
	ITER-India (Institute for Plasma Research)	Global Tender No.
		I-I/ET-TPT/25001/25-26

Title	Phase 2-Driver and Final stage High Power RF Amplifiers for 2 sets of ITER ICRF Sources
Sub Title	PART-A (iii): Terms and Conditions of the Contract

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



	PART-A (iii): Terms and Conditions of the Contract (TCC) for <u>Phase 2-Driver and Final stage High Power RF Amplifiers for 2 sets of ITER ICRF Sources</u>	Global Tender No.
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Title	Phase 2-Driver and Final stage High Power RF Amplifiers for 2 sets of ITER ICRF Sources
Sub Title	PART-A (iii): Terms and Conditions of the Contract (TCC)

Distribution list	Interested Bidders
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Written by	Reviewed by	Approved by
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**PART-A (iii): Terms and Conditions of the Contract
(TCC) for Phase 2-Driver and Final stage High Power
RF Amplifiers for 2 sets of ITER ICRF Sources**

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A

ABG · *Advance Bank Guarantee*

B

BG · *Bank Guarantee*

H

HDFC · *Housing Development Finance Corporation*

HP · *Hold Point*

I

ICICI · *Industrial Credit and Investment Corporation of India*

IDBI · *Industrial Development Bank of India*

L

LD · *Liquidated Damages*

N

NP · *Notification Point*

P

PBG · *Performance Bank Guarantee*

PLR · *Prime Lending Rate*

PM · *Project Manager*

Q


QMP · *Quality Management Table*

S

SBI · *State Bank of India*

T

TRO · *Technical Responsible Officer*

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1 Terms and Conditions of Contract (TCC)

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

1.1 Definitions and Interpretations


1.1.1 Definitions

- (a) **“BID” or “TENDER” or “QUOTATION”** shall mean the tender, offer and quotation in response to this notice inviting tender/ enquiry/notification.
- (b) **“BIDDER” or “TENDERER” or “VENDOR”** shall mean the entity who seeks to supply the specified goods by submitting Tender/Bid/Quotation
- (c) **“COMPLETION”** shall mean that all activities specified under the scope of supply and work as per Tender Part-A (ii) have been successfully completed to the complete satisfaction of the Purchaser in all aspects and approved & accepted by the Purchaser.
- (d) **“CONTRACT”** shall mean the communication or document signed by the Purchaser and the Contractor confirming the agreement on the terms and conditions and complete technical details mentioned or referred to in the said communication or document, including all attachments and appendices thereto, for supply of items and scope of work mentioned therein and any subsequent amendments there to made on the basis of mutual agreement.
- (e) **“CONTRACTOR”** shall mean the firm or company with whom or with which the Contract for **“Phase 2-Driver and Final stage High Power RF Amplifiers for 2 sets of ITER ICRF Sources”** is placed and shall be deemed to include the Contractor's legal successors and/or assignees (approved by the Purchaser), representatives, heirs, executors and administrators unless excluded by the Contract.
- (f) **“CONTRACTOR RELEASE NOTE” (CRN)/ “DISPATCH CLEARANCE NOTE” (DCN)** shall mean the signed document sent by Purchaser’s commercial coordinator authorizing the Contractor to release the Items for shipment.
- (g) **“DAY” or “DAYS”** shall mean a Gregorian calendar day or days of twenty-four (24) hours each.
- (h) **“DELIVERABLES”** shall mean all the Items, Products, Components, Services, Documentation that are part of the scope of supply as defined in this Tender.
- (i) **“EFFECTIVE DATE OF CONTRACT” or “COMMENCEMENT DATE OF CONTRACT”** shall mean the date of release of advance payment by the Purchaser, on which the Contract shall come into force.
- (j) **“FACTORY ACCEPTANCE”** shall mean acceptance of items at factory as described in Part-A (ii).
- (k) **“FINAL ACCEPTANCE”** shall mean acceptance of items as per “Conditions for Acceptance”

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described in Annexure-K of PART-A (ii).

- (l) **“INCOTERMS”** shall mean International Commercial Terms as per latest version.
- (m) **“IO”** shall mean ITER - Organization having its office at Route de Vinon-sur-Verdon, 13067 St Paul Lez Durance, France.
- (n) **“ITER-INDIA (IPR)”** is a project of Institute for Plasma Research, Bhat, Gandhinagar 382428 and it is Indian Domestic Agency for the execution of ITER Project
- (o) **“ITEM(S)” or “GOODS” or “MATERIALS” or “PRODUCTS” or “SUPPLIES”** shall mean and include entire scope of supply and work which the Contractor has agreed to supply and perform as specified in the Contract (as per Part-A(ii) of this tender).
- (p) **“MILESTONE”** shall mean a scheduled or planned event or activity that indicates the completion of a major deliverable event or activity of the contract that is measurable and observable.
- (q) **“MONTH”** shall mean a month according to Gregorian calendar.
- (r) **“ON SITE”** –ITER-India site at Gandhinagar, Gujarat, India and ITER site, C/o ITER Organization, Route de Vinon-sur-Verdon CS 90 046, 13067 St Paul Lez Durance, Cedex, France as applicable
- (s) **“PARTY”** shall mean either the PURCHASER or the CONTRACTOR
- (t) **“PARTIES”** to the Contract are the Contractor and the Purchaser named in the Contract.
- (u) **“PRICE”** shall mean the prices quoted by the bidder in his bid proposal for the entire scope of supply as per the specifications as defined in Part-A (II) of this tender.
- (v) **“PROJECT DIRECTOR”** shall mean Project Director of ITER-India, who is appointed by a competent authority.
- (w) **“PROJECT MANAGER” or “PM”** shall mean the person authorized to act as Project Manager (PM) by a competent authority of ITER-India.
- (x) **“PURCHASER”** shall mean ITER-India (IPR), acting through the Project Director or his authorized representative.
- (y) **“PURCHASE OFFICER” or “COMMERCIAL COORDINATOR”** shall mean the person authorized to act as Purchase Officer and he/she is Purchaser’s representative for all commercial matters of the Contract.
- (z) **“QUALITY SURVEILLANCE ENGINEER/INSPECTOR”** shall mean any person appointed by or on behalf of the Purchaser to inspect or carry out quality surveillance on Items/supplies, equipment or work under the Contract or any person deputed by Purchaser for the said purpose.
- (aa) **“SUB-CONTRACTOR”** shall mean any person or firm or company on whom execution of any part of the supplies, including supply of any components, carrying out any manufacturing process/inspection/conformity assessment is subcontracted by the Contractor and includes its


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legal successor or permitted assignees, and unless otherwise stated, all the sub-contractor s and suppliers to such person and the term sub-contract shall be construed accordingly.

- (bb) **“TECHNICAL RESPONSIBLE OFFICER (TRO)”** shall mean the person nominated by the Purchaser to carry out all technical functions concerning the Contract including ITER-India review of technical documents, post Contract technical follow up and such other technical functions with the approval of Project Manager.
- (cc) **“THIRD PARTY”** shall mean the party authorized to carry out the assigned job on behalf of the Purchaser.
- (dd) **“TOTAL CONTRACT VALUE” or “TOTAL CONTRACT PRICE”** shall mean the total price as mentioned in the Contract
- (ee) **“UNIT RATE”** shall mean the rate per unit quoted by the bidder which can be used for addition or deletion purposes.
- (ff) **“WARRANTY PERIOD”** shall mean the period during which the Contractor shall remain liable without any extra cost to the Purchaser for repair, replace or rectify any defective item (s) or for performance of the ITEMS supplied under the Contract.

