

General Terms and
Conditions (GTC)
To
Request For Quotation
(R.F.Q.)

Ref: BR01/RRD/6300032819

PROJECT : RS15 PROJECT

No. of Cars : 80 CARS & SPARES

SCOPE : Manufacture and supply of
Two types of Cover Front for RS15 Project

TWO BID SYSTEM: Technical and Commercial
Separately.

Table of Contents / Index

Sl. No.	Terms / Clause	Page No.
1.	GLOSSARY, DEFINITIONS & INTERPRETATIONS	04
2.	SCOPE OF SUPPLY	05
3.	QUALIFYING REQUIREMENTS OF THE TENDERERS	05
4.	TENDER SUBMISSION CONDITION	05
5.	SUBMISSION OF OFFER IN TWO-BID SYSTEM (TECHNICAL & COMMERCIAL OFFER SEPARATELY)	06
6.	PAYMENT	07
7.	FIRM PRICE	07
8.	AUTHORITY OF PERSONS SIGNING DOCUMENT	07
9.	SECRECY	08
10.	INSURANCE	08
11.	COUNTER TERMS AND CONDITION	08
12.	OTHER CONDITIONS	09
13.	ACCEPTANCE & ACKNOWLEDGEMENT	09
14.	QUALITY & WORKMANSHIP	09
15.	IDENTIFICATION OF ITEMS / PIECES	09
16.	SUPPLY OF SAMPLE	09
17.	DOCUMENT SUBMISSION CLAUSE	10
18.	FALL CLAUSE	11
19.	DELIVERY, LIQUIDATED DAMAGES FOR LATE DELIVERY AND RISK PURCHASE CLAUSE	12
20.	INSPECTION & CONSEQUENCE OF REJECTION	12
21.	LAWS APPLICABLE	13
22.	INDEMNITY	13
23.	BRIBES AND GIFTS	13
24.	JURISDICTION	13
25.	ARBITRATION	13
26.	FORCE MAJEURE CLAUSE	14
27.	RIGHT TO VARY QUANTITIES	14
28.	RAW MATERIALS ARRANGEMENT	14
29.	LANGUAGE	14

Table of Contents / Index

Sl. No.	Terms / Clause	Page No.
30.	TAX CLAUSE	14
31.	PACKING AND MARKING	15
32.	PERFORMANCE BANK GUARANTEE	15
33.	SPARES SUPPORT	16
34.	POST-WARRANTY SERVICE	16
35.	CHANGES IN THE NAME OF FIRM	16
36.	MODIFICATION, ADDITION AND AMENDMENTS	17
37.	ASSIGNMENT OF THIRD PARTY	17
38.	INVOLVEMNET OF ANY AGENT AND MIDDLEMEN	17
39.	INFRINGEMENT OF PATENTS	17
40.	SUPERVISION, TECHNICAL ASSISTANCE AND SERVICE SUPPORT	17
41.	SEVERABILITY	18
42.	SAFETY ASSURANCE	18
43.	LIMITATION OF LIABILITY AND PRODUCT LIABILITY	18
44.	CONFIDENTIAL AGREEMENTS & NON COMPETITION AGREEMENT	19
45.	DEFECT LIABILITY PERIOD & SPARES SUPPORT	19
46.	WARRANTY	19
47.	DIVISION OF PATRONAGE	20
48.	CUSTOM DUTY	20
49.	GST TERMS & CONDITIONS	21
50.	PUBLIC PROCUREMENT	23

1. GLOSSARY, DEFINITIONS & INTERPRETATIONS

Unless otherwise stipulated herein, the following terms shall have the meanings hereby assigned to them:

