

## **General Terms and Conditions of Rate Contract**

### **1. Introduction**

- A. This document is an electronic record published by GeM under the provisions of the Information Technology Act, 2000 as amended up to date and the rules made there under (as applicable) and shall act as valid agreement between Seller / Service Provider and Buyer. Further the use of GeM Portal for Sale / Purchase of Goods / Services and the resulting Rate Contract and Purchase Order placed against such Rate Contract shall be governed by the following set of Terms and Conditions:
- (i) General terms and conditions on GeM (GeM GTC);
  - (ii) General Terms and Conditions of Rate Contract contained in this document (GTC of RC);
  - (iii) Category Specific Special Terms and Conditions applicable for the Goods / Service category – as available on GeM Portal (STC);
  - (iv) BID / Reverse Auction specific ATC as contained in the relevant bid document (ATC).
- B. The above terms and conditions are in reverse order of precedence i.e. ATC supersedes Category Specific STC which supersedes GTC of RC which supersede GEM GTC – only in case of any conflicting provisions. In respect of all terms and conditions of GeM GTC, where there is no overriding / superseding terms and conditions in - GTC of RC or STC or ATC, the General Terms and Conditions on GeM will be applicable.
- C. The above set of conditions along with Scope of supply including price as enumerated in the Contract Document shall be construed to be part of the contract.

### **2. Rate Contract:**

"Rate contract" (RC) means an agreement between a Rate Contract organization or RC Buyer with one or more bidders, valid for a specified period of time, which sets out terms and conditions under which specific procurements can be made by enabled set of buyers on GeM during the term of the agreement (by issue of Purchase Order through GeM) and

include an agreement on predetermined agreed price (s) with provision for their revision with / without further competition. Listing of the seller's catalogue in GeM RC Marketplace will signify conclusion of Rate Contract.

### **3. General Terms and Definitions:**

- i. **Rate contract organization:** Rate contract organization is a buyer organization on the GeM platform enabled to facilitate conclusion of rate contracts. This organization will issue bid (s) for identified Goods / services and identified locations, finalise bids and publish rate contract catalogues of the selected eligible bidders.
- ii. **RC Buyer:** RC buyer is the user nominated by Buyer Organization to float the bid for identified Goods / services and identified locations, finalise bids and publish rate contract catalogues of the eligible bidders and manage rate contracts.
- iii. **RC Consignee:** RC consignee are locations for which price discovery will be done for rate contracts. Depending on item peculiarity, consignee could be either a District or a State, **implying that RC price will be fixed for the entire District or Entire State (as the case may be for a particular bid).**
- iv. **Buyer:** Users registered on GeM as buyers and enabled by the RC Buyer to place direct Purchase Order using rate contract catalogue Marketplace on GeM.
- v. **Seller:** The entity registered as Seller / Service provider on GeM which can participate in the RC bids floated by the RC buyer and are bound by the RC bid terms and conditions (including this General Terms and Conditions of Rate Contract) to supply the stores / services as per rate contract catalogue published by RC Buyer based on such RC bidding process.
- vi. **Consignee:** Secondary user of Buyer organization registered as consignee in GeM. The actual recipient of the RC item where seller will deliver the store / service.

- vii. **RC Catalogue Marketplace:** The marketplace on GeM enlisting the catalogues of the RC items finalised by the RC buyer. The Buyer can place the Purchase Order through this marketplace.
- viii. **Purchase Order:** The order placed by the buyer through GeM portal against the available RC catalogue from the RC catalogue Marketplace indicating Quantity, Delivery Locations / Consignee details, Paying Authority details and Delivery Period. Only online Purchase Orders placed through GeM portal shall have legal validity and No off-GeM purchase Order shall be placed against Rate Contracts concluded on GeM.

#### **4. Role, Responsibilities and Obligations:**

##### **a. RC Buyer**

- i. RC buyer is responsible for creating and publishing rate contract bids on GeM platform for specified categories, evaluating and finalising the bids, **ascertaining / establishing reasonableness of prices**, awarding rate contract by publishing RC catalogues on GeM and managing rate contracts during its validity period.
- ii. There can be multiple RC buyers.
- iii. RC Buyer are not supposed to place Purchase Orders of any type against the awarded rate contracts. Purchase orders will be placed by the enabled buyers.
- iv. Rate contract validity will be defined by RC Buyer while creating RC bid on GeM.
- v. RC buyer must define a quantity slab for discount to enable slab-based pricing while creating RC Bid. Defining quantity slab is mandatory to publish rate contract Bid. RC buyer can create maximum 3 slabs.
- vi. RC Buyer may add additional Terms and Conditions in RC bid either from ATC library or add specific clauses as per requirement of particular RC item.
- vii. Negotiation and Price Match by RC buyer:

- a) The RC buyer may negotiate with the eligible bidders as per the applicable government guidelines.
  - b) The RC buyer may counter offer a price to selected sellers to conclude parallel Rate Contracts for ensuring adequate supply capacity at all delivery locations to cover all buyer's estimated requirements during RC validity period.
- viii. RC Buyer will manage the post RC award activities related to Rate Contract. RC Buyer will **not** manage the post contract activities related to individual purchase orders placed by enabled buyers against the Rate Contract.