1.1.2 Interpretations

- (a) In the Contract, except where the context requires otherwise:
 - (i) Words indicating one gender include all genders;
 - (ii) Words indicating the singular also include the plural and words indicating the plural also include the singular;
 - (iii) Provisions including the word “agree”, “agreed” or “agreement” require the agreement to be recorded in writing;
 - (iv) The word “tender” is synonymous with “bid”, “tenderer” with “bidder” and “tender documents” with “bidding documents”;
 - (v) “Written” or “in writing” means hand-written, type-written, printed or electronically made, electronic mail resulting in a permanent record.
- (b) The marginal words and headings shall not be taken into consideration in the interpretation of these Terms & Conditions of Contract.
- (c) **PERSONS:** Words incorporating persons or parties shall include firms, companies, corporations, government entities and other bodies whether incorporated or not but having legal entity.
- (d) **ENTIRE AGREEMENT:** The Contract constitutes the entire agreement between the Purchaser and Contractor with respect to the subject matter of contract and includes all written communications, negotiations and agreements of parties with respect thereto made prior to the date of Contract that are included as reference in the Contract.
- (e) **SEVERABILITY:** 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.

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1.2 General provisions of the Contract

1.2.1 Language

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

1.2.2 Governing Law

- 1.2.2.1 The Contract shall be construed and shall be governed by the laws of India and the Contractor shall be required to comply with all the applicable laws with regard to performance of the Contract.

1.2.3 Jurisdiction

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

1.2.4 Exercising the Rights and Powers of the Purchaser

- 1.2.4.1 All the rights, discretion and powers of the Purchaser under the Contract shall be exercised by the Purchaser through written communications which shall be given by the Project Director or other officers authorized by him for and on behalf of the Purchaser.

1.2.5 Communication channel

- 1.2.5.1 The Contractor shall not involve themselves in direct communication with IO, France for any matter related to this contract. Any communication with IO, France shall be executed through Purchaser only.

1.2.6 Publicity

- 1.2.6.1 No publicity of any kind whatsoever regarding the Contract shall be given by the Contractor without prior written permission of the Purchaser.

1.2.7 Confidentiality and Secrecy

Refer Annexure-D of Part-A(ii) for Intellectual Property Rights


1.2.8 Management Specifications

Refer Annexure-A of Part-A(ii) for Management Specifications

1.3 The Purchaser

1.3.1 Permits, Licenses or Approvals

- 1.3.1.1 The Purchaser may provide, at the request of the Contractor, such reasonable assistance in the form of issue of necessary documents as required under law so as to allow the Contractor to obtain any permits, licenses or approvals required by the laws of the country, which the Contractor is required to obtain. However, no claim can be made by the Contractor with respect to this clause. The Contractor shall bear all cost charges and expenses for the licenses, permits and approvals required to be obtained by him for execution of the Contract.

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1.4 The Contractor

1.4.1 Permits, Licenses or Approvals


- 1.4.1.1 The Contractor shall, at his own cost, acquire in its name all permits, approvals and/or licenses from all local, state or national government authorities or public service undertakings that are necessary for the performance of the Contract, including, without limitation, visas for the Contractor's and sub-contractor's personnel and any entry permit. The Contractor shall also acquire all other permits, approvals and/or licenses that are not the responsibility of the Purchaser as per clause 1.3.1 (Permits, licenses or approvals) hereof and that are necessary for the performance of the Contract.
- 1.4.1.2 EXPORT LICENSE: If the quoted item/s is/are subject to Export License, the Contractor shall apply on time to obtain Export License from the Exporter's country or any other country without any cost to Purchaser. Purchaser shall provide End Use Statement to Contractor on receipt of End Use format and a written request from the Contractor. If Export License is not required, the Contractor shall intimate the same through a letter before making request for opening of LC to the Purchaser
- 1.4.1.3 The Contractor shall have carefully examined all Contract documents and obtained clarifications from the Purchaser wherever needed, the quantities and nature of work and material necessary for the completion of the Contract including all necessary information for risks, contingencies and others. The Contract price and the quoted Unit Rates shall, except as otherwise provided, cover all his obligations under the Contract and all matters and things necessary for the proper completion of the supplies. The Contractor acknowledges that any failure to acquaint itself with all such data and information shall not relieve its responsibility for properly estimating the difficulty or cost of successfully supplying the items. No claim on his part which may arise on account of non-examination or misunderstanding of the particulars and/or matter related to site will, in any circumstances, be considered payable by the Purchaser.

1.4.2 Compliance with law

- 1.4.2.1 The Contractor shall comply with all laws in force in India, in their country where the items/equipment are manufactured and in the country where the items/equipment will be installed. The laws will include all local, state, national or other laws that affect the performance of the Contract and bind upon the contractor. The contractor shall indemnify and hold harmless the Purchaser from and against any and all liabilities, damages, claims, fines, penalties and expenses of whatever nature arising or resulting from the violation of such laws by the contractor or its personnel, including the sub-contractor's and their personnel.

1.4.3 Sub-contracting, subletting or assignment of Contract

- 1.4.3.1 The Contractor shall not sub-contract, sublet, transfer or assign the Contract 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

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placement of orders by the Contractor). However, such consent shall not be unreasonably withheld by the Purchaser, if such items/equipment are not normally manufactured by the Contractor. Such assignment or subletting shall not relieve the Contractor from any contractual obligation or responsibility under the Contract.

- 1.4.3.2 In case of non-compliance of above clause, action as deemed fit may be initiated against the Contractor.
- 1.4.3.3 The Contractor shall be responsible for coordination of all activities with his sub-contractors
- 1.4.3.4 In case the Contractor sublets, transfers or assigns any part of the Contract with the prior written consent of the Purchaser, all payments to his Sub-Contractor(s) shall be the responsibility of the Contractor and any requests from such Sub-Contractor(s) shall not be entertained by the Purchaser.
- 1.4.3.5 All payment to the sub-contractor(s) shall be made by the Contractor only.

1.4.4 Alteration of specifications

- 1.4.4.1 The Purchaser reserves the right to alter specifications, whenever necessary. As from that date, the supplies shall be in accordance with the specifications so altered which the Contractor is bound to comply with.
- 1.4.4.2 In the event of such alteration involving a revision in the cost, or in the delivery period, the same shall be discussed and mutually agreed to, taking into account the unit rates of similar items in the Contract. In case of disagreement, the decision, in the cost or the delivery period, shall be agreed by and between the Purchaser and the Contractor.


1.4.5 Codes and Standards

Contractor shall execute the Contract as per Codes and standards referred in **Section 6.5 of Part-A(ii)**. The version of such codes and standards, one (01) day prior to date of Price bid opening shall apply unless otherwise specified. During the Contract execution, any change(s) in codes and standards shall be applied after approval by the Purchaser and may be treated in accordance with clause **1.13** (Changes), as applicable.

1.5 Contract Work Scope and Completion Time

1.5.1 Scope of Supply and Specifications:

- 1.5.1.1 Part-A (ii) of this tender specifies the scope of supply, technical specifications of deliverables and scope of work to be covered under this Contract. In case of conflicting requirements specified in various sections of the specifications, either the stringent one or the requirement as per the Purchaser's interpretation shall govern.
- 1.5.1.2 Any tooling, spares, fasteners, foundation bolts or accessories which might not have been explicitly mentioned in the Specifications but which are necessary for proper, efficient and safe functioning of the systems as per the specifications of the

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tender shall be supplied by the Contractor without extra charge to the Purchaser; the systems supplied shall be complete in all respects.

1.5.1.3 Preservation of tools & tackles/Jigs & fixtures etc.: In case, the bidder has the tools & tackles/Jigs & fixtures etc. required to execute this contract, the same can be used for future procurement with prior agreement with Purchaser. If bidder does not have the required tools & tackles/Jigs & fixtures etc., the same need to be developed and manufactured by the Contractor without any additional cost to the Purchaser. Further, it has to be noted that the Tools & tackles/jigs & fixtures used for site acceptance test of items will be considered as deliverable to the Purchaser and will remain under ownership of Purchaser.

