course of transit or otherwise after their delivery to the interim Consignee.

Note: Consignee shall issue a rejection advice within 90 days from the date of actual receipt of the Goods, which may or may not have been pre-inspected at Contractor's premises, and all related documents from the Contractor, which are required to be verified by the Consignee upon receipt, as per the Contract, prior to the acceptance of the materials. The 90-day timeframe specified above is solely for the initial acceptance of the materials by the Consignee and without prejudice to the right of the Purchaser or Consignee, on Purchaser's behalf, to reject the material as per Warranty/ Guarantee Clause (Clause 10) within the period specified therein.

(c) The provisions contained in Clause 11 relating to the removal of Goods rejected by the Inspecting Officer shall mutatis mutandis apply to Goods rejected by the Consignee as herein provided.

(d) Where under a Contract, the price payable is fixed on F.O.R. station of dispatch or Ex-Works basis, the Contractor shall, if the Goods are rejected at destination by the Consignee, be liable, in addition to his other liabilities, to reimburse to the Purchaser the freight paid by the Purchaser.

4.3 Sub-letting and Assignment:

(a) The Contractor shall not, save with the previous consent in writing of the Purchaser, sub-let, transfer or assign the Contract or any part thereof or interest therein or benefit or advantage thereof in any manner whatsoever.

(b) Sub-Contracting does not amount to Sub-letting or Assignment or Transfer.

(c) If the Contractor sub-lets or assigns or transfers the Contract or any part thereof without such permission, the Purchaser shall be entitled, and it shall be lawful on his part, to treat it as a breach of Contract and avail any or all remedies there under. The decision of the Purchaser in this regard shall be final and binding on the Contractor.

4.4 Changes in Constitution of the Contractor:

Where the Contractor is a partnership firm, the following restrictions shall apply to changes in the constitution during the execution of the Contract:

(a) A new partner shall not be introduced in the firm except with the prior consent in writing of the Purchaser, which shall be granted only upon execution of a written undertaking by the new partner to perform the Contract and accept all liabilities incurred by the firm under the Contract before the date of such undertaking.

(b) On the death or retirement of any partner of the Contractor firm before the complete performance of the Contract, the Purchaser may, at his option, terminate the Contract and in such case the Contractor shall have no claim whatsoever for any compensation against the Purchaser.

(c) If the Contract is not determined as provided in Sub-clause (b) above notwithstanding the retirement of a partner from the firm he shall continue to be liable under the Contract for acts of the firm until a copy of the public notice given by him under Section 32 of the Partnership Act,1932 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 Contractor or any partner of the Contractor firm has committed a breach of any of the conditions in this sub- clause contained shall be final and binding on the Contractor.

4.5 Assistance to the Contractor:

(a) The Contractor shall be solely responsible to procure any material or obtain any import or other licence or permit required for the fulfilment of the Contract and the grant by the Purchaser or any other authority of a quota certificate or permit required under any law for distribution or acquisition of iron and steel or any other commodity or any other form of assistance in the procurement of the material aforesaid or any attempt to render assistance in the matter aforesaid, shall not be construed as a representation on the part of the Purchaser that the material covered by such licence or permit or quota certificate is available or constitute any promise, undertaking or assurance on the part of the Purchaser regarding the procurement of the same or effect any variation in the rights and liabilities of the parties under the Contract.

(b) However, if by reason of any such assistance as aforesaid, the Contractor obtains any materials at less than their market price or the cost of production of the

Goods is lowered, the price of the Goods payable under the Contract shall be reduced proportionately and the extent of such reduction shall be determined by the Purchaser whose decision shall be final and binding on the Contractor.

(c) Every effort made by the Purchaser to supply, or give assistance in the procurement of materials, whether from the Government stock or by Purchaser under a permit or release order issued by or on behalf of or under authority from Government or by any officer empowered in that behalf by law or under other arrangements made by the Purchaser shall be deemed to be subject to the condition that it will be performed with due regard to the other demands and only if it is found practicable to do so within the stipulated time and the decision of the Purchaser whether it was practicable to supply or give assistance as aforesaid or not shall be final and binding on the Contractor.

