



Title: Supply of One Directional Carbon Fiber Composite Plate

Tender No.

I-I/ET-TPT/GTE/23003/23-24

Title	Tender No. I-I/ET-TPT/GTE/23003/23-24 dated 22-09-2023 for Supply of One Directional Carbon Fiber Composite Plate
Sub Title	PART-A (III): Terms and Conditions of the Contract/Purchase Order

ITER-India, Institute for Plasma Research
Block A, Sangath Skyz, Bhat-Motera Road, Koteswar,
Ahmedabad 380005, Gujarat, INDIA





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<http://www.iterindia.in>





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Amendment Record

Date dd/mm/yyyy	Description of Changes	Version No.	Changes made by



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1 Terms and Conditions of the Contract (TCC) / Purchase Order

Following are the Terms and Conditions of the Contract (TCC) applicable to this tender enquiry. The Contract / Purchase Order resulting from this tender enquiry shall be governed by the terms and conditions given in this TCC. Bidders submitting the bid against this tender enquiry shall be deemed to have read and understood the same in total.

1.1 General provisions of the Contract

1.1.1 Language

- 1.1.1.1 The ruling language of the Contract and language for documentation and communication shall be English.

1.1.2 Governing Law

- 1.1.2.1 The Contract/Purchase Order shall be construed and shall be governed by the laws of India and the Contractor/Supplier shall be required to comply with all the applicable laws with regard to performance of the Contract/Purchase Order.

1.1.3 Jurisdiction

- 1.1.3.1 The Courts in Ahmedabad (Gujarat State, India) only shall have exclusive jurisdiction to deal with and decide all disputes arising out of this Contract/Purchase Order.

1.1.4 Severability

- 1.1.4.1 If any provision or condition of the Contract is prohibited or rendered invalid or unenforceable, such prohibition, invalidity or unenforceability shall not affect the validity or enforceability of any other provisions and terms & conditions of the Contract.

1.1.5 General obligations

- 1.1.5.1 Each party shall bear their own expenses for visit of their personnel to other party's end concerning execution of the Contract/Purchase Order/order.

1.1.6 Sub-contracting, subletting or assignment of Contract/Purchase Order

- 1.1.6.1 The Contractor/Supplier shall not sub-contract, sublet, transfer or assign the Contract/Purchase Order or any part thereof, without the prior written consent of the Purchaser (All major sub-contractors are required to be appraised and approved by the Purchaser, before placement of orders by the Contractor/Supplier). However, such consent shall not be unreasonably withheld by the Purchaser, if such items/equipment are not normally manufactured by the Contractor/Supplier. Such assignment or subletting shall not relieve the Contractor/Supplier from any Contractual obligation or responsibility under the Contract/Purchase Order.

- 1.1.6.2 The Contractor/Supplier shall be responsible and accountable for coordination of all activities with his sub-contractors

- 1.1.6.3 In case the Contractor/Supplier sublets, transfers or assigns any part of the Contract/Purchase Order with the prior written consent of the Purchaser, all payments to the Sub-Contractor shall be the responsibility of the Contractor/Supplier and any requests from such Sub-Contractor shall not be entertained by the Purchaser.

- 1.1.6.4 All payment to the sub-contractors shall be made by the Contractor/Supplier



1.2 Contract/Purchase Order Work Scope and Completion Time

1.2.1 Scope of Work, Scope of Supply and Specifications:

- 1.2.1.1 Part-A(II) of this tender enquiry specifies the **scope of work, scope of supply, testing and technical specifications** of deliverables to be covered under this Contract/Purchase Order.
- 1.2.1.1 Operation/instruction manual, technical manuals and technical drawings is essential in English to enable the Purchaser to put the Items/system to proper use, so the Contractor shall furnish such manuals along with the Items/Systems as per Part A (II) of the tender.

1.2.2 Delivery Dates and Completion Time

- 1.2.2.1 Contractor/supplier shall make complete delivery of all the ordered items as per clause No. **1.5.2** within **4 months** from date of Contract/ Purchase Order. The final acceptance of ordered items at ITER-India lab shall be completed within **15 days** from the date of receipt of all items at Purchaser's site.
- 1.2.2.2 **The date of delivery and time for completion stipulated in the Contract/Purchase Order shall be deemed to be the essence of the Contract/Purchase Order.** Delivery completion must be accomplished within the dates/durations specified in Delivery Schedule.
- 1.2.2.3 The date of the final acceptance note issued by the Purchaser after successful completion of Site acceptance tests at ITER-India Lab shall be considered as completion date.

1.3 Free Issue Material (FIM):

No Free Issue Material (FIM) from Purchase side is involved for execution of this Contract/Order. Purchase will provide facilities like electricity, water, space as may be required for final/site acceptance testing of the ordered items.

