



ITER-India
(Institute For Plasma Research)

Tender Notice No.

I-ITN21005

Title	Manufacturing, Testing and Supply of Vacuum Vessels for HNB3 (Beam line Vessel and Beam source Vessel) and DNB
Sub Title	Section A(II) : Terms and Conditions of Contract

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





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Title	Manufacturing, Testing and Supply of Vacuum Vessels for HNB3 (Beam line Vessel and Beam source Vessel) and DNB
Sub Title	Section A(II) : Terms and Conditions of Contract (TCC)

Distribution list	Interested Bidders
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Written by	Reviewed by	Approved by
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Amendment Record

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

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Abbreviations

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*

S

SBI · *State Bank of India*

T

TRO · *Technical Responsible Officer*

W

WCT · *Work Contract Tax, .*

Terms and Conditions of Contract (TCC)

Following are the Terms and Conditions of Contract (TCC) applicable to this tender. The Contract(s) 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.

Single Contract consisting of two Parts as per below detail will be signed between Purchaser and Contractor.

Part-A will for DNB Vessel

Part-B will be for HNB3 Vessel

Bifurcation of Parts is based on execution of manufacturing of Vacuum Vessels under this Contract.

Both the Parties shall mutually agree on apportioning of cost in terms of % of total contract value for each Part at the time of signing of the Contract. The cost apportioned for each Part will be mentioned in the Contract. Invoices will be raised by the Contractor for each Part separately based on agreed apportioned cost.

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 the tender enquiry/notification.
- (b) **“BIDDER” or “TENDERER” or “VENDOR”** shall mean the entity who seeks to supply the specified Items by submitting Tender/Bid/Quotation
- (c) **“COMPLETION”** shall mean that all activities specified under the scope of supply and scope of work have been successfully completed to the complete satisfaction of the Purchaser in all aspects and approved and accepted by the Purchaser.
- (d) **“CONTRACT”** shall mean the communication or document signed for and on behalf of the Purchaser by an Officer duly authorized confirming the acceptance, for and on behalf of the Purchaser, on the terms and conditions mentioned or referred to in the said communication or document, including all attachments and appendices thereto, while accepting the Bid or Offer of the Contractor for supply of items 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(s) for **“Manufacturing, Testing and Supply of Vacuum Vessels for HNB3 (Beam line Vessel and Beam source Vessel) and DNB”** are 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)** shall mean the document approved by Purchaser

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 work and scope of supply as defined in this Tender.
- (i) **“EFFECTIVE DATE OF CONTRACT” or “COMMENCEMENT DATE OF CONTRACT”** shall mean the date of signing of Letter of Intent (LoI), on which the Contract shall come into force.
- (j) **“FACTORY ACCEPTANCE”** shall mean acceptance of items at Contractor’s factory as described in Section-B
- (k) **“FINAL ACCEPTANCE”** shall mean acceptance of items at on-site as per “Site Acceptance” described in Section-B
- (l) **“INCOTERMS”** shall mean INCOTERMS 2020 (International Chamber of Commerce - ICC).
- (m) **“ITER-INDIA”** is a project of Institute for Plasma Research, Bhat, Gandhinagar and it is Indian Domestic Agency for the execution of ITER Project
- (n) **“ITEM(S)” or “GOODS” or “MATERIALS” or “PRODUCTS” or “DNB/HNB3 VESSEL” or “SYSTEMS” or “EQUIPMENT” or “SUPPLIES” or “COMPONENTS”** shall mean and include entire scope of supply which Contractor has agreed to supply and provide under the contract deliverables as specified in the Contract.
- (o) **“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.
- (p) **“MONTH”** shall mean a month according to Gregorian calendar.
- (q) **“ON-SITE”** shall mean the place(s) where the deliverables shall be dispatched/exported by the Purchaser i.e. ITER Organization, Cadarache, France.
- (r) **“PARTY”** shall mean either the PURCHASER or the CONTRACTOR
- (s) **“PARTIES”** to the Contract are the Contractor and the Purchaser named in the Contract.
- (t) **“PRICE”** shall mean the prices quoted by the bidder in his bid proposal for the entire scope of supply and scope of work as per the specifications as defined in Section-B of this tender.
- (u) **“PROJECT DIRECTOR”** shall mean Project Director of ITER-India, who is appointed by a competent authority.
- (v) **“PROJECT MANAGER” or “PM”** shall mean the person authorized to act as Project Manager (PM) by a competent authority of ITER-India.
- (w) **“PURCHASER”** shall mean ITER-India (IPR), acting through the Project Director or his authorized representative.
- (x) **“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.

- (y) **“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.
- (z) **“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 legal successor or permitted assignees, and unless otherwise stated, all the sub-contractors and suppliers to such person and the term sub-contract shall be construed accordingly.
- (aa) **“TECHNICAL RESPONSIBLE OFFICER”** shall mean the person nominated by the Purchaser to carry out all technical functions concerning the Contract including inter-alia review of technical documents, post Contract technical follow up and such other technical functions with the approval of Project Manager.
- (bb) **“THIRD PARTY”** shall mean the party authorized to carry out the assigned job on behalf of the Purchaser.
- (cc) **“TOTAL CONTRACT VALUE” or “TOTAL CONTRACT PRICE”** shall mean the total price as mentioned in the Contract i.e. it is the Contract price excluding taxes, duties and levies (as applicable)
- (dd) **“UNIT RATE”** shall mean the rate quoted by the bidder on per unit basis, which will be used for addition or deletion purposes.
- (ee) **“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 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 General 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 general conditions of the Contract.

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

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 Publicity

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

1.2.6 Confidentiality and Secrecy

- 1.2.6.1 All information, including but not limited to, specifications, drawings and designs that are imparted to the Contractor, shall at all times, remain the absolute property of the Purchaser. The Contractor shall not use them for purposes other than for which they are provided for, and shall treat all these documents as confidential. These shall not be reproduced in whole or in part for any other purpose.
- 1.2.6.2 All information, drawings, documents, specifications, datasheets and other related documents forming part of the enquiry or tender or Contract are property of the Purchaser only and shall not be used for any other purpose, except for execution of the Contract. All rights, including rights in the event of grant of a patent and registration of designs are reserved. The technical information, drawings, specifications, records and other documents shall not be copied, transcribed, traced or reproduced in any other form or otherwise in whole and/ or duplicated, modified, divulged and/or disclosed to a third party nor misused in any other form whatsoever, without the Purchaser's prior consent in writing, except to the extent required for the execution of this Contract. This technical information, drawings, specifications and other related documents shall be returned to the Purchaser in proper condition with all approved copies and duplicates, if any, immediately after they have been

used for the agreed purpose.

- 1.2.6.3 The Contractor shall use his best endeavours to ensure that such information are not divulged to third parties except where needed for the performance of the Contract by the Contractor with the prior consent of the Purchaser. In such cases, the Contractor shall ensure and obtain similar obligation of confidence, from other parties in question.
- 1.2.6.4 A confidential/ Non-Disclosure Agreement (NDA) shall be signed at the time of placement of Contract as per the attached **Annexure-6**.
- 1.2.6.5 The Contractor shall at his own cost procure from his own employees, agents, suppliers or sub-contractors (and agents, suppliers and sub-contractors of such agents, suppliers and sub-contractors) the execution of a confidentiality agreement in the form and manner acceptable to the Purchaser and shall do or assist in doing all such acts, deeds and things to cause such employees, agents and sub-contractors to whom the confidential information is given, to be bound by all the confidentiality obligations as the Contractor is bound under this Contract.
- 1.2.6.6 In the event of any breach of this provision, the Contractor shall indemnify the Purchaser from any loss and/or damage or any other claims whatsoever from any parties claiming from or through him in respect of such breach.

1.2.7 INTELLECTUAL PROPERTY RIGHTS (IPR)

Detailed intellectual property rights provisions to be adhered by the Contractor are given in **Annexure-4 of Section A(II)**.

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 certificates 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.

1.3.2 Purchaser's representatives

- 1.3.2.1 The **Project Director**, as mentioned in the Contract, shall act as an authority who can take all decisions related to this Contract.
- 1.3.2.2 The **Project Manager**, as mentioned in the Contract, shall act as a **Contract Manager** for the Purchaser and execute all such duties assigned to him by the Project Director for smooth execution of the Contract
- 1.3.2.3 The **Technical Responsible Officer / Task Officer**, as mentioned in the Contract, will be Purchaser's representative to carry out all technical functions concerning the Contract including inter-alia review of technical documents , post Contract technical follow up and such other technical functions with the approval of Project Manager.
- 1.3.2.4 **The Purchase Officer** as mentioned in the Contract is the Purchaser's representative for all commercial matters of the Contract and act as a **Commercial Coordinator**.

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.

1.4.2 Compliance with law

- 1.4.2.1 The Contractor shall comply with all laws in force in India and in the countries / states where the items/equipment are manufactured. 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-contractors and their personnel.

1.4.3 Contractor's representative

- 1.4.3.1 The Contractor shall appoint the Contractor's key representatives , who are responsible for execution of managerial, technical and commercial aspects of the Contract . The details of the contractor representatives including their roles and responsibilities shall be intimated to the Purchaser before signing of the contract.
- 1.4.3.2 The Contractor's representatives shall represent and act for the Contractor at all times during the tenure of the Contract. All notices, instructions, information and all other communications to be given by the Purchaser to the Contractor under the Contract shall be given to the Contractor's representative(s), except as herein otherwise provided.
- 1.4.3.3 The Contractor shall promptly inform in writing to the Purchaser if there is any change in the Contractor's representative personnel or their designated roles towards this Contract. In the absence of timely information regarding change of personnel or their designated roles from the Contractor, the resulting damages/liabilities if any, shall not be attributable to the Purchaser.
- 1.4.3.4 During the Contract period, to carry out some activities listed in scope of work using the Purchaser's workstation (especially using ENOVIA/CATIA software), the Contractor needs to deploy his manpower at the Purchaser's office at the Contractor's risk and cost. For this, the Purchaser will not provide any facility except office space, workstation and license to work at ITER-India office and will not provide any local hospitality like lodging, transportation, food, etc.

1.4.4 Sub-contracting, subletting or assignment of Contract

- 1.4.4.1 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 sub-contractors and suppliers are required to be appraised and approved by the Purchaser, before 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.

1.4.4.2 The Purchaser reserves the right to take necessary action as deemed fit including cancellation of the Contract or any part thereof in case of any breach of condition as mentioned in **1.4.4.1** above and Purchaser reserves the right to purchase from other sources at the risk and cost of the Contractor in terms of clause **1.25** hereof and/or recover from the Contractor losses/damages arising from such cancellations.

1.4.4.3 The Contractor shall be responsible for coordination of all activities with his sub-contractors and suppliers.

1.4.4.4 In case the Contractor sublets, transfers or assigns any part of the Contract with the prior written consent of the Purchaser, all payments to the Sub-Contractor(s) and supplier(s) shall be the responsibility of the Contractor and any requests from such Sub-Contractor(s) shall not be entertained by the Purchaser.