4.6 Charges for Work Necessary for Completion of the Contract:

The Contractor shall pay all charges for handling, stamping, painting, marking, protecting or preserving patent rights, drawings, templates, models and gauges and for all such measures as the Purchaser or the Inspecting Officer may deem necessary for the proper completion of the Contract, though special provision therefore may not be made in the specification or drawings.

4.7 Use of Raw Materials secured with Government Assistance:

(a) **Accountability of Government-Assisted Raw Materials**:

(i) Where any raw material is procured for the execution of a Contract with the assistance of the Government rendered in the form of permit, or licence or quota certificate/ essentiality certificate or release order issued by or on behalf of or under the authority of the Government or by an officer empowered in that behalf, or

(ii) Where the raw material is issued to the Contractor from Government stock, or

(iii) Where advance payments are made to the Contractor to enable him to purchase the raw material, or

(iv) Where raw material is arranged by the Government,

the Contractor—

(i) Shall hold such material as trustee for the Government,

(ii) Shall use such material economically and solely for the purpose of the Contract.

(iii) Shall not dispose of the same without the previous permission in writing of the Purchaser, and

(iv) Shall render due account of such material and return to the Government at such place as the Purchaser may direct all surplus or unserviceable material that may be left after the completion of the Contract or its termination for any reason whatsoever.

On returning such material, the Contractor shall be entitled to such price therefor as the Purchaser may fix, having regard to the condition of such material.

(b) Where the Contract is terminated due to any default on the part of the Contractor, the Contractor shall pay all transport charges incurred for returning any material up to such destination as may be determined by the Purchaser and the decision of the Purchaser in that behalf shall be final and binding on the Contractor.

(c) If the Contractor commits breach of any of the conditions in this clause specified, he shall, without prejudice to any other liability, penal or otherwise, be liable to account to the Government for all moneys, advantages or profits accruing from or which, in the usual course, would have accrued to him by reason of such breach.

(d) Where the Goods manufactured or fabricated by the Contractor out of the material arranged or procured by or on behalf of the Government are rejected, the Contractor shall, without prejudice to any other right or remedy of the Government, pay to the Government, on demand, the cost price or market value of all such materials whichever is greater.

4.8 Risk of Loss or Damage to Government or Purchaser's Property:

(a) All the property of the Government or Purchaser loaned, whether with or without deposit on terms and conditions to be separately agreed upon in respect of each particular Contract, to the Contractor in connection with the Contract shall remain the property of the Government or the Purchaser, as the case may be. The Contractor shall use such property for the purpose of the execution of the Contract and for no other purpose whatsoever.

(b) All such property shall be deemed to be in good condition when received by the Contractor unless he shall have within twenty-four hours of the receipt thereof notified the Purchase Officer to the contrary. If the Contractor fails to notify any defect in the condition or quality of such property, he shall be deemed to have lost the right to do so at any subsequent stage.

(c) The Contractor shall return all such property and shall be responsible for the full value thereof to be assessed by the Purchaser whose decision shall be final and binding on the Contractor. The Contractor shall be liable for loss or damage to such property from whatever cause happening while such property is in the possession of or under the control of the Contractor, his servants, workmen or agents.

(d) Where such property is insured by the Contractor against loss or fire at the request of the Government or Purchaser such insurance shall be deemed to be affected by way of additional Precaution and shall not prejudice the liability of the Contractor as aforesaid.

4.9 Confidentiality, Secrecy and Intellectual Property Rights (IPR):

(a) <u>Confidentiality:</u>

All documents, drawings, samples, data, associated correspondence or other information furnished by or on behalf of the Purchaser to the Contractor, in

connection with the Contract, whether such information has been furnished before, during or following completion or termination of the Contract, are confidential and shall remain the property of the Purchaser and shall not, without the prior written consent of Purchaser neither be divulged by the Contractor to any third party, nor be used by him for any purpose other than the design, procurement, or other services and work required for the performance of this Contract. If advised by the Purchaser, all copies of all such information in original shall be returned on completion of the Contractor's performance and obligations under this Contract.