1.4 Bank Guarantees

1.4.1 Security Deposit (SD)

- 1.4.1.1 Not applicable

1.4.2 Performance Bank Guarantee (PBG)

- 1.4.2.1 Not applicable

1.4.3 Bank charges

- 1.4.3.1 **For Indian Contractor:** All bank charges, if applicable, shall be borne by Contractor/Supplier only.
- 1.4.3.2 **For Foreign Contractor:** All the bank charges within India shall be borne by ITER-India. Similarly, all bank charges outside India shall be borne by the contractor. Subsequent amendment of LC (if any), including extension charges will be in the account of the party who is responsible for such amendment/extension.

1.5 Contract/Purchase Order Price, Payment and Recoveries

1.5.1 Terms of Prices

- 1.5.1.1 The unit prices for this Contract/Purchase Order shall be **firm with no price variation**



during the validity and extended validity of the Contract/Purchase Order.

1.5.1.2 Price/s are required to be quoted according to the units indicated in the Price Bid (Part-B).

1.5.1.3 Cost for travel, accommodation, lodging and other expenses which will be necessary for execution of the Contract/Purchase Order i.e. visit for testing / meeting at other party's site or any other place/lab will be borne by respective parties.

1.5.2 Basis of Delivery

1.5.2.1 **For Indian bidders:** The price quoted in INR should be inclusive of packing & forwarding, on Free Door Delivery basis including insurance. Indian bidders quoting in foreign currency should quote on the FCA at the specified 'Gateway Airport' basis as per INCOTERMS 2020 (Ref. clause No. [1.5.2.2.1](#)).

1.5.2.2 **For Foreign bidders:** The prices quoted should be on FCA at the specified 'Gateway Airport' basis as per Incoterms 2020.

1.5.2.2.1 List of Gateway airports is given below (Table-1) for air shipment

Table-1 List of Gateway airports

Sr. No.	Country	Airport
1	Argentina	Buenos Aires
2	Australia	Melbourne
3	Austria	Vienna
4	Belgium	Antwerp
5	Canada	Toronto / Montreal
6	China	Beijing
7	Czech Republic	Prague
8	Denmark	Copenhagen
9	Finland Helsinki	Finland Helsinki
10	France	Paris
11	Germany	Frankfurt
12	Hong Kong	Hong Kong
13	Ireland	Dublin
14	Italy	Rome
15	Japan	Tokyo / Osaka
16	Netherlands	Amsterdam
17	Norway	Oslo
18	Poland	Warsaw
19	Russia	Moscow
20	Singapore	Singapore
21	South Africa	Johannesburg
22	South Korea	Seoul
23	Spain	Barcelona/Madrid
24	Sweden	Stockholm
25	Switzerland	Zurich
26	United Kingdom	London
27	U.S.A.	JFK



1.5.2.2.2 Since the purchaser has authorized consolidation agents, they will arrange for airfreight from the respective Gateway Airport.

1.5.2.3 Refer to clause no. [1.6.4.2](#) for details of “delivery address”.

1.5.3 Taxes and Duties

1.5.3.1 **In respect of Foreign bidder:** The price/s quoted should be inclusive of all applicable taxes, levies, duties arising in the bidder’s/manufacturer’s country or any other country/ies except India.

1.5.3.2 **In respect of Indian bidder:** The price quoted should be exclusive of all applicable taxes, levies, duties which are to be mentioned separately in the un-Price Bid format (**Annexure-A3** of Part-A(I)) at the prevailing rates. GST as applicable during the original delivery schedule shall be paid against submission of GST compliant invoice. No GST exemption certificate will be issued by Purchaser for concessional rate of GST.

1.5.3.2.1 **GST registration:** Indian Bidder shall submit a copy of GST Registration certificate along with the bid.

1.5.3.2.2 Supplier shall be liable to undertake assessment of likely GST impact on the price of the supplies being made to the Purchaser in light of the anti-profiteering provisions being proposed. After completion of such assessment, Supplier shall forthwith inform the Purchaser of the extent of reduction in cost so that the prices may be renegotiated accordingly and amendments can be made in the contracts. In case any deviation is found at subsequent stage, wherein GST impact has not been given effect to the cost for any reasons whatsoever, then any consequences arising thereof shall be borne by the supplier. The Supplier hereto agrees that all liabilities arising out of any default from complying with the aforesaid directions and consequences thereof will be of the Supplier and Purchaser is authorised to recover the same along with interest from the Supplier and/or the same can be deducted from the amount payable to the Supplier.