- a) "Tender" means and includes Offer / Quotation
- b) "Acceptance of Tender" means the letter of memorandum communicating to the supplier, the acceptance of the Tender / offer / quote and includes an advance acceptance of tender.
- c) Equipment/Materials means goods as described in Procurement Technical Specification or Technical Delivery Conditions, which is part of tender
- d) P.T.S. means Procurement technical specification provided by the purchaser.
- e) T.D.C means Technical Delivery Conditions provided by the purchaser
- f) Specification means technical specifications of the Equipment / Material as set forth in Procurement technical specification (PTS) / Technical Delivery Conditions (TDC) / technical drawings, which is part of tender.
- g) BEML Limited / Company means "BHARAT EARTH MOVERS LIMITED", a company registered under the Companies Act, 1956 ("The Purchaser" / "The employer").
- h) "Supplier" means and include a Contractor and also means a person, firm or company with whom the order for supply is placed and shall be deemed to include the Supplier's Successors, representatives, heirs, executors and administrators as the case may be unless excluded by the terms of purchase order.
- i) Representative (s) means the person (s) authorized by Supplier to perform the relevant supervision, inspection at the site if required.
- j) "Stores" means the goods and services specified in the Purchase Order.
- k) Words in singular include the plural and vice versa.
- l) Words importing the masculine gender shall be taken to include the feminine gender and words importing persons shall include any firm, company or association or body of individuals whether incorporated or not.
- m) The wording of these conditions shall not affect the interpretation or construction thereof.
- n) F.O.B. / F.D.D. is to be interpreted in accordance with the provisions of INCOTERMS 2010, unless otherwise specified in this Tender Document / Purchase order.
- o) Delivery means the date of arrival of the equipment / materials dispatched by Supplier in accordance with the terms & condition and Procurement technical specification (PTS) attached herewith.
- p) Bank means any scheduled commercial bank authorized by RBI of supplier's country wherever applicable.
- q) **Purchase Order:**
"Purchase Order" means and includes the invitation to tender, instructions to Tenders, tender, minutes of discussions / negotiations acceptance of tender, contract between purchaser & supplier to be executed in the most approved, substantial and drawings in the quantities set forth in the purchase order on the date or dates specified therein, general terms and conditions of Purchase Order, Special conditions of purchase order, particulars, descriptions, specifications and other conditions specified in the acceptance of tender and includes a repeat order which has been

accepted or acted upon by the / for the supplier for supply of stores and includes an order for performance of service and a formal agreement, if executed. Unless otherwise specified, the equipment / material shall be entirely brand new and of the best quality with workmanship to the satisfaction of the purchaser.

- r) **End-Customer / End-user** means M/s. DMRC or their representative(s).
- s) **Offer:** An offer is the response from a source to a tender Enquiry. An offer is considered to be valid if it is not a late / regret / unsolicited offer. It refers to the submission of quotation by a firm in the form of price for supplying the item to the required specification and quantity or for a service to be rendered in response to an enquiry along with commercial terms.
- t) **Late Offer:** Any offer / quotation received after closing hours of due date for opening of tender will not to be considered for evaluation purposes.

2. SCOPE OF SUPPLY

The offer / supply should strictly confirm to all the technical /physical parameters indicated in the Procurement Technical Specification (P.T.S.) / Technical Delivery Conditions (TDC) / Drawings enclosed. The supplier shall supply and deliver the equipment/materials as under:

- a) **In case of foreign Supplier** : F.O.B. (Free on Board) suppliers' nearest port basis.
- b) **In case of Indian Supplier** : F.D.D. (Free Door Delivery), BEML Limited, Bangalore.

Strict compliance with the purchase order and the details of which are as per scope indicated in the purchase order.

3. QUALIFYING REQUIREMENTS OF THE TENDERERS.

The Bidders shall provide satisfactory evidence acceptable to the purchaser to show that:-

- a) The Bidder is a licensed manufacturer, who regularly manufactures the items offered and has adequate technical knowledge with relevant practical experience.
- b) The Bidder has adequate financial stability and status to meet the obligations under the purchase order for which he is required to submit a report from a recognized bank or financial institution.
- c) The Bidder has adequate manufacturing capacity and capability to manufacture and supply the items offered within the agreed delivery schedule.
- d) The Bidder has established quality control systems and organization to ensure adequate control at all stages of the manufacturing process.
- e) In addition to the above, further information regarding his capacity, capability, if required by the purchaser, shall be promptly furnished by the Bidder and would offer all facilities to representatives of the purchaser for assessing capacity , capabilities by actual visit to his work place/office if required.

4. TENDER SUBMISSION CONDITION

- a) Please ensure that offers are submitted against individual items in the tender invitation published through BEML SRM e-procurement platform within the Closing date & time indicated therein.
- b) Offers received after the closing time and date will not be considered.
- c) The quotation should be kept valid for a minimum period of **180 days** from the date of closing the tender.