1.5.1.4 Operation/instruction manual is essential in English to enable the Purchaser to put the Systems to proper use, so the Contractor shall furnish such operation/instruction manual along with the Systems in duplicate as per **Section no. 4.5 of Part A (ii)**.

1.5.1.5 **BAR/PERT CHARTS:**

To be provided as per the requirement of the Purchaser for different activities to execute the Contract.

1.5.2 Delivery Dates and Completion Time

1.5.2.1 The date of delivery and time for completion stipulated in the Contract shall be deemed to be the essence of the Contract. Delivery and work completion must be accomplished within the dates/durations specified in Delivery Schedule **as per Annexure E of PART A(ii)**.

1.5.2.2 Delivery Schedule for tender: as per **Annexure E of PART A(ii)**

1.5.2.1 Should ITER-India make a duly justified request to postpone the delivery of the whole or part of the Items/System, at least 60 (sixty) calendar days prior to the Contractual delivery or actual delivery date, whichever is later, the Contractor shall provide safe storage, protection and maintenance under its own responsibility for 60 days free of charge (maximum two (2) requests of postponement of delivery allowed) for any RF Chain (HPA2 and HPA3) for the whole duration of Contract. Purchaser shall pay storage cost (as per optional rate in price bid) from 61st day. Maximum period of postponement for request not to exceed 90 days. Beyond two (2) requests of postponement of delivery of any RF Chain (HPA2 and HPA3) for the whole duration of Contract, payment of storage cost shall be applicable from 1st day; each postponement not to exceed 90 days. In this event, Factory Acceptance (FAT) will be performed as scheduled and will not be postponed.

1.5.3 Performance Security Bank Guarantee (PSBG)

1.5.3.1 Within five weeks from the date of signing of Contract, the Contractor shall submit an irrevocable Bank Guarantee (BG) equal to 5% (five percent) of total Contract value, as “Performance Security” towards satisfactory execution, performance of the Contract and warranty obligations.

1.5.3.2 In case of BG is issued by a Foreign Bank, it should be from a first-class bank of international repute and acceptance of the same will be subject to confirmation by SBI, in India. The format of the Performance Security is given in Annexure-1. BG

issuing bank is required to send SFMS Confirmation through SWIFT on our SBI bank having SWIFT Code SBININBB209 Account No: 30360272380 and provide intimation of the same on following E-mail ID: accounts@iter-india.org.

- 1.5.3.3 The Bank Guarantee shall remain valid till two months beyond the completion of warranty obligations of all items/system under the Contract. If need arises, the Contractor (without waiting for any confirmation on charges to be paid by which party) shall extend the validity of the Bank Guarantee for suitable period, BG extension charges, shall be borne by the Party liable for such extension (if the Purchaser is liable for the extension, such charges shall be reimbursed by the Purchaser to the Contractor against valid documentary proof).
- 1.5.3.4 If the Contractor fails to provide the PSBG, within the period as specified in clause no. [1.5.3.1](#) such failure shall constitute a breach of Contract and action as deemed fit may be initiated by the Purchaser.
- 1.5.3.5 In the event, the Contractor fails to fulfil any of the obligations under the Contract; the Purchaser shall have the right to encash the Security Deposit.
- 1.5.3.6 If the Contractor fails to extend the PSBG, the Purchaser shall have the right to invoke the Bank Guarantee(s) without prejudice to the terms and conditions of the Contract.
- 1.5.3.7 Upon satisfactory completion of warranty period/warranty obligations, the original Bank Guarantee (s) shall be returned to the Contractor on receipt of a request from the Contractor .
- 1.5.3.8 No interest shall be payable to the contractor on PSBG amount, till it is retained by Purchaser.


1.5.4 Advance Payment Bank Guarantee

- 1.5.4.1 Wherever, advance payment is involved, it will be made subject to submission of Bank Guarantee (BG) for an equivalent amount from one of the banks mentioned in [1.5.3.2](#). BG for advance payment should be furnished by contractor as per format given in [Annexure-2](#). Advance Bank Guarantees shall remain valid two months beyond the delivery of all ordered items. Advance payment bank guarantees shall also be subject to confirmation by Purchaser's Bank i.e. State Bank of India and issuing bank needs to Confirmation through SWIFT on SBI bank as per details mentioned in clause no. 1.5.3.2. Advance BGs will be released on pro-rata basis based on despatch of deliverables by the Contractor.

- 1.5.4.2** If need arises, the Contractor (without waiting for any confirmation on charges to be paid by which party) shall extend the validity of the Bank Guarantee for suitable period, BG extension charges, shall be borne by the Party liable for such extension (if the Purchaser is liable for the extension, such charges shall be reimbursed by the Purchaser to the Contractor against valid documentary proof).

1.5.5 Bank charges

- 1.5.5.1 All the bank charges within India shall be borne by ITER-India. Similarly, all the

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charges outside India shall be borne by the Contractor including the charges towards advising amendment commission.

- 1.5.5.2 If need arises, the Purchaser (without waiting for any confirmation on charges to be paid by which party) shall extend the validity of the LC for suitable period, LC extension charges, shall be borne by the Party liable for such extension (if the Purchaser/Contractor is liable for the extension, such charges shall be reimbursed by the Purchaser/Contractor to the Contractor/Purchaser against valid documentary proof).


1.6 Contract Price, Payment and Recoveries

1.6.1 Terms of Prices

- 1.6.1.1 The unit prices for this Contract shall remain **firm** during the validity and extended validity of this Contract. Break-up of price shall be furnished as per price-bid format (Part-B). Unit rate/s shall be valid throughout the validity of Contract period for addition/deletion purposes. The quoted price shall not be subject to price variation. The quoted price shall be firm, fixed and non-revisable during the validity/extended validity of Contract. Moreover, any variation in the scope of supply or work to meet the intent of this specification and to be in line with good engineering practice and manufacturing feasibility during execution of Contract shall not be subject to price change. The Contractor shall issue valid fumigation certificate and/or heat treatment certificate or dangerous cargo certificate, as required without any additional cost to the Purchaser.
- 1.6.1.2 Prices are required to be quoted according to the units indicated in the Price Bid.

1.6.2 Basis of Delivery

- 1.6.2.1 Delivery will be on Free Door Delivery at ITER-India site for Indian Contractor and FCA (nearest international airport in Contractor's country) or DAP ITER-India as per Incoterms 2020 or latest version – For Foreign Contractor. Purchaser will at his own discretion will select any of the delivery basis as stated above
- 1.6.2.2 Taxes and Duties
- 1.6.2.3 The price/s quoted shall be inclusive of all applicable taxes, levies, duties arising in the bidder's/manufacturer's country or any other country/ies except India. Any statutory duty/tax become applicable in India during the pendency of the Contract shall be borne by the Purchaser
- 1.6.2.4 Tax Deducted at Source (TDS) or any other leviable taxes and or duties.

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

1.6.2.4.2 Tax Deducted at Source (TDS applicable for Foreign Contractor) as applicable under Income tax act will not be deducted from the invoices as raised by the Contractor and no certificate will be issued by the Purchaser in this regard.

1.6.3 Mode of Payment and Payment Schedule:

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

1.6.3.1 The first three payments (Sr. no. 1, 2 and 3 of Annexure-A) and payment against MRR-Sr. no. 8 will be made through wire transfer. Rest payments will be made through irrevocable Letter of Credit (LC) to be opened before 6 months of due date for dispatch of each deliverable. The last payment i.e. Sr. no. 17 of Payment schedule will be made through wire transfer. No. of LCs to be opened will be mutually agreed between both the Parties.