1.5.3.2.3 Supplier shall be liable to evaluate compliance requirements under GST and ensure proper mechanism for undertaking the same is put in place so that there is no loss of any kind to the Purchaser due to non-compliance on supplier. The Supplier agrees that in case of any loss arising out of acts of the Supplier or any non-compliance on the part of the Supplier, Purchase is authorised to recover the same along with interest from the Supplier and/or the same can be deducted from the amount payable to the supplier.

1.5.3.2.4 Supplier shall be liable to update GSTN and HSN Code as and whenever applicable to the item(s) supplied on Invoice and any mis-match/rejection due to GSTN/ HSN Code will be on supplier’s account and any loss of credit arising due to any non-compliance by the Supplier will be recovered from Supplier along with interest and / or the same can be deducted from the amount payable to the Supplier.

1.5.3.2.5 Custom Duty:

ITER-India is exempted from payment of Customs Duty as per notification no. 39/96-custom dated 23/07/1996 as amended by notification no. 5/2012-custom dated 07/02/2012 (S. No. 37). Hence, Custom Duty payable in India should not form a part of the bid (**Applicable for import material cleared in India**). The Purchaser will issue the customs duty exemption certificate for materials and bought out items, which are part and deliverables to order ITEMS. Purchaser shall neither issue customs duty exemption

certificate nor reimburse the customs duty paid by the Contractor for the machines & tools purchased by the Contractor which are not a part/deliverable of the Contract/Purchase Order. List of materials and bought out items to be imported to India for this tender enquiry shall be submitted by the bidder along with the bid submission. This List should include description of items and tentative quantity. The Contractor shall furnish priced purchase order copy of all items being imported for the Contract/Purchase Order at least **60** days before actual import. Copy of L/C wherever applicable, shall also be furnished by the Contractor if the purchase of such components being imported to India, have been bought through L/C. Contractor has to maintain the list of all the Raw materials purchased, consumed and scrap for this Contract/Purchase Order, in case the Custom Duty exemption is availed. Any proceeds received on the left-out portion/scrap etc. of goods cleared through customs authority under the custom duty exemption provided by the Purchaser, applicable amount shall be given by the Contractor either to Customs authority or to ITER-India on demand from the Purchaser/customs authority. **All expenses including applicable GST except customs duty, towards procurement of the imported materials should be borne by the Contractor.**

1.5.3.3 Tax Deducted at Source (TDS) or any other leviable taxes and or duties:

1.5.3.3.1 Income tax (applicable for Indian Contractor) at a prevailing rate will be deducted from the supplier's invoice(s). Certificate of TDS will be issued by the Purchaser.

1.5.3.3.2 TDS (applicable for Indian Contractor) at the prevailing rate as per GST Act will be deducted from the supplier's invoice(s). A TDS certificate will be issued to this effect.

1.5.3.3.3 No TDS will be applicable to Foreign Contractor

1.5.3.4 In case, there is any other applicable taxes and duties, same should be informed by the bidder in the bid.

1.5.4 Mode of Payment and Payment Schedule:

ITER-India is fully funded by Government of India and the normal terms of payment are as follows:

1.5.4.1 **Payment terms for Foreign Contractor** - The payment will be arranged through sight draft State Bank of India (SBI). However, other terms of payment like Wire transfer/ establishment of Irrevocable Letter of Credit (L/C) with payment at sight may be considered by the Purchaser on such terms and conditions as may be agreed upon. (L/C will be opened through Purchaser's Bankers and all bank charges outside India to be borne by the Contractor). However, final payment of 10% will be made through wire transfer (applicable for foreign contractor) only. Hence, L/C value will be appropriately calculated. Refer to Payment Schedule given in clause No. [1.5.4.3](#).

1.5.4.1.1 Opening of L/C will be subject to signing of a Contract, furnishing order acknowledgement and Contractor obtaining Export License, if applicable. In case Export License is not required, Contractor shall submit a declaration to this effect along with the Order Acknowledgement.

1.5.4.2 **Payment terms for Indigenous Contractor:** Payment shall be made through RTGS/NEFT in INR within 30 days from the date of acceptance against each payment milestone as per [Table-2](#) and on receipt of error free invoice and other mentioned

documents complete in all respects. Necessary mandate form for RTGS/NEFT will be provided at the time of Contract/order.