1.4.4.5 All payment to the sub-contractors shall be made by the Contractor only.

1.4.5 Codes and Standards

Wherever references are made in the Contract to codes and standards in accordance with which the Contract shall apply. During the Contract execution, any changes in such codes and standards as intimated by the Purchaser shall be applied and shall be treated in accordance with clause **1.22** (Changes).

1.4.6 Mistakes in drawings, specifications etc.

The Contractor shall be responsible to make all necessary alterations to the deliverables which are caused due to any discrepancies, errors or omission in the specifications, drawings or particulars submitted by the Contractor irrespective of whether these have been approved by the Purchaser or not. If the Contractor fails to make such alterations, the Purchaser may do so at the risk and cost of the Contractor.

1.5 Contract Work Scope

1.5.1 Scope of Work, Scope of Supply and Specifications:

1.5.1.1 Section-B of this tender specifies the scope of work, scope of supply, technical and management specifications covered under this Contract.

1.5.1.2 Any tooling or accessories which may not be specifically mentioned in the Specifications but which are necessary for proper and efficient functioning of the systems as per the specifications of the 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 ITER-India reserves the right to increase or decrease the quantities of work or to totally omit any items of work and the Contractor shall not be entitled to claim any extra for damages and/or loss of profit on these grounds.

1.6 Bank Guarantees

1.6.1 Security Deposit (SD)

1.6.1.1 Within four weeks from the date of signing of Contract, the Contractor shall submit two

irrevocable Bank Guarantee (BGs) (on a non-judicial stamp paper), one SDBG equal to 3% (three percent) of Part-A Contract value and second SDBG equal to 3% (three percent) of Part-B Contract value as “Security Deposit” towards satisfactory execution and performance of the Contract.

- 1.6.1.2 For the BG towards the security deposit is issued by an Indian bank, it shall be from State Bank of India (SBI) /from any other Nationalized Bank /from one of the banks namely ICICI, HDFC, AXIS and IDBI. The format of the Security Deposit is given in **Annexure-1**. BG issuing bank required to send SFMS Confirmation on our SBI bank having IFS Code SBIN0010864 and provide intimation of the same on following E-mail ID : accounts@iterindia.in/ purchase@iterindia.in.
- 1.6.1.3 The Bank Guarantee shall remain valid till the expiry of (60) sixty days from the date of Final site acceptance of delivered Items under this Contract. If need arises, the Contractor shall extend the validity of the Bank Guarantees for suitable period at his expenses.
- 1.6.1.4 If the Contractor fails to provide the Security Deposit, within the period as specified in clause no. [1.6.1.1](#) such failure shall constitute a breach of Contract and the Purchaser shall be entitled to cancel the Contract and make alternate arrangements for the purchase of contracted items from other sources at the risk and expenses of the Contractor and recover from the Contractor the damages arising from such cancellation.
- 1.6.1.5 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. Applicable GST shall be charged, at the prevailing rate at that time, on encashed amount of SD.
- 1.6.1.6 In case of extension of Contractual delivery date/Final site acceptance date, the Contractor shall extend the validity of Bank Guarantee(s) suitably to cover the extended/expected period, failing which, the Purchaser shall have the right to invoke the Bank Guarantee(s) without prejudice to the terms and conditions of the Contract.
- 1.6.1.7 Upon satisfactory execution of the Contract, the original Bank Guarantee shall be returned to the Contractor on receipt of a request from the Contractor.
- 1.6.1.8 No interest shall be payable on security deposit amount till it is retained by Purchaser in terms of Contract.

1.6.2 Performance Bank Guarantee (PBG)

- 1.6.2.1 The Contractor shall furnish to the Purchaser an interest free Performance Bank Guarantees (PBGs) for 3% of the Contract value, by way of providing a Bank Guarantee from one of the banks and other details as mentioned in clause [1.6.1.2](#) on a non-judicial stamp paper for the satisfactory performance of the Items supplied against the Contract. The Performance Bank Guarantees (PBGs) will be effective from the date of site/Final acceptance and shall remain in force two months beyond the warranty period mentioned in the Contract. 02 PBGs needs to be submitted by the Contractor. One for HNB3 Vessel (Beam Line Vessel and Beam Source Vessel) for 3% of Part-B Contract value and another for DNB Vessel for 3% of Part-A Contract value.
- 1.6.2.2 In the event that the Bank Guarantee needs extension, the Contractor shall extend the validity of PBGs for suitable period at his expenses. On the performance and completion of all contractual obligations including warranty, the original PBGs shall be returned to the Contractor without any interest on receipt of a request from the Contractor. The

Performance Bank Guarantee format is given in **Annexure-3**.

- 1.6.2.3 In the event, the Contractor fails to fulfil any of the warranty obligations under the Contract; the Purchaser shall have the right to encash the PBGs. Applicable GST shall be charged, at the prevailing rate at that time, on encashed amount of PBGs.

1.6.3 Bank charges

- 1.6.3.1 All bank charges, if applicable, shall be borne by the Contractor only.

1.7 Contract Price, Payment and Recoveries

1.7.1 Terms of Prices

- 1.7.1.1 The price(s) for the Contract shall be **subject to Price Variation (PV)**. Formula for PV with applicable ceiling in % and other terms & conditions related to PV will be provided in the tender in form of amendment.

- 1.7.1.2 Export of Items under this Contract will be under the name of Purchaser.

1.7.2 Basis of Delivery

- 1.7.2.1 The price quoted should be on Free On Board (FOB) Indian Port as per Incoterms 2020 for the Contract. Indian Ports for this Contract can be any one out of Nhava Sheva (JNPT)/Mumbai, Chennai and Hazira. Contractor needs to specify any one port out of these three Indian ports in their bid. Please refer clause no. [1.11.2](#) on “delivery address” for details.

1.7.3 Taxes and Duties

- 1.7.3.1 The price quoted should be exclusive of all applicable Indian taxes, levies, duties which are to be mentioned separately in the Price Bid (Section-C) at the prevailing rates.

- 1.7.3.2 The ITEMS manufactured under this Contract(s) will be exported by ITER-India (IPR) outside India to the destinations as per details given in On-site (refer clause 1.1.1 (q)).

- 1.7.3.3 GST registration: Bidder shall submit a copy of GST Registration certificate along with the bid. The bidder shall also declare the HSN code for the quoted items.

- 1.7.3.4 GST will be extra as applicable at the prevailing rates. Contractor shall not charge GST against submission of exemption or waiver or charge concessional rate (5%) against submission of certificate under below mentioned notifications by the Purchaser:

- Integrated Tax (IGST) as per Notification by Department of Revenue, Ministry of Finance, Govt. of India Notification No. 47/2017 - Integrated Tax (Rate) dated 14th November, 2017
- Central Tax (CGST) as per Notification by Department of Revenue, Ministry of Finance, Govt. of India Notification No. 45/2017-Central Tax (Rate) dated 14th November, 2017
- State Tax (SGST) as per Finance Department, Govt. of Gujarat Notification No. 45/2017 – State Tax (Rate) dated 15th November, 2017

- 1.7.3.5 The Contractor shall be liable to undertake assessment of likely GST on the price of supplied being made to the Purchaser during the execution of the Contract in light of

the anti-profiteering provisions being proposed under GST act. After completion of such assessment, Contractor shall forthwith inform the Purchaser of the extent of reduction in cost so that prices may be renegotiated accordingly and amendments can be made in the Contract. In case of any deviation(s) 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 Contractor. The Contractor hereto agrees that all liabilities arising out of any default from complying with the aforesaid directions and consequences thereof will be of the Contractor and Purchaser is authorized to recover the same along with interest from the Contractor and/or the same can be deducted from the amount payable to the Contractor

1.7.3.6 Contractor 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 to the Purchaser due to non-compliance on your part. The Contractor agrees that in case of any loss arising out of acts of the Contractor or any non-compliance on the part of the Contractor, the Purchaser is authorized to recover the same along with the interest from the Contractor and/or the same can be deducted from the amount payable to the Contractor

1.7.3.7 Contractor shall be liable to update GSTN an 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 Contractor's account and any loss arising due to any non-compliance of the Contractor will be recovered along with the interest from the Contractor and/or the same can be deducted from the amount payable to the Contractor

1.7.3.8 **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 under the referred notification, 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. **List of materials and bought out items to be imported to India for this tender 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 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, 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, except customs duty, towards procurement of the imported

materials should be borne by the Contractor.

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

Income tax (TDS) at a prevailing rate as per section 194C of Income Tax Act and prevailing rate as per GST act on the Total Contract Value will be deducted from the invoice. Bidder shall submit the PAN along with the bid. Certificate of TDS will be issued by the Purchaser.

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

1.7.4 Mode of Payment and Payment and Delivery Schedule:

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

1.7.4.1 Mode of Payment 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 invoice complete in all respects. Separate Invoices will be raised by the Contract for each part i.e. Part-A (DNB Vessel) and Part-B (HNB3 Vessel) Contract. Necessary mandate form for RTGS/NEFT will be provided at the time of Contract. Wherever, advance payment is involved, it will be made subject to submission of Bank Guarantee (BG) for an equivalent amount from State Bank of India (SBI) / any Nationalized bank or one of the banks mentioned in bracket (ICICI, IDBI HDFC, AXIS). BG issuing bank required to send SFMS Confirmation on our SBI bank having IFS Code SBIN0010864 and provide intimation of the same on following E-mail ID : accounts@iterindia.in/purchase@iterindia.in. BG for advance payment should be furnished by Contractor as per format given in **Annexure-2**.

1.7.4.1.1 Release of payment shall be subject to:

- i. Signing of Contract
- ii. Submission of Security Deposit as specified (refer: [1.6.1](#))
- iii. Submission of Advance Bank Guarantees (ABGs) as specified

1.7.4.2 Delivery and Payment Schedule

1.7.4.2.1 The payment in INR to the Contractor will be made as per the [Table-2](#)

1.7.4.2.2 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.

1.7.4.2.3 Note:

Delivery as per Incoterms 2020 FOB Indian Port will be considered completed only when,

- (1) All items are factory accepted by I-I and IO and the corresponding Contractor Release Note (CRN) is signed
- (2) Packing of all items is successfully completed as per approved procedure
- (3) All items are delivered to the Purchaser on FOB Indian port as per INCOTERMS 2020 basis. Factory stuffing needs to be carried out by the Contractor.