(b) Secrecy:

If the Contract declares the subject matter of this Contract as coming under the Official Secrets Act, 1923 or if the Contract is marked as "Secret", the Contractor shall take all reasonable steps necessary to ensure that all persons employed in any connection with the Contract, have acknowledged their responsibilities and penalties for violations under the Official Secrets Act and any regulations framed thereunder.

(c) Intellectual Property Rights:

All deliverables, outputs, plans, drawings, specifications, designs, reports and other documents and software submitted by the Contractor under this Contract shall become and remain the property of the Purchaser and subject to laws of copyright and must not be shared with third parties or reproduced, whether in whole or part, without the Purchaser's prior written consent. The Contractor shall, not later than upon termination or expiration of this Contract, deliver all such documents and software to the Purchaser, together with a detailed inventory thereof. The Contractor may retain a copy of such documents and software but shall not use it for any commercial purpose.

(d) Obligations of the Contractor:

(i) Without the Purchaser's prior written consent, the Contractor shall not use the information mentioned above except for the sole purpose of performing this Contract.

(ii) The Contractor shall treat and mark all information as confidential (or Secret, as the case may) and shall not, without the written consent of the Purchaser, divulge to any person other than the person(s) employed by the Contractor in the performance of the Contract. Further, any such disclosure to any such employed person shall be made in confidence and only so far as necessary for such performance for this Contract.

(iii) Notwithstanding the above, the Contractor may furnish to its holding company or its Sub Contractor(s) such documents, data, and other information it receives from the Purchaser to the extent required for performing the Contract. In this event, the Contractor shall obtain from such holding company/ Sub-Contractor(s) an undertaking of confidentiality (or secrecy — as the case may be) similar to that imposed on the Contractor under the

above clauses.

(iv) The obligation of the Contractor under sub-clauses above, however, shall not apply to information that:

(1) the Contractor needs to share with the institution(s) participating in the financing of the Contract;

(2) now or hereafter is or enters the public domain through no fault of Contractor;

(3) can be proven to have been possessed by the Contractor at the time of disclosure and which was not previously obtained, directly or indirectly, from the Purchaser; or

(4) otherwise lawfully becomes available to the Contractor from a third party that has no obligation of confidentiality.

(e) The above provisions shall not in any way modify any undertaking of confidentiality (or Secrecy — as the case maybe) given by the Contractor before the date of the Contract in respect of the Contract/ the Tender Document or any part thereof.

(f) The provisions of this clause shall survive the completion or termination of the Contract for any reason.

4.10 Indemnity for breach of Intellectual Property Rights (IPR):

(a) The Contractor shall at all times indemnify and hold harmless, free of costs, the Purchaser and its employees and officers from and against all suits, actions or administrative proceedings, claims, demands, losses, damages, costs and expenses of any nature, including attorney's fees and expenses, which may arise in respect of the Goods provided by the Contractor under this Contract, as a result of any infringement or alleged infringement of any patent, utility model, registered design, copyright or other Intellectual Property Rights (IPR) or trademarks, registered or otherwise existing on the date of the Contract arising out of or in connection with:

(i) any design, data, drawing, specification, or other documents or Goods provided or designed by the Contractor for or on behalf of the Purchaser.

(ii) The sale by the Purchaser in any country of the products produced by the Goods supplied by the Contractor, and

(iii) The installation of the Goods by the Contractor or the use of the Goods by the Purchaser.

(b) Such indemnity shall not cover any use of the Goods or any part thereof or any products produced thereby:

(i) other than for the purpose indicated by or to be reasonably inferred from the Contract

(ii) in association or combination with any other equipment, plant, or materials

not supplied by the Contractor.

(c) If any proceedings are brought, or any claim is made against the Purchaser arising out of the matters referred above, the Purchaser shall notify the Contractor of the same and the Contractor shall, at his own expense, either settle any such dispute or conduct any litigation that may arise therefrom.