1.5.4.3 Payment Schedule

1.5.4.3.1 The payment to the Contractor/Supplier will be made as per the following terms ([Table-2](#)), on production of the requisite documents:

Table-2: Payment Schedule:

Sr. No.	Mile-stone for payment	% of PO value (basic amount) for payment	Documents required from the Supplier for release of payment
01	Payment against complete delivery of ordered items to On-Site address by Indian Contractor / FCA at specified Gateway airport by foreign contractor	90% [plus 100% applicable taxes and any other applicable charges]	<ul style="list-style-type: none"> A. A copy of Despatch Clearance Note issued by Purchaser B. Original on-board clean Airway bill (for foreign contractor) C. Proof of Transit Insurance as per FCA (for foreign contractor) D. Delivery Challan duly inward at Security Gate and signed by ITER-India representative as delivery acknowledgement (For Indian contractor) E. Tax Invoice describing the items delivered, quantity, unit rate (as applicable), their total value and indicating the country of origin in triplicate F. Packing list showing individual weight and dimensions of packages along with other necessary details. G. Valid Phytosanitary or Fumigation certificate and / or dangerous cargo certificate / ISPM 15 certificate or its equivalent certificate issued by the competent authority (This point is applicable for foreign contractor)



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02	Payment against successful completion of Final/ Site acceptance i.e. site acceptance test(s) of all the deliverables specified in the Contract/Order.	10%	A. A copy of Final Acceptance Note issued by the Purchaser B. Duly signed Pro-forma Invoice in triplicate
Total		100%	

1.5.4.3.2 Agency Commission (if applicable)

- a. The amount of commission included in the price and payable to the Indian Agent of the Foreign Contractor shall be paid directly to the Indian Agent by ITER-India in equivalent Indian Rupees on the basis of an invoice from the agent applying Telegraphic Transfer (T.T.) buying rate of exchange ruling on the date of placement of the Contract and which shall not be subject to any further exchange variations. The payment will be released to the Indian Agent within 30 days from the date of final acceptance of ITEMS. Indian agent may send the invoice in duplicate to ITER-India after final acceptance of ITEMS. Applicable Tax Deducted at Source (TDS) and other taxes will be deducted from the payment and certificate will be issued.
- b. The Foreign Contractor shall invoice only for the net amount payable to him, after deducting the amount of Agency commission which would be paid to the Indian Agent directly by ITER-India. However, the Foreign Contractor's invoice should separately reflect the amount of commission payable to the Indian Agent.
- c. The Name and address of the accredited Indian Agent, if any, should be mentioned clearly in the Bid with credentials of the Agent. A copy of Agency Agreement shall also be submitted along with Bid (For Foreign bidder).

1.5.5 Despatch Clearance Note

- 1.5.5.1 Contractor/Supplier shall obtain a Despatch Clearance Note (DCN) on satisfactory pre-dispatch inspection / factory acceptance of Items/System from ITER-India Commercial Coordinator before effecting the dispatch.
- 1.5.5.2 The Contractor is not entitled to make partial shipment without written consent of the Purchaser.

1.6 Packing, Labelling, Insurance and Delivery Instructions

1.6.1 Packing Instructions

- 1.6.1.1 Packing should be airworthy, sturdy and rigid enough to withstand shocks and vibrations during transportation. The Contractor/Supplier shall provide suitable packing such as shock/vibration absorption material to avoid damage during transportation. The packing arrangement shall include (but not limited to) a necessary list of documentation and appropriate packing, markings, labelling, handling provisions for the items. The Contractor/Supplier shall be held responsible for all damages due to improper or poor packing.
- 1.6.1.2 The supplier shall take due care regarding packing and forwarding of the system. It is the liability of the supplier to deliver the system in perfect working condition to ITER-India. Lost/Damaged components will be repaired/ replaced by the supplier at free of cost.



- 1.6.1.3 The Contractor/Supplier shall submit a detailed transportation scheme including packing details to the Purchaser in advance for the approval.
- 1.6.1.4 If packing materials are of any kind of plant origin, Phytosanitary Certificate (ISPM 15) or its equivalent issued by an authorized Officer at the Country of Origin of the consignment in the format prescribed under the International Plant Protection Convention of the food and agricultural organization shall be sent along with the shipping documents. This is a mandatory requirement under law enacted by the Govt. of India. Deviation from this may result in holding of the consignment at customs causing delay which will be the sole responsibility of Foreign Contractor. In case, the dangerous cargo certificate is required, same needs to be submitted by the Foreign Contractor.
- 1.6.1.5 The Contractor shall also ensure that one copy of packing list is enclosed in each box/crate in order to facilitate prompt clearance of deliverables upon arrival.

1.6.2 Marking & Labelling

- 1.6.2.1 All packages shall be clearly, legibly and durably marked for correct identification with uniform block letters (preferably with waterproof paint) on at least three sides with:
- Delivery address (as communicated)
 - Contract/Purchase Order Number and date
 - Net and gross weights
 - Sign showing 'SIDE UP'
 - Any handling and unpacking instructions, if considered necessary.
 - In case of spare parts, each spare part shall be clearly marked and labeled on the outside of its packing with its description and catalogue/part number.

