

GOVERNMENT OF INDIA (BHARAT SARKAR)
MINISTRY OF RAILWAYS (RAIL MANTRALAYA)
(RAILWAY BOARD)
INDIAN RAILWAY STANDARD CONDITIONS OF CONTRACT
(Vide Para 417 of the Indian Railway Code for the Stores Department)

0100. Definitions and Interpretation.

ender means Tender document duly uploaded on Railways Authorised Website 'ireps.gov.in'.

0101. In the Contract, unless the context otherwise requires;

0102. "Acceptance of Tender" means the letter of memorandum communicating to the Contractor the acceptance of his tender and includes an advance acceptance of his tender;

0103. "Consignee" means where the stores are required by the acceptance of tender to be despatched by rail, road, air or steamer, the person specified in the Acceptance of Tender to whom they are to be delivered at the destination; Where the Stores are required by the acceptance of tender to be delivered to a person as an interim consignee for the purpose of despatch to another person, such other persons; and in any other case the person to whom the stores are required by the acceptance of tender to be delivered in the manner therein specified

0104. "Contract" means and includes the invitation to tender, instructions to tenderers, acceptance of tender, Standard Conditions of Contract, Special Conditions of Contract, particulars and the other conditions specified in the acceptance of tender and includes a repeat order which has been accepted or acted upon by the contractor and a formal agreement if executed;

0105. The "Contractor" means the person, firm or company with whom the order for the supply is placed and shall be deemed to include the contractor's successors (approved by the Purchaser), representatives, heirs, executors and administrators as the case may be, unless excluded by the terms of the contract

0106. "The Sub-contractor" means the person, firm or company from whom the Contractor may obtain any material or fittings to be used in the supply or manufacture of the stores ;

0107. "Drawing" means the drawing or drawings specified in or annexed to the Schedule or Specifications

0108. "Government" means the Central Government or a State Government, as the case may be;

0109. "The Inspecting Officer" means the person specified in the contract for the purpose of Inspection of stores or work under the contract and includes his authorised representative;

0110. "Material" means anything used in the manufacture or fabrication of the stores

0111. "Particulars" include-

- (a) Specifications
- (b) Drawings
- (c) Pattern bearing the seal and signature of the Inspecting Officer (hereinafter called the sealed pattern) which shall include also a certified copy thereof sealed by the Purchaser for the guidance of the Inspecting Officer;
- (d) Sample sealed by the Purchaser for guidance of the Inspecting Officer (hereinafter called the certified sample) which shall include a certified copy thereof sealed by the Purchaser for the guidance of the Inspecting Officer;
- (e) Trade pattern, that is to say, a pattern, stores conforming to which are obtainable in the open market and which denotes a standard of the Indian Standard Institute or other standardising authority or a general standard of the industry;
- (f) "Proprietary mark "or "brand "means the mark or brand of a product which is owned by an industrial firm;
- (g) Any other details governing the construction, manufacture or supply of stores as may be prescribed by the contract;

0112. "Purchase Officer" means the officer signing the acceptance of tender and includes any officer who has authority to execute the relevant contract on behalf of the Purchaser

0113. "The Purchaser" means the President of India in the case of stores ordered for the Indian Government Railways and includes his successors and assignees

0114. "Digitally Signed E-Bid" means online offer form including rate page filled in and submitted online after digitally signing the same by the authorized vendor, with a valid digital signature certificate as per IT Act 2000.

0115. "Site" means the place specified in the contract at which any work is required to be executed by the contractor under the contract or any other place approved by the Purchaser for the purpose;

0116. "Stores" means the goods specified in the contract which the contractor has agreed to supply under the contract;

0117. "Supply Order" means an order for supply of stores and includes an order for performance of service;

0118. "Test" means such test as is prescribed by the particulars or considered necessary by the Inspecting Officer whether performed or made by the Inspecting Officer or any agency acting under the direction of the Inspecting officer;

0119. "Unit" and "Quantity" means the unit and quantity specified in the contract;

0120. "Writing" or "Written" includes matter either in whole or in part, in manuscript, type-written, lithographed, cyclostyled, photographed or printed under or over signature or seal, as the case may be;

0121. The delivery of the stores shall be deemed to take place on delivery of the stores in accordance with the terms of the contract, after approval by the Inspecting Officer if so provided in the contract to -

- (a) the consignee at his premises ; or
- (b) where so provided the interim consignee at his premises , or
- (c) a carrier or other person named in the contract for the purpose of transmission to the consignee, or
- (d) The consignee at the destination station in case of contract stipulating for delivery of stores at destination station.

0122. Words in the singular include the plural and *vice versa*

0123. Words importing the masculine gender shall be taken to include the feminine gender and words importing persons shall include any company or association or body of individuals, whether incorporated or not;

0124. The heading of these conditions shall not affect the interpretation or construction thereof;

0125. Terms and expression not herein defined shall have the meanings assigned to them in the **Indian Sale of Goods Act, 1930** (as amended), or the **Indian Contract Act, 1872** (as amended) or the **General Clauses Act, 1897** (as amended), as the case may be.

0200. Parties-

The parties to the contract are the Contractor and the Purchaser, as defined in Clauses 0105 and 0113.

0201. Authority of person signing the Contract on behalf of the Contractor-

A person signing the tender or any other document in respect of the Contract on behalf of the Contractor without disclosing his authority to do so shall be deemed to warrant that he has authority to bind the Contractor. If it is discovered at any time that the person so signing has no authority to do so, the Purchaser may, without prejudice to any other right or remedy of the Purchaser, cancel the contract and make or authorize the making of a purchase of the stores at the risk and cost of such person and hold such person liable to the Purchaser for all costs and damages arising from the cancellation of the contract including any loss which the Purchaser may sustain on account of such purchase. The provisions of Clause 0700 shall apply to every such purchase as far as applicable.

0202. Address of the Contractor and notices and communications on behalf of the Purchaser:-

- (a) For all purposes of the contract, including arbitration there under, the address of the Contractor mentioned in the tender shall be the address to which all communications addressed to the Contractor shall be sent, unless the Contractor has notified change by a separate letter containing no other communication and sent by registered post acknowledgement

due to the Purchaser. The Contractor shall be solely responsible for the consequence of an omission to notify a change of address in the manner aforesaid.

- (b) Any communication or notice on behalf of the Purchaser in relation to the contract may be issued to the Contractor by the Purchase Officer and all such communications and notices may be served on the Contractor either by registered posts or under certificate of posting or by ordinary post or by hand delivery at the option of such officer.

0300. Quotations of rates by Contractors

- (a) The price quoted by the Contractor shall not be higher than the controlled price fixed by law for the stores or where there is no controlled price, it shall not exceed the prices or contravenes the norms for fixation of prices laid down by Government or where no such prices or norms have been fixed by the Government, it shall not exceed the price appearing in any agreement relating to price regulation by any industry in consultation with the Government.