1.6.3.2 Release of first advance payment will be, subject to signing of a Contract, furnishing order acknowledgement, submission of PSBG and Advance payment bank guarantee as specified in the tender documents and a declaration in form of "statement" confirming application submitted by the Contractor for export license or the Contractor's declaration that the Export License is not required.

1.6.3.3 Payment Schedule

The payment to the Contractor will be made as per the Annexure-A.

1.6.4 Insurance


1.6.4.1 The Contractor shall also take appropriate insurance for all the items delivered up as per Incoterms 2020 (or latest version) agreed in the Contract against risk of loss or damage during the transport. Proof of insurance to be submitted to ITER-India along with shipping documents.

1.6.5 Recovery of Sums Due

Wherever any claim for the payment of Liquidated Damages or loss suffered by the Purchaser arises in terms of money out of the Contract against the Contractor, the Purchaser shall be entitled to recover such sums from any due payment under the Contract. In the event of this amount being insufficient, then the amount of damages or loss shall be recoverable from the payment that may become due, to the Contractor from this Contract. Should this sum be not sufficient to cover the amount of damages or loss that may be recoverable, the Contractor shall pay to the Purchaser on demand, amount due. Similarly, if the Purchaser had made any claim against the Contractor under this Contract, only the payments that fall within the scope of the dispute could be withheld until such claim is finally settled .

1.7 Quality Assurance, Inspections, Site activities and Acceptance Tests

Refer Part-A (ii) for more details regarding quality assurance and acceptance test requirements.

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1.7.1 Dispatch Clearance

Dispatch Clearance Note/ Contractor Release Note

- 1.7.1.1 Contractor shall obtain approval on Dispatch Clearance Note (DCN)/ Contractor Release Note (CRN) from the commercial coordinator of the Purchaser on satisfactory pre-dispatch inspection of Items/Systems at Contractor's site before affecting the dispatch.


1.8 Packing, Labelling and Dispatch

1.8.1 Packing Instructions

- 1.8.1.1 The Contractor shall pack and crate all items/deliverables for air shipment and road transportation in a manner suitable for export to a tropical humid climate, in accordance with internationally accepted export practices and in such a manner so as to protect it from damage and deterioration during transportation. The Contractor shall be held responsible for all damages due to improper or poor packing.
- 1.8.1.2 The Contractor shall provide packing with suitable 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. Further, special registers (viz. shock, tilt etc.) that are needed to verify the safe transport of the items in particular for the fragile items shall also be incorporated.
- 1.8.1.3 Packing of the items to be optimized for shipment as per regular air transport norms. The contractor shall submit a detailed transportation scheme including packing details to the purchaser in advance for approval.
- 1.8.1.4 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 the law. 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
- 1.8.1.5 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.
- 1.8.1.6 The Contractor shall comply with packing requirements as specified in **Section 7 of Part-A(ii)**

1.8.2 Marking & Labelling

- 1.8.2.1 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:
 - i. Delivery address (as communicated)
 - ii. Contract Number and date
 - iii. Dimensions
 - iv. Net and gross weights
 - v. Sign showing 'SIDE UP'
 - vi. Sign showing 'FRAGILE' marks in case of delicate Products
 - vii. Sign showing slinging and sling position as well as tilt and shock indicators
 - viii. Any handling and unpacking instructions, if considered necessary.

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- ix. Identification marks relating them to the appropriate shipping documents
- x. 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.

1.8.2.2 The Contractor shall comply with marking and labelling requirements as specified in **Section 7 of Part-A(ii)**

1.8.3 Ultimate Consignee & Delivery Address:

The ultimate consignee will be the Purchaser.

1.8.3.1 Bill To:

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

1.8.3.2 Delivery Address (On-Site):

ICRH Lab
ITER-India Lab Building, Institute for Plasma Research
Near Indira Bridge, Bhat Village,
Gandhinagar 382428
Gujarat, India

1.8.4 Mode of Despatch

Multimodal – Road/Air.


1.8.5 CONTRACTOR'S RESPONSIBILITY REGARDING DISPATCH

1.8.5.1 To ensure proper arrangement of logistics within the required time frame, Contractor will inform at least 3 months in advance about readiness of consignment for delivery. Contractor shall provide packing list of the ordered items at least 3 months in advance which is required by the Purchaser to arrange the shipment to ITER-India, IPR.

1.8.5.2 Photos before packing, during packing and after packing will be shared by the Contractor to the Purchaser. This is to ensure items in good condition are packed by the Contractor.

1.8.5.3 In order to facilitate prompt clearance of Systems/Components on arrival in India through Customs, the Contractor shall forward in advance to the Purchaser, by rapid Courier Service, one copy of each of documents as detailed hereunder:

- a) Non-Negotiable Airway Bill(s)
- b) Invoice
- c) Packing list indicating items dispatched

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- d) Number of packages with their dimensions and weights
- e) Flight/Vessel details, expected date of arrival at India, insurance policy (if applicable).
- f) Inspection Report (if applicable)
- g) Shipment Clearance Letter
- h) Warranty Certificate
- i) Proof of Insurance/ Insurance Policy (if applicable)
- j) Phytosanitary Certificate/Fumigation Certificate

The Contractor shall mention the country of origin of the Systems/Components in the invoice.

The Contractor shall also intimate the Purchaser by email (scanned copy) the shipping details such as Air Way Bill number, flight number, date of flight, date of arrival at port, number and weight of packages, value of consignments, Contract number and date so that delivery documents can be made preparatory to customs clearance, by the Purchaser.

1.8.6 DEMURRAGE/ WHARFAGE

All demurrage, detention, storage, customs inspection, wharf age 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.

1.8.7 Transfer of Ownership and Title

- a. Transfer of ownership of the Items shall occur upon delivery of each shipment/shipments as per Incoterms 2020 basis
- b. Transfer of Ownership of the Consignments as per Incoterms 2020 to the Purchaser shall be on notional basis only i.e. to facilitate custom formalities during transportation to India/ITER Organization, France
- c. Transfer of Ownership from Contractor to ITER-India as per Incoterms 2020 shall not in any way relieve the Contractor of its responsibilities and liabilities under the Contract till successful completion of all contractual obligations.

1.8.8 Transfer of Risks

Transfer of risks shall be in accordance with applicable Incoterms. After delivery, items pass under Purchaser's custody. Contractor shall be liable for loss and/or damage occurring directly following the performance and/or non-performance of the contractual obligations.

1.9 Delay, Extension & Postponement

1.9.1 Extension of Time (due to Contractor)

- 1.9.1.1 In the event, the contractual delivery dates/completion time cannot be adhered to for any cause(s) attributable to the Contractor, an application for extension of time with sufficient reasons shall be made by the Contractor to the Purchaser. If failure, on the part of the Contractor to deliver the items/completion of work 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. However, this extension shall be without prejudice to the Purchaser's right to recover liquidated damages (LD) as stipulated in clause [1.9.3](#). The Contractor shall not become entitled to receive additional payment towards escalation or increased statutory levies (if any) beyond the contractual delivery date / completion time.

- 1.9.1.2 If the Contractor fails to apply and secure extension of Contract delivery date(s) (before effecting the supply of the items as in the Contract) acceptance of such supplies by the Purchaser, shall not entitle the Contractor to claim payment on account of escalation or extra payment on account of increase of statutory levies that may be payable at higher rate after the expiry of Contract delivery dates/Contract completion date (clause [1.9.2](#)).

1.9.2 Delay in delivery dates/completion time

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

- 1.9.2.1.1 To receive the deliverable items under the Contract after prescribed date of delivery with the right to recover the Liquidated Damages as per the clause [1.9.3](#).