Delivery Schedule as per Table -1 and Payment Schedule as per Table -2 & Table-3



**Note: In following “Delivery” means “Delivery on FOB Indian Port Incoterms 2020 basis”
T0= Date of Letter of Intent (LoI)**

Table-1 Delivery Schedule

Major Milestone of Schedule

S. No.	Major Schedule milestones	Milestone Schedule
1.	Effective Date for start of Contract (Date of LoI)	T0
2	Approval of manufacturing/fabrication drawings for DNB Vessel and HNB3 Vessel	T0 + 3 months
3	Manufacturing Readiness Review of DNB Vessel and HNB3 Vessel	T0 + 5 months
4	Manufacturing Completion of DNB Vessel	T0 + 44 months
5	Factory Acceptance Test, Delivery Readiness Review and despatch of DNB Vessel on FOB Indian Port as per INCOTERMS 2020	T0 + 45 months
6	Site Acceptance Test of DNB Vessel	T0 + 47 months
7	Manufacturing completion of HNB3 Vessel	T0 + 56 months
8	Factory Acceptance Test, Delivery Readiness Review and despatch of HNB3 Vessel on FOB Indian Port as per INCOTERMS 2020	T0 + 57 months
9	Site Acceptance Test of HNB3 Vessel	T0 + 59 months

*** Any mock-up will not be a part of deliverable to the Purchaser and shall remain the property of the Contractor**

Table 2 – Payment Schedule for Part-A Contract (DNB Vessel)

Sr. No.	Payment Milestone	% of Part-A Contract value except supervision charges	Document Evidence Required
1	Advance with Contract Award (against irrevocable bank guarantee)	5%	1. Copy of Security Deposit Bank Guarantee 2. Proforma Invoice in triplicate 3. Advance Payment bank guarantee of equivalent amount
2.	Approval of all Manufacturing drawings	5%	1. Proforma Invoice in triplicate

			2. Copy of Acceptance note for approval of all manufacturing drawings issued by the Purchaser 3. Advance payment bank guarantee of equivalent amount
3.	Successful completion of Manufacturing Readiness Review (MRR)	5%	1. Proforma Invoice in triplicate 2. Copy of acceptance note for MRR issued by Purchaser 3. Advance Payment bank guarantee of equivalent amount
4.	Placement of PO for major Raw material (Plates, Pipes, Forgings etc.)	5%	1. Proforma Invoice in triplicate 2. Copies of POs for major raw material (Plates, Pipes, Forgings etc.) 3. Advance Payment bank guarantee of equivalent amount
5	Major Raw Material (Plates, Pipes, Forgings etc) Acceptance at Bidder's Premises (against bank guarantee) - After receipt and acceptance of entire quantity of major Raw material (Plates, Pipes, Forgings etc) for the Contract	5%	1. Proforma Invoice in triplicate 2. Copy of acceptance note for MRR issued by Purchaser 3. Advance Payment bank guarantee of equivalent amount
6.	Factory Acceptance Test, approval of Delivery Readiness Review and Despatch of DNB Vessel on FOB Indian Port basis as per Incoterms 2020	65%+ applicable taxes	Delivery Documents as per clause no. 1.11.3
7.	*Final Site Acceptance of DNB Vessel at On-site by ITER Organization	10%	1. Proforma Invoice in triplicate 2. Acceptance note issued by the Purchaser 3. Performance Bank Guarantee for DNB Vessel
8.	Payment of supervision charges	At actuals	1. Tax Invoice in triplicate 2. Utilization and attendance sheet duly signed by Purchaser

Table 3 – Payment Schedule for Part-B Contract (HNB3 Vessel)

Sr. No.	Payment Milestone	% of Part-B Contract value except supervision charges	Document Evidence Required
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1	Advance with Contract Award (against irrevocable bank guarantee)	5%	1. Copy of Security Deposit Bank Guarantee 2. Proforma Invoice in triplicate 3. Advance Payment bank guarantee of equivalent amount
2.	Approval of all Manufacturing drawings	5%	1. Proforma Invoice in triplicate 2. Copy of Acceptance note for approval of all manufacturing drawings issued by the Purchaser 3. Advance payment bank guarantee of equivalent amount
3.	Successful completion of Manufacturing Readiness Review (MRR)	5%	1. Proforma Invoice in triplicate 2. Copy of acceptance note for MRR issued by Purchaser 3. Advance Payment bank guarantee of equivalent amount
4.	Placement of PO for major Raw material (Plates, Pipes, Forgings etc)	5%	1. Proforma Invoice in triplicate 2. Copy of acceptance note for MRR issued by Purchaser 3. Advance Payment bank guarantee of equivalent amount
5	Major Raw Material (Plates, Pipes, Forgings etc) Acceptance at Bidder's Premises (against bank guarantee) - After receipt and acceptance of entire quantity of major Raw material (Plates, Pipes, Forgings etc) for the Contract	5%	1. Proforma Invoice in triplicate 2. Copy of acceptance note for MRR issued by Purchaser 3. Advance Payment bank guarantee of equivalent amount
6.	Factory Acceptance Test, approval of Delivery Readiness Review and Despatch of HNB3 Vessel on FOB Indian Port basis as per Incoterms 2020	65%+ applicable taxes	Delivery Documents as per clause no. 1.11.3
7.	*Final Site Acceptance of HNB3 Vessel at On-site by ITER Organization	10%	1. Proforma Invoice in triplicate 2. Acceptance note issued by the Purchaser 3. Performance Bank Guarantee for DNB Vessel
8.	Payment of supervision charges	At actuals	1. Tax Invoice in triplicate 2. Utilization and attendance sheet duly signed by Purchaser

* If Final Site Acceptance is delayed beyond 6 months from the period as mentioned in the delivery schedule, for the reasons attributable to the Purchaser, then payment of 10% against this milestone

shall be paid against PBG with validity for 24 months plus claim period of 2 months, Proforma Invoice in triplicate and undertaking on non-judicial stamp paper (of appropriate value) by the Contractor stating their agreement to witness Site acceptance based on request from the Purchaser and within the mutually agreed time.

1.7.4.2.4 It is mandatory that activities upto Sr. no. 1 to 5 of Table 2 and respective of Table 3 are performed in parallel and therefore payment against sr. no. 1, 2, 3, 4 and 5 of above Table-2 and Table-3 will be released simultaneously and only if the related activities for both the vessels are completed as per terms and condition of the Contract. Validity of Advance payment bank guarantees – Advance Payment Bank Guarantee (against sr. no. 1, 2, 3 and 4 of above Table-2 and Table-3) should remain valid till 60 days beyond the delivery of respective Vessel under the Contract.

1.7.5 Recovery of advance payment in case of breach of Contract

1.7.5.1 In case the Contractor fails to execute the Contract due to reasons not attributable to the Purchaser and which do not fall under force majeure as per the Contract conditions, the outstanding advance payment(s) made shall be recovered, along with the interest at the prevailing Prime Lending Rate (PLR) of State Bank of India as on date of opening of Part-B bid. This shall be without prejudice to the other remedies available to the Purchaser under this Contract.

1.7.6 Recovery of Sums Due

1.7.6.1 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 or any other Contract (if applicable) with the Purchaser. 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 or any other Contract with the Purchaser, the payment of all sums payable under the Contract to the Contractor shall be withheld to the extent of claims due according to the Purchaser till such claims of the Purchaser are finally paid by the Contractor, pending which the same will be adjusted. Notwithstanding the provision for recovery through adjustment, the Purchaser shall be free to recover his claims from the Contractor as per the terms of the Contract.

1.8 FREE ISSUE MATERIALS

1.8.1.1 Following are Free Issue Material (FIM) to the Contractor for this Contract. Contractor will take necessary insurance and will submit insurance papers to the Purchaser for the items listed below.

Contractor shall take and submit Insurance policy of an Insurance Company towards adequate security for the materials provided by the Purchaser as Free Issue Material (FIM) for the due execution of the Contract. Contractor shall also provide Indemnity Bond for FIM as per format given in Annexure-9

FIM Details: - Table - 4

Sr. No.	Material/ Items	Approximate Cost (INR)
1	DNB Top Lid Seal -01 no.	74 lacs
2	HNB3 Top Lid Seal – 01 no.	74 lacs
3	HNB3 Rear Lid Seal – 01 no.	74 lacs
Total approximate cost in INR		2.22 crores

1.8.1.2 The Contractor shall be provided with FIM by the Purchaser to Contractor's site. Contractor shall take an Insurance Policy for storage for the value of the FIM + 10% covering all insurable risks, including risks not expressly mentioned in this Contract. The Contractor shall submit storage Insurance Policy and Indemnity bond before taking the delivery of FIM.. The Insurance Policy shall be valid till the complete execution of the Order and shall cover the following.

INSURED : Name and address of the Contractor

BENEFICIARY : ITER-India, IPR acting through Project Director or any other Officials authorized by ITER-India.

RISKS COVERED : Any loss or damage to the Purchaser's material due to Fire, riot, burglary, strike, theft, civil commotion, Natural calamities, corrosive contact with other material(s) and any damages arising out of external sources such as damages due accidents, materials falling on Purchaser's materials and to protect against weather conditions and any risks as covered under ICCA.

1.8.1.3 The Contractor shall be fully responsible for the safety of the FIM during safe storage of FIM all through the period during which the FIM will remain in his possession. The Contractor shall take all necessary precautions against any loss, deterioration or destruction of the FIM from whatever cause arising whilst the said material remain in his possession and/or his custody or control, the Contractor shall also not mix-up the material in question with any of his goods and shall render true and proper accounts of the material actually used. The Contractor shall not use the FIM for other than Purchaser's job and utmost care should be taken to minimize the wastage or loss. Contractor will be held responsible, accountable and liable for spoilage and damage during the process. The decision as to whether the Contractor has occasioned any loss, deterioration or destruction of the FIM whilst in his possession, custody or control from whatever cause arising, as also the decision regarding quantum of the damages suffered by the Purchaser shall be final and binding upon the Contractor.

1.8.1.4 The Purchaser at all times has the right to enter the Contractor's premises where the free issue materials are stored or where the free issue materials are being used for manufacturing.

1.9 Quality Assurance, Inspections and Acceptance Tests

Refer Section-B for more details regarding quality assurance and acceptance test requirements. The Purchaser shall deploy ITER Recognized Third Party Inspection Agency (TPIA) at Contractor's premises for carrying out inspection and witnessing testing during execution of the Contract, as per the need of Section B (Technical) and its annexures. In case, there is a delay in execution by the Third Party Inspection- TPI (deployed by the Purchaser) due to the reasons attributable to the Contractor, then amount equivalent to such increase in TPI cost, shall be deducted from the due payment of the Contractor's bill(s).

TPIA requirement shall be mutually agreed between both the Parties after 02 months from the date of Contract.

1.9.1 Manufacturing & Inspection Plan

- 1.9.1.1 The Purchaser's representative/an authorized third Party shall be entitled at all reasonable times during manufacturing to inspect, examine and test the material and workmanship of all items to be supplied under this Contract at the Contractor's /sub-contractor's/supplier's premises. This monitoring/inspection/testing shall include Notification Points (NP) , Witness Points and Hold Points (HP) at critical steps in the manufacturing process. These quality control points shall be indicated on the Contractor's MIP that is mutually agreed and approved by the Purchaser. However such inspection, examination and testing by Purchaser shall not release the Contractor from his obligation under this Contract.
- 1.9.1.2 If part of said items/systems/components are being manufactured at other premises (viz. subcontractor/supplier), the Contractor shall obtain a permission for the Purchaser's representative to inspect, examine, and test as if the equipment were being manufactured on the Contractor's premises.