- d) Please return the drawing(s) / technical specification(s) along with the quotation as otherwise the quotation is liable to be ignored.
- e) The price quoted should be both in figures and words. *In case of any variation, the lower price will be taken for the purpose of tender evaluation.*
- f) Prices should be on F.O.B. (Free on Board) supplier's nearest port basis (**In case of foreign Supplier**) and F.D.D. (Free Door Delivery), BEML Limited, Bangalore (**In case of Indian Supplier**) and prices are to be firm till completion of supplies against the purchase order. Under any circumstances, no increase in price during the execution of the contract is admissible unless other-wise agreed specifically in the contract by the purchaser.
- g) Bidders to indicate the GST and other levies applicable. GST shall be paid only after confirmation of payment of GST by vendors on GST Website.
- h) BEML Limited reserve the right to avail the price offered for full quantity of the tender or part thereof or ignore the offer completely without assigning any reason whatsoever. BEML also reserves the right to increase the order quantity at the same rates and terms and conditions during the pendency of the contract.
- i) Canvassing in any manner, including unsolicited letters after submission of tenders, or post tenders corrections shall render offers liable for rejection.
- j) Each page of the quotation/ offer must be numbered consecutively, should bear the tender number and should be signed by the Bidder at the bottom. A reference to the total number of pages comprising the offer must be made at the top right hand corner of the first page.
- k) The suppliers will be responsible for the material to reach destination intact & the transit insurance should be arranged by them only. Delivery indicated in the tender enquiry is to be adhered to. Delay in delivery will result ***in levy of Liquidated Damage charges at the rate of 0.1% of total value of the amounts apportioned to the affected delivery schedule for each calendar day of delay for first 30 days and 0.25% of the total value of the amounts apportioned to the affected delivery schedule for each calendar day of delay beyond 30 days to the maximum of 10 % of purchase order value.*** The extent of LD applicable is only for the undelivered items.

5. SUBMISSION OF OFFER IN TWO-BID SYSTEM (TECHNICAL & COMMERCIAL OFFER SEPARATELY)
If specified in the tender,

- a) **If specified by the purchaser in RFQ,** the bidder in addition to the compliance for conditions stipulated in Tender Submission Condition (Clause 4) above has to **submit the Quote/offers in two bids in BEML SRM e-procurement platform as under :**

Technical bid (without price): Bidder should have all requisites technical details, with compliance to the Terms and conditions including deliveries. Enclosures related to technical and other information deemed appropriate in respect of this tender may be enclosed in C Folder. **Please note that technical bid should not have any prices / price details** Offers will be rejected in case price details are indicated in the Technical Bid. **Firm has to submit the Integrity pact along with Technical bid.**

- b) **Commercial Bid:** Should contain only Price and applicable tax details and the same should be uploaded in **BEML SRM e-procurement platform only.**
- c) If the item is covered on DGS&D rate contract, it should be confirmed that the prices are same as applicable to DGS&D /Government Departments. The DGS&D rate contract reference should also be indicated, besides giving a copy of the rate contract.

6. PAYMENT

a) APPLICABLE TO FOREIGN BIDDERS

- i. In accordance with BEML Ltd standard practice, payment against any order materializing out of your offer will 100% by an irrevocable Letter of credit in favor of supplier payable within 60 days from the date of shipment.
- ii. Purchaser agrees to establish an irrevocable letter of credit in favor of supplier thirty (30) days prior to shipment for each delivery after the finalization of the Purchase order, covering the partial amount of purchase order Delivery Quantity. The L/C confirmation charge shall be borne by the supplier if a confirmation is needed / insisted by the supplier.
- iii. All bank charges incurred in Republic of India shall be borne by purchaser and all bank charges outside Republic of India shall be borne by the supplier.
- iv. Any amendment to the established LC by BEML on insistence or fault on part of the supplier, all the LC amendment charges are to be borne by the supplier.
- v. The price of the quotation/offer submitted by the Bidder and subsequent purchase order from the purchaser is firm and not subject to any escalation up to the time of fulfillment /completion of the purchase orders by Supplier.
- vi. For Foreign Vendors: Landed cost calculation would be arrived by considering the following components.
 - 1) Prices should be on F.O.B. (Free on Board) suppliers nearest port basis only. If firm does not agree for FOB terms then those quotation may be liable for rejection. This conditions to be complied in GTC and uploaded along with Technical Bid.
 - 2) Further on the FOB price, cost insurance freight (CIF) would be added to arrive at CIF prices @3% on FOB charges and Local freight would be added @1.5% on CIF.
 - 3) Loading interest for payment terms if not agreed as per BEML standard payment terms of 100% by an irrevocable Letter of credit in favor of supplier payable within 60 days from the date of shipment @ 12% per annum would be added.
 - 4) Customs duty if any for clearing the consignment at customs at the prevailing rate at the time of submission of quotation.

b) APPLICABLE TO THE INDIAN BIDDERS

- i. Please note that our terms of payment are 100% on 30th day for MSE & for others on 60th day from the date of receipt of material at BEML Stores.
- ii. Please indicate the category of your firm under MICRO/SMALL/MEDIUM/MAJOR INDUSTRIES for our data updating with necessary documentary proof of evidence.
- iii. For Indian/Local Vendors: Landed cost calculation would be arrived by considering the following components.
 - The firm to quote for unit price including packing and forwarding charges.
 - Local freight @ 1.5% of Basic price (Including packing charges +taxes) would be added to unit price, if firms does not agree for BEML standard delivery terms of FOR BEML BANGALORE COMPLEX.
 - GST as applicable at the time of submitting the quotation.