1.6.3 Insurance

1.6.3.1 Indian Contractors:

The items shall be delivered to the purchaser's site (Delivery address given in [1.6.4.2](#)) on free door delivery basis, freight paid and duly insured (covering transit insurance, installation, commissioning till final acceptance). All expenses including the freight, insurance, loading, unloading of items at Purchaser's site, shifting of items within Purchaser's site, installation testing and commissioning are to the account of Contractor/Supplier.

1.6.3.2 Foreign Contractors:

The foreign Contractor must take an appropriate insurance for all the Items delivered up to FCA specified Gateway airport against a risk of loss or damage during the transport. Proof of insurance to be submitted to ITER-India along with other shipping documents. Purchaser shall make further arrangement for delivery of items from the FCA airport to the delivery site at its own cost.

1.6.4 Ultimate Consignee & Delivery Address:

1.6.4.1 The ultimate consignee of the Purchaser is:

The Sr. Officer (Purchase & Stores), ITER-India, Ahmedabad
Phone: +91-79-23 26 96 56 / +91-79-23 26 95 30
E-mail: purchase@iterindia.in

1.6.4.2 Delivery Address:

DNB Lab,



ITER-India Lab building
Institute for Plasma Research Campus
Bhat, Gandhinagar-382428
Gujarat, India

1.6.4.3 Bill To:

Sr. Officer (Purchase & Stores),
ITER-India, Institute for Plasma Research
Block A, Sangath Skyz,
Bhat-Motera Road, Koteshwar,
Ahmedabad 380005
Gujarat, India.

1.6.5 Delivery Documents

1.6.5.1 The Contractor/Supplier shall forward in advance to the Purchaser, by rapid Courier Service and scanned copies through e-mail, following documents:

- a. Airway bill clean on board (foreign contractor)
- b. Packing list
- c. ISPM 15 / Fumigation (foreign contractor)
- d. Non-Dangerous Cargo certificate (foreign contractor)
- e. Original Tax Invoice in triplicate
- f. Delivery Challan in triplicate (Indian contractor)
- g. Duly consignment receipted copy of Lorry Receipt. (Indian contractor)
- h. Despatch clearance note issued by the Purchaser

1.6.5.2 The dispatch documents such as Invoice, Delivery Challan, Packing list etc., shall bear the “Contract/Purchase Order Number”, “Contract/Purchase Order Date”, “Destination/Delivery address”

1.6.6 Delivery Inspection

The boxes/packages containing the deliverable items, received at the Purchaser’s site will be unpacked for identifying the item & visually inspection for any loss/damage during transit. Refer Part-A(II) for more details.

1.7 Demurrage / Wharfage

All demurrage, detention, storage, customs inspection, wharfage and allied expenses incurred by ITER-India, if any, due to delayed clearance of items in view of non-receipt, incomplete or delayed receipt by ITER-India of the shipment documents, mis-declaration/wrong declaration of cargo, errors/difference between materials/items specifications mentioned in shipping documents and physically on the materials/items shall be recovered from the payment due to the Contractor. ITER-India shall inform as soon as possible to contractor of such incidences in writing along with the necessary information.

1.8 Transfer of Ownership and Title

a. Transfer of ownership of the Items shall occur upon delivery of each shipment/shipments as per FCA specified Gateway airport Incoterms 2020 basis (for Foreign Contractor) and upon successful completion of Final Site Acceptance test (For Indian Contractor).



b. Transfer of Ownership from contractor to ITER-India as per FCA airport or upon safe receipt shall not in any way relieve the Contractor of its responsibilities and liabilities under the Contract.

1.9 Risk of Loss/damages

The Contractor/Supplier shall be responsible and liable for risk of any loss or damages to deliverable items during transportation, till the Final Acceptance of complete system/deliverables at the Purchaser's site (refer clause No. [1.6.4.2](#)). – For Indian Contractor

The Foreign Contractor shall be responsible at his own risk for the care and custody including theft, damage due to any reasons, of the Items or any part thereof until their respective delivery as per Incoterms 2020. However, the Foreign Contractor shall be responsible and liable for the Items delivered till successful completion of Site Acceptance test.

1.10 Delay, Extension & Postponement

1.10.1 Extension of Time (due to Contractor/Supplier)

1.10.1.1 In the event, the contractual delivery dates cannot be adhered to for any cause(s) attributable to the Contractor/Supplier, an application for extension of time with sufficient reasons shall be made by the Contractor/Supplier to the Purchaser. If failure, on the part of the Contractor/Supplier to deliver the items in scheduled time shall have arisen from any causes which the Purchaser may find as reasonable ground for an extension of time (and his decision shall be final), he may allow such additional time as he may consider justified in the circumstances of the case through a formal notification. The Contractor/Supplier shall not become entitled to receive additional payment towards escalation or increased statutory levies (if any) beyond the contractual delivery date if the delay is attributed to the Contractor.