1.9.2 Dispatch Clearance

1.9.3 Dispatch Clearance Note

- 1.9.3.1 Contractor shall obtain a Contractor Release Note (CRN) on satisfactory pre dispatch inspection (factory acceptance) of Items/Systems from ITER-India before affecting the dispatch.

1.10 Packing & Labelling

1.10.1 Packing Instructions

- 1.10.1.1 The Contractor shall pack and crate all items/deliverables for road transportation in 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.
- 1.10.1.2 The Contractor 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.
- 1.10.1.3 Wood to be used for packing should be in conformity with IS 16662:1993(R-2003) and should be Heat Treated as heat treated wood does not have any expiry period for

exportation as in case of fumigation i.e. 21 days from the date of fumigation.

1.10.1.4 Accelerometers shall be provided by the Purchaser for mounting on the packages ready for dispatch.

1.10.1.5 The Contractor shall submit a detailed transportation scheme including packing details to the Purchaser in advance for the approval.

1.10.1.6 Refer Annexure 13_Labeling, Packing, Handling and Shipping of Section-B for further details of the tender for further details

1.10.2 Marking & Labelling

1.10.2.1 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. Net and gross weights
- iv. Sign showing 'SIDE UP'
- v. Any handling and unpacking instructions, if considered necessary.
- vi. 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.

1.11 Delivery Basis

1.11.1 Delivery Basis:

1.11.1.1 The items shall be delivered to the Purchaser on FOB Indian port basis (All the documents for export like Invoice, packing list, GR Waiver (as applicable) required for Customs clearance will be provided by the Purchaser, however Customs clearance shall be undertaken by the Contractor) as per Incoterms 2020.

1.11.1.2 Purchaser shall undertake the scope of sea shipment from FOB Indian port to Marseille port, France and finally to IO on-site.

1.11.2 Ultimate Consignee & Delivery Address:

The ultimate consignee of the Purchaser will be ITER Organization (IO) (Refer On-site address given in 1.1.1 (q)) or to be as specified in the Tax and Export Invoice.

1.11.2.1 Bill To:

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

1.11.3 Delivery Documents

1.11.3.1 The Contractor shall forward in advance to the Purchaser, by rapid Courier Service , following documents in triplicate as detailed hereunder:

- a. Original GST Invoice in triplicate

- b. Delivery Challan in triplicate
- c. Packing list
- d. Contractor Release Note
- e. Insurance Proof as per FOB Indian Port Incoterms 2020 basis
- f. Any other document(s) required by prevailing legislation

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

1.12 Delay, Extension & Postponement

1.12.1 Extension of Time (due to Contractor)

1.12.1.1 In the event, the contractual delivery dates 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 [1.12.3](#). The Contractor shall not become entitled to receive additional payment towards escalation or increased statutory levies (if any) or any implication of new taxes beyond the contractual delivery date.

1.12.1.2 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 or any implication of new taxes that may be payable at higher rate after the expiry of Contract delivery dates (clause [1.12.2](#)) will not be applicable or waiver of LD.

1.12.2 Delay in delivery dates

1.12.2.1 Should the Contractor fails to comply with contractual delivery dates 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:-

1.12.2.1.1 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 [1.12.3](#).

1.12.2.1.2 To terminate the total Contract, as per clause [1.25.1](#) in case the liquidated damages (as per clause [1.12.3](#)) 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.

1.12.2.2 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. The Contractor shall get record of hindrances in the Hindrance Register approved / endorsed by the Purchaser’s representative. Such hindrance in the Work or Supply endorsed by the Purchaser’s representative will only be taken into consideration for granting time extension. Format of Hindrance Register will be provided in the Contract.

1.12.3 Liquidated Damages (LD)

1.12.3.1 If the Contractor fails to make the items ready for shipment within the time specified in the Contract and the delay or part thereof is attributable to the Contractor, the Purchaser shall recover from the Contractor as liquidated damages as per below details

1.12.3.1.1 LD equivalent to sum of half percent (0.5 percent) of the Part-A Contract price for DNB Vessel for each full calendar week of delay that is attributable to the Contractor. The total liquidated damages shall not exceed five percent (5%) of the Part-A Contract price for DNB Vessel. Sr. no. 05 of Delivery Schedule – Table – I shall be considered shall be taken for evaluation of LD. Applicable GST shall be charged, at the rate prevailing at that time, on LD amount.

1.12.3.1.2 LD equivalent to sum of half percent (0.5 percent) of the Part-B Contract price for HNB3 Vessel for each full calendar week of delay that is attributable to the Contractor. The total liquidated damages shall not exceed five percent (5%) of the Part-B Contract price for HNB3 Vessel. Sr. no. 08 of Delivery Schedule – Table – 1 shall be considered shall be taken for evaluation of LD. Applicable GST shall be charged, at the rate prevailing at that time, on LD amount.

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

1.12.4 Force Majeure

1.12.4.1 Force Majeure is herein defined as any cause which is beyond the control of the Contractor or the 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:

1.12.4.1.1 Natural Phenomena, including but not limited to floods, droughts, earthquakes, and epidemics.

1.12.4.1.2 Acts of any Government, domestic or foreign including but not limited to war-declared or undeclared, priorities, quarantines, embargoes.

1.12.4.1.3 Other Phenomena including but not limited to hostilities riots, civil commotion and declared lock-out in Contractor's works.

1.12.4.1.4 Provided that 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 has come into force during the extended delivery period.

1.13 Final Acceptance:

Final/Site Acceptance of items will be subject to the fulfilment of requirements given in Section-B.

1.14 Rejection of defective goods & Contractor's Liability

1.14.1 Rejection against Damages during Transit (From FOB Indian Port to IO, France):

- 1.14.1.1 If the items/Systems/components or any portion thereof is damaged during transit due to improper packing by 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 to avoid unnecessary delay in the intended usage of the Systems/Items. The costs of replaced items shall be borne by the Contractor.
- 1.14.1.2 If the items/Systems/components or any portion thereof is damaged during transit due to reasons attributable to the Purchaser, 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 to avoid unnecessary delay in the intended usage of the Systems/Items. The costs of repair/replacement shall be borne by the Purchaser. The costs of replaced items shall be as per the price break up in the Contract of similar items. In case the break up is not available, the costs of replaced items shall be mutually agreed between both the parties.

1.15 Transfer of ownership

The ownership of the items covered under the Contract shall be transferred to the Purchaser upon safe loading on-board vessel (identified by the Purchaser) i.e. FOB Indian Port basis as per INCOTERMS 2020. The transfer of title shall not in any way relieve the Contractor of its responsibilities and liabilities under the Contract. Notwithstanding the transfer of ownership of the supplies, the responsibility for ensuring intended performance of the supplies at the on-site lies with the Contractor.

1.16 Indemnity

The Contractor 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 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.

Provided that such indemnity shall not apply when such infringement has taken place in complying with the specific directions issued by the Purchaser but the Contractor shall pay any royalties or other charges payable in respect of any such use, the amount so paid being reimbursed to the Contractor only if the use was the result of any drawings and/or specifications issued by the Purchaser after submission of the price bid or revised price bid, if any.

1.16.1 Indemnity against loss / damage

- a) The Contractor shall indemnify the Purchaser against any risk of accidents or damage to the supplies till completion/ handing over to the Purchaser.
- b) The Contractor shall indemnify and hold harmless the Purchaser and its employees and officers, and their respective agents, against all claims, demands, damages, losses, costs and expenses of whatsoever nature (including legal fees and expenses) in respect of :
 - i. Bodily injury, sickness, disease or death, of any person whatsoever

- ii. damage to or loss of any property, real or personal (other than the supplies whether accepted or not) arising in connection with design and supply of the items and remedying of any defects, unless attributable to any negligence, willful act or breach of the Contract by the Purchaser, its employees, officers or their respective agents.
- c) The Contractor shall at all times indemnify the Purchaser against all claims, damages or compensation under the provisions of the Payment of The Wages Act. 1936, The Minimum Wages Act, 1948, The Employer's Liability Act, 1938, The Workmen's Compensation Act, 1923, The Industrial Disputes Act, 1947 and The Maternity Benefit Act, 1961 or any modifications thereof or any other law relating thereto and rules made there under from time to time or as a consequence of any accident or injury to any workman or other persons in or about the works, whether in the employment of the Contractor or not, save and except where such accident or injury has resulted from any act of the Purchaser, his agents or servants, and also against all costs, charges and expenses of any suit, action or proceedings arising out of such accident or injury and against all sum or sums which may with the consent of the Contractor be paid to compromise or compound any claim. without limiting his obligations and liabilities as above provided, the Contractor shall insure against all claims, damages or compensation payable under the workmen's compensation act, 1923 or any modification thereof or any other law relating thereto, with specific endorsement in such insurance policies that Purchaser's interest shall be protected.
- d) The Contractor shall pay and indemnify the Purchaser against any liability in respect of any fees or charges payable by him under any act of parliament, state laws, any government instrument, rule or order and any regulations or by-laws of any local authority in respect of the supplies prevailing on the date of submission of tender.
- e) The Contractor shall indemnify and hold the Purchaser harmless from and against all claims, damages and expenses arising out of his failure to obtain all permit and licenses which he is required to comply with in respect of laws, ordinances, and regulations of the central or state government and/or local/public authorities.

1.16.2 Indemnity for taxes and duties

- 1.16.2.1 The Contractor hereby protects, indemnifies and holds harmless the Purchaser from any and all claims or liability for income, customs duties, royalty or any other taxes, duties, penalties etc., assessed or levied by the government of India or by any appropriate authority thereof or by the government of any other country against Contractor or its subcontractor or against the Purchaser for or on account of any payment made to or earned by Contractor or its subcontractor hereunder.
- 1.16.2.2 The Contractor further protects and holds the Purchaser harmless from all taxes assessed or levied against or on account of wages, salaries or other benefits paid to Contractor's employees or employees of its subcontractor and all taxes assessed or levied against or on the account of any property or equipment of the Contractor.
- 1.16.2.3 The Contractor shall be responsible for filing all necessary tax returns (including, without limitation, returns for corporate income tax, personal income tax and Goods and Services Tax (GST)) with the relevant government authorities in accordance with

all applicable statutory requirements and shall be responsible for providing all information requested by such government authorities.

1.16.2.4 The Contractor shall also ensure that its subcontractors file such returns as stipulated by the relevant government authorities and furnish such information as requested for by the relevant government authorities.