- Loading interest for payment terms: If firms does not agree BEML standard payment terms of 60 days credit from the date of receipt and acceptance of material at BEML for Non MSME firms, the interest loading would be added @ 12% per annum for the deviant number of days.

The payment is further subject to the following:

- The Invoice shall be compliant with GST laws.
- GST liability is to be discharged and ensure filing outward supply details on GSTN portal within timeline prescribed.
- Any debit note/supplementary invoice if any, is to be raised within September month following the respective financial year of filing of annual return by BEML, whichever is earlier.
- Any loss of tax credit due to the reason attributable to supplier shall be recovered from supplier along with applicable interest and penalty.
- Bidders to indicate the GST and other levies applicable. GST shall be paid only after confirmation of payment of GST by vendors on GST Website.

7. FIRM PRICE

The prices remain firm for the entire supplies of the purchase order and no escalation shall be entertained under any circumstances. The prices are to be firm & no increase in quoted price will be entertained after awarding contract during the period of Contract for any reasons whatsoever.

8. AUTHORITY OF PERSONS SIGNING DOCUMENT

A person signing the tender or any other document in respect of the Purchase Order shall be deemed to have power to do so on behalf of the Supplier.

9. SECRECY

- All the information, know-how, technical data, specification and drawing models or specimens furnished by BEML for the purpose of or in connection with the manufacture and supply of the stores hereby tendered constitute the property of BEML and the supplier shall keep them in strict confidence and he shall not divulge the same to anyone else except under the authority and for the purpose of BEML. All such documents, data, drawing, models and specimens are the property of BEML and shall be returned when done with or when demanded by BEML.
- The supplier shall not supply the material ordered by BEML to anyone else other than BEML and shall not disclose any initiations, development or adaptations thereof to anyone else except with the written consent of BEML.
- BEML shall be entitled to prevent a breach of the above and to damages in case of breach. In case of non-performance in the PO, BEML will have to take procurement action at you risks and cost apart from levy of liquidated damages.

10. INSURANCE

APPLICABLE TO FOREIGN SUPPLIER

- In case of F.O.B. offers, insurance shall be arranged by the purchaser from supplier port till purchaser destination.
- In case of imports of the materials, although the insurance shall be paid by the purchaser, any loss or damage shall be made goods by the supplier at free of cost, without waiting for the settlement of insurance claim. The purchaser shall reimburse the payment after settlement of insurance claim to the supplier. It will be entirely responsibility of the supplier make good the loss / damage without waiting for the settlement of the insurance claim, so that the material is commissioned within the time specified in the purchase order.

APPLICABLE TO INDIAN SUPPLIER

- iii. In the case of indigenous offer, the purchaser shall not arrange for any transit insurance and the supplier will be responsible till the entire equipment / material ordered for arrive in good condition in destination. Where the Bidder intends to insure the goods, the Bidder may arrange for insurance & pay insurance charges. The Bidder separately in their offer should indicate insurance charges and it shall be paid on the submission of documentary evidence by the Bidder. The consignee will advise the Bidder within 45 (Forty five) days of arrival of goods and it shall be Bidder responsibility to lodge the necessary claim on the carrier and or insurer and peruse the same. The Bidder shall, however at the own cost replace or rectify the goods lost or damaged to the entire satisfaction of the consignee within 30 (Thirty) days from the date of receipt of intimation from the consignee, without waiting for the settlement of the claim.

11. COUNTER TERMS AND CONDITION

- a) Conditional offers will not be acceptable.
- b) When the bidder offers counter terms and conditions of the business, purchaser shall not be deemed to govern by such terms and condition unless written acceptance thereof has been given by purchaser. Terms & conditions noticed of which has not been given in the tender by the bidder and forwarded in subsequent correspondence / after placement of order will not be considered by the purchaser.
- c) Only offer accepting BEML Limited' standard payment shall be considered and evaluated. No deviation in payment terms is acceptable and offer(s) indicating such deviant term is liable for rejection & consideration for evaluation purpose. However, BEML Limited reserves complete rights to decide / accept or reject the offer submitted by the supplier for any deviant terms.