- 1.9.2.1.2 To terminate the total Contract, as per clause Termination of Contract for default 1.14.2 in case the liquidated damages recovered from the Contractor reaches maximum value. However, the Purchaser will inform in writing one month in advance to the Contractor before exercising this clause.

- 1.9.2.2 The Contractor is required to maintain Hindrance Register for reporting hindrance if any, while executing the work and supply related issues, in an approved format. Such hindrance in the Work or Supply will be taken into consideration for accessing the additional time extension. Format of Hindrance Register is as per Annexure-3.

1.9.3 Liquidated Damages (LD)

- 1.9.3.1 If the Contractor fails to deliver any of the deliverables as mentioned under Original Delivery Schedule as per Annexure-E of part-A(ii) i.e. First Chain (refer Sr. No. 12), Components for HPA2 (refer Sr. no. 16), Second Chain (refer Sr no. 21), Third Chain (Sr. no. 29), Modification in existing chain (refer Sr no. 32) and Spare Tubes (Sr. No. 32) and the delay or part thereof is attributable to the Contractor, the Purchaser shall recover from the Contractor as liquidated damages sum of half percent (0.5 percent) of the price for respective Items (First Chain/Components for HPA2/Third Chain/Modification in existing chain/spare tubes) for each calendar week or part thereof for the delay that is attributable to the Contractor . The total liquidated damages shall not exceed five percent (5%) of the total price of respective deliverable.

- 1.9.3.2 However, the payment of liquidated damages shall not in any way relieve the Contractor from any of its obligations to complete the supplies and work scope

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or from any other obligations and liabilities of the Contractor under the Contract.

1.9.4 Force Majeure

1.9.4.1 Force Majeure is herein defined as any cause which is beyond the control of the CONTRACTOR or PURCHASER, as the case may be which they could not foresee or with a reasonable amount of diligence could not have foreseen and which substantially affects the performance of the Contract, such as-

- (i) Natural Phenomena, including but not limited to floods, droughts, earthquakes, and epidemics.
- (ii) Acts of any Government, domestic or foreign including but not limited to war-declared or undeclared, priorities, quarantines, embargoes.
- (iii) Other Phenomena including but not limited to hostilities riots, civil commotion and declared lock-out in Contractor's works.
- (iv) Shortage/stoppage of manufacture of components, raw material or energy source, when deriving from a Force Majeure event as defined above, shall be considered as Force Majeure events.

1.9.4.2 Parties shall not be liable for delays in performing its obligations resulting from any Force Majeure causes as referred to/or defined above. The date of completion will subject to hereinafter provided, be extended by reasonable time even though such cause may occur after Contractors performance of his obligations has been delayed for other cause. However, the Contractor is not entitled to increase in statutory levies that have come into force during the extended delivery period

1.10 Acceptance

1.10.1 Factory Acceptance:

All Items will be "Factory Accepted" subject to fulfilment of requirements specified in **Section-8 of Part-A(ii).**


1.10.2 Final Acceptance/ Site Acceptance:

Final Acceptance/ Site Acceptance will be carried out "ON-SITE" as specified in **Section-8 of Part-A(ii).**

1.11 Rejection of defective goods & Contractor's Liability

1.11.1 Rejection against Damages during Transit:

If the items/Systems/components or any portion thereof is damaged during transit due to improper packing or due to the reason(s) attributable to the Contractor, the Purchaser shall give notice to the Contractor setting forth particulars of such items/Systems/Components damaged during transit. The replacement of such Systems/Components/Items shall be effected by the Contractor within a reasonable time as agreed upon by the Purchaser to avoid unnecessary delay in the intended usage of the Systems/Items. The complete cost of replaced items and the cost of replacement shall be borne by the Contractor and replacement items needs to be delivered on DAP ITER-India/ ITER site as per Incoterms 2020 basis by the Contractor on their cost and risk.

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1.11.2 Accident Liabilities during onsite work

- 1.11.2.1 Contractor shall insure its own personnel deployed at Purchaser's site against all risk, such as injuries, loss of life etc. The Contractor will be fully responsible and liable for payment of compensation to its own personnel.
- 1.11.2.2 The Contractor shall take all possible precautions and avoid damages to equipment/items during the execution of site work (assembly, integration and site acceptance test) at purchaser's site. In the event of loss or damage to Purchaser's property and/or injury or loss of life to Purchaser's personnel during the course of onsite work as a result of fault(s) in the items supplied under the contract or due to the reasons attributable to the Contractor, in such cases, the Contractor will be fully responsible and liable for such damages/losses and payment of appropriate compensation. The Contractor agrees to relieve the Purchaser from all the liabilities under this clause.

1.11.3 Limitation of liability

Except in cases of criminal negligence or willful misconduct, the aggregate liability of the Contractor to the Purchaser, whether under the contract, in tort or otherwise, shall not exceed the total contract price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment related to defects remedied by the Contractor under the warranty clause (clause 1.11.5), or to any obligation of the contractor to indemnify the Purchaser with respect to Intellectual Propriety Rights infringement. The Purchaser being a research institute, indirect losses, such as but not limited to loss of production and loss of profit is not applicable

1.11.4 Indemnity

The Contractor shall warrant and be deemed to have warranted that all items/systems/components, supplied against this Contract are free and clean of infringement of any patent, copy right or trade mark and shall at all times indemnify the Purchaser against all claims which may be made in respect of the items/systems/components of infringement of any right protected by Patent, Registration of design or Trade Mark.

The Contractor shall indemnify the Purchaser for direct damages suffered as the result of the performance and/or non-performance of the Contractor's contractual obligations on account of Items supplied by the Contractor as per limitation of liability as indicated in clause no 1.11.3 above

1.11.5 Warranty

- 1.11.5.1 The Contractor shall warrant that the items supplied under this Contract comply fully with the specifications laid down, for material, workmanship and performance. The items shall be brand new, unused and free from any defects. The Contractor must guarantee for specified performance of the components supplied by them against the specifications as per Condition for Acceptance (Section 8 of Part A(ii) of this Contract). All the tests will be performed with the specified type of the tubes as per table 4.1.1 of Part- A(ii).
- 1.11.5.2 The Contractor shall provide a warranty covering repair or replacement of the Items supplied by the Contractor (except tubes) up to 3 years from the date of successful completion of Factory Acceptance Test or 2 years from the date of successful


completion of Site Acceptance Test (SAT), whichever is earlier, subject to the condition that the delivered Items are not found to be defective or not found to be underperforming during SAT. For all tubes warranty covering repair or replacement, will be up to 2 years from the date of arrival at ITER-India site OR 500 filament hours Free Of Cost (FOC) replacement/5000 filament hours pro-rata credit, whichever will be earlier. The warranty shall be subject to compliance with the Instructions of use. If any defects are discovered therein or any defects therein are found to have developed under proper use arising from faulty materials, design or workmanship, Contractor shall remedy such defects at ITER-India site or IO site (as applicable), within a mutually agreed time at his own cost provided he is called upon to do so within the warranty period.