1.16.2.5 In certain situations, a government authority may treat the Purchaser as the representative assessee of the Contractor and/or its subcontractors and recover the taxes due to the government authority by the Contractor or its subcontractors from the Purchaser. In such situations, the Purchaser shall have the following rights:

- a) The Purchaser shall be entitled to recover from the Contractor, the taxes paid on behalf of the Contractor or its subcontractors (together with any costs and expenses incurred by the Purchaser in connection therewith) or to retain the same out of any amounts to be paid to the Contractor or its subcontractors that may be in its possession (whether due under this Contract or otherwise) and shall pay only the balance, if any, to the Contractor; and
- b) If the Purchaser is required to furnish any details or documents in such capacity, the Purchaser shall request the details or documents to be furnished to it by the Contractor and the Contractor shall immediately furnish the same to the Purchaser. If the Contractor fails to comply with the foregoing, any penalty/interest levied on the Purchaser for non-filing or late filing of details or documents in this regard shall be recoverable from the contractor.

1.17 Limitation of liability

Except in cases of criminal negligence or wilful 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, or to any obligation of the Contractor to indemnify the Purchaser with respect to Intellectual Propriety Rights infringement.

1.18 Insurance (as per FOB Indian Port INCOTERMS 2020)

1.18.1 General Requirements for Insurances:

- a) The Contractor shall, “at his own cost”, take out and maintain in effect the following Insurance based on reinstatement value during the performance of the Contract and the Purchaser shall be named as co-insured under all insurance policies. All Insurers’ rights of subrogation against co-insured shall be waived. Deductibles / excesses if any, under the insurance policies shall be borne by the Contractor. The identity of the insurers and the type of policies shall be subject to the approval of the Purchaser.
- b) Unless otherwise stated, insurances under this sub-clause shall cover all physical loss / damage and third party liability subject only to minimum compulsory / general exclusions.

- c) Alterations to the terms of insurance shall not be made without the approval of the Purchaser.
- d) The required insurance coverage referred to and set forth in this clause shall in no way affect or limit Contractor's liability with respect to performance of the work or any obligation under the Contract / law.

1.18.2 Cargo Insurance till FOB Indian port as per INCOTERMS 2020:

Insurance till FOB Indian port as per INCOTERMS 2020, covering all physical loss / damage and third party liability subject only to minimum compulsory / general exclusions, for full replacement value of the consignment/cargo from the Contractor's or Sub-contractor's works or Supplies.

1.18.3 Storage Insurance / Contractor's All Risk Insurance Policy:

Insurance should cover physical loss or damage to the supplies at storage against All Risks including Terrorism occurring prior to the completion and handing over of supplies.

1.18.4 Insurance for Contractor's Personnel

The Contractor shall effect and maintain insurance against liability for claims, damages, losses and expenses (including legal fees and expenses) arising from injury, sickness, disease or death of any person(s) employed at site by the Contractor or any Contractor's Personnel.

In accordance with the applicable statutory requirement, the Contractor should take Workmen's Compensation Insurance for his workmen. The phrase "Purchaser's interest is protected" shall be endorsed in the Policy.

1.18.5 Third Party Liability Insurance

Covering bodily injury or death suffered by Third parties (including Purchaser's personnel) and loss or damage to the property occurring in connection with the supply.

1.18.6 Automobile Liability Insurance:

The Contractor shall maintain automobile liability insurance covering all owned, non-owned and hired automobiles, trucks and other vehicles used by Contractor or its sub-Contractors in connection with the execution of Contract.

1.18.7 General

In all insurance policies except for Third Party liability insurance and Automobile insurance, the Purchaser shall be named as "Loss Payee".

The Contractor shall ensure that, where applicable, its sub-Contractor(s) shall take out and maintain in effect adequate insurance policies for their personnel and vehicles and for work executed by them under the Contract, unless such sub-Contractors are covered by the insurance policies taken out by the Contractor.

1.19 Storage of items at Contractor's place

- a) If the Purchaser makes a duly justified request to postpone the supply of the whole or part of the items at least 60 (sixty) calendar days prior to the stipulated date of dispatch of DNB Vessel and/or HNB3 Vessel, the Contractor shall be responsible for providing storage, protection and maintenance for both the Vessels (DNB and HNB3 Vessel), free of charge, for a period of 60 (sixty) calendar days from the stipulated date of dispatch.
- b) The Purchaser shall provide the Contractor, direction on future storage, protection or maintenance requirements no later than the 40th calendar day of the free-of-charge period of 60 (sixty) calendar days. If the period exceeds 60 (sixty) calendar days, the Contractor shall continue to provide storage, protection and maintenance.
- c) An agreement between the Purchaser and the Contractor will be reached concerning the reimbursement of actual duly documented and justified costs incurred by the Contractor during the period of time in excess of the aforementioned 60 (sixty) calendar days.

1.20 Warranty, Defect Liability, Latent defect

1.20.1 Warranty

- 1.20.1.1 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 new, unused and free from any defects.
- 1.20.1.2 The Contractor shall provide a minimum warranty (for DNB Vessel) covering repair or replacement of Items up to 24 months from the final/site acceptance at On-site. The Contractor shall provide a minimum warranty (for HNB3 Vessel) covering repair or replacement of Items up to 24 months from the final/site acceptance at On-site. Final Acceptance is acceptance at "On Site" as defined in of "Annexure 2_QA, QC, Inspection and testing" of Section-B of the tender. Note: This warranty is applicable to all the activities performed by the Contractor under this Contract.
- 1.20.1.3 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 and within 60 days 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.
- 1.20.1.4 A reasonable time limit for repair or replacement of defective item(s) under warranty shall be guaranteed by the Contractor and agreed by the Purchaser.
- 1.20.1.5 In case, any kind of defect attributable to the Contractor is found in the supplied items at on-site (ITER Organization, Cadarache, France) during the warranty period, then, the Contractor shall repair/replace the same at his own cost and risk. The Contractor shall bear all the expenses for such repair/replacement including to & fro, lodging, boarding expense at on-site etc.

1.20.1.6 If any supplied item is repaired/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 repair/replacement, or remaining original warranty period, whichever is longer.

1.20.1.7 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 components cannot be repaired or altered to make it comply with the requirements of the Contract, the Contractor shall remove and replace the defective component confirming in all respects to the stipulated specifications at the Contractor's own cost.

1.20.2 Contractor's Failure to Repair/Replacement of defective Goods during the warranty period

1.20.2.1 If the Contractor fails to repair or replace the damaged/defective items within the notified time period by the Purchaser, the Purchaser at his option either :

1.20.2.1.1 Replace or rectify such defective items and recover the actual costs so involved from the Contractor

1.20.2.1.2 Acquire the defective items/Systems/components at a reduced price considered equitable under the circumstances. The provision of this article shall not prejudice the Purchaser's rights under Clauses [1.20](#) and [1.14](#).

If the Contractor fails to make the required repairs/ replacement within mutually agreed time, then in pursuant to clause [1.20.2.1.1](#), 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 or recovered from the PBG by the Purchaser. 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.

1.21 Care of supplies

- a) From the date of commencement of the Contract, the Contractor shall be responsible for the care and custody of the supplies or any part thereof until the delivery of Items on FOB Indian Port basis.
- b) In the event any item is damaged, lost, stolen, destroyed or otherwise impaired while in storage at Contractor's place/manufacturer's factory, the Contractor shall at its own expense and cost restore or replace such affected item.
- c) The Contractor shall also be responsible for any loss or damage to the supplies caused by the Contractor or its subcontractors in the course of any work carried out, pursuant to clause [1.14](#) (Contractor's liability for defective goods).

1.22 CHANGES

1.22.1 Right to vary

1.22.1.1 Purchaser shall have the right to propose to the Contractor from time to time during the performance of the whole Contract period to make any change, alteration, modification, addition or deletion to the Contract, including the PARTICULARS (hereinafter called "Change"). The Contractor shall accept such CHANGES as a part

of the Contract. Such CHANGES in the PARTICULARS during Contract period shall be governed by applicable sub-clauses of clause [1.21](#)

1.22.1.2 The Contractor may from time to time during its performance of the Contract propose to the Purchaser any Change that the Contractor considers necessary or desirable. The Purchaser may at its discretion approve or reject any Change proposed by the Contractor.

1.22.1.3 Notwithstanding clauses no. [1.22.1.1](#) and [1.22.1.2](#), no change made necessary because of any default of the Contractor in the performance of its obligations under the Contract and/or for Contractor's convenience, shall be deemed to be a Change, and such change shall not result in any adjustment of the Contract Price or the Time for Completion.

1.22.2 Changes Originating From Purchaser

1.22.2.1 Clause 8.6 of Section-B_Technical & management specifications, Scope of Supply and Scope of Work and Annexure 12_Engineering Analysis for more details

1.22.2.2 If the Purchaser proposes a Change pursuant to this clause, it shall send to the Contractor a "Deviation Request" (Template will be provided in the Contract) requiring the Contractor to prepare and furnish to the Purchaser as soon as reasonably practicable a "Change Proposal," which shall include the following (as applicable):

- a. Brief description of the Change
- b. Effect on the Contract schedule
- c. Effect on the Contract Price
- d. Effect on Functional Guarantees (if any)
- e. Effect on any other provisions of the Contract.

1.22.2.3 Within 120 days from the date of receipt of the Change Proposal, the Purchaser and the Contractor shall mutually agree upon all matters therein contained. Within 120 days, the Purchaser shall, if it intends to proceed with the Change, instruct the Contractor to carry out the Change. However, the Contractor shall implement the changes, without waiting for such agreement with the Purchaser on cost and schedule.

1.22.2.4 If both the Parties do not mutually agree within 120 days from the date of receipt of change proposal, then both the Parties shall mutually agree on a period for reaching such an agreement. If the Purchaser decides not to proceed with the Change for whatever reason, it shall, within the said period of 120 days, notify the Contractor accordingly.

1.22.2.5 However, if the Parties cannot reach agreement within mutually agreed period, then the provisions of clause no. [1.26](#) shall apply.

1.22.3 Changes Originating From Contractor

1.22.3.1 If the Contractor proposes a Change pursuant to clause no. [1.22](#), the Contractor shall submit to the Purchaser a written Change Proposal (Template will be provided in the

Contract) giving reason for the proposed Change and including the information specified in clause no. [1.22.2.2](#) and then the provisions of clause [1.22.2.3](#), [1.22.2.4](#) and clause [1.22.2.5](#) shall apply. The changes shall be effected only on receipt of acceptance of Change Proposal by Purchaser.

1.22.3.2 In case any changes or modifications in the design of any Item(s) arise during manufacturing phase, and provided such changes or modifications have positive cost implication, the same shall be carried out by the Contractor after taking the prior approval of the Purchaser, free of cost i.e. without extra cost to the Purchaser.