(d) If the Contractor fails to notify the Purchaser within twenty-eight (28) days after receiving such notice that he intends to conduct any such proceedings or claim, then the Purchaser shall be free to conduct the same on his behalf at the risk and cost to the Contractor.

(e) At the Contractor's request, the Purchaser shall afford all available assistance to the Contractor in conducting such proceedings or claim and shall be reimbursed by the Contractor for all reasonable expenses incurred in so doing.

(f) The Contractor shall not be liable for payment of any royalty, licence fee or other expenses in respect of or for making use of patents or designs with respect to which he is according to the terms of the Contract, to be treated as an agent of the Government for the purpose of making use of patent or trade mark for fulfilment of the Contract.

4.11 Packing:

(a) The Contractor shall pack at his own cost the Goods sufficiently and properly for transit by rail/road, air and/or sea as provided in the Contract so as to ensure their being free from loss or damage or adverse impact on quality on arrival at their destination.

(b) Unless otherwise provided in the Contract, all containers (including packing cases, boxes, tins, drums and wrappings) in which the Goods are supplied by the Contractor, shall be considered as non-returnable and their cost as having been included in the Contract price.

(c) If the Contract provides that the containers shall be returnable, they must be marked 'returnable' and they will be returned to the Contractor as per terms of the Contract.

(d) If the Contract provides that returnable containers shall be separately charged; they shall be invoiced by the Contractor at the price specified in acceptance of tender. In such cases, the Contractor shall give full credit for the invoiced amount if the containers are returned to the Contractor. Return of containers shall be made within a reasonable time and in the event of any dispute or difference arising as to whether the containers were so returned, the decision of the Purchaser thereon shall be final and binding and the Purchaser may, in his discretion award, such compensations as may in his opinion be proper for any undue delay in returning the containers.

(e) Each bale or package delivered under the Contract shall be marked by the Contractor at his own expense. Such marking shall be distinct (all previous irrelevant marking being carefully obliterated) and shall clearly indicate the

description and quantity of the Goods, the name and address of the Consignee, the gross weight of the package and the name of the Contractor with a distinctive number or mark sufficient for the purpose of identification. All markings shall be carried out with such material as may be found satisfactory by the Inspecting Officer as regards quickness of drying, fastness and indelibility.

(f) The Inspecting Officer may reject the Goods if the Goods are not packed/ or marked as aforesaid and in case where the packing materials are separately prescribed, if such materials are not in accordance with the terms of the Contract. Such rejection of the Goods by the Inspecting Officer shall be final and binding on the Contractor.

(g) Each bale or package shall contain a packing note specifying the name and address of the Contractor, the number and date of the acceptance of tender or supply order and the designation of the Purchase Officer, the description of the Goods and the quantity contained in such bale or package.

4.12 Freight:

If as per Contract conditions, freight is to be borne by the Purchaser at actual, the goods shall be booked by the most economical route or most economical tariff available at the time of dispatch as the case may be. Failure to do so will render the Contractor liable for any avoidable expenditure caused to the Purchaser.

5. Samples:

5.1 Advance Sample:

(a) Where an advance sample is required to be approved under the terms of the Contract, the Contractor shall submit the sample free of cost to the Inspecting Officer within the time specified in the Contract.

(b) If the Contractor is unable to do so, he must apply immediately to the Office issuing the Contract for extension of time stating the reasons for the delay. If the Purchaser is satisfied that a reasonable ground for an extension of time exists, he may allow such additional time as he considers to be justified (and his decision shall be final) with or without alteration in the delivery period stipulated in the Contract and on such conditions as he deems fit.

(c) In the event of the failure of the Contractor to deliver the advance sample by the date specified in the Contract or any other date to which the time may be extended as aforesaid by the Purchaser or of the rejection of the sample, the Purchaser shall be entitled to terminate the Contract and take further action as per the provisions of Clause 13.

(d) Unless otherwise provided in the Contract, all samples required for test shall be supplied by the Contractor free of cost. Where sample, which is supplied free, is rejected after examination and test, the Contractor shall arrange for collection of the same or whatever remains of the sample, after examination and test within three months of the date of such rejection.