**b. Seller**

- i. Sellers will participate in RC Bid by offering Minimum Order Quantity, Lead Time for starting supply, Monthly Rate of Supply and Offer Price per unit for RC items for each RC Consignee / Location where seller is willing to supply.
  - a) Minimum Order Quantity – is the minimum quantity per Purchase Order acceptable to the seller. The seller will not be considered for award of Purchase Order if buyer is searching for quantity less than Min. Order Quantity defined by the seller while bidding.
  - b) Lead time – is the number of days seller will take to start delivering the item (0 to 60 days – to be selected by seller while bidding). The seller will not be considered for award of Purchase Order if buyer is searching for delivery period shorter than the Lead Time defined by the seller.
  - c) Monthly Rate of Supply – is the quantity that seller is committing to supply (on door delivery basis at consignee location) every month against the rate contract if purchase orders are placed on it. While committing quantity against Rate Contract, seller must consider their production capacity, delivery logistics, other market commitments etc.
- ii. Sellers can not change the Minimum Order Quantity, Lead Time and Monthly Rate of Supply during RC validity period.

- iii. If RC buyer has defined quantity slab for discount in RC bid, it is mandatory for sellers to define discount in percentage against RC buyer defined quantity slab.
- iv. If seller do not want to offer discount against any quantity slab it can offer zero percentage.
- v. The slab discounts as quoted by the seller and incorporated in the rate contract catalogues cannot be changed by the seller during the validity period of the rate contract, except when RC buyer has asked for price match or negotiation or at the time of periodic price discovery / revision initiated by RC Buyer. Slab Discount shall be outside the purview of the Fall Clause.
- vi. Negotiation and Price Match acceptance: RC Buyer may exercise the option for Negotiation and Price Match. Sellers must respond to such requests received online through GeM portal within 3 days. No request shall be entertained post 3 days from bidders for price match request whatsoever may be the reason.
- vii. Price once offered by the seller and accepted by RC buyer by creation of RC catalogue, shall remain firm and fixed during the validity period of Rate Contract (unless price variation clause is incorporated in RC bid by the RC Buyer).
- viii. The sellers shall be liable to supply / deliver the item on Free Delivery to Consignee Destination basis **to any consignee location within the district / state** selected and indicated as RC Consignee / Location in RC bid. Price shall be valid for entire District or State as defined in bid.

**c. Buyer:**

- i. Only those users who are registered on GeM as buyers and are authorized / enabled (by RC Buyer) to place direct Purchase Orders against any particular rate contract shall be able to access Catalogue pertaining to that RC item in the Rate Contract Marketplace.
- ii. The buyer must select the consignee, quantity, and delivery time to place a Purchase Order from the RC Catalogue Marketplace.

- iii. **Buyer can not see or identify or select a seller or brand for placement of Purchase Order against RC.** Purchase Orders will be placed on seller identified by GeM system based on different delivery and price related parameters and on random basis if there are multiple sellers eligible and meeting all delivery requirements and having identical prices.
- iv. There is no cart validity for RC marketplace. The price displayed is applicable for that **particular point of time**. Individual sellers' stock will keep on changing depending on Purchase Orders being placed by different buyers. There is always a possibility of some other buyer having placed Purchase Order while the buyer was still seeking internal approvals. This may result in change of stock available for covering the requirement of the buyer and hence possible change of applicable price and discount etc. **While seeking internal approvals, buyer should therefore account for any possible change in Purchase Order price / value due to change in stock position in intervening period. Actual order value and seller name will only be known after Purchase Order is placed with OTP / e-Sign by buyer.**
- v. The buyer shall define the payment authority while finalizing Purchase Order.
- vi. Buyer will manage all post contract activities related to individual purchase orders placed against the Rate Contract.

**d. Consignee**

- i. Role and responsibility of consignee in a Purchase Order remains same as defined in GeM General Terms and Conditions.
- ii. The consignee shall accept or reject the item as per the Purchase Order within prescribed timelines.
- iii. The consignee shall generate the PRC and CRAC etc. as per the Purchase Order.
- iv. The consignee shall process the bill if required as per the Purchase Order.