In any case, save for special reasons stated in the tender, the price quoted shall not be higher than the lowest price charged by the Contractor for stores of the same nature, class or description to a private purchaser, domestic or foreign as well as Purchaser Governments.

- (b) If the price quoted is higher than the controlled price or where there is no controlled price, the price usually charged by the Contractor from a private Purchaser, domestic or foreign, as well as Purchaser Government for the stores of the same nature, class or description the Contractor will specifically mention this fact in his tender giving reasons for quoting higher price(s). If he fails to do so or makes any mis-statement, it shall be lawful for the Purchaser,
 - (i) to revise the price at any stage so as to bring it in conformity with the Sub-clause (a) above or
 - (ii) to terminate the contract and forfeit the Security Deposit.

0400. Contract.

0401. This contract is for the supply of the stores of the description, specifications and drawings, and in the quantities set forth in the contract on the date or dates specified therein. Unless otherwise specified, the stores shall be entirely brand new and of the best quality and workmanship to the satisfaction of the Inspecting Officer. The stores shall further be in all respects acceptable to the Inspecting Officer.

0402. Any variation or amendment of the contract shall not be binding on the Purchaser unless and until the same is duly endorsed on the contract incorporated in a formal instrument or in exchange of letters and signed by the parties.

0500: SECURITY DEPOSIT:

0501: Unless otherwise agreed between the Purchaser and the contractor, the contractor shall, within 14 days of posting of written notice of acceptance to the contractor, deposit with the Railway concerned (in cash or the equivalent in Government Securities or approved Banker's Guarantee Bond) a sum equal to 10 per cent of the total value of the stores detailed in the contract for which, the tender has been accepted, subject to **upper ceiling of Rs. 10 Lakhs for contracts valuing upto Rs.10 Crores and Rs.20 Lakhs for contracts valuing above Rs.10 Crores.**

SAFETY ITEMS: The Security Deposit (SD)/Performance Guarantee shall be taken from all the firms for contracts for all Safety Items placed against Open Tenders and Global Tenders subject to following exemptions:

a) Vendors registered with NSIC upto the monetary limit of their registration for the items ordered. Bidders seeking waiver of Security Deposit on this ground shall have to submit requisite documentary evidence.

OTHER THAN SAFETY ITEMS: The Security Deposit (SD) shall be taken from all the firms for contracts for items other than safety items placed against Open Tenders and Global Tenders subject to following exemptions:

a) Vendors registered with NSIC upto the monetary limit of their registration for the items ordered.

b) Vendors registered with Railways upto the monetary limit of their registration for the items ordered/trade groups for items ordered or vendors on approved list of RDSO/PUs/CORE/Railways etc. for those specific items for which they are on approved list or other Railways, Govt. Departments on their specific request and on merits of the case as considered by tender committee.

c) Bidders seeking waiver of Security Deposit on this ground shall have to submit requisite documentary evidence.

The usual security deposit, shall, however be taken in case the contracts are placed on unregistered/unapproved firms or for items for which a particular firm is not registered/approved.

Security Deposit should remain valid for a minimum period of 60 days beyond the date of completion of all the contractual obligations of the supplier.

0502: If the contractor, having been called upon by the Purchaser to furnish security Deposit fails to make and to maintain a security deposit within the specified period, it shall be lawful for the Purchaser: -

- a) to recover from the Contractor the amount of such security deposit by deducting the amount from the pending bills of the contractor under the contract or any other contract with the purchaser or the Government or any person contracting through the Purchaser or otherwise however, or
- b) to cancel the contract or any part thereof and to purchase or authorize the purchase of the stores at the risk and cost of the contractor and in that event the provisions of Clauses 0702 shall apply as far as applicable.

0503: No claim shall lie against the Purchaser in respect of interest on cash deposits or Government Securities or depreciation thereof.

0504: The Purchaser shall be entitled and it shall be lawful on his 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 Contractor in the fulfillment or performance in all respects of the contract under reference or any other contract with the Purchaser or any part thereof to the satisfaction of the Purchaser and the Purchaser shall also be entitled to deduct from the said deposits any loss or damage which the Purchaser may suffer or be put by reason of or due to any act or other default, recoverable by the Purchaser from the Contractor in respect of the contract under reference or any other contract and in either of the events aforesaid to call upon the contractor to maintain the security deposits at its original limit by making further deposit, provided further that the Purchaser shall be entitled to recover any such claim from any sum then due or which at any time thereafter may become due to the Contractor under this or any other contracts with the Purchaser.

0600. Delivery.

0601. The Contractor shall as may be required by the Purchaser either deliver free or FOR. or CIF. at the place/places detailed in the contract, the quantities of the stores detailed therein and the stores shall be delivered or despatched not later than the date specified in the contract. The delivery will not be deemed to be complete until and unless the stores are inspected and accepted by the Inspecting Officer as provided in the contract.

0602. 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 stores, is controlled by or under the orders of the Government.

0603. Notwithstanding any inspection and approval by the Inspecting Officer on the Contractor's premises, property in the stores shall not pass on to the Purchaser until the stores have been received, inspected and accepted by the consignee.

0604. No stores shall be deliverable to the consignee's depots on Sundays and public holidays without the written permission of the consignee.

0700. Time for and Date of Delivery; the Essence of the Contract-

The time for and the date specified in the contract or as extended for the delivery of the stores shall be deemed to be of the essence of the contract and delivery must be completed not later than the date(s) so specified or extended.

0701. Progressing of Deliveries- The Contractor shall allow reasonable facilities and free access to his works and records to the Inspecting Officer, Progress 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.

0702. Failure and Termination:- If the Contractor fails to deliver the stores or any instalment thereof within the period fixed for such delivery in the contract or as extended or at any time repudiates the contract before the expiry of such period the Purchaser may without prejudice to his other rights:-

- (a) recover from the Contractor as agreed liquidated damages and not by way of penalty a sum equivalent to 2 per cent of the price of any stores (including elements of taxes, duties, freight, etc.) which the Contractor has failed to deliver within the period fixed for delivery in the contract or as extended for each month or part of a month during which the delivery of such stores may be in arrears where delivery thereof is accepted after expiry of the aforesaid period, or
- (b)
 1. Risk Purchase clause is deleted for all orders for safety items, as levy of 10% Security deposit has been made compulsory in all such order/(except in case of vendors registered with NSIC upto the monetary limit of their registration for the items ordered). In case of failure of contract, Security Deposit shall be forfeited. Such failure shall be recorded & will be considered by Railways on merit in future cases.
 2. In respect of orders for materials other than safety items where 10% security deposit has been taken from firms, Risk Purchase clause is deleted and in case of default by such firms, the Security Deposit shall be forfeited.