(e) Where under the Contract, the Contractor is required to submit an advance

sample, any expenses incurred by the Contractor on or in connection with the production of Goods in bulk, before the sample has been approved unconditionally, shall be borne by the Contractor and he shall not claim any compensation in the event of such sample being found unacceptable by the Inspecting Officer.

(f) Where the Contract does not require any advance sample to be approved, the Contractor may before proceed with bulk manufacture or delivery of the Goods, if he so desires, submit to the Inspecting Officer for inspection a sample of the Goods in which case a quantity not less than one percent (1%) of the total quantity to be supplied unless otherwise authorized by the Inspecting Officer shall be submitted. The Contractor shall not, however, be entitled to be shown any consideration or give any extension of time or claim to be exonerated from completing the delivery within the stipulated period only on the ground of delay in the approval of any such sample.

(g) If under the Contract, the supplies are governed by a sealed pattern, the Contractor shall be bound to examine such pattern before preparing a sample or manufacturing the Goods in bulk as the case may be.

(h) If the Contractor submits a sample whether with, before or after the tender, the same shall not govern the standard of supply except when it has been specifically stated so in the acceptance of tender.

(i) Marking: Samples submitted shall be clearly labelled with the Contractor's name and address and the Contract number.

(j) The rejection of the sample by the Inspecting Authority or Inspecting Officer or Consignee shall be final and binding on the Contractor.

5.2 Loan of Sample:

(a) If a certified sample is lent to the Contractor, it will bear a label containing inter alia variations known to the Inspecting Officer between the said sample and the Goods desired. If the Contractor finds any further variation between the certified sample and the particulars of specifications mentioned in the Contract he shall at once refer the matter to the Inspecting Officer and the Contractors shall also give intimation of such discrepancy to the Purchase Officer. The Contractor shall follow the instructions of the Inspecting Officer as to what sample of particulars should guide the production of Goods and the decision of the Inspecting Officer in the matter shall be final and binding on the Contractor.

(b) The Contractor shall not detach the said label from the certified sample and if for any reasons the said label gets detached the Contractor shall at once return the certified sample to the Inspecting Officer for attaching a fresh label.

6. Inspection:

6.1 Pre-dispatch Inspection of Goods:

(a) When inspection during manufacture or before delivery or dispatch is required, notice through the online portal of the Purchaser/ inspecting agency, if available,

or else in writing, shall be sent by the Contractor to the Inspecting Officer when the Goods or material to be supplied are ready for inspection and test, and no Goods shall be delivered or dispatched until the Inspecting Officer has certified in writing that such Goods have been inspected and approved by him.

(b) In cases where the Inspecting Authority specified in the Contract requires on behalf of the Purchaser that inspection of the raw materials to be used and/or stage inspection during the manufacturing process of the component/ Goods, etc. is also to be done, notice through the online portal of the Purchaser/ Inspecting agency, if available, or else in writing, shall be sent by the Contractor to the Inspecting Officer to visit his premises/works to test the raw materials and/or conduct necessary inspection during the manufacturing process of the component/ Goods, etc. as deemed essential.

(c) Notification of Result of Inspection: Unless otherwise provided in the specification of schedule, the examination of the Goods will be made as soon as practicable after the same have been submitted for inspection and the result of the examination will be notified to the Contractor.

(d) Inspection Notes: On the Goods being found acceptable by the Inspecting Officer he shall furnish the Contractor with necessary copies of Inspection Notes duly completed, for being attached to the Contractor's bill in support thereof.

(e) In case the Contract is concluded with traders/ agents for the items, which are peculiar to the railways, traders/ agents should indicate the source of supply (manufacturer) and the inspection for such items should be carried out at manufacturer's premises rather than the premises of a trader/ agent, to ensure genuineness and quality of Goods. Such Goods, unless otherwise specified in the Contract, shall be dispatched to the Consignee directly from the manufacturer's premises, without routing through the premises of such traders/ agents.