1.23 Suspension of work

- a) The Purchaser may, by notice to the Contractor, order the Contractor to suspend performance of any or all of its obligations under the Contract, for any of the following reasons:
 - i. On account of any default of the Contractor with or without impairing safety of the works, or
 - ii. For proper supply of the items or part thereof for reasons other than the default of the Contractor, or
 - iii. For safety of the supplies or part thereof, for reasons other than the default of the Contractor
- b) Such notice shall specify the obligation of which performance is to be suspended, the effective date of the suspension and the reasons. Therefore, the Contractor shall there upon suspend performance of such obligation (except those obligations necessary for the care or preservation of the supplies) until ordered in writing to resume such performance by the Purchaser.
- c) The Contractor shall not be entitled to an extension of time for, or to payment of the cost incurred in consequence of suspension as per sub-clause [1.23.a\(i\)](#)
- d) The Contractor may be entitled to an extension of time as mutually agreed in consequence of suspension as per sub-clauses [1.23.a\(ii\)](#) and [\(iii\)](#)

1.24 Foreclosure of Contract

- a) 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.
- b) Upon receipt of the notice of foreclosure under sub-clause [1.24.a](#), the Contractor shall either immediately or upon the date specified in the notice of foreclosure
 - i) 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.

- ii) Terminate all subcontracts, except those to be assigned to the Purchaser pursuant to sub-clause (b) (ii) above
- iii) Stop all further purchasing and/ or subcontracting activities related to work foreclosed.
- iv) In addition, the Contractor, subject to the payment specified in sub-clause [1.24.a](#) shall
 - a. supply to the Purchaser the parts of the items procured by the Contractor up to the date of foreclosure
 - b. to extent legally possible, assign to the Purchaser all right, title and benefit of the Contractor to the supplies and to the plant and equipment as of the date of foreclosure, and, as may be required by the Purchaser, in any subcontracts concluded between the Contractor and its subcontractors.
 - c. Supply to the Purchaser all non-proprietary drawings, specifications and other documents prepared by the Contractor or its subcontractors as at the date of foreclosure in connection with the supplies.
- c) In the event of foreclosure of the Contract under sub-clause [1.24.a](#), the Purchaser shall pay to the Contractor the full amount at Contract rates, properly attributable to supplies completed and/or the parts of the items supplied by the Contractor and accepted by the Purchaser as of the date of foreclosure. Both the Parties shall mutually agree on unit rate of such supplies accepted by the Purchaser.

1.25 Cancellation/Termination of Contract

1.25.1 Termination of Contract for default

- 1.25.1.1 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:
 - 1.25.1.1.1 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.
 - 1.25.1.1.2 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
- 1.25.1.2 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
 - 1.25.1.2.1 Forfeiture of Security deposit
 - 1.25.1.2.2 Recovery of Liquidated Damages (LD) as per the Contract.
 - 1.25.1.2.3 To purchase from elsewhere, after (thirty) 30 days notice to the Contractor, on account and 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.

1.25.1.2.4 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.

1.25.1.3 In the event of action being taken under sub-clause [1.25.1](#) 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 without prejudice to the right of the Purchaser, to recover the damages for breach of Contract by the Contractor as provided in the Contract or under the general law.

1.25.1.4 If the Contract is terminated as provided in clause [1.25.1](#), 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.

1.25.1.5 The termination will not relieve the Contractor from submitting the Performance Bank Guarantee for the portion not terminated. Refer Annexure-08 for undertaking to be submitted by the Contractor at the time of signing of Contract.

1.25.2 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. Purchaser would be 'Financial Creditors' for, if any, sums remaining to be recovered after settlement of Contract and forfeiture/encashment of SD/ABG/PBG.

1.25.3 Termination of contract for convenience

After placement of Contract, there may be some unforeseen situations compelling the Purchaser to cancel the Contract. In such a case, the Purchaser will send a suitable notice at least one month in advance to the Contractor for cancellation of the Contract, in whole or in part, for Purchaser's convenience, inter alia, indicating the date with effect from which the termination is to become effective. Depending on the merits of the case, the Purchaser suitably compensates the Contractor on mutually agreed terms for terminating the Contract.

1.26 Precedence

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

1.27 Settlement of disputes and Arbitration

1.27.1 Settlement

- 1.27.1.1 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 [1.27.2](#)
- 1.27.1.2 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.

1.27.2 Arbitration

- 1.27.2.1 All disputes or differences arising out of or in connection with the Contract including the one connected with the validity of the Contract or any part thereof, should be settled by bilateral discussions.
- 1.27.2.2 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 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.
- 1.27.2.3 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.
- 1.27.2.4 The parties shall continue to perform their respective obligations under the Contract during the pendency of the arbitration proceedings except in so far as such obligations are the subject matter of the said arbitration proceedings.

1.28 The Contract

1.28.1 Signing of Contract(s):

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

1.28.2 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.

1.28.3 Coming into Force (Effect of Contract)

The Contract shall come into force from the date of Letter of Intent (LoI)

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 (Security Deposit)
2. Annexure-2: Bank Guarantee (Advance Payment)
3. Annexure-3: Performance Bank Guarantee (PBG)
4. Annexure-4: Intellectual Property Rights Provisions
5. Annexure-5: Integrity Pact
6. Annexure-6: Non-Disclosure Agreement
7. Annexure-7: Undertaking for Storage
8. Annexure-8: Undertaking from the Contractor for termination of the Contract for default
9. Annexure-9: Indemnity Bond for FIM



Annexure-1: Bank Guarantee (Security Deposit)

(On non-judicial stamp paper of appropriate value)

BANK GUARANTEE NO. _____ DATE: _____

THIS DEED OF GURANTEE MADE AT _____ this
_____ day _____ of
_____ between _____ having
its registered office at _____ and one of its
branches at _____ (hereinafter called “the Bank” which expression shall mean and include the
said _____ and its successors and assigns) of the one part AND ITER-India
(INSTITUTE FOR PLASMA RESEARCH) Block A, Sangath Skyz, Bhat-Motera Road, Koteswar,
Ahmedabad 380005, Gujarat, INDIA (hereinafter called “the Purchaser” which expression shall mean
and include the said ITER – India, AHMEDABAD and its successors and assigns) of the other part.

WHEREAS _____ (hereinafter called “the
Contractor”) having its registered office at _____ have entered into a
Contract having Contract value of INR. _____ (In words
_____) with the Purchaser being Contract No.
_____ dated _____ for _____ in accordance
with the terms, specifications and conditions contained therein.

AND WHEREAS under the terms of the aforesaid Contract, the Contractor is to furnish to the
Purchaser a Bank guarantee for an amount of INR. _____ (Rupees
_____) being 3% of the total value of the Contract by way of security for
fulfilment of the Contractual obligations on the part of the Contractor there under.

AND WHEREAS the Contractor has requested the Bank to guarantee the due payment of the aforesaid
amount by the Contractor to the Purchaser in case the Contractor fails to fulfil any of the aforesaid
Contractual obligations.

NOW THIS DEED WITNESSES AS FOLLOWS:

1. The Bank hereby agrees unequivocally and unconditionally to pay within 48 hours, on demand, in
writing from the Purchaser or any officer authorised by it in this behalf and without recourse to the
Contractor and without any demur, or protest or objection any amount up to and not exceeding
INR. _____ (Rupees _____) to the Purchaser on behalf of the
Contractor.
2. This guarantee is valid and binding upon the Bank till delivery of last consignment under this
Contract and shall not be terminable or affected by notice of any change in this constitution of the
Bank or of the firm of Contractor or on account of any reason whatsoever.
3. The liability of the Bank hereunder shall not be impaired or discharged by any extension of time
or variations or alterations made or conceded or agreed within or without the knowledge or consent
of the Bank or by or between the parties to the said Contract.



4. The liability of the Bank under this deed is restricted to the sum of INR. _____ (Rupees _____) and same shall remain in force till successful completion of Final On-Site Acceptance under this Contract. In case any further extension of the present guarantee is required the same shall be granted on receiving instructions in writing there for from the Contractor on whose behalf this guarantee is issued.
5. Unless proceeding for enforcing this guarantee is commenced against the Bank within two months from the expiry of the aforesaid period or such extended period or periods as aforesaid all the rights of the Purchaser under this guarantee shall be extinguished and the Bank shall be relieved and discharged from all liabilities hereunder.
6. The neglect or forbearance of the Purchaser in enforcement of any of its rights under the aforesaid Contract against the Contractor shall in no way relieve the Bank of its liability under this deed.
7. OUR GUARANTEE shall remain in force until _____ (two months beyond the successful completion of Final On-Site Acceptance under this Contract) and unless a claim under the guarantee is lodged on or before the above date, all rights of Purchaser 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.

This the _____ day of _____ 20_____.

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

Witnesses:

(1) Name: _____ Signature _____

(2) Name: _____ Signature _____



Annexure-2: Bank Guarantee (Advance Payment)

(On non-judicial stamp paper of appropriate value)

BANK GUARANTEE NO. _____ DATE: _____

1. 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")
2. 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.
3. 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.
4. 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.
5. 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).
6. 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 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 delivery of last consignment under this Contract) and unless a claim under the guarantee is lodged on or before the above date, all rights of the Purchaser 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 _____

(2) Name: _____ Signature _____



Annexure-3: Performance Bank Guarantee (PBG)

(On non-judicial stamp paper of appropriate value)

BANK GUARANTEE NO. _____ DATE: _____

1. WHEREAS on or about the _____ day of _____ 20__ M/s _____, a company registered under the Companies and having its registered office at _____ (hereinafter referred to as "the Contractor") entered into an Contract bearing No. _____ dated _____ (hereinafter referred to as "The Contract") 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").
2. AND WHEREAS under the terms and conditions of the contract an amount of INR _____ (Rupees _____ only) representing balance _____ percent payment out of the total value of the contract of INR _____ (Rupees _____ only) is to be paid to the Contractor on the successful completion of Final On-Site Acceptance under this Contract and on the Contractor furnishing a bank guarantee in a manner herein contained towards satisfactory performance of the equipment during warranty period, viz. 24 months from the date of Final Acceptance of the said equipment.
3. NOW WE, _____ (Name and Address of the Bank) in consideration of the promises and the payment of said sum of INR _____ (Rupees _____ Only) by the Purchaser to the Contractor do hereby agree and undertake to pay to the Purchaser the amount due and payable under the 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 suffered by the Purchaser by reason of unsatisfactory performance of the equipment during the warranty period. 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).
4. WE, _____ (Bank) undertake to pay to ITER-India 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 bond 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 for making such payment.
5. WE, _____ (Bank) hereby further agree that the decision of the Project Director, ITER-India as to whether the said equipment is giving satisfactory performance or not during the warranty period and as to the amount of damages suffered by the Purchaser on account of the unsatisfactory performance of the said equipment shall be final and binding on us.