3. In such cases as covered under (1) and (2) above, the quantities unsupplied shall be procured independently without risk and cost of the original firm/supplier.
 4. Adverse performance of such firms will be recorded and intimated to the approving authority and also to be taken into account in future tender cases on merit.
 5. Such cases which are not covered under Para (1) & (2) above. Risk Purchase provisions shall continue for them as per existing guideline as given below.
- (c) The Purchaser reserves the right to purchase or authorise the purchase of the stores not so delivered or others of a similar description (where stores exactly complying with particulars are not in the opinion of the Purchaser, which shall be final, readily procurable) at the risk and cost of the Contractor.
- It shall, however, be in the discretion of the purchaser to collect or not, Security Deposit from the firm(s) on whom the contract is placed at the risk and expense of the defaulted firm.
- (d) Where action is taken under Sub-clause (c) above, the Contractor shall be liable for any loss which the Purchaser may sustain on that account provided the purchase or if there is an agreement to purchase 1 such agreement is made, in case of failure to deliver the stores within the period fixed for such delivery in the contract or as extended within six months from the date of such failure and in case of repudiation of the contract before the expiry of the aforesaid period of delivery, within six months from the date of cancellation of the contract. The Contractor shall not be entitled to any gain on such purchase and the manner and method of such purchase shall be in the entire discretion of the Purchaser. It shall not be necessary for the Purchaser to serve a notice of such purchase on the Contractor.

Note: In respect of the stores which are not easily available in the market and where procurement difficulties are experienced the period for making risk purchase shall be nine months instead of six months provided above.

0703. Consequence of Rejection- If on the stores 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: -

- (i) require the Contractor to replace the rejected stores 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 stores but without being entitled to any extra payment on that or any other account, or
- (ii) purchase or authorize the purchase of quantity of the stores rejected or others of a similar description (when stores exactly complying with

- particulars are not in the opinion of the Purchaser, which shall be final, readily available) without notice to the Contractor at his risk and cost and without affecting the Contractor's liability as regards the supply of any further installment due under the contract, or
- (iii) cancel the contract and purchase or authorize the purchase of the stores or others of a similar description (when stores exactly complying with particulars are not, in the opinion of the Purchaser, which shall be final, readily available) at the risk and cost of the Contractor. In the event of action being taken under Sub-clause (ii) above or under this Sub-clause, the provision of Clause 0702 above will apply as far as applicable.
 - (iv) where under the contract the price payable is fixed F.O.R despatching station, the Contractor shall, if the stores are rejected at destination by the consignee, be liable, in addition to his other liabilities, including refund of price recoverable in respect of the stores so rejected, to reimburse to the Purchaser the freight and all other expenses incurred by the Purchaser in this regard.

0800. Extension of Time for Delivery-

If such failure as aforesaid shall have arisen from any cause which the Purchaser may admit as reasonable ground for extension of time, 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 as aforesaid. Any failure or delay on the part of sub-contractor, though their employment may have been sanctioned under Condition 1500 hereof, 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.

0900. Examination of Drawing, Specifications and Patterns-

When tenders are called for in accordance with a drawing, specification or sealed pattern the Contractor's tenders to supply in accordance with such drawing, specifications or sealed pattern shall, be deemed to be an admission on his part that he has fully acquainted himself with the details thereof and, in no circumstances, will any claim on his part which may arise on account of his insufficient examination of the said drawing, specification or scaled pattern, be considered.

1000. Mistakes in Drawing.

The Contractor shall be responsible for and shall pay for any alterations for the works due to any discrepancies, errors or omissions in the drawings or other particulars supplied by him whether such drawings or particulars have been approved by the Purchaser or not provided that such discrepancies, errors or omissions be not due to inaccurate information or particulars furnished to the Contractor on behalf of the Purchaser. If any dimension figure upon a drawing or

plan differ from those obtained by scaling the drawing or plan, the dimensions as figured upon the drawing or plan shall be taken as correct.

1100. Samples.

1101. Advance Sample- 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 acceptance of tender. If the Contractor is unable to do so, he must apply immediately to the Office issuing the acceptance of tender 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 acceptance of tender and on such conditions as he deems fit. In the event of the failure of the Contractor to deliver the advance sample by the date specified in the acceptance of tender 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 cancel the contract and, if so desired, purchase or authorize the purchase of the stores at the risk and cost of the Contractor, in which case the provisions of **Clause 0700** shall apply as far as applicable.

1102. 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 same or whatever remains of the sample, after examination and test will be returned to the Contractor at his request and cost within three months of the date of such rejection at public tariff rate at Owner's risk.

1103. Marking- Samples submitted shall be clearly labelled with the Contractor's name and address and the acceptance of tender number.

1104. 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.

1105. 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 stores 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.

1106. The rejection of the sample by the Inspecting Authority or Inspecting Officer shall be final and binding on the Contractor.

1107. Where the contract does not require any advance sample to be approved, the Contractor may before proceeding with bulk manufacture or delivery of the stores, if he so desires, submit to the Inspecting Officer for inspection a sample of the stores in which case a quantity not less than one per cent 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.

1108. If, under the contract supplies are governed by a sealed pattern the Contractor shall be bound to examine such pattern before preparing a sample or manufacturing the stores in bulk as the case may be.

1109. Loan of Samples- 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 stores 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 stores and the decision of the Inspecting Officer in the matter shall be final and binding on the Contractor.

1110. 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.

1200. Risk of Loss or Damage to Government or Purchaser's Property.

1201. 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.

1202. 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 contract. 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.

1203. 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.

1204. 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.

1300. Inspection by Inspecting Officer.

1301. (a) When inspection during manufacture or before delivery or despatch is required, notice in writing shall be sent by the Contractor to the Inspecting Officer when the stores or material to be supplied are ready for inspection and test, and no stores shall be delivered or despatched until the Inspecting Officer has certified in writing that such stores 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/stores, etc. is also to be done, notice 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 / stores, etc. as deemed essential.

1302. Marking of Stores- The Contractor shall, if so required, at his own expense, mark all the approved stores with a recognized Government or Purchaser's mark. The stores 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.

The Inspecting Officer shall also have power to mark the rejected stores with a rejection mark so that they may be easily identified, if resubmitted for inspection.

1303. Facilities for test and Examination- The Contractor shall, at his own expense afford to the Inspecting Officer all reasonable facilities as may be necessary for satisfying himself, that the stores are being and/or have been manufactured in accordance with the particulars. 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 stores 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.

1304. Cost of Test- 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. If the Contractor fails to comply with the conditions aforesaid, the Inspecting Officer shall, in his sole judgement, be entitled to remove for test and examination all or any of the stores 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.