12. OTHER CONDITIONS

- a) BEML do not bind itself to accept the submitted tender & reserve the right to itself of accepting or rejecting the whole or any part of the tender or the quantity offered in full in part without assigning any reason thereof. Supplier will have the obligation to supply the accepted quantity at the offered rate.
- b) The supplier shall be responsible to bear all taxes, levies, duties on imports arising in his country & payable directly or indirectly in respect of goods ordered on him & shall bear all cost of stamping, painting, marking, port fees, etc., as payable on the port of loading.
- c) No representation would be entertained on any error(s) if found in the RFQ. However, vendor(s) shall bring such errors / omissions to notice of BEML for necessary corrective action(s). The vendor's time and expenses has to be borne by vendor(s).
- d) This is a highly confidential document to be circulated only to the participant(s) of the tenders issued by BEML.
- e) **Anti-profiteering law:**
It is mandatory to pass on the benefit arising due to reduction in rate of tax or from input tax credit to the BEML as an anti-profiteering measure.
- f) Special conditions arising out of GST to be complied

13. ACCEPTANCE & ACKNOWLEDGEMENT.

Within 15 days of receipt of the Order, the Supplier shall forward an acknowledgement in acceptance of purchase order in whole including terms and conditions (As applicable) or otherwise of the same failing which it shall be deemed that the Purchase Order has been accepted in total.

14. QUALITY & WORKMANSHIP

The stores supplied shall be of the best quality and workmanship and shall be in strict conformity with all the drawings and specifications furnished to the supplier either earlier or along with the purchase orders and shall answer to the description in all respects. All supplies should be accompanied by suppliers works inspection / test certificate duly certifying that the stores are in strict conformity with the drawings / specifications / descriptions. However, final acceptance of the stores supplied will be subject to inspection and approval by BEML at their works. Once the materials are rejected and communicated to the supplier, no request shall be entertained for re-inspection or acceptance of the

stores. However, BEML reserves the right to re-inspect the stores and consider acceptance at its discretion.

15. IDENTIFICATION OF ITEMS / PIECES

The supplier shall indicate BEML stock number, supplier code number and BEML PO No. and date in all delivery documents, invoices and correspondence. Also he shall emboss / engrave the supplier code no. on each item / piece at a convenient non-machinable place as per drawing, failing which the supplies are liable for rejection.

16. SUPPLY OF SAMPLE if Applicable

Before effecting the bulk supplies, an acceptable sample shall be submitted without any obligation on the part of BEML if required / insisted as regards acceptance, payment and safe custody thereof and supplier shall obtain necessary clearance for effecting bulk supplies as per schedule of delivery. Samples so supplied shall be clearly labeled with Supplier's name, address and Purchase Order number. In respect of any certified sample sent by BEML, the supplier shall be responsible for the safe custody and return of the certified sample intact without damage, after the purpose for which it was given is served, without delay or when demanded back. Any clarification regarding submission of sample shall be obtained from concerned Inspection and Quality Control, BEML Limited. If the supplier submits a sample whether with, before or after the tender, the same shall not govern the standard of supply except when it has been so specifically stated in the acceptance of tender.

17. DOCUMENT SUBMISSION CLAUSE

A. APPLICABLE TO FOREIGN SUPPLIER

- a) In accordance with the standard practice of M/s. BEML Limited, the supplier shall make the equipment/material ready for immediate shipment according to the delivery Schedule indicated in the purchase order and hand over the equipment/material to the freight forwarding agent nominated by Purchaser on F.O.B. (Free on Board) supplier's port basis as applicable & specified in the purchase order.
- b) As soon as each shipment is made in line with the delivery schedule specified in the purchase order, the supplier shall send the following shipping documents to Our Banker by courier service.
 - i. Three original inks signed and six copies of signed supplier's invoice.
 - ii. Three original inks signed and six copies of signed inspection/works test certificates.
 - iii. Three original inks signed and six copies of signed packing list indicated with quantity, purchase order number, consignee name.
 - iv. Three original inks signed and six copies of certificate of the country of origin issued by the concerned authorities (Chamber Of Commerce of supplier Nation)
 - v. Three original inks signed and six copies of certificate of weight & measurements.
 - vi. Three original inks signed and six copies of signed original negotiable clean on board Bill of Lading (B/L) /Air-way bill issued by the shipper.
 - vii. Three original ink signed and six Copies of certificate issued by supplier as to the compliance of order terms & completeness of supply as per order specification.
 - viii. If wood is used as packing material then six copies of Phytosanitary certificate from the concerned authorities indicating that the wood has been properly treated to be seaworthy.
 - ix. six copies of certificate indicating as under:
 - x. "This Invoice is correct in all respects and no other Invoice except the Pro-forma Invoice has been rendered previously in respect of the articles now charged herein."
- c) The ordered equipment/materials will be required to supply as per the delivery schedule in the purchase order. Deviation in shipment/piece meal will not be entertained, unless otherwise specifically communicated by the purchaser to the supplier.
- d) SHIPPING / Letter of Credit Document Submission: **(Applicable for Foreign Bidders)**
 - i. **In-case of Air Shipment:**