6. AND WE, the _____ (Bank) do hereby agree that our liability hereunder shall not be discharged by virtue of any Agreement/Contract/Purchase Order between the Purchaser and the Contractor whether with or without our knowledge and/or consent or by reason of the Purchaser showing any indulgence or forbearance to the Contractor whether as to payment, time for performance, or any other matter whatsoever relating to the contract which but for this provision would amount to discharge of the surety under the law.
7. THIS GUARANTEE will not be discharged due to the change in the constitution of the Bank or the Contractor(s).
8. OUR GUARANTEE shall remain in force until _____ (two months beyond the Contract warranty period) and unless a claim under the guarantee is lodged with us on or before the above date, all rights of the Purchaser under the guarantee shall be forfeited and we shall be relieved and discharged from all our 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 _____

(2) Name: _____ Signature _____

Annexure-4 - INTELLECTUAL PROPERTY RIGHTS PROVISIONS**Intellectual Property and Provision****1. General terms & definitions:**

1.1 As defined in Article 1.2 & 1.3 of Annex on Information and Intellectual Property (IIP Annex) of the Agreement on the Establishment of the ITER International Fusion Energy Organization for the Joint Implementation of the ITER Project (ITER Agreement), the following definition applies to information and intellectual property:

1.1.1 Information:

“Information” shall mean published data, drawings, designs, computations, reports and other documents, documented data or methods of research and development, as well as the description of inventions and discoveries, whether or not protectable, which are not covered by the term Intellectual Property as defined in 1.1.2

“Information” shall also include confidential information like specifications, 3-D models, samples and prototypes.

1.1.2 Intellectual property (IP):

“Intellectual Property” shall have the meaning defined in Article 2 of the Convention Establishing the World Intellectual Property Organization, done at Stockholm on July 14, 1967. It may include confidential information such as know-how or trade secrets provided that they are unpublished, and in written or otherwise documented form, and

- (a) have been held in confidence by their owner,
- (b) are not generally known or available to the public from other sources, and/or are not generally available to the public in printed publications and/or other readable documents and any form of electronic records
- (c) have not been made available by their owner to other parties without an obligation concerning confidentiality, and
- (d) are not available to the receiving party without an obligation concerning confidentiality.

1.1.3 Background Intellectual property:

“Background Intellectual Property” shall mean Intellectual Property that has been or is acquired, developed or produced, before the entry into force of the Contract, or outside of the scope of this Contract. (Entry into force shall be the date of Letter of Intent (LoI), in case the actual contract is signed after the LoI).

1.1.4 Generated Intellectual Property:

“Generated Intellectual Property” shall mean Intellectual Property that is generated or acquired with full ownership by ITER-India or by the Contractor and its subcontractors, pursuant to and in the course execution of this Contract

2. Provisions under background Intellectual Property:

2.1 Declaration of background:

2.1.1 The Contractor shall declare all Intellectual Property and Information which is held by the Contractor prior to the signature of the Contract or outside its scope and which is needed for carrying out the Contract – this information & Intellectual Property shall be subsequently be referred to as “the background”. The declaration shall provide detailed information on the origin and ownership of the background as well as any legal restrictions relating to its use of which the Contractor is aware. The declaration of the background forms part of the Contract.

2.1.2 The Contractor may identify additional background information after the signature of the contract. However, in such a situation, the Contractor needs to justify why such a background was not invoked originally into the Contract. The use of this Background information shall be authorized only after discussion with ITER-India.

2.1.3 The Contractor must clearly identify the use background information that belongs to a third party for which the Contractor has a license agreement. Further, he must obtain the rights form third party to allow him to use the background in conformity with 2.1.1 and 2.1.2.

2.1.4 The Contractor must clearly identify the Background information that is confidential. ITER-India shall preserve (in a manner agreed mutually with the Contractor) the confidentiality of the same. On transfer of component to IO, the Background confidential information so provided shall be communicated to IO and shall be protected by IO in a manner described in clause 2.2.2.

2.1.5 The background information provided by the Contractor shall be owned exclusively by the Contractor.

2.2 Access to Background information:

2.2.1 The Contractor who has incorporated Background Intellectual Property, except confidential information such as know-how and trade secrets into the items supplied to the ITER-India and the background information so provided is required:

- to construct, operate, use or integrate technology for research and development in relation to the IO facilities,
- to maintain or repair the item provided, or
- when deemed necessary by ITER-India, in advance of any public procurement,

shall grant on an equal and non-discriminatory basis an irrevocable, non-exclusive, royalty free license to such Background Intellectual Property to ITER-India, other Members (of IO) and to the IO either directly or through ITER-India, with the right of the IO to sub-license and the right of the ITER-India and other Members (of IO) to sub-license to their research institutes and institutes of higher education within their respective territory for the purposes of publicly sponsored fusion research and development programme.

2.2.2 The Contractor who has incorporated background confidential information into the items provided to ITER-India and the background confidential information is required:

- to construct, operate, use or integrate technology for research and development in relation to the IO facilities,
- to maintain or repair the item,
- when deemed necessary by ITER-India in advance of any public procurement, or
- for safety, for quality assurance and quality control reasons as required by regulatory authorities,

shall ensure that ITER-India and the IO have an irrevocable, non-exclusive, royalty-free license available to use such background confidential information including manuals or instructional training materials for the construction, operation, maintenance and repair of the IO facilities.

The confidential information shall be transmitted maintaining the protection for confidentiality in accordance with section 2.1.4. The recipient for such information shall use it only for the provisions identified above. IO guarantees this protection and compensation for damages arising from the misuse of the background confidential information shall be the responsibility of IO.

2.2.3 The Contractor's attention is drawn to Article 4.2.4 and 4.2.5 of the IIP Annex of ITER Agreement, whereby the contractor shall use its best efforts to either grant licenses to the background incorporated into the goods supplied under the Contract or to supply such goods to IO Members under the conditions established in Article 4.2.4 and 4.2.5 of the IIP Annex of JIA.

2.2.4 The Contractor is encouraged to make its background incorporated into the goods supplied under the Contract available for commercial purposes under the conditions established in Article 4.2.6 of the IIP Annex of ITER Agreement.

2.2.5 The Contractor shall grant on fair and reasonable conditions a license to use the background information & Intellectual Property, applicable to this Contract to any third party nominated by ITER-India for the purpose of fulfilling a Contract with ITER-India.

3. Provisions under Generated Intellectual Property

3.1 All Information (defined in 1.1.1 above) provided by or on behalf of ITER-India to the Contractor shall remain the property of ITER-India. These shall not be shared without permission from ITER-India.

3.2 The background intellectual property provided by ITER-India will continue to be the property of the ITER-India. Any further extension of the IP during the course of execution of the Contract will also belong to the ITER-India.

3.3 If, during the process of execution of the contract, any improvement, refinement or technical changes and modifications are effected by the contractor to the background Information and IP owned by ITER-India and given to the Contractor for execution, such changes shall not affect the title to the property of the ITER-India and it shall continue to own the modified Information and IP. ITER-India shall have absolute rights to assign, transfer, sublet, use and transmit all such Information and IP to its consultants, agents and collaborators. Contractor shall not have any claim or right whatsoever in respect of the above Information and IP.

- 3.4 Any information and Intellectual property generated during the course of execution of the Contract including those generated at the subcontractors end working for this Contract shall be communicated to ITER-India immediately and ITER-India shall have the first right to protect such generated intellectual property on its name. The Contractor shall take appropriate legal and administrative measures to enable ITER-India protect it in its own name.
- 3.5 In specific cases ITER-India may waive its right to take protection. In such a situation, the Contractor can take the protection of IP in its name and solely at its cost after reimbursing costs incurred by ITER-India (if any) on such a protection. At all times ITER-India shall be entitled to a royalty-free, non-exclusive, worldwide, irrevocable license with the royalty-free right to grant sublicenses on the resulting registered right.
- 3.6 If the Contractor or its employees desires to claim rights on the generated intellectual property, it shall be ensured that the same is possible, subject to compatibility with the Contractor's obligations under the Contract and also ensuring that the rights of ITER-India remain unaffected.
- 3.7 The Contractor shall be permitted to use the generated Intellectual Property for his own needs. For this, he needs to obtain license from ITER-India. The terms shall be mutually agreed.
- 3.8 The Contractor is made aware of the fact that ITER-India may at its discretion, decide to seek protection of a generated intellectual Property, outside India.
- 3.9 For generated IP where ITER-India, decides to seek protection, the inventors will assign their rights to ITER-India.
- 3.10 ITER-India will seek protection through DAE-IPR Cell.
- 3.11 Should the Contractor wish to seek protection of IP generated on the subject matter on the Contract within a period of 24 months after conclusion of the Contract, the same shall be conveyed to ITER-India. It may be noted that the subject of these IPs shall be considered to be a part of the Generated Intellectual Property (and subject to provision 3.3 above), unless the Contractor demonstrates that these have been created outside the scope of the Contract.

4 Indemnities, repair rights and copyrights:

- 4.1 In case the Contractor needs to use the intellectual property belonging to a third party, the Contractor shall indemnify ITER-India from any action for infringement associated with the third party intellectual property.
- 4.2 The Contractor shall have the first right to attend to repairs for proprietary supplies which incorporate background intellectual property owned by him. However, should the Contractor not be successful in effecting repairs for such supplies in the first instance, ITER-India shall have the right to effect repairs by whomsoever it may think fit.



- 4.3 The Contractor shall be responsible for obtaining all permits, license and copyrights required for the implementation of the Contract, as per laws applicable to the place where the Contract is executed. In case of inability to seek the necessary permits, licenses and copyrights, the Contractor shall inform the same to ITER-India and ITER-India shall decide whether to acquire the rights at costs payable by the Contractor or effect a decision to discontinue all or some part of the work

Signed and delivered by

Purchaser
(Official Seal)

Contractor
(Official Seal)

Annexure – 5 - INTEGRITY PACT

ITER-India, a project of Institute for Plasma Research, a society incorporated under the provisions of Societies Registration Act on 28th August 1986 having its office at Block-A, Sangath Skyz, Bhat-Motera Road, Koteswar, Ahmedabad – 380005, India herein after referred to as “**The Principal**”

And

Contractor’s name and address herein after referred to as “**The Contractor**”

Preamble

The Principal has awarded, under the laid down organization procedures, Contract for “**Manufacturing, Testing and Supply of Vacuum Vessels for HNB-3 (Beam line Vessel and Beam source Vessel) and DNB Vessel**”. The Principal values full compliance with all relevant laws, rules, regulations, economic use of resources and of fairness / transparency in its relation with its Contractor

Section 1 – Commitments of the Principal

(1) The Principal commits itself to take all measures necessary to prevent corruption and to observe the following principles:-

- a. No employee of the Principal, personally or through family members, will in connection with the execution of a Contract, demand, take a promise for or accept, for self or third person, any material or immaterial benefits which the person is not legally entitled to.
- b. The Principal during the tender process treated all the Bidders with equity. The Principal in particular, before and during the tender process, provided the same information to all the Bidders and has not provided any Bidders confidential/ additional information through which the Bidders had an advantage in relation to tender processing.
- c. The Principal will exclude from the process all known prejudiced persons

(2) If the Principal obtains information on the conduct of any of its employees which is a criminal offence under the IPC/PC Act or if there be a substantive suspicion in this regard, the Principal will inform the Chief Vigilance Officer and in addition can initiate disciplinary actions.

Section 2 – Commitments of the Contractor

(1) The Contractor to commit himself to take all measures necessary to prevent corruption. He commits himself to observe the following principles during the Contract execution.