## **5. RC Catalogue Marketplace:**

- a. The marketplace on GeM, enlisting all the catalogues of the RC items for which RC has been finalised by the RC buyer. Only Buyers Authorized / enabled by RC Buyer can access relevant catalogues in this marketplace and place the Purchase Orders through this marketplace.
- b. Every Goods / Services item associated with RC bid will become one catalogue in RC marketplace with stock positions and discounts of all mapped sellers configured in GeM System (based on offered values in RC Bid). RC Catalogue will have no seller / brand identifier.
- c. Rate contract catalogue can be filtered by Consignee Location, Quantity, Goods / Service Category, Delivery Days etc. as per filters enabled in GeM.

**6. Award of parallel Rate Contracts:** The RC buyer may decide to conclude parallel Rate Contracts with multiple Sellers / Service providers for ensuring adequate supply capacity at all delivery locations to cover all enabled buyer's estimated requirements during RC validity period. Number of parallel rate contracts may depend on the anticipated demand of the item, location of the users, capacity of the responsive bidders, reasonableness of the prices quoted by the responsive bidders etc.

## **7. Placement of Purchase Order:**

- a. To place Purchase Order, buyer shall define the required Quantity, Consignee location & Delivery period within which supplies are required by the Buyer.
- b. Eligible RC Catalogues will appear on RC marketplace's catalogue listing to the configured Buyer only, based on the input given by Buyer.
- c. A direct online Purchase Order can only be placed on rate contract catalogue marketplace through GeM. No offline order shall be placed based on GeM RC catalogue listing.

- d. There is no inbuilt, GeM system driven, financial limit on placement of Direct Purchase orders against rate contract catalogue, however, buyer need to ensure that necessary internal / departmental and financial approvals based on value of purchase are obtained.
8. **Performance Security:** RC buyer will define in the RC bid through ATC about any requirements of Performance Security. Requirement could be in terms of consolidated performance security at RC level to be taken by RC buyer or against individual Purchase Orders placed by any buyer to be taken by the Buyer placing purchase order or both – as defined in RC bid.
9. **Transit Insurance:** The Buyer will not pay separately for Transit Insurance and the Seller will be responsible till the entire Goods / Services contracted for arrive in good condition at consignee destination. The transit risk in this respect may be covered by the Seller by getting the same duly insured if he so desires.
10. **Rate Contract Management:**
  - a. Once bidders offer has been accepted by RC Buyer and RC catalogue has been created in RC catalogue Marketplace, the seller is contractually bound to honour all contracts / purchase orders placed by enabled buyers against that catalogue during Validity period of Rate Contract. Not completing contractual obligations against the Purchase Order will invite Actions as per GeM GTC and GeM Incident Management Policy besides being liable for forfeiture of Performance Security by the Buyer.
  - b. During the validity period of rate contract, Seller can withdraw his offering / catalogue from RC marketplace by serving a notice only after 30 days of conclusion of RC. For withdrawal of RC, seller shall have to serve a notice to RC buyer. RC withdrawal will become effective after 15 days from the date of such notice.
  - c. RC buyer can also choose to short close any RC catalogue of any seller after giving 15 days' notice for the same.
  - d. RC catalogues which are in notice period can be seen and managed by RC buyer.

- e. Purchase Order can be placed till the last date of validity of the Rate Contract Catalogue even if the RC Contract is in Notice period.
- f. During RC validity, if seller has spare capacity to supply more quantity, the stock can be increased from Seller's RC panel on GeM. However, decreasing of stock is not allowed.

**11. Duties & Taxes:** Seller Offer Prices and Rate Contract Catalogue prices on GeM shall be on all-inclusive basis i.e. including all taxes, duties, local levies etc. Any Statutory variation in the rate of GST, taking place between the date of Bid Submission by seller and Bid End Date, shall be to the Seller's account. Hence, Seller must ensure that any Statutory variation in the rate of GST till Bid End Date is duly incorporated in the bid submitted by the seller by withdrawing bid and submitting revised bid. In case seller fails to incorporate the same in bid, the seller will not be eligible for claiming any change in price due to such Statutory variation. Statutory variation in the rate of GST, taking place between the Bid end date and the original / refixed delivery period, shall be to the Buyer's account. For claiming any change in price due to such Statutory variation, the seller shall have to lodge claim before the Buyer / Paying authority, providing documentary evidence of change in rate of GST taking place after Bid end date and the date of supply within the original / refixed delivery period along with an undertaking that the provisions of anti-profiteering clause under GST Act have been complied with.