One set of photo copy documents indicated in the clause 18.A.b. above should be sent directly by courier through fastest mode / air mail to the following address:

**THE SENIOR MANAGER,
METRO PURCHASE
BEML LIMITED, BANGALORE COMPLEX,
PB NO.7501, NEW THIPPASANDRA POST,
BANGALORE, KARNATAKA, INDIA, POSTAL CODE - 560 075**

ii. **In-case of Ocean Shipment:**

One set of Photo copy documents indicated in the clause 18.A.b. above should be sent directly by courier through fastest mode / air to the following address:

**THE ASSISTANT MANAGER,
BEML LIMITED, ERRABALU CHETTY STREET,
CHENNAI, TAMIL NADU, POSTAL CODE - 600 001**

- e) One set of soft copy may also be emailed to metro.rm2@beml.co.in
- f) **NOTE:** The advance documents should reach the port consignee at least 15 days prior to the arrival of the vessel in case of sea shipment. if there is any accrual of demurrage/wharfage charges, either for belated receipt of documents or for wrong physical markings on the packages / bundles, these charges will be to supplier's account.

g) **CONSIGNEE DETAILS**

(i) PORT CONSIGNEE

The Assistant Manager,
BEML Limited,
Errabalu Chetty Street,
Chennai, Tamil Nadu, Postal Code - 600 001

(ii) ULTIMATE CONSIGNEE

The Deputy General Manager,
BEML Limited, Bangalore Complex,
PB No.7501, New Thippasandra post,
Bangalore, Karnataka, India,
Postal Code - 560 075

B. APPLICABLE TO INDIAN SUPPLIERS

- a) In accordance of standard practice of M/s. BEML Limited, the supplier shall make the equipment/material ready for immediate shipment according to the purchase order and dispatch the items on F.D.D. (Free Door Delivery), BEML Limited, Bangalore Works.
- b) As soon as each shipment is made in line with the delivery schedule specified in the purchase order, the supplier shall send **one set of Original documents and three (3) sets of photocopies** each of the following documents to the address indicated below by courier service.
- i. Commercial / Retail Invoice
 - ii. Delivery Challan
 - iii. Packing List
 - iv. BEML Limited's Source Inspection Team's Inspection clearance document(s), material test certificates and other applicable quality documents pertaining to the supplies.
 - v. Copy of excise gate pass (As applicable)

Postal Address

The Senior Manager, Metro Purchase
BEML Limited, Bangalore Complex,
PB No.7501, New Thippasandra post,
Bangalore, Karnataka, India,
Postal Code - 560 075

18. FALL CLAUSE

- a) The prices charged for the materials supplied under the PO by the tender shall in no event exceed the lowest price by which vendor sells the materials of identical description to any other buyer inclusive BEML office / division, Governmental institutions & PSU during the pendency of the PO.
- b) If at any time, during the said period, the vendor reduces the sale price of such materials or sells such materials to any other buyer as indicated at clause 19.a. at a price lower than the price chargeable under the PO, the vendor shall forthwith notify such reduction or sale to the authority which has placed the PO and the price payable under the PO for the materials supplied after the date of coming into force of such reduction, shall stand correspondingly reduced.
- c) The vendor shall furnish to the consignee / paying authority concerned of this PO the following certificate along with the invoice for the supplies effected under the PO.

"I / we certify that the materials of description identical to the stores supplied to the consignee concerned under the PO have not been sold by me / us to any other vendor inclusive BEML office / division, Governmental institutions & PSU from the commencement of the contract up to the period of completion of delivery at a price lower than the price charged to the consignee concerned of the PO".