1305. Delivery of Stores 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 stores as he may require.

1306. Liability for Costs of Special or Independent Test- In the events of rejection of stores 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 stores 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.

1307. Method of Testing- The Inspecting Officer shall have the right to put all the stores or materials forming part of the same or any part thereof to such tests as he may think fit and proper. The Contractor shall not be entitled to object on any ground whatsoever to the method of testing adopted by the Inspecting Officer.

1308. Stores Expended in Test- Unless otherwise provided for in the contract if the test proves satisfactory and the stores or any instalment thereof is accepted, the quantity of the stores or materials expended in the test will be deemed to have been taken delivery of by the Purchaser and be paid for as such.

1309. Powers of Inspecting Officer- The Inspecting Officer shall have the power:-

- (i) before any stores or part thereof are submitted for inspection to certify that they can not be in accordance with the contract owing to the adoption of any unsatisfactory method of manufacture.
- (ii) to reject any stores submitted as not being in accordance with the particulars.
- (iii) to reject the whole of the installment 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.
- (iv) the Inspecting Officer's decision as regards the rejection shall be final and binding on the Contractor.

1400. 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 of drawings.

1500. Responsibility of the Contractor for Executing the Contract.

1501. Risk in the Stores- The Contractor shall perform the contract in all respects in accordance with the terms and conditions thereof. The stores and every constituent part thereof, whether in the possession or control of the Contractor, his agents or servants or a carrier, or in the joint possession of the Contractor, his agents or servants and the Purchaser, his agents or servants, shall remain in every respect at the risk of the Contractor, until their actual delivery to the consignee at the stipulated place or destination or, where so provided in the acceptance of tender, until their delivery to a person specified in the contract as interim consignee for the purpose of despatch to the consignee. The Contractor shall be responsible for all loss, destruction, damage or deterioration of or to the stores from any cause whatsoever while the stores after approval by the Inspecting Officer are awaiting despatch or delivery or are in the course of transit from the Contractor to the consignee or, as the case may be, interim consignee. The Contractor shall alone be entitled and responsible to make claims against a Railway Administration or other carrier in respect of non-delivery, short delivery, mis-delivery, loss, destruction, damage or deterioration of the goods entrusted to such carrier by the Contractor for transmission to the consignee or the interim consignee as the case may be.

1502. Consignee's Right of Rejection – Notwithstanding any approval which the Inspecting Officer may have given in respect of the stores 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 not with

standing delivery of the stores where so provided to the interim consignee, it shall be lawful for the consignee, on behalf of the Purchaser, to reject the stores 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 stores 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 despatch or delivery or during transit or otherwise howsoever.

Note- *In respect of materials pre-inspected at the firm's premises the consignee will issue rejection advice within 90 days from the date of receipt.*

1503. Provided that where, under the terms of the contract the stores are required to be delivered to an interim consignee for the purpose of despatch to the consignee, the stores 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 stores 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.

1504. The provisions contained in Clause 2200 relating to the removal of stores rejected by the Inspecting Officer shall *mutatis mutandis* apply to stores rejected by the consignee as herein provided.

Note- *In respect of stores inspected during manufacture or before delivery or despatch at contractor's premises the consignee will issue communication of rejection within 90 days from the date of actual delivery thereof.*

1505. Subletting and Assignment- The Contractor shall not, save with the previous consent in writing of the Purchaser, sublet, transfer or assign the contract or any part thereof or interest therein or benefit or advantage thereof any manner whatsoever.

In the event of the Contractor's subletting or assigning this contract or any part thereof without such permission, the Purchaser shall be entitled to cancel the contract and to purchase the stores elsewhere on the Contractor's account and risk and the Contractor shall be liable for any loss or damage which the Purchaser may sustain in consequence or arising out of such purpose.

1506. Changes in a Firm:-

(a) Where the Contractor is a partnership firm, a new partner shall not be introduced in the firm except with the previous consent in writing of the

Purchaser, which may be granted only 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 prior to the date of such undertaking.

(b) On the death or retirement of any partner of the Contractor firm before complete performance of the contract, the Purchaser may, at his option, cancel the contract and in such case the Contractor shall have no claim whatsoever to 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, has been sent by him to the Purchaser by registered post acknowledgement due.

(d) Consequence of breach - Should a partner in the Contractor firm commit a breach of Sub-clause 1505 above or the Contractor should commit a breach of the conditions 1506(a) of this Sub-clause, it shall be lawful for the Purchaser to cancel the contract and purchase or authorize the purchase of the stores at the risk and cost of the Contractor and in that event the provisions of Clauses 0600 and 0700 as far as applicable shall apply.

(e) 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.

1507. 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, or 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. But, 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 stores is lowered the price of the stores 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.

(b) Every effort made by the Purchaser to supply, or give assistance in the procurement of materials, whether from the Government stock or by purchase 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.

1600. Use of Raw Materials secured with Government Assistance.

- 1601.** **(a)** 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
- (b)** where the raw material is issued to the Contractor from Government stock, or
- (c)** where advance payments are made to the Contractor to enable him to purchase the raw material, or
- (d)** 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 therefore as the Purchaser may fix, having regard to the condition of such material.

1602. 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.

1603. 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.

1604. Where the stores 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.

1700. Indemnity.

1701. The Contractor shall at all times indemnify the Purchaser against all claims which may be made in respect of the stores for infringement of any right protected by patent, registration of designs or trade mark. Provided always that in the event of any claim in respect of alleged breach of letters patent, registered designs or trade mark being made against the Purchaser, 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.

1702. 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.

1800. Packing.

1801. The Contractor shall pack at his own cost the stores 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 on arrival at their destination.

1802. Unless otherwise, provided in the contract all containers (including packing cases, boxes, tins, drums and wrappings) in which the stores are supplied by the contractor, shall be considered as non-returnable and their cost as having been included in the contract price.

1803. 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.

1804. 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.

1805. Each bale or package delivered under the contract shall be marked by the Contractor or 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 stores, 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.

1806. The Inspecting Officer may reject the stores if the stores 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 stores by the Inspecting Officer shall be final and binding on the Contractor.

1807. 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 issuing the supply order, the description of the stores and the quantity contained in such bale or package.

1900. Notification of Delivery.

Notification of delivery or despatch in regard to each and every instalment shall be made to the consignee and to the indentor immediately on despatch or delivery. The Contractor shall further supply to the consignee, or the interim consignee, as the case may be, a packing account Quoting number of the acceptance of tender and/or supply or repeat and date of despatch of the stores. 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 stores on arrival at destination. The Railway Receipt/Consignment Note or Bill of Lading, if any, shall be forwarded to the consignee by registered post immediately on the despatch of stores. 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.