6.2 Marking of Goods:

(a) The Contractor shall, if so required, at his own expense, mark all the approved Goods with a recognized Government or Purchaser's mark. The Goods which cannot be so marked shall, if so, required by the Inspecting Officer, be packed at his own expense in suitable packages or cases, each of which shall be sealed and marked with such mark.

(b) The Inspecting Officer shall also have power to mark the rejected Goods with a rejection mark so that they may be easily identified, if re-submitted for inspection.

6.3 Facilities for test and Examination:

(a) The Contractor shall, at his own expense afford to the Inspecting Officer all reasonable facilities as may be necessary for satisfying himself, that the Goods are being and/ or have been manufactured in accordance with the particulars.

(b) The Inspecting Officer shall have full and free access at any time during the execution of the Contract to the Contractor's work for the purpose aforesaid, and he may require the Contractor to make arrangements for inspection of the Goods or any part thereof or any material at his premises or at any other place specified by the Inspecting Officer and if the Contractor has been permitted to employ the services of a Sub-Contractor, he shall in his Contract- with the Sub-Contractor, reserve to the Inspecting Officer a similar right.

6.4 Cost of Tests:

(a) The Contractor shall provide, without any extra charge, all materials, tools, labour and assistance of every kind which the Inspecting Officer may demand of him for any test and examination, other than special or independent test, which he shall require to make on the Contractor's Premises and the Contractor shall bear and pay all costs attendant thereon.

(b) If the Contractor fails to comply with the conditions aforesaid, the Inspecting Officer shall, in his sole judgment, be entitled to remove for test and examination all or any of the Goods manufactured by the Contractor to any premises other than his (Contractor's) and in all such cases the Contractor shall bear the cost of transport and/or carrying out such tests elsewhere. A certificate in writing of the Inspecting Officer, that the Contractor has failed to provide the facilities and the means, for test examination shall be final.

6.5 Delivery of Goods for Test:

The Contractor shall also provide and deliver for test, free of charge, at such place other than his premises as the Inspecting Officer may specify, such material or Goods as he may require.

6.6 Liability of Costs for Special or Independent Tests:

In the events of rejection of Goods or any part thereof by the Inspecting Officer in the consequence of the sample which is removed to the laboratory or other places of test, being found on test not in conformity with the Contract and in the event of the failure of the Contractor for any reason to deliver the Goods passed on test within the stipulated period, the Contractor shall, on demand pay to the Purchaser all costs incurred in the inspection and/or test. Cost of test shall be assessed at the rate charged by the laboratory to private persons for similar work.

6.7 Method of Testing:

(a) The Inspecting Officer shall have the right to put all the Goods or materials forming part of the same or any part thereof to such tests as required for the Goods specified in the Contract.

(b) The Contractor shall not be entitled to object on any ground whatsoever to the method of testing adopted by the Inspecting Officer.

6.8 Goods Expended in Test:

Unless otherwise provided for in the Contract if the test proves satisfactory and the

Goods or any instalment thereof is accepted, the quantity of the Goods or materials expended in the test will be deemed to have been taken delivery of by the Purchaser and be paid for as such.

6.9 Powers of Inspecting Officer:

The Inspecting Officer shall have the power: —

(a) before any Goods or part thereof are submitted for inspection, to certify that they cannot be inspected in accordance with the Contract owing to the adoption of any unsatisfactory method of manufacture.

(b) to reject any Goods submitted as not being in accordance with the particulars.

(c) to reject the whole of the instalment tendered for inspection, if after inspection of such portion thereof as he may in his discretion think fit, he is satisfied that the same is unsatisfactory.

(d) the Inspecting Officer's decision as regards the rejection shall be final and binding on the Contractor.

6.10 Inspection towards the End of Delivery Period:

(a) If the Contract requires pre-dispatch inspection of the ordered Goods, the Contractor shall present the Goods for inspection well in advance of the end of delivery period to ensure completion of the inspection and delivery as per the Contract, within that period.