- d) Failure in submission of this aforesaid certificate by the vendor will result in withholding of the payment of their bills against supply, if any.

19. DELIVERY, LIQUIDATED DAMAGES FOR LATE DELIVERY AND RISK PURCHASE CLAUSE

- a) The time for and the date of delivery of the stores stipulated in the PO shall be deemed to be the essence of the Purchase order and delivery must be completed not later than the dates specified therein. The supplier shall strictly adhere to the delivery schedule indicated in the PO. Should the supplier fail to deliver the stores or any consignment thereon within the period prescribed for such delivery, BEML shall be entitled at their option either:
 - i. to accept the delayed supply and to recover from the supplier the liquidated damage charges (i.e.) 0.1% of the total value of any equipment/material not delivered for each calendar day of delay for the first 30 calendar days & 0.25% of the total value of the amount for each calendar day for delays beyond 30 Calendar days subject to maximum of 10 % of the value of the purchase order, which the supplier has failed to deliver as aforesaid for each week or part thereof during which the delivery of such stores may be in arrears
(or)
 - ii. to purchase elsewhere, without notice to the supplier on the account and at the risk and cost of the supplier, the stores not delivered or others of a similar description (where stores exactly complying with the description and readily procurable) without canceling the PO in respect of consignments not due for delivery
(or)
 - iii. To cancel the purchase order by issuance of written notice to supplier for delay in delivery beyond 3 months w.r. t. schedule indicated in PO.
- b) In the event of action being taken under (i) or (ii) the supplier shall be liable for any loss, which BEML may sustain on that account but the supplier shall not be entitled to any gain or purchases

made against default. As soon as it is apparent that the scheduled dates cannot be adhered to, an application shall be sent by the supplier to BEML, well before the expiry of the delivery period specified in the purchase order.

- c) Without prejudice to the foregoing rights, if such failure to deliver in proper time as aforesaid shall have arisen from any cause which BEML may admit as a reasonable ground for an extension of the time (and their decision shall be final) they may allow such additional time as they may consider justified by circumstances of the case.
- d) Delivery required to be made in lots shall be made in lots only and any extra deliveries involved either on account of repeated rejections or variance in supply of lots shall be liable for service charges of 5% of the purchase order value for each extra delivery.

20. INSPECTION & CONSEQUENCE OF REJECTION

- a) Maximum care shall be exercised by the supplier to avoid any rejections. Heavy or frequent rejections shall be a ground for termination of the purchase order and BEML shall be entitled for any remedy as provided in **clause-20** of these terms and conditions.
- b) In case the stores get rejected either during the initial inspection stage or during further processing stage, the rejected materials shall be arranged to be collected by the supplier at his own cost within thirty days from the date of intimating such rejection failing which the rejected material shall be disposed off at the discretion of BEML at the risk and cost of supplier. The amount paid to the supplier towards the rejected material including freight, GST, insurance and any other expenses incurred by BEML in this regard shall be paid by the supplier before collecting the rejected material or the same shall be recovered / recoverable from any of the outstanding / future bills of the supplier. Any amount accrued by disposal or rejected material shall be appropriated towards the cost and expenses incurred in this regard.

21. LAWS APPLICABLE

Domestic laws both substantive and procedure, for the time being in force including modification thereto shall govern contract. The competent Domestic courts shall have sole jurisdiction over the disputes between the BEML and the supplier. The making of all stores supplied must comply with the requirements of Domestic Acts relating to trade and merchandise marks and all the rules made under such acts

22. INDEMNITY

The supplier shall at all times indemnify BEML against all claims which may be made in respect of the stores for infringement of any right protected by patent, registration of design or trade mark and shall take all risk of accidents or damage which causes a failure of the supply. The supplier shall comply with the provisions of Contract Labour (Regulation and Abolition) Act, 1970 and the Contract Labour (Regulation and Abolition) Central Rules 1971 as modified from time to time wherever applicable and shall also indemnify the Company from and against any claims under the aforesaid Act and the Rules.

23. BRIBES AND GIFTS

Any bribe, commission, gift or advantage given, promised or offered by or on behalf of the supplier or his partner, agent or servant or anyone on his or their behalf to any officer, servant, representative or agent of BEML or any person on his or their behalf in relation to the obtaining or to the execution of or any other contract with BEML shall in addition to any criminal liability which the supplier may incur, subject the supplier to the cancellation of the PO and all other contracts with BEML and also to payment of any loss or damage resulting from any such cancellation to like extent as is provided in case of cancellation under Clause-20 hereof. Any question or dispute as to the commission of any offence under the present clause shall be settled by BEML in such manner and on such evidence of information as they may think fit and sufficient and their decision shall be final and conclusive.