2000. Progress Reports.

2001. The Contractor shall from time-to-time, render such reports concerning the progress of the contract and/or supply of the stores in such form as may be required by the Purchaser.

2002. 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.

2100. Freight.

The stores shall be despatched at public tariff rates. In the case of FOR station of despatch contract, the stores shall be booked by the most economical route or most economical tariff available at the time of despatch as the case may be. Failure to do so will render the Contractor liable for any avoidable expenditure caused to the Purchaser. Where alternative routes exist, the Purchaser shall, if called upon to do so, indicate the most economical route available, or name the authority whose advice in the matter shall be taken and acted upon. If any advice of any such authority is sought, his decision or advice in the matter shall be final and binding on the Contractor,

2200. Removal of Rejected Stores.

2201. On rejection of all stores submitted for inspection at a place other than the premises of the Contractor, such stores shall be removed by the Contractor at his own cost subject as hereinafter stipulated, within 21 days of the date of intimation of such rejection. If the concerned communication is addressed and posted to the Contractor at the address mentioned in the contract, it will be deemed to have been served on him at the time when such communication would be in the course of ordinary post reach the Contractor. Provided that the Inspecting Officer may call upon the Contractor to remove dangerous, infected or perishable stores within 48 hours of the receipt of such communication and the decision of the Inspecting Officer in this behalf shall be final in all respects. Provided further that where the price or part thereof has been paid, the consignee is entitled without prejudice to his other rights to retain the rejected stores till the price paid for such stores is refunded by the Contractor save that such retention shall not in any circumstances be deemed to be acceptance of the stores or waiver of rejection thereon.

2202. All rejected stores shall in any event and circumstances remain and always be at the risk of the Contractor immediately on such rejection. If such stores are not removed by the Contractor within the periods aforementioned, the Inspection Officer may remove the rejected stores and either return the same to the contractor at his risk and cost by such mode of transport as the Purchaser or Inspecting Officer may decide, or dispose of such stores at the Contractor's risk and on his account and retain such portion of the proceeds, if any from such disposal as may necessary to recover any expense incurred in connection with such disposals (or any price refundable as a consequence of such rejection). The Purchaser shall, in addition, be entitled to recover from the Contractor ground rent/demurrage charges on the rejected stores after the expiry of the time limit mentioned above.

2203. The stores that have been despatched by rail and rejected after arrival at destination may be taken back by the Contractor either at the station where they were rejected or at the station from which they were sent, after refunding the price paid for such stores and other charges refundable as a consequence of such rejection. If the contract placed for delivery f o. r. station of despatch, the Contractor shall pay the carriage charges on the rejected consignment at public tariff rates from the station of despatch to the station where they are rejected. If the Contractor elects to take back the goods at the station from which they were despatched, the goods shall in addition, be booked back to him freight to pay at public tariff rates and at owner's risk. The Contractor shall be liable to reimburse packing and incidental costs and charges incurred in such return or rejected stores in addition to other charges refundable as a consequence of rejection. The goods shall remain the property of the Contractor unless and until accepted by the Purchaser, after inspection.

2300. System of Payment.

2301. Unless otherwise agreed upon between the parties, payment for delivery of the stores will be made on submission of bills in the prescribed form which may be obtained from the Purchase Officer in accordance with the instructions given in the Acceptance of Tender, by a cheque or demand draft on a branch of the Reserve Bank of India or State Bank of India transacting government business as may be decided by the Purchaser.

2302. Payment for the stores 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: -

- (a) 95% payments for the stores or each consignment thereof will be made to the firms against proof of inspection and dispatch. The original railway receipt should be sent to the Accounts Officer responsible for payment

along with 95% bill advising the particulars of dispatch to the consignee. The Accounts Officer after passing the 95 % bill should pass on the original railway receipt to the consignee for taking delivery of the consignment. It should, however, be ensured that there is no delay in the Accounts Office transmitting the original railway receipt to the consignee.

- (b) The balance of 5% shall be paid on receipt of the stores or each consignment thereof in accordance with the terms of the contract in good condition by the consignee, with a certificate to that effect endorsed on the copy of the Inspection Note by the Consignee which shall accompany the bill submitted by the Contractor.
- (c) In the case of F.O.B. & C. & F. contract 95 per cent of the price will be paid on presentation of shipping documents and inspection certificate and the remaining 5 per cent on receipt of the stores in accordance with the terms of the contract in good condition by the Consignee, and on producing the certificate of such receipt endorsed on one copy of the Inspection Note by the Consignee, or alternatively at the Contractor's option, the full value of the stores will be paid after inspection, on receipt of the consignment in accordance with the terms of the contract in good condition by the Consignee and on producing a certificate of such receipt endorsed on one copy of the Inspection Note.

2303. In all other contracts or in contracts where the Inspecting Officer also acts as the interim consignee or where inspection is carried on by the Consignee himself at destination and in all cases of local delivery full payment shall be made on submission of "Final 100 percent bill" supported by the Inspection Certificates and consignee's receipt as aforesaid to the Accounts Officer concerned.

Note-

(1) The system of 95 percent and 5 percent payment is not applicable to claims amounting to Rs.1000/- or below. In such cases only a single bill for value should be submitted.

(2) In the case of Running Contracts, the system of payment will be similar to the above except that payment would be 98 per cent and 2 per cent instead of 95 per cent and 5 per cent specified above.

2400. Withholding and lien in respect of sums claimed.

2401. Whenever any claim or claims for payment of a sum of money arises out of or under the contract against the Contractor, the Purchaser shall be entitled to withhold and also have a lien to retain such sum or sums in whole or in part from the security, if any, deposited by the Contractor and for the purpose aforesaid, the Purchaser shall be entitled to withhold the said cash security deposit or the

security, if any, furnished as the case may be and also have a lien over the same pending finalization or adjudication of any such claim. In the event of the security being insufficient to cover the claimed amount or amounts or if no security has been taken from the Contractor, the Purchaser shall be entitled to withhold and have lien to retain to the extent of the such claimed amount or amounts referred to supra, from any sum or sums found payable or which at any time-thereafter may become payable to the Contractor under the same contract or any other contract with the Purchaser or the Government pending finalization or adjudication of any such claim.

It is an agreed term of the contract that the sum of money or moneys so withheld or retained under the lien referred to above, by the Purchaser will be kept withheld or retained as such by the Purchaser till the claim arising out of or under the contract is determined by the Arbitrator (if the contract is governed by the arbitration clause) or by the competent court as prescribed under clause 2703 hereinafter provided, as the case may be, and that the Contractor will have no claim for interest or damages whatsoever on any account in respect of such withholding or retention under the lien referred to supra and duly notified as' such to the Contractor.