**12. Validity Period of Rate Contract:** This is the duration of the rate contract during which the rate contract is valid for placement of the Purchase Order by the buyer. Default validity period of Rate Contract is 12 months unless defined otherwise by the RC buyer in the Rate Contract bid. Validity Period of Rate Contracts may be extended with identical terms and conditions etc., for a suitable period (up to maximum 3 months), with the consent of the rate contract holder seller / service provider. Rate contract catalogues of the sellers, who do not agree to such extension, shall expire after validity period of Rate Contract.

**13. Reservation of Right for periodic price discovery and addition of more Sellers in parallel rate Contracts:** RC Buyer reserves the right for periodic price discovery / revision during Validity Period of Rate Contract and for addition of

more Sellers in parallel Rate Contracts for same items. Existing Rate Contract catalogue sellers can also participate in the process, apart from new eligible bidders. Depending on outcome of the fresh price discovery process, RC Buyer may decide to short close any RC catalogue of any existing seller after giving 15 days' notice.

14. **Delivery Period in Purchase Order:** Delivery Period in Purchase Order shall be defined by buyer, while procuring the item on GeM. In all cases, the Delivery Period so stipulated shall be deemed to be accepted by the Seller as per their bid commitment and shall be deemed to be essence of the Contract and delivery must be completed not later than such Date.
15. **Last date for placement of Purchase Order:** Buyer is entitled to place Purchase Orders up to the last day of the validity period of rate contract. Seller is bound to execute all Purchase Orders placed against rate contract till last day of Rate Contract validity. Irrespective of date of placement of Purchase Order, maximum allowed delivery period for any Purchase Order against any Rate Contract can not be more than 90 days beyond the Validity Period of rate contract. Though supply against such Purchase Orders may be affected beyond the validity period of the rate contract, all such supply shall be guided by the terms & conditions of the rate contract. No extension of validity period of the rate contract itself is required when deliveries against outstanding Purchase Orders continue even after expiry of the validity period. The rate contract will remain alive / valid for purpose of delivery for all the stores ordered during the currency of the rate contract until deliveries against all purchase orders are completed.
16. **Payment of Transaction Charges/ Annual Milestone Charge to GeM:** Sellers will have to pay Transaction Charge and / or Annual Milestone Charge, wherever applicable, as per extant Revenue Policy of GeM, for each purchase order.
17. **Estimated Annual Drawl against the Rate Contract:** The Rate Contract agreement is a standing offer from the Seller / Service provider. There is therefore no guarantee as to the number or quantity of the Goods / Services which shall be ordered to any particular seller / service provider during the

period of the rate contract. The Estimated Annual Drawl against the Rate Contract declared by the RC Buyer in the RC bid is an estimation of annual requirements from different Buyers. However, the buyers (even when enabled to use Rate Contract), reserve the right to obtain from any other source and using any other procurement method, any Goods / Services referred to in the Rate Contract. There is no commitment on minimum quantity to be ordered to any Seller / Service Provider if Rate Contract is awarded to them.

**18. FALL CLAUSE:**

The prices charged for the stores supplied under the Rate Contract by the Seller shall in no event exceed the lowest price at which the Seller sells the Stores or offer to sell stores of identical description to any person(s)/organisation(s) including the Buyer or any Department of the Central Government or any Department of a State Government or any statutory undertaking of the Central or a State Government, as the case may be, during the period till performance of Purchase Orders placed during the validity period of the Rate Contract is completed.

If at any time during the said period, the Seller reduces the Sale price, sells or offers to sell such stores to any person(s)/organisation(s) including the Buyer or any Department of the Central Government or any Department of a State Government or any statutory undertaking of the Central or a State Government, as the case may be, at a price lower than the price chargeable under this Rate Contract, he shall forthwith notify such reduction or Sale or offer of Sale to the RC Buyer and the Buyer and the price payable under any of the Purchase Order for the stores supplied after the date of coming into force of such reduction or sale or offer of sale stand correspondingly reduced. The above stipulation will, however, not apply to:

- (a) Export/deemed Export by the Contractor
- (b) Sale of Goods as Original Equipment prices lower than the price charged for normal replacement.
- (c) Sale of goods, such as drugs, which have expiry date.
- (d) Sale of goods at lower price on or after the date of completion of sale / placement of order of goods by the authority concerned, under the existing

or previous Rate Contracts as also under any previous contracts entered into with the Central or the State Government Departments including new undertakings (excluding joint sector companies and or private parties) and bodies.