(b) The situation, where the Goods (part or whole of Contract quantity) is tendered for inspection towards the end of the delivery period resulting in inspection and delivery not being completed as per Contract conditions, shall be treated as a breach of the Contract. The Purchaser shall be entitled to take action as per provisions of Clause 13 or may, on written request of the Contractor, take action as per Clause 7.5.

(c) The Contractor shall not dispatch the Goods till such time as an extension in terms of sub-clause(b) above is granted by the Purchaser and accepted by the Contractor.

(d) Notwithstanding the above, if the Goods are dispatched by the Contractor before an extension letter as aforesaid is issued by the Purchaser it shall solely be at the risk and expense of the Contractor. The Purchaser shall be entitled to take action as per provisions of Clause 13 or may, on written request of the Contractor, take action as per Clause 7.5.

7. Delivery:

7.1 Notification of Delivery:

(a) Notification of delivery or dispatch in regard to each and every instalment shall be made to the Consignee, indenter (if so mentioned in the Contract) and to the Purchaser immediately on dispatch or delivery.

(b) The Contractor shall further supply to the Consignee, or the interim Consignee,

as the case may be, a packing account quoting the Contract number and date of dispatch of the Goods. All packages, containers, bundles and loose materials part of each and every instalment shall be fully described in the packing account and full details of the contents of the packages and quantity of materials shall be given to enable the Consignee to check the Goods on arrival at destination.

(c) The Railway Receipt/ Consignment Note or Bill of Lading, if any, shall be forwarded to the Consignee by registered post immediately on the dispatch of Goods. The Contractor shall bear and reimburse to the Purchaser demurrage charges, if any, paid by reason of delay on the part of the Contractor in forwarding the Railway Receipt, Consignment Note or Bill of Lading.

7.2 Progress Reports:

(a) The Contractor shall from time-to-time, render such reports concerning the progress of the Contract and/ or supply of the Goods in such form as may be required by the Purchaser.

(b) The submission, receipt and acceptance of such reports shall not prejudice the rights of the Purchaser under the Contract, nor shall operate as an estoppel against Purchaser merely by reason of the fact that he has not taken notice of/ or subjected to test any information contained in such report.

(c) Progressing of deliveries: The Contractor shall allow reasonable facilities and free access to his works and records to the Inspecting Officer, or such other Officer as may be nominated by the Purchaser for the purpose of ascertaining the progress of the deliveries under the Contract.

7.3 Delivery, Inspection and Acceptance of Goods:

(a) The Contractor shall, as may be required by the Purchaser, deliver the Goods as per the conditions of the Contract. The delivery will not be deemed to be complete until and unless the goods are inspected and accepted by the Inspecting Officer as provided in the contract.

(b) The Purchaser shall not be liable to render assistance to the Contractor in securing or to arrange for or provide transport to the Contractor unless it is so specifically stated in the Contract, notwithstanding that transport of the Goods, is controlled by or under the orders of the Government.

(c) Notwithstanding any inspection and approval by the Inspecting Officer on the premises of Contractor or manufacturer, as the case may be, property in the Goods shall not pass on to the Purchaser until the Goods have been received, inspected and accepted by the Consignee.

(d) No Goods shall be deliverable to the Consignee on Sundays and public holidays or beyond normal office hours without the written permission of the Consignee.

(e) Perishable Goods: For Goods with a limited shelf life, the Contractor shall ensure that at least 75% (or any other percentage stipulated in the Contract) of shelf life remains balance on delivery date. The Purchaser reserves its rights to reject expired or products with less than such specified shelf life.

7.4 Time is the essence of the Contract:

The time for and the date specified in the Contract or as extended for the delivery of the Goods shall be deemed to be of the essence of the Contract and delivery must be completed not later than the date so specified or extended.