2402. For the purpose of Clause 2401, where the Contract or is a partnership firm or a limited company, the Purchaser shall be entitled to withhold and also have a lien to retain towards such claimed amount or amounts in whole or in part from any sum found payable to any partner/limited company, as the case may be, whether in his individual capacity or otherwise.

2403. Lien in respect of Claims in other Contracts-

a) Any sum of money due and payable to the Contractor (including the security deposit returnable to him) under the contract may withhold or retain by way of lien by the Purchaser or Government against any claim of the Purchaser or Government in respect of payment of a sum of money arising out of or under any other contract made by the Contractor with the Purchaser or Government.

b) It is an agreed term of the contract that the sum of money so withheld or retained under this clause by the Purchaser or Government will be kept withheld or retained as such by the Purchaser or Government till his claim arising out of the same contract or any other contract is either mutually settled or determined by the arbitrator, if the contract is governed by the arbitration clause or by the competent court under Clause 2703 hereinafter provided, as the case may be, and that the Contractor shall have no claim for interest or damages whatsoever on this account or on any other ground in respect of any sum of money withheld or retained under this clause and duly notified as such to the Contractor.

2500. Corrupt Practices.

2501. The Contractor shall not offer or give or agree to give to any person in the employment of the Purchaser or working under the orders of the Purchaser any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any act in relation to the obtaining or execution of the contract or any other contract with the Purchaser or Government or for showing any favour or for bearing to show disfavour to any person in relation to the contract or any other contract with the Purchaser or Government. Any breach of the aforesaid condition by the Contractor, or any one employed by him or acting on his behalf (whether with or without the knowledge of the Contractor) or the commission of any offence by the Contractor or by any one employed by him or acting on his behalf under IX of the Indian Penal Code, 1860 or the Prevention of Corruption Act, 1947 or any other act enacted for the prevention of corruption by public servants shall entitle the Purchaser to cancel the contract and all or any other contracts with the Contractor and to recover from the Contractor the amount of any loss arising from such cancellation in accordance with the provisions of Clauses 0600 and 0700.

2502. Any dispute or difference in respect of either the interpretation effect or application or the above condition or of the amount recoverable there under by the Purchaser from the Contractor, shall be decided by the Purchaser, whose decision there on shall be final and binding on the Contractor.

2600. Insolvency and Breach of Contract.

2601. The Purchaser may at any time, by notice in writing summarily determine the contract without compensation to the Contractor in any of the following events, that is to say

- (a) if the Contractor being an individual or if a firm, any partner thereof, shall at any time, be adjudged insolvent or shall have a receiving order or order for administration of his estate made against him or shall take any proceeding for composition under any Insolvency Act for the time being in force or make any conveyance or assignment of his effects or enter into any assignment or composition with his creditors or suspend payment or if the firm be dissolved under the Partnership Act, or
- (b) if the Contractor being a company is wound up voluntarily or by the order of a Court or a Receiver, Liquidator or Manager on behalf of the Debenture-holders is appointed or circumstances shall have arisen which entitle the Court or Debenture holders to appoint a Receiver, Liquidator or Manager, or

- (c) if the Contractor commits any breach of the contract not herein specifically provided for.

Provided always that such determination shall not prejudice any right of action or remedy which shall have accrued or shall accrue there after to the Purchaser and provided also the Contractor shall be liable to pay to the Purchaser for any extra expenditure he is thereby put to and Contractor shall, under no circumstances, be entitled to any given on re-purchase.

2700. Laws governing the Contract.

2701. This contract shall be governed by the Laws of India for the time being in force.

2702. Irrespective of the place of delivery, the place of performance or place of payment under the contract, the contract shall be deemed to have been made at the place from which the acceptance of tender has been issued.

2703. Jurisdiction of courts- This Courts of the place from where the acceptance of tender has been issued shall alone have jurisdiction to decide any dispute arising out of or in respect of the contract.

2704. Marking of stores- The marking of the stores must comply with the requirements of the laws relating to merchandise marks for the time being in force in India.

2705. Compliance with provisions of Contract Labour (Regulation and Abolition) Act, 1970:-

- (1) The Contractor shall comply with the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 and the Contractor Labour (Regulation and Abolition) Central Rules, 1971, as modified from time-to-time, wherever applicable and shall also indemnify the Purchaser from and against any claims under the aforesaid Act and the Rules.
- (2) The Contractor shall obtain a valid license under the aforesaid Act as modified from time-to-time before the commencement of the contract and continue to have a valid license until the completion of the contract. Any failure to fulfill this requirement shall attract the penal provisions of the contract arising out of the resultant non-execution of the contract.
- (3) The Contractor shall pay to labour employed by him directly or through Sub-Contractors the wages as per provisions of the aforesaid Act and the Rules wherever applicable. The Contractor shall, notwithstanding the provisions of the contract to the contrary, cause to be paid the wages to

labour indirectly engaged on the contract including any engaged by his Sub- Contractors in connection with the said contract, as if the labour had been immediately employed by him.

- (4) In respect of all labour directly or indirectly employed in the contract for performance of the Contractor's part of the contract, the Contractor shall comply with or cause to be complied with the provisions of the aforesaid Act and the Rules wherever applicable.
- (5) In every case in which, by virtue of the provisions of the aforesaid Act or the Rules, the Purchaser is obliged to pay any amount of wages to a workman employed by the Contractor or his Sub-Contractor in execution of the contract or to incur any expenditure in providing welfare and health amenities required to be provided under the aforesaid Act and the Rules or to incur any expenditure on account of the contingent liability of the Purchaser due to the Contractor's failure to fulfill his statutory obligations under the aforesaid Act or the Rules the Purchaser will recover from the Contractor, the amount of wages so paid or the amount of expenditure so incurred, and without prejudice to the rights of the Purchaser under Section 20, Sub-section (2) and Section 21, Sub-section (4) of the aforesaid Act, the Purchaser shall be at liberty to recover such amount or part thereof by deducting it from the security deposit and/or from any sum due by the Purchaser to the Contractor whether under the contract or otherwise. The Purchaser shall not be bound to contest any claim made against it under Sub- section (i) of Section 20 and Sub-section (4) of Section 21 of the aforesaid Act except on the written request of the Contractor and upon his giving to the Purchaser full security for all costs for which the Purchaser might become liable in contesting such claim. The decision of the Purchaser regarding the amount actually recoverable from the Contractor as stated above, shall be final and binding on the Contractor.

2800. Headings.

The headings of conditions here to shall not affect the construction thereof.