- 1.11.5.3 The Purchaser may accept the supplies, if it is complete in all respects or alternatively accept the same on such terms as may be considered appropriate. If the supplies, after the acceptance thereof is discovered to have defects, latent or otherwise, notwithstanding that such defects could have been discovered at the time of inspection, or any defects therein are found to have developed during the warranty/defect liability period, the Purchaser shall be entitled to give a notice to the Contractor, thereafter, setting forth details of such defects or failure and Contractor shall forthwith make the defective supplies good or alter the same to make it comply with the requirements of the Contract at his own cost and within reasonable time limit mutually agreed between both the Parties.
- 1.11.5.4 A reasonable time limit for replacement of defective item(s) under warranty shall be guaranteed by the Contractor and agreed by the Purchaser.
- 1.11.5.5 The replacement of items under warranty by the Contractor shall be on **DAP ITER-India/ITER site (as applicable)** basis as per Incoterms 2020. The defective items under warranty has to be collected from the site (ITER-India/ ITER site) by the Contractor at his cost and risk for required repair/replacement.
- 1.11.5.6 If any supplied item is replaced during the warranty period, the Contractor shall warrant all such items for a further period of at least 12 months from the date of replacement, or remaining original warranty period, whichever is longer.

1.11.6 Contractor's Failure to Replacement of defective Goods

- 1.11.6.1 If the Contractor fails to replace the damaged/defective items within the agreed time period during the warranty period, the Purchaser at his option either :
 - 1.11.6.1.1 Replace or rectify such defective items and recover the actual costs so involved from the Contractor
 - 1.11.6.1.2 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 [09.3](#) and [1.11.5](#) of Part-A(iii).

If the Contractor fails to make the required replacement within mutually agreed time, then in pursuant to clause [1.11.6.1.1](#), such 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 to the Purchaser or in case, the

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same is not agreed by the Contractor, then, the Purchaser shall be entitled to encash the PBG. In such case of repair or replacement, 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 replacement.

1.12 After Sales Services & Availability of Spares

1.12.1 After Sales Services (after warranty period)


- 1.12.1.1 In case the purchaser desires to avail the contractor's services for repair or maintenance of the supplied items after expiry of warranty period mentioned in the contract, the Contractor shall provide the same on mutual agreement.

The Contractor shall also undertake the supply of additional number (Nos.) of items covered by the Order as considered necessary by the Purchaser at a later date. The actual price to be paid shall be mutually agreed to after negotiations.

1.12.2 Availability of Spares

- 1.12.2.1 The contractor guarantees to the purchaser, that all the spares for the items supplied under the contract will be available at least for 10 years from the date of delivery to the purchaser. Notwithstanding the foregoing, in the event that during the period indicated above, the contractor intends to phase out the items or the components or spare parts become obsolete or not available, the contractor shall inform in writing to the purchaser about his intention of the manufacture discontinuance of the items supplied to the purchaser or about such obsolescence well in time.

1.13 CHANGES


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- 1.13.1 The Purchaser reserves the right to propose to the contractor, any necessary changes/modifications, additions/deletions to the contract specifications and requirements, during the contract period. The contractor shall accept such changes as a part of the contract, after a feasibility assessment and following the procedure specified in the clause [\(1.13.1\)](#).
- 1.13.2 The contractor during the execution of the contract may also propose to the purchaser any change(s) that the contractor considers necessary or desirable. The purchaser may at its discretion approve or reject any such change(s) proposed by the Contractor following the procedure specified in the clause [\(1.13.32\)](#).
- 1.13.3 In either case ([1.13.1](#) and [1.13.2](#)), the Contractor shall submit within a reasonable time to be agreed upon by both parties, a change proposal as to the effect, if any, of such modifications on the price, performance and the delivery schedule taking into account the unit rates of the similar items in the contract. The Contractor needs to provide detailed break up with supporting documentary evidence for the price and other changes, if asked by the Purchaser. If both parties agree on such change proposal, the Purchaser will decide whether such modifications is to be introduced or not and will advise the Contractor in writing accordingly. When a modification or other change is so authorized by the Purchaser, the Contractor shall proceed with the action.

1.14 Cancellation/Termination/Foreclosure of Contract

1.14.1 Foreclosure of Contract

- 1.14.1.1 If at any time after acceptance of the tender / during execution of work, the Purchaser shall decide to abandon or reduce the scope of the work for any reason whatsoever and hence not require the whole or any part of the work to be carried out, the Purchaser shall give notice in writing to that effect to the Contractor and the Contractor shall have no claim to any payment of compensation or otherwise whatsoever, on account of any profit or advantage which he might have derived from the execution of the work in full but which he did not derive in consequence of the foreclosure of the whole or part of the contract.
- 1.14.1.2 Upon receipt of the notice of foreclosure under sub-clause [1.14.1](#), the Contractor shall either immediately or upon the date specified in the notice of foreclosure
- (a) Cease all further work, except for such work as may be specified in the notice of termination for the sole purpose of protecting that part of the items already supplied.
 - (b) Terminate all subcontracts, except those to be assigned to the Purchaser pursuant to sub-clause (d) (ii) below
 - (c) Stop all further purchasing and/ or subcontracting activities related to work foreclosed.
 - (d) In addition, the Contractor, subject to the payment specified in sub-clause [1.14.1.3](#) shall
 - (i) Supply to the Purchaser the parts of the items procured by the Contractor up to the date of foreclosure on mutually agreed rate.
 - (ii) to extent legally possible, assign to the Purchaser all right, title and benefit of the Contractor to the Items as of the date of foreclosure, and, as may be required by the Purchaser.

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(iii) Supply to the Purchaser all non-proprietary drawings, specifications and other documents prepared by the Contractor or its subcontractor as on the date of foreclosure in connection with the supplies.

1.14.1.3 In the event of foreclosure of the Contract under sub-clause [1.14.1](#), the Purchaser shall pay to the Contractor the full amount at Contract rates, properly attributable to supplies/services completed and/or the parts of the items/services supplied by the Contractor and accepted by the Purchaser as of the date of foreclosure on mutually agreed basis, in case the unit rates are not available in the Contract.

1.14.2 Termination of Contract for default

1.14.2.1 The Purchaser may, without prejudice to any other remedy for breach of Contract, by written notice of default sent to the Contractor, terminate the Contract in whole or in part in circumstance detailed hereunder:


- a. If the Contractor fails to supply/provide any or all of the deliverable items, within the time period(s) specified in the Contract or any extension thereof granted by the Purchaser or within the period (10 weeks) till which the maximum LD amount is reached.
- b. If the Contractor fails to perform any other obligation(s) under the Contract within the period specified in the Contract or any extension thereof granted by the Purchaser

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

- a. Forfeiture of Security Deposit
- b. Recovery of Liquidated Damages (LD) as per the Contract
- c. To purchase from elsewhere, after (thirty) 30 days' notice to the Contractor, on the risk and cost of the Contractor, 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 in respect of the consignments not yet due for supply.

1.14.2.3 To cancel the total Contract 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.

1.14.2.4 In the event of action being taken under sub-clause [1.14.2.1](#) above, the Contractor shall be liable for any loss which the Purchaser may sustain on that account. Contractor 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

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without prejudice to the right of the Purchaser, to recover the damages for breach of Contract by the Contractor as provided in the Contract.

1.14.2.5 If the Contract is terminated as provided in clause [1.14.2.2](#), the Purchaser in addition to any other rights provided in the clause, may require the Contractor 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, the Contract price of such completed items that are delivered to and accepted by the Purchaser.

1.14.2.6 The termination will not relieve the Contractor from submitting the Performance Bank Guarantee for the portion not terminated.

1.14.3 Termination of contract for insolvency

If the Contractor becomes bankrupt or otherwise insolvent or goes into liquidation, the Purchaser may, at any time, terminate the Contract, by giving a written notice to the Contractor, without compensation to the Contractor, provided that such termination will not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to the Purchaser.

1.15 Settlement of disputes and Arbitration

1.15.1 Settlement


1.15.1.1 Any disputes or difference arising out of or in connection with the Contract 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 [1.15.2](#).

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

1.15.2 Arbitration

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.](#)

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. The award of arbitration tribunal/arbitrator shall be enforceable in Ahmedabad courts only.