- a. The Contractor will not, directly or through any other person or firm, offer, promise or give to any of the Principal’s employees involved in the execution of the Contract or to any third person any material or other benefit which he/she is not legally entitled to, in order to obtain in exchange any advantage of any kind whatsoever during the execution of the Contract.
- b. The Contractor will not enter with others into any undisclosed agreement or understanding.
- c. The Contractor will not commit any offence under the relevant IPC/PC Act, further Contractor will not use improperly, for purposes of competition or personal gain, or pass on to others, any information or document provided by the Principal as part of

the business relationship, regarding plans, technical proposals and business details, including information contained or transmitted electronically.

- d. The Contractor of Indian Nationality shall furnish the name and address of the foreign principals, if any.

- (2) The Contractor will not instigate third person to commit offences outlined above or be an accessory to such offences

Section 3 – Disqualification and exclusion from future Contracts

If the Contractor during execution has committed a transgression through a violation of section -2, above or in any other form such as to put his reliability or credibility in question, the Principal is entitled to disqualify the Contractor from the future tender process or awarding the contracts or take action as per the procedure mentioned in the “Guidelines on Banning of business dealing “.

Section 4 - Compensation for Damages

If the Principal has terminated the Contract according to section 3, or if the Principal is entitled to terminate the Contract according to section 3, the Principal shall be entitled to demand and recover from the Contractor Liquidated Damages as specified in the Contract or Performance Bank Guarantee amount.

Section 5 – Previous transgression

- (1) The Contractor declares that no previous transgressions occurred in the last 3 years with the other Company in any country conforming to the anti-corruption approach or with any other Public Sector Enterprise in India that could justify his exclusion for the Contract process
- (2) If the Contractor makes incorrect statement on this subject, he can be disqualified for entering into to a Contract and the Principal can cancel the awarding of the Contract as per the procedure mentioned in “Guidelines on Banning of business dealings”

Section 7 – Criminal charges against violation Contractor/Subcontractor

If the Principal obtains knowledge of conduct of a Contractor or Subcontractor, or of an employee or a representative or an associate of a Contractor or Subcontractor which constitutes corruption, or if the Principal has substantive suspicion in the regard, the Principal will inform the same to the Chief Vigilance Officer

Section – 8 Pact Duration

- (1) The Pact comes into force from the date of signing by all the parties. It shall expire for the Contractor 12 months after the last payment under the respective Contract.

Section – 9 Miscellaneous Provisions

- (1) This Pact is subject to Indian Law. The place of performance and jurisdiction shall be (as per the Contract) Ahmedabad
- (2) The actions stipulated in this Integrity Pact are without prejudice to any other legal action that may follow in accordance with the provisions of the extent law in force relating to any civil or criminal proceedings.

The Parties hereby sign this Integrity Pact at Ahmedabad on xx-xx-xx

Signed and delivered by

Purchaser

Contractor



Annexure-6: Non-Disclosure Agreement

CONTRACTOR agrees following points to maintain non-disclosure of proprietary and/or confidential information that are presented/referred in the ITER-India Contract for “**Manufacturing, Testing and Supply of Vacuum Vessel for HNB-3 (Beam line Vessel and Beam source Vessel) and DNB**” vide Contract No._____.

1. Any information from the referred documents will not be disclosed to any other third party or person for making any kind of references without the prior permissions from ITER-India.
2. In case information are to be revealed to a sub-contractor/ consortium partner, CONTRACTOR will sign similar ‘Mutual Non-Disclosure Agreement’ with the sub-contractor/ consortium partner and will submit a copy of the same to ITER-India for conforming the compliance of this ‘Mutual Non-Disclosure Agreement’.
3. Any information from the referred documents of this tender will not be used or published for any purposes other than necessary for the present Contract.

CONTRACTOR will take all necessary steps to protect the secrecy of the proprietary and/or confidential Information provided along with the Contract.

Date:

CONTRACTOR
(Name and signature of responsible officer with SEAL)

Annexure -7 : Undertaking for Storage

(On Non-Judicial stamp paper of appropriate value)

We,------(Contractor), give an undertaking as follows, as prerequisite to receive milestone payment as per clause no.----- of Contract.

- The Contractor shall store DNB/HNB3 Vessel(s) free of cost till shipment from Contractor's factory.
- The Contractor will store DNB/HNB3 Vessel(s) in such a way that it will not deteriorate the packed components including its packing as per the Contract.
- The Contractor will be liable and responsible for any loss and/or damage to DNB/HNB3 Vessel(s) during storage at Contractor's end.
- The Purchaser along with insurance surveyor (if applicable) will inspect DNB/HNB3 Vessel(s) before transportation and if any damage(s)/discrepancies/non-conformance are found in the packing of DNB/HNB3 Vessel(s) during the inspection, the Contractor shall rectify the damage(s)/discrepancies/non-conformance at their factory without any financial impact to the Purchaser.
- The Purchaser along with insurance surveyor (if applicable) will inspect the components before transportation and if any damage(s)/discrepancies/non-conformance are found in DNB/HNB3 Vessel(s) during the inspection, the Contractor shall rectify the damage(s)/discrepancies/non-conformance at their factory within the prescribed time-limit by the Purchaser.
- This Undertaking is valid till -----.

Date:

CONTRACTOR

(Name and signature of responsible officer with SEAL)

Annexure – 8 – UNDERTAKING FROM THE CONTRACTOR FOR TERMINATION OF CONTRACT FOR DEFAULT

(On Non-judicial Stamp Paper of appropriate value)

The Contractor agrees to the clause 1.24.1 of Section A(II) as elaborated below under the Contract No. -----dated -----for “Manufacturing and Supply of In-Wall Shield (IWS) for two Vessel Sectors (VSs) and Field Joints (FJs) of ITER Vacuum Vessel”

In case of abnormal delays (beyond the maximum late delivery period as per Penalty clause) in supplies or non-fulfilment of any other terms and conditions given in the Contract, the Purchaser may cancel the Contract in full or part thereof, and may also make the purchase of such Item(s)/material from elsewhere / alternative source at the risk and cost of the Contractor. The Purchaser will take all reasonable steps to get the material/Item(s) from alternate source at optimum cost. This will be without prejudice to any other right of the Purchaser under the Contract. Termination for Default Clause (clause no. 1.24.1 of Section A (II)), in line with Terms and Conditions of Contract, may be invoked in any of the following cases:

1. Contractor’s poor progress of the work vis-à-vis execution timeline as stipulated in the Contract, backlog attributable to Contractor including unexecuted portion of work/ supply does not appear to be executable within balance available period (#) considering its performance of execution.
2. Withdrawal from or abandonment of the work by Contractor before completion of the work as per contract.
3. Non completion of work/ Non-supply by the Contractor within scheduled completion/delivery period as per Contract or as extended from time to time, for the reason(s) attributable to the Contractor
4. Termination of Contract on account of any other reason (s) attributable to Contractor
5. Assignment, transfer, subletting of Contract without Purchaser’s written permission resulting in termination of Contract or part thereof by the Purchaser
6. Non-compliance to any contractual terms & conditions or any other default attributable to Contractor.

#In-case inputs from the Purchaser are likely to be delayed or are actually delayed, this delay may also be taken into account while considering balance period available for execution of Contract.

Risk and Cost against Balance Supply/Work (subject to Value B not paid by the Purchaser, in case, B is paid, it will be added to below formula):

Risk & Cost Amount= $[(A-B) + (A \times H/100)]$

Where, A= Value of Balance scope of Work/ Supply (*) as per rates of new contract



B= Value of Balance scope of Work/ Supply (*) as per rates of old contract being paid to the contractor at the time of termination of contract.

H = Overhead Factor to be taken as 15%

In case (A-B) is less than 0 (zero), value of (A-B) shall be taken as 0 (zero).

*(Balance scope of work/ supply) Difference of Contract Quantities and Executed Quantities as on the date of issue of Letter for 'Termination of Contract', shall be taken as balance scope of Work/ Supply for calculating risk & cost amount. Contract quantities are the quantities as per original contract. If, Contract has been amended, quantities as per amended Contract shall be considered as Contract Quantities. Substitute/ extra items which have been executed but rates have not been approved, would also form part of contract quantities for this purpose and rates of such items shall be determined in line with contractual provisions.

NOTE: In case portion of work is being withdrawn, Contract quantities pertaining to portion of work withdrawn shall be considered as 'Balance scope of work/supply' for calculating Risk & Cost amount.

Date:

CONTRACTOR

(Name and signature of responsible officer with SEAL)

Annexure – 9 - INDEMNITY BOND FOR FIM

(On Rs. Non-judicial Stamp Paper of appropriate value)

WHEREAS the party of one part (party receiving Free Issue Material), hereinafter called the (.....) has entered into a Contract with the party of other part, i.e. the ITER-India (Institute for Plasma Research), Block – A, Sangath Skyz, Bhat-Motera Road, Koteswar, Ahmedabad - 380005, hereinafter called the “ITER-India”(I-I)/Purchaser, vide Contract No. dated DD/MM/YYYY for carrying out (name of job as stated in the said Contract) at a total consideration of Rs. (Rupees..... (in words).

AND WHEREAS as per the terms of the said Contract the (.....) is to ensure safety and security of the (name of material), which is issued to the as Free Issue Material, hereinafter called FIM, valuing Rs. (Rupees (in words) for carrying out the job as per the Contract. The (.....) shall furnish I-I/Purchaser a copy of insurance policy as a proof of it having insured along with this Indemnity Bond for an amount of Rs.(Rupees (in words). The Contractor shall indemnify the Purchaser and keep the Purchaser indemnified to the extent of full value of FIM for such time the entire Contract is executed and proper account for the FIM is rendered by the Contractor to the Purchaser.

NOW the (.....) hereby agrees unequivocally and unconditionally to pay, within 48 hours on demand, in writing from I-I/Purchaser or any officer authorized by it in this behalf and without demur, any amount upto and not exceeding Rs.....Rupees.....(in words) till the completion and handing over the job to the satisfaction of I-I/Purchaser as per the terms and conditions mentioned in the Contract.

NOTWITHSTANDING anything contained hereinabove,

- (i) The liability of the (.....) is restricted to Rs.....(Rupees [in words)
- (ii) This Indemnity Bond shall be valid upto DD/MM/YYYY (till the completion of the Contract).
- (iii) The liability of the (.....) to make payment shall arise and the (.....) shall be liable to indemnify the amount or any part thereof under this Indemnity Bond, only if I-I/Purchaser serves upon the (.....) a written claim or demand in terms of the Indemnity Bond on or before DD/MM/YYYY.



ITER-India
(Institute For Plasma Research)

Tender Notice No.

I-ITN21005

IN WITNESS WHEREOF, we, the (.....) has executed this
Indemnity Bond on this _____ day _____ 2022.

Signature of the Contractor :
Name and Designation :
Seal

Address :

Witness :

- (i) Name and address :
Signature :
(ii) Name and address :
Signature :