1.10.1.2 If the Contractor/Supplier fails to apply and secure extension of Contract/Purchase Order delivery date(s) (before effecting the supply of the items as in the Contract/Purchase Order) acceptance of such supplies by the Purchaser, shall not entitle the Contractor/Supplier to claim payment on account of escalation or extra payment on account of increase of statutory levies or new statutory levies that may be payable at higher rate after the expiry of Contract/Purchase Order delivery date (clause [1.10.2](#)).

1.10.2 Delay in delivery dates/completion time

1.10.2.1 Should the Contractor/Supplier fails to comply with contractual delivery dates and the reasons for such failures are attributed to the Contractor/Supplier, it shall be construed as a breach of the Contract/Purchase Order and the Purchaser shall be entitled at his option to the following:-

1.10.2.1.1 To terminate the total Contract/Purchase Order, as per clause [1.18](#). However, the Purchaser will inform in writing one month in advance to the Contractor/Supplier before exercising this clause.

1.11 Liquidated Damages (LD)

1.11.1 Not applicable



1.12 Final/Site Acceptance:

1.12.1 Final Acceptance

Final / Site Acceptance of the Item will be subject to the fulfilment of requirements given in Part-A (II).

1.13 Rejection of defective goods & Contractor/Supplier's Liability

1.13.1 Rejection against Damages during Transit:

If the items or any portion thereof is damaged during transit, the Purchaser shall give notice to the Contractor/Supplier setting forth particulars of such items/ damaged during transit. The replacement of such Items shall be effected by the Contractor/Supplier within a reasonable time to avoid unnecessary delay in the intended usage of the Items. The costs of replaced items shall be borne by the Contractor/Supplier (applicable for Indian contractor). In case of Foreign contractor, the cost of replaced items shall be borne by the Purchaser, subject to transit damage due to default in transportation carried out by the Purchaser. However, in case of transit damage due to improper packing, then cost of replaced items shall be borne by Foreign Contractor only.

1.13.2 Rejection before final acceptance:

1.13.2.1 In the event that any of the items/components supplied by the Contractor/Supplier are found defective in material or workmanship or not in conformity with the requirements of the Contract/Purchase Order specifications, before the final acceptance, the Purchaser shall reject the same and request the Contractor/Supplier in writing to repair or to replace the defective items free of cost to the Purchaser within a mutually agreed time period.

1.13.3 Limitation of liability

1.13.3.1 Except in cases of criminal negligence or willful misconduct, the aggregate liability of the Contractor/Supplier to the Purchaser, whether under the contract, in tort or otherwise, shall not exceed the total Contract/Purchase Order price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment, or to any obligation of the contractor to indemnify the purchaser with respect to Intellectual Property Rights infringement.

1.13.3.2 The Purchaser being a research institute, indirect losses, that is loss of production and loss of profit is not applicable.

1.14 Indemnity

The Contractor/Supplier shall at all times indemnify and hold harmless the Purchaser and its employees and officers from and against all claims which may be made in respect of supplies covered by this Contract/Purchase Order against infringement of any right protected by patent registration, law of designs, trademarks, utility model, copyright and other intellectual property rights registered or otherwise existing.

1.15 Warranty, Defect Liability, Latent defect

1.15.1 Warranty

1.15.1.1 The Contractor/Supplier shall warrant that the items i.e. One Directional Carbon Fiber Composite Plate supplied under this Contract/Purchase Order comply fully with the specifications laid down, for material, workmanship and performance. The items shall be



new, unused and free from any defects. The warranty period shall be one year from date of final site acceptance of Items by Purchaser

1.15.1.2 A reasonable time limit for repair or replacement of defective item(s) shall be guaranteed by the Contractor/Supplier and agreed by the Purchaser.

1.15.1.3 The repair or replacement of items by the Contractor/Supplier shall be on Free Door Delivery basis (by Indian Contractor) and DAP ITER-India lab, Gandhinagar, Gujarat as per Incoterms 2020 (by Foreign Contractor). The Contractor/Supplier shall be responsible for taking the damaged items from On-site and after delivering the replaced item.

1.15.1.4 Further, if in the opinion of the Purchaser, defects are of such a nature that the same cannot be made good or repaired without impairing the efficiency or workability of the system or if in the opinion of the Purchaser, such opinion being final, the item cannot be repaired or altered to make it comply with the requirements of the Contract/Purchase Order, the Contractor/Supplier shall remove and replace the defective item confirming in all respects to the stipulated specifications at the Contractor/Supplier's own cost.