2900. Arbitration.

(a) (i) In the event of any question, dispute or difference arising under these conditions or any special conditions of contract, or in connection with this contract (except as to any matters the decision of which is specially provided for by these or the special conditions, i.e., excepted matters (non-arbitrable)) the same shall be referred to the sole arbitration of an Arbitrator in terms of the Arbitration and Conciliation Act, 1996 as amended by Arbitration and Conciliation (Amendment) Act, 2015. Arbitrator shall be a person possessing qualifications laid down in para 2900 (a)(ii) and shall be appointed by the General Manager in the case of contracts entered into by the Zonal Railways and Production Units ; by any Member of the Railway Board/Director General (Railway Stores), in the case of contracts entered into by the Railway Board and by the Head of the Organisation in respect of contracts entered into by the other Organisations under the Ministry of Railways.

(ii) Qualification for appointment as Sole Arbitrator:

(a) Retired Railway officer not below SAG level 3 years after his date of retirement.

(b) Age of Arbitrator at the time of appointment shall not exceed 70 year.

(iii) An Arbitrator may be appointed notwithstanding the total no. of arbitration cases in which he has been appointed in the past. Retired Railway officer being appointed as arbitrator, however, will not be one of those who had an opportunity to deal with the matters to which the contract relates or who in the course of their duties as railway servant have expressed views on all or any of the matters under dispute or difference.

(iv) The award of the arbitrator shall be final and binding on the parties to this contract.

(b) In the event of the arbitrator dying, neglecting or refusing to act or resigning or being unable to act for any reason, or his award being set aside by the court for any reason, it shall be lawful for the authority appointing the arbitrator to appoint another arbitrator in place of the outgoing arbitrator in the manner aforesaid.

(c) It is further a term of this contract that no person other than the person appointed by the authority as aforesaid should act as arbitrator and that if for any reason that is not possible, the matter is not to be referred to arbitration at all.

(d) Deleted

(e) (i) The cost of arbitration shall be borne by the concerned parties in terms of section 31 (A) of Arbitration and Conciliation Act, 1996 as amended by Arbitration and Conciliation (Amendment) Act, 2015. The cost shall inter-alia include fee of the Arbitrator, as per the rates fixed by Railway Board from time to time. Further, the fee payable to the Arbitrator would be governed by instructions issued on the subject by Railway Board from time to time irrespective of the fact whether the Arbitrator is appointed by the Railway administration under this clause or by any court of law unless specifically directed by Hon'ble court otherwise on the matter.

(ii) Arbitrator shall be entitled to 50 percent extra fee, if award is made within 6 months in terms of provisions contained in section 29(A)(2) of the Arbitration and Conciliation Act, 1996 as amended by Arbitration and Conciliation (Amendment) Act, 2015.

Besides above, Arbitrator shall also be entitled for this extra fee, in cases, where Fast Tract Procedure in terms of section 29 (B) of the Arbitration and Conciliation Act, 1996 as amended by Arbitration and Conciliation (Amendment) Act, 2015, is followed.

(f) Subject as aforesaid, the arbitration and Conciliation Act, 1996 as amended by Arbitration and Conciliation (Amendment) Act, 2015 and the rules there under and any statutory modifications thereof for the time being in force shall be deemed to apply to the arbitration proceedings under this clause

(g) The venue of arbitration shall be the place from which the acceptance note is issued or such other place as the arbitrator at his discretion may determine in terms of section 20 of the Arbitration and Conciliation Act, 1996 as amended by Arbitration and Conciliation (Amendment) Act, 2015.

- (h) In this clause the authority, to appoint the arbitrator includes, if there be no such authority, the officer who is for the time being discharging the functions of that authority, whether in addition to other functions or otherwise.
- (i) It is further a term of this contract that where the arbitral award is for the payment of money, no interest shall be payable on whole or any part of the money for any period till the date on which the award is made in terms of Section 31 (7) (a) of the Arbitration and Conciliation Act, 1996 as amended by Arbitration and Conciliation (Amendment) Act.,2015.

3000. Fall Clause. Deleted

3100. INSPECTION & REJECTION:-

Where under a contract the price payable is fixed on F.O.R. station of despatch basis, the Contractor shall, if the consignee rejects the stores at destination be liable in addition to his other liabilities, to reimburse to the Purchaser the freight paid by the Purchaser.

3101. Notification of Result of inspection.- Unless otherwise provided in the specification of schedule, the examination of the stores 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.

3102. Inspection Notes.--On the stores 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.

3200. Warranty/Guarantee-

3201. The Contractor/Seller hereby covenants that it is a condition of the contract that all goods/stores/articles furnished to the Purchaser under this contract shall be of the highest grade free of all defects and faults and of the best materials, quality, manufacture and workmanship throughout and consistent with the established and generally accepted standards for materials of the type ordered and in full conformity with the contract specification, drawing or sample, if any and shall, if operable, operate properly.

3202. The Contractor also guarantees that the said goods/stores/articles would continue to conform to the description and quality as aforesaid, for a period of 30 months after their delivery or 24 months from the date of placement in service whichever shall be sooner, and this warranty shall survive notwithstanding the fact that the goods/stores/articles may have been inspected, accepted and payment thereof made by the Purchaser.

3203. If during the aforesaid period, the said goods/stores/articles be discovered not to conform to the description and quality aforesaid or have deteriorated, otherwise that by fair wear and tear the decision of the Purchaser in that behalf being final and conclusive that the Purchaser will be entitled to reject the said goods/stores/articles or such portions thereof as may be discovered not to conform to the said description and quality. On such rejection, The goods/stores/articles will be at the Seller's risk. If the Contractor/Seller So desires, the rejected goods may be taken over by him or his agents for disposal such manner as he may deem fit within a period of 3 months from the date of such rejection. At the expiry of the period, no claim whatsoever shall lie against the Purchaser in respect of

the said goods/stores/articles, which may be disposed of by the Purchaser in such manner as he thinks fit. Without prejudice to the generality of the foregoing, all the provisions in the Indian Railways Standard Conditions of Contract relating to the 'rejection of stores' and 'failure' and 'termination' add and Clause 3100-02 above shall apply.

3204. The Contractor/Seller shall, if required, replace the goods or such portion thereof as have been rejected by the Purchaser, free of cost, at the ultimate destination, or at the option of the Purchaser, the Contractor/Seller shall pay to the Purchaser, the value thereof at the contract price and such other expenditure and damage as may arise by reason of the breach of the conditions herein before specified. Nothing herein contained shall prejudice any other right of the Purchaser in that behalf under this contract or -otherwise.

3300. Book Examination Clause-The Government reserves the right for 'Book Examination' as follows: -

(i) The Contractor shall whenever called upon and requiring to produce or cause to be produced for examination by any Government Officer duly authorised in that behalf, any cost or other account book of account, voucher, receipt, letter, memorandum, paper or writing or any copy of or extract from any such document and also furnish information any way relating to such transaction and procedure before the duly authorised Government Officer returns verified in such manner as may be required relating in any way to the execution of this contract or relevant for verifying or ascertaining the cost of execution of this contract (the decision of such Government Officer on the question of relevancy of any document, information of return being final and binding on the parties).