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1.16 The Contract

1.16.1 Signing of Contract:

1.16.1.1 The Contract shall be signed by authorized representatives of Contractor and Purchaser (on non-judicial stamp paper of appropriate value, as applicable)

1.16.2 Amendments

Any amendment to the Contract including its Attachments, Appendices and Annexures which may be necessary will be a result of a mutual agreement between the Parties. It will be established within a reasonable time in the form of an amendment to the Contract, to be signed by both the Parties and will be an integral part of the Contract.

1.16.3 Coming into Force (Effect of Contract)

The Contract shall come into force from :

- (i) signing of Contract by both the Parties and
- (ii) receipt by the Contractor of the advance payment

1.16.4 INTELLECTUAL PROPERTY RIGHTS (IPR as in Annexure D of part A (ii))

Intellectual Property Rights (IPR) provisions applicable to this Contract are given in **Annexure– D of Part A(ii)**. (Background information and its amendment as given by the Contractor will be applicable for this Contract).


1.16.5 OWNERSHIP AND PROPERTY

Refer applicable provisions as per IPR – **Annexure D of Part-A(ii)**

2 Annexures

The Attachments and Annexes referred to in this section shall form an integral part of this collaborative Contract.

1. Annexure-1: Bank Guarantee (Performance Security)
2. Annexure-2: Advance Payment Bank Guarantee
3. Annexure-3: Hindrance Register
4. Annexure-A: Payment Schedule

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5. Annexure-1: Bank Guarantee (Performance Security)

**(On non-judicial stamp paper (of appropriate value)-For Indian Contractor
(On bank's letter head) – For Foreign Contractor**

Bank Guarantee Format for Performance Security

Beneficiary:

Project Director

**ITER-INDIA, INSTITUTE FOR PLASMA RESEARCH
BLOCK A SANGATH SKYZ BHAT-MOTERA ROAD,
KOTESHWAR,
AHMEDABAD - 380005**

(hereinafter referred to as Beneficiary)

Date: [date of issue of BG] (To be filled by issuing bank)

PERFORMANCE BANK GUARANTEE No.: [guarantee number] (To be filled by issuing bank)

PERFORMANCE BANK GUARANTEE Amount: Rs **(In words)**

Contract No.:

Bid Number:

Applicant / Seller:


[Name & Address of Contractor]

Guarantor: [name and address of the issuing Bank] (To be filled by issuing bank).....

1. The Applicant / Seller named above has entered into above referred contract with the Beneficiary for the supply of Goods and / or Services as defined in the said contract. According to the conditions of the Contract, a performance security is required to be furnished by the Seller to the Beneficiary for due performance of the contract.

2. At the request of the Applicant, we as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of **Rs. (in words:)**, upon receipt by us of the Beneficiary's demand stating that the Applicant is in breach of its obligation(s) under the Contract, without the Beneficiary needing to prove or to show grounds for your demand or the sum specified therein.

3. We do hereby undertake to pay the amount due and payable under this Guarantee without any demur, merely on a demand from the Beneficiary. Any such demand made on the Bank shall be conclusive as regards the amount due and payable by the Bank under this Guarantee. However, our liability under this guarantee shall be restricted to an amount not exceeding **Rs. (in words:)**

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4.We undertake to pay the Beneficiary any money so demanded not withstanding any dispute or disputes raised by Seller(s)in any suit or proceeding pending before any Court or Tribunal relating thereto liability under this present being absolute and unequivocal.

5.The payment so made by us under this Bond shall be a valid discharge of our liability for payment thereunder and the Seller (s) shall have no claim against us for making such payment.

6.We further agree that the Guarantee here in contained shall remain in full force and effect during the period that would be taken for the performance of the said Contract including Guarantee/ Warrantee period and that it shall continue to be enforceable till all the dues of the Beneficiary under or by virtue of the said Contract have been fully paid and its claims satisfied or discharged.

7.We further agree with Beneficiary that the Beneficiary shall have the fullest liberty without our consent and without affecting in any manner our obligations hereunder to vary any of the terms and condition of the said Contractor to extend time of performance by the said Seller(s) from time to time or to postpone any time or from time to time powers exercisable by the Beneficiary against the said Seller(s) and to forbear or enforce any of the terms and condition relating to the said Contract and we shall not be relieved from our liability by reason of any such variation, or only extension being granted to the said Seller(s) or for any forbearance,act or omission on the part of the Beneficiary or any indulgence by the Beneficiary to the said Seller(s) or by any such matter or thing whatsoever which under the law relating to sureties would, but for this provision, have effect of so relieving us.

8.Notwithstanding anything contained herein above our liability under the Guarantee is restricted to **Rs.** **(in words:)** and shall remain in force until

9.This Guarantee will not be discharge due to be change in the constitution of the Bank or the Seller (s).

10.We lastly undertake not to revoke this Guarantee during its currency except with the previous consent of the Beneficiary in writing.

Dated

For.....

(Indicate the name of the Bank)


Signature.....

Name of the Officer.....

Designation of the officer

Code no

Name of the Bank and Branch.....


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Annexure – 2 - Bank Guarantee (Advance Payment)

**(On non-judicial stamp paper (of appropriate value)-For Indian Contractor
(On bank's letter head) – For Foreign Contractor**

BANK GUARANTEE NO. _____ DATE: _____

- WHEREAS on or about the _____ day of _____ M/s _____, a company registered under the companies act and having its registered office at _____ (hereinafter referred to as “the Contractor”) entered into Contract bearing No. _____ date _____ with ITER-India (INSTITUTE FOR PLASMA RESEARCH) Block A, Sangath Skyz, Bhat-Motera Road, Koteswar, Ahmedabad 380005, Gujarat, India (hereinafter referred to as "The Purchaser") for the supply of _____ (hereinafter referred to as “the Equipment”)
- AND WHEREAS under the terms and conditions of the Contract an amount of Rs. _____ (Rupees _____ only) representing _____ percent advance payment out of the Contract value of Rs. _____ (Rupees _____ only) is to be paid by the Purchaser.
- AND WHEREAS ITER-India has agreed in pursuance of the said terms and conditions of the Contract to make an advance payment of Rs. _____ (Rupees _____ only) to the Contractor on the Contractor furnishing a Bank Guarantee in the manner herein contained.
- NOW WE, _____ (Name and Address of the Bank) in consideration of the Purchaser having agreed to pay to the Contractor an advance payment of Rs. _____ (Rupees _____ Only) do hereby agree and undertake to indemnify the Purchaser and keep the Purchaser indemnified to the extent of a sum not exceeding the said sum of Rs. _____ (Rupees _____ Only) against any damage or loss that may be suffered by the Purchaser by reason of non-fulfillment of any of the terms and conditions of the Contract by the Contractor.
- WE, _____ (Bank) do hereby undertake to pay the amount due and payable under this guarantee without recourse to the Contractor and without any demur or protest or objection, merely on a demand from the Purchaser stating that the amount claimed is due by way of loss or damage caused to or would be caused to or suffered by the Purchaser by reason of breach by the said Contractor(s) of any of the terms and conditions contained in the said Contract or by reason of the Contractor(s)’s failure to perform the said Contract. Any such demand made on the bank shall be conclusive as regards the amount due and payable by the Bank under this guarantee. However, our liability under this guarantee shall be restricted to an amount not exceeding Rs. _____ (Rupees _____ Only).
- WE, _____ (Bank) undertake to pay to the Purchaser any money so demanded notwithstanding any dispute or disputes raised by the Contractor(s) in any suit or proceeding pending before any Court or Tribunal relating thereto our liability under this present guarantee

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being absolute and unequivocal. The payment so made by us under this bond shall be a valid discharge of our liability for payment thereunder and the Contractor(s) shall have no claim against us.