1.15.2 Contractor/Supplier's Failure to Repair/Replacement of defective Goods

1.15.2.1 If the Contractor/Supplier fails to repair or replace the damaged/defective items within the agreed time period, the Purchaser at his option either :

1.15.2.1.1 Replace or rectify such defective items and recover the actual costs so involved from the Contractor/Supplier

1.15.2.1.2 Acquire the defective items at a reduced price considered equitable under the circumstances. The provision of this article shall not prejudice the Purchaser's rights under Clauses [1.15](#) and [1.13](#).

If the Contractor/Supplier fails to make the required repairs/ replacement within mutually agreed time, then in pursuant to clause [1.15.2.1.1](#), such repairs/replacement shall be carried out by the Purchaser, with due information on the actual costs incurred by the Purchaser in carrying out such work in connection therewith, against documentary proof by the Purchaser, shall be paid by the Contractor/Supplier to the Purchaser or recovered by the Purchaser from the payment due to the Contractor/Supplier. In such case, the Purchaser shall be entitled to use the items in a reasonable and proper manner on a mutually agreed basis for such time as sufficient to enable the Purchaser to obtain repair / replacement.

1.16 After Sales Services & Availability of Spares

1.16.1 After Sales Services

Not applicable

1.16.2 Availability of Spares

Not applicable

1.17 CHANGES

- 1.17.1 The Purchaser shall have the right to propose and order the Contractor/Supplier from time to time during the execution of the Contract/Purchase Order to make any change, modification, addition or deletion to, in or from the supplies (hereinafter called “Change”), provided that such change falls within the general scope of the supplies and does not constitute unrelated work and that it is technically practicable, taking into account both the state of advancement of the supplies and the technical compatibility of the change envisaged with the nature of the supplies as specified in the Contract/Purchase Order.
- 1.17.2 The Contractor/Supplier may from time to time during its execution of the Contract/Purchase Order propose to the Purchaser any change that the Contractor/Supplier considers necessary or desirable. The Purchaser may at its discretion approve or reject any change proposed by the Contractor/Supplier.
- 1.17.3 Notwithstanding Clause [1.17.1](#) and Clause [1.17.2](#), no change made necessary because of any default of the Contractor/Supplier in the performance of its obligations under the Contract/Purchase Order and/or for Contractor/Supplier’s convenience, shall be deemed to be a change and such change shall not result in any adjustment of the Contract/Purchase Order price or the time for completion.
- 1.17.4 If any of the items in addition to the schedule of supply of materials is required during execution of the Contract/Purchase Order due to change in specifications, drawings, designs etc., which in the opinion of the Purchaser, if not procured promptly may delay the completion of the supplies, the Contractor/Supplier shall procure the required material as per the specifications to the extent required to keep the progress of work unhindered. The Contractor/Supplier shall be paid for such additional procurement in the following manner:
- 1.17.5 If the required item/cost for change(s) proposed by the Purchaser is available in the Contract/Purchase Order, the same unit rate/rate shall be used as cost for such change.
- 1.17.6 If the required item/cost for change(s) proposed by the Purchaser is not available in the Contract/Purchase Order, the Purchaser reserves the right to get the detailed break up with valid documentary evidence from the Contractor/Supplier. Contractor/Supplier shall provide the details asked by the Purchaser within the stipulated time. Purchaser and Contractor/Supplier shall mutually agree on such cost for change within 90 days from the date of such change proposed by the Purchaser.

1.18 Cancellation/Termination of Contract/Purchase Order

1.18.1 Termination of Contract/Purchase Order for default

- 1.18.1.1 The Purchaser may, without prejudice to any other remedy for breach of Contract/Purchase Order, by written notice of default sent to the Contractor/Supplier, terminate the Contract/Purchase Order in whole or in part in circumstance detailed hereunder:
- 1.18.1.1.1 If the Contractor/Supplier fails to supply/provide any or all of the deliverable items, within the time period(s) specified in the Contract/Purchase Order or any extension thereof granted by the Purchaser
- 1.18.1.1.2 If the Contractor/Supplier fails to perform any other obligation(s) under the Contract/Purchase Order within the period specified in the Contract/Purchase Order or any extension thereof granted by the Purchaser



1.18.1.2 In the event the Purchaser terminates the Contract/Purchase Order in whole or in part, the Purchaser may take recourse to any one or more of the following actions. However, the Contractor/Supplier shall continue to perform the Contract/Purchase Order to the extent not terminated.