7.5 Extension of Time for Delivery:

(a) If the Contractor fails to deliver the Goods as per the stipulated deadlines in the Contract, for any cause which the Purchaser may admit as reasonable ground for extension of time for delivery, the Purchaser shall allow such additional time as he considers to be justified by the circumstance of the case, and shall forgo the whole or such part, as he may consider reasonable, of his claim for such loss or damage due to delay in effecting delivery. Any failure or delay on the part of Sub-Contractor, though their employment may have been sanctioned by the Purchaser, shall not be admitted as a reasonable ground for any extension of time or for exempting the Contractor from liability for any such loss or damage as aforesaid. The decision of the Purchaser in this regard shall be final and binding on the Contractor.

(b) If extension of time for delivery period is allowed, as above, by the Purchaser with damages, the amendment giving such an extension shall be subject to the following conditions:

(i) Levy Liquidated Damages (LD): recover from the Contractor as agreed liquidated damages and not by way of penalty a sum equivalent to ½ (half) % of the price of any Goods (including elements of taxes, duties, freight, etc.) which the Contractor has failed to deliver within the period fixed for delivery in the Contract for each week or part of a week during which the delivery of such Goods may be in arrears where delivery thereof is accepted after expiry of the aforesaid period. Upper limit for recovery of liquated Damages in Supply Contracts will be 10% (Ten percent) of value of delayed supplies irrespective of delays, unless otherwise provided, specifically in the Contract. The parties to this Contract willingly agree that this amount of damages is an agreed pre- estimate of damages caused to the Purchaser because of delay in supply of Goods by the Contractor. The Purchaser shall not be called upon by the Contractor to prove any damage/ loss in order to claim the damages due to delay in supply of Goods, if the damages so claimed by the Purchaser are as per this Clause. The Liquidated Damages shall be calculated on the gross value of supply (inclusive of GST) as provided for in the Contract.

(ii) Denial Clause (DC) as under:

(1) No increases in price on account of any statutory increase in or fresh Imposition of GST, customs duty or on account of any other taxes/ duty/ cess/ levy, leviable in respect of the Goods and incidental Works/ Services stipulated in the said Contract which takes place after the original delivery date, shall be admissible on such

of the said Goods, as are delivered after the said date; and

(2) Notwithstanding any stipulation in the Contract for an increase in price on any other ground, including price variation clause or foreign exchange rate variation, or any other variation clause, no such increase after the original delivery date shall be admissible on such Goods delivered after the said date.

(3) Nevertheless, the Purchaser shall be entitled to the benefit of any decrease in price on account of reduction in or remission of GST, customs duty or on account of any other Tax or duty or any other ground as stipulated in the price variation clause or foreign exchange rate variation or any other variation clause which takes place after the expiry of the original delivery date.

7.6 Consequences of Rejection:

If on the Goods being rejected by the Inspecting Officer or Interim Consignee or Consignee at the destination, the Contractor fails to make satisfactory supplies within the stipulated period of delivery, the Purchaser shall be at liberty to:

(a) require the Contractor to replace the rejected Goods forthwith but in any event not later than a period of 21 days from the date of rejection and the Contractor shall bear all cost of such replacement including freight, if any, on such replacing and replaced Goods but without being entitled to any extra payment on that or any other account, or

(b) terminate the Contract for the rejected quantity and take further action as per the provision of Clause 13.

(c) Where under the Contract some price is paid to the Contractor for the Goods so rejected, the Contractor shall be liable, in addition to his other liabilities, to refund of price recoverable in respect of such rejected Goods and to reimburse to the Purchaser the freight and all other expenses incurred by the Purchaser in this regard. The above said liability on the Contractor shall arise immediately after the issue of the communication of such rejection to him.

8. System of Payment:

8.1 Unless otherwise agreed upon between the parties, payment for delivery of the Goods will be made on submission of bills in the prescribed manner through online billing mode on authorised e-procurement portal of the Purchaser, in accordance with the instructions given in the Contract, by a cheque or demand draft or through online mode (through a branch of the Reserve Bank of India or State Bank of India transacting Government business) or through e-payment to the registered bank account of the Contractor at the option of the Purchaser.

8.2 Payment for the Goods or for each consignment thereof will be made to the Contractor on submission of bills accompanied by required document in accordance with the following procedure in Contracts where such a facility to the Contractor has specifically been agreed to by the Purchaser:-