7. AND WE, _____ (Bank) hereby further agree that the decision of the said Project Director, ITER-India as to whether the Contractor has committed breach of any such terms and conditions of the Contract or not and as to amount of damage or loss assessed by the said Project Director as damage or loss suffered by the Purchaser/ITER-India on account of such breach would be final and binding on us.
8. WE _____ (Bank) further agree with the Purchaser that the Purchaser shall have the fullest liberty without our consent and without affecting in any manner our obligations hereunder to vary any of the terms and conditions of the said Contract or to extend time of performance by the said Contractor(s) from time to time or to postpone for any time or from time to time any of the powers exercisable by the Purchaser against the said Contractor(s) and to forbear or enforce any of the terms and conditions relating to the said Contract and we shall not be relieved from our liability by reason of any such variation or extension being granted to the said Contractor(s) or for any forbearance, act or commission on the part of the Purchaser or any indulgence by the Purchaser to the said Contractor(s) or by any such matter or thing whatsoever which under the law relating to sureties would, but for this provision, have the effect of relieving us.
9. THIS GUARANTEE will not be discharged due to the change in the constitution of the Bank or the Contractor(s).
10. OUR GUARANTEE shall remain in force until _____ (two months beyond the Contract delivery date) and unless a claim under the guarantee is lodged on or before the above date, all rights of ITER-India under the guarantee shall be forfeited and we shall be relieved and discharged from all liabilities thereunder.

In witness whereof, we the _____ have executed this.


Dated the _____ day of _____ 20_____.

For _____
(Indicate the name of bank with Postal address, Fax Number & email address)

Witnesses:

(1) Name: _____ Signature _____

Name: _____ Signature _____

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3 Annexure – 3 Hindrance Register

A Hindrance Register is to be maintained in the enclosed Format to record all hindrances encountered during execution of items/work against the PO/Contract. The items or work affected due to any hindrance shall be clearly recorded in the Hindrance Register and the Purchaser's representative as well as the Supplier's/Contractor's representative will sign on the register against the recorded hindrance(s). In case of encountering multiple hindrances simultaneously over a period of time affecting the same item/work or different items/work, the net period of hindrance will be worked out considering the overlapping period.

Format of Hindrance Register:

Sr. No.	Nature of Hindrance	Item or Work which is affected/could not be executed on account of this hindrance	Date of start of hindrance	Date of removal of hindrance (references of communications to resolve)	Overlapping period (if any)	Net Delay in days	Sign/e clearance of Purchaser's representative	Sign/e clearance of Contractor's representative

It is to be noted that the delay in individual activities may not be affecting the contractual milestone depending on the available float, if any.

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4 Annexure – A Payment Schedule

Sr. No.	Mile-stone for Payment	% Payment of Contract value	Documents to be submitted
1	Advance with Contract Award	10%	a. Copy of Security Deposit Bank Guarantee for 5% of total price b. Advance Payment Bank Guarantee of equivalent amount c. Declaration for submission of application for Export license (if applicable)/Declaration for non-applicability of export license
2	Successful completion of Final Design Review (FDR)	5%	a. Acceptance note from Purchaser for successful completion of FDR b. Advance Payment Bank Guarantee of equivalent amount
3	Successful completion of Fabrication Readiness Review (FRR)	5%	a. Acceptance note from Purchaser for successful completion of FRR b. Advance Payment Bank Guarantee of equivalent amount c. Declaration for receipt of export license (if applicable)
4	Against shipment (on FCA any nearest international airport in Contractor's country INCOTERMS 2020 basis) of first RF chain as per Part- A(ii)	45% of first chain's value	a. Dispatch clearance Note from Purchaser based on approval of FAT report. b. On-board clean Air-way bill c. Invoice in triplicate d. Packing list in triplicate e. Proof of Insurance f. Valid ISPM 15 certificate/Heat Treatment certificate/ Dangerous cargo certificate (if applicable)
5	Successful completion of Site Acceptance Test of first RF Chain at II(ITER-India) site	10% of first chain's value	Final Acceptance note from Purchaser on Successful completion of Site Acceptance Testing of First RF Chain supplied by Contractor at II site



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6	Against shipment (on FCA any nearest international airport in Contractor's country INCOTERMS 2020 basis) of second RF chain as per Part- A(ii)	45% of second chain's value	a. Dispatch clearance Note from Purchaser based on approval of FAT report. b. On-board clean Air-way bill c. Invoice in triplicate d. Packing list in triplicate e. Proof of Insurance f. Valid ISPM 15 certificate/Heat Treatment certificate/ Dangerous cargo certificate (if applicable)
7	Successful completion of Site Acceptance Test of second RF Chain at II(ITER-India) site	10% of second chain's value	Final Acceptance note from Purchaser on Successful completion of Site Acceptance Testing of second RF Chain supplied by Contractor at II site
8	Successful completion of Manufacturing Readiness Review (MRR)	5%	a. Acceptance note from Purchaser for successful completion of MRR b. Advance Payment Bank Guarantee of equivalent amount
9	Successful completion of Site Acceptance Test of first RF Chain at IO (ITER Organization) site	10% of first chain's value	Final Acceptance note from Purchaser on Successful completion of Site Acceptance Testing of First RF Chain supplied by Contractor at IO site
10	Successful completion of Site Acceptance Test of second RF Chain at IO (ITER Organization) site	10% of second chain's value	Final Acceptance note from Purchaser on Successful completion of Site Acceptance Testing of second RF Chain supplied by Contractor at IO site
11	Against shipment (on FCA any nearest international airport in Contractor's country INCOTERMS 2020 basis) of third RF chain as per Part- A(ii)	45% of third chain's value	a. Dispatch clearance Note from Purchaser based on approval of FAT report. b. On-board clean Air-way bill c. Invoice in triplicate d. Packing list in triplicate e. Proof of Insurance f. Valid ISPM 15 certificate/Heat Treatment certificate/ Dangerous cargo certificate (if applicable)
12	Successful completion of Site Acceptance Test of third RF Chain at II (ITER-India) site	10% of third chain's value	Final Acceptance note from Purchaser on Successful completion of Site Acceptance Testing of third

			RF Chain supplied by Contractor at II site
13	Successful completion of Site Acceptance Test of third RF Chain at IO (ITER Organization) site	10% of third chain's value	Final Acceptance note from Purchaser on Successful completion of Site Acceptance Testing of third RF Chain supplied by Contractor at IO site
14	Against shipment (on FCA any nearest international airport in Contractor's country INCOTERMS 2020 basis) spare Tubes as per Part- A(ii)	65% of spare tubes value	a. Dispatch clearance Note from Purchaser based on approval of FAT report. b. On-board clean Air-way bill c. Invoice in triplicate d. Packing list in triplicate e. Proof of Insurance f. Valid ISPM 15 certificate/Heat Treatment certificate/ Dangerous cargo certificate (if applicable)
15	Modification and successful testing of first set of HPA2 and HPA3	65% of modification cost	Final Acceptance note from Purchaser on Successful completion of modification and testing of first set of HPA2 and HPA3
16	Against shipment (on FCA any nearest international airport in Contractor's country INCOTERMS 2020 basis) Components for inhouse HPA2 as per Part- A(ii)	65% of component cost for inhouse HPA2	a. Dispatch clearance Note from Purchaser based on approval of FAT report. b. On-board clean Air-way bill c. Invoice in triplicate d. Packing list in triplicate e. Proof of Insurance f. Valid ISPM 15 certificate/Heat Treatment certificate/ Dangerous cargo certificate (if applicable)
17	Successful completion of Contract as per Part- A(ii)	10% of contract value	a. Acceptance note from Purchaser for successful completion of Contract b. Performance Security bank guarantee with required extension