The obligation imposed by this clause is without prejudice to the obligation of the contractor under any statute, rules or orders shall be binding on the Contractor.

(ii)The Contractor shall, if the authorised Government Officer so requires

(whether before or after the prices have been finally fixed), afford facilities to the Government Officer concerned to visit the Contractors works for the purpose of examining the processes of manufacture and estimating or ascertaining the cost of production of the articles. If any portion of the work be entrusted or carried out by a sub-contractor or any of its subsidiary or allied firm or company, the authorised Government Officer shall have power to examine all the relevant books of such sub-contractor or any subsidiary or allied firm or company shall be open to his inspection as mentioned in clause (i).

(iii)If on such examination, it is established that the contracted price is in excess of the actual cost plus reasonable margin of profit, the Purchaser shall have the right to reduce the price and determine the amount to a reasonable level.

(iv)Where a contract provides for book examination clause, the Contractor or its agency is bound to allow examination of its books within a period of 60 days from the date the notice is received by the Contractor, or its agencies calling for the production of documents as under clause (i) above. In the event of Contractor's or his agency's failure to do so, the contract price would be reduced and determined according to the best judgement of the Purchaser which would be final and binding on the Contractor and his agencies.

3400. Inspection at the Fag End of the Delivery Period-

In cases where only a portion of the stores ordered is tendered for inspection at the end of the delivery period and also in cases where inspection is not completed in respect of the portion of the stores tendered for inspection during the delivery period, the Purchaser reserves the right to cancel the balance quantity not tendered for inspection within the delivery period fixed in the contract at the risk and expense of the Contractor without any further reference to him. If the stores tendered for inspection during or at the end of the delivery period are not found acceptable after carrying out the inspection, the purchaser is entitled to cancel the contract in respect of the same at the risk and expense of the contractor. If, however, the stores tendered for inspection are found acceptable, the Purchaser may grant an extension of the delivery period subject to the following conditions: -

(a) The Purchaser has the right to recover from the contractor under the provision of clause 0702 (a) of I.R.S. Conditions of Contract liquidated damages on the stores which the Contractor has failed to deliver within the period fixed for delivery.

(b) That no increase in price on account of any statutory increase in or fresh imposition of Customs Duty, Excise Duty, Sales Tax on account of Foreign Exchange variation or on account of any other tax or duty leviable in respect of stores specified in the contract which takes place after the date of the delivery period stipulated in the contract shall be admissible on such of the said stores as are delivered after the date of the delivery stipulated in the contract.

(c) That notwithstanding any stipulation in the contract for increase in price on any other ground no such increase which takes place after the date of the delivery stipulated in the contract shall be admissible on such of the said stores as are delivered after the expiry of the delivery period stipulated in the contract.

(d) But nevertheless, the Purchaser shall be entitled to the benefit of any decrease in price on account of reduction in or remission of Custom Duty, Sales Tax or on account of Foreign Exchange variation or on account of any other Tax or Duty or on other ground as stipulated in the price variation, clause which takes place after the expiry of the date of delivery period stipulated in the contract.

3401. The Contractor shall not despatch the Stores till such time as an extension in terms of para 3400 (a) to (d) above is granted by the Purchaser and accepted by the Contractor. If the stores are despatched by the Contractor before an extension letter as aforesaid is issued by the Purchaser and the same are accepted by the Consignee, the acceptance of the stores shall be deemed to be subject to the conditions (a) to (d) mentioned in the paragraph 3400 above.

3402. In case where the entire quantity has not been tendered for inspection within the delivery period stipulated in the contract and the Purchaser chooses to grant an extension of the delivery period the same would be subject to conditions

(a) to (d) mentioned in the paragraph 3400 above.

3500. (ADDITIONAL) SPECIAL CONDITIONS:- (Vide Para 417-S)

These (special) conditions wherever they differ from the Invitation to Tender and Instruction to Tenderers over ride the latter.

In addition to Standard Conditions of Contract, the following special conditions shall apply to (Running) Contract:

3600. Purpose of Contract and Parties to the Contract.

3601. The parties to the contract, which shall be deemed to be a "Running Contract" and which is intended for the supply of the stores of the descriptions and approximately in the quantities set forth in the contract during the period specified therein, shall be the Contractor of the one part and the authorities named in the contract hereinafter called the Purchaser (which expression shall, where the context so admits or implies, be deemed to include his successors and assigns) of the other part. The quantities shown in the said Contract, are only approximate, and cannot be guaranteed.

3602. The Purchaser may authorise any officer (who shall hereinafter be called Direct Demanding Officer) at any time during the period of the contract, to place orders direct on the Contractor.

3603.

Any variation of this contract shall not be binding on the Purchaser unless or until same is endorsed on the contract or incorporated in a formal instrument in exchange of letters and signed by the parties.

3700. Delivery.

3701. The Contractor shall as may be required by the Purchaser either deliver free or FOR or CIF at the place or places specified in the contract such quantities of the stores detailed in the said contract as may be ordered direct from the Contractor from time-to-time by the Purchaser or by the Direct Demanding Officer. The Contractor shall deliver or despatch the full quantity of the stores so ordered within the period specified in the said contract.

3800. Increase or Decrease of Quantities: Deleted.

3900. Maintenance and Replacement of Stocks.

3901. To meet casual demands, the Contractor shall maintain at all time in stock (until 75 per cent of the requirements have been drawn), at the place (s) specified in the contract, the quantity /quantities mentioned therein. All demands should be complied with immediately they are received by the Contractor or within the period, if any, stipulated in individual orders. As soon as the Contractor is called upon to effect supplies, he shall take action to replenish the guaranteed stocks until such time as 75 percent of the total approximate requirement has been drawn and such replenishment shall be completed within the period specified in the contract, after the receipt by the Contractor of casual demands. Due notice will be given to the Contractor by the Direct Demanding Officers or by the Purchaser, if any additional quantities over and above 75 per cent of the total approximate requirements are required and Contractor shall then arrange stocks accordingly.

3902. The period for replenishment of stocks will be allowed only if the material is not in stock. If the material is in stock, this Provision will be in operative even though the guaranteed stock quantity may have been supplied against the contract.

4000. Reporting Progress of Contract.

The Contractor shall, three calendar months before the termination of the contract or at such intervals as may be specified in the contract, submit a report to the Purchaser stating the total quantity of stores delivered or despatched under the contract.

4100. Special conditions where they differ from Standard Conditions override the latter.