1.18.1.2.1 To purchase from elsewhere, after (thirty) 30 days' notice to the Contractor/Supplier, at risk and cost of the Contractor/Supplier, the supplies, materials and equipment, not delivered or other items of similar description when such deliverable exactly complying with the particulars are not in the opinion of the Purchaser readily procurable, such opinion being final, without cancelling the Contract/Purchase Order in respect of the consignments not yet due for supply.

1.18.1.3 To cancel the total Contract/Purchase Order or balance portion thereof, and if so desired, to purchase or authorize the purchase of the supplies, materials and equipment not so delivered or other deliverable of similar description, when such deliverable exactly complying with the particulars are not, in the opinion of the Purchaser, readily procurable, such opinion being final, at the risk and cost of the Contractor/Supplier.

1.18.1.4 In the event of action being taken under sub-clause [1.18.1](#) above, the Contractor/Supplier shall be liable for any loss which the Purchaser may sustain on that account. Contractor/Supplier shall not however be entitled to gain on such purchase made on account of his default. The manner and method of such alternate purchase shall be at the entire discretion of the Purchaser, whose decision shall be final. This right shall be without prejudice to the right of the Purchaser, to recover the damages for breach of Contract/Purchase Order by the Contractor/Supplier as provided in the Contract/Purchase Order.

1.18.1.5 If the Contract/Purchase Order is terminated as provided in clause [1.18.1](#), the Purchaser in addition to any other rights provided in the clause, may require the Contractor/Supplier to transfer title and deliver to the Purchaser any completed items that are found to be useful and acceptable to the Purchaser. The Purchaser shall pay to the Contractor/Supplier, the Contract/Purchase Order price of such completed items that are delivered to and accepted by the Purchaser.

1.19 Precedence

In case of Conflict between the parties, the decision of Purchaser shall have precedence over this Tender enquiry.

1.20 Settlement of disputes and Arbitration

1.20.1 Settlement

1.20.1.1 Any disputes or difference arising out of or in connection with the Contract/Purchase Order shall be to the extent possible settled amicably between the parties involving management from either side within one hundred and twenty(120) days. If amicable settlement cannot be reached within one hundred and twenty (120) days, then all disputed issues shall be settled by Arbitration as per clause [1.20.2](#)

1.20.1.2 Notwithstanding any reference to the arbitration as herein before provided (a) the Parties shall continue to perform their respective obligations under the Contract/Purchase Order with due diligence, unless they otherwise agree, (b) the Purchaser shall continue to pay any undisputed amount to the Contractor/Supplier.



1.20.2 Arbitration

1.20.2.1 For Indian Bidders:

- a. All disputes or differences arising out of or in connection with the Contract/Purchase Order including the one connected with the validity of the Contract/Purchase Order or any part thereof, should be settled by bilateral discussions.
- b. The Arbitration shall be conducted, in English, by two Arbitrators, one each nominated by the Purchaser and Contractor/Supplier. In case, the said Arbitrators are not able to settle the dispute by themselves, the matter shall be referred to the Arbitrator mutually nominated by the Purchaser and the Contractor/Supplier and whose decision shall be final and binding on both the parties. The sole Arbitrator shall have its seat in Ahmedabad or such other place in India as may be mutually agreed to between the parties. The arbitration proceedings shall be conducted under the Indian Arbitration and Conciliation (Amendment) Act, 2015 and the award of such Arbitration Tribunal shall be enforceable in Indian Courts only. The Courts of Ahmedabad, Gujarat shall only have exclusive jurisdiction to deal with and decide any legal or dispute arising out of the Contract/Purchase Order.
- c. Each party shall bear its own cost of preparing and presenting its case. The cost of arbitration including the fees and expenses shall be shared equally by the parties, unless otherwise awarded by the sole arbitrator.
- d. The parties shall continue to perform their respective obligations under the Contract/Purchase Order during the pendency of the arbitration proceedings except in so far as such obligations are the subject matter of the said arbitration proceedings.

1.20.2.2 For Foreign Bidders:

- a. In the event of any dispute or difference arising under the Contract, the matter shall be referred to Arbitration in accordance to the rules of International Chamber of Commerce. The Arbitration shall be conducted, in English, by two Arbitrators, one each nominated by the Purchaser and Contractor. In case, the said Arbitrators are not able to settle the dispute by themselves, the matter shall be referred to the Arbitrator mutually nominated by the Purchaser and the Contractor and whose decision shall be final and binding on both the parties. The Arbitrator shall have its seat in Ahmedabad or such other place in India as may be mutually agreed between the parties. Award of arbitral tribunal shall be enforceable in Indian Courts only.
- b. Either party may also, without waiving any remedy under this agreement, seek from any court having jurisdiction any interim or provisional relief that is necessary to protect the rights or property of that party, pending the arbitrator's determination of the merits of the controversy.