24. JURISDICTION

Courts of Bangalore, India alone shall have jurisdiction to decide any issue / dispute arising out of the Arbitration or this Purchase Order in exclusion of all other Courts.

25. ARBITRATION

Disputes if any, arising between BEML and the supplier in connection with this Purchase Order or any other matters connected herewith, the same will be mutually discussed and settled, failing which, the disputes shall be referred to a sole arbitrator to be appointed by BEML. The arbitration / proceedings shall be in accordance with the provisions of Arbitration and Conciliation Act 1996 and Rules framed there under.

The place of arbitration shall be at Bangalore and all arbitration proceedings shall be conducted in English language. The award of the sole arbitrator shall be final and binding on all the parties.

Supply under the purchase order, if reasonably possible, may continue by mutual agreement during the dispute / arbitration proceedings.

26. FORCE MAJEURE CLAUSE

- a) Notwithstanding anything contained in the Contract, neither the Service provider nor the BEML shall be held responsible for total or partial non-execution of any of the contractual obligations, shall the obligation become unreasonably onerous or impossible due to occurrence of a 'Force Majeure' conditions which directly affect the obligations to be performed by the BEML or the Service provider. Such events include war, military operations of any nature, blockages, revolutions, insurrections, riots, civil commotions, insurgency, sabotage, acts of public enemy, fires, explosion, epidemics, quarantine restrictions, floods, earthquake, or acts of God, restrictions by Govt. authorities over which the Service provider or the acts on which the BEML has no control.
- b) The party claiming to be affected by Force Majeure shall notify the other party in writing without delay, within two weeks on the intervention and on the cessation of such circumstance. Extension of time sought by the Service provider along with supporting evidence and so granted by the BEML for the supply / work affected, if any, shall not be construed as waiver in respect of remaining deliveries.
- c) Notwithstanding above provisions, BEML shall reserve the right to cancel the order / Contract, wholly or partly, in order to meet the overall delivery schedule and make alternative arrangements including arrangements with third party for completion of deliveries and other schedules. Purchase may takeover partly processed Service at a mutually agreed price.

27. RIGHT TO VARY QUANTITIES

BEML reserves the right to increase or decrease up to 50% of the quantity specified in the schedule of requirements without any change in the unit price or other terms and conditions within the agreed delivery schedule.

28. RAW MATERIALS ARRANGEMENT

The supplier shall make his own arrangement to procure all raw materials required and BEML Limited shall not be responsible for any assistance in such procurement or whatsoever.

29. LANGUAGE

All documents in connection with this purchase order shall be made in English only and shall be expressed by metric system (IS System).

30. TAX CLAUSE

- a) Any tax and/or duty, which may hereafter be imposed outside India, shall be on Supplier's account. On the other hand, any tax and/or duty, which may hereafter be imposed in India, shall be on BEML's account. Notwithstanding the foregoing, tax on supervising fee and/or other training fees shall be on Supplier's account, however, it shall be withheld and paid by BEML in India on behalf of Supplier according to provisions of the corporation tax law, the local inhabitant tax law and convention between Republic of India and the respective Suppliers country, for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income.
- b) Where the government of the supplier's country exempts goods in export from any or all of such taxes, levies, duties on imports, the supplier shall charge the purchase price, which are exclusive of and free from such taxes, levies, and duties on imports.
- c) Any downward revision in taxes or duties imposed in supplier's country should be informed and that benefit should be passed on to the BEML.
- d) Any increase in statutory levies during the period wherein supplier has defaulted to effect supplies as per delivery schedule indicated in contract has to be borne by the supplier.
- e) HSN CODE/CHAPTER ID details are to be indicated along the applicable GST rates for the respective items.
- f) TDS (Tax deducted at source) will be applicable for domestic supplies including service purchase orders and will be deducted as per law of land. SAC (Service Account code) shall be indicated for the services /NRC that will be carried out by the supplier. Presently the applicable TDS is 2%.

31. PACKING AND MARKING

- a) The Equipment/Materials shall be packed in seaworthy wooden packing conditions according to international commercial and industrial practice. The wood packaging materials should be Heat treated (HT) or Methyl Bromide (MB) fumigation, and present the mark which certifies the approved treatment on two opposite sides of the WPM. The Supplier shall apply proper anti-erosion and/or anti-rust compounds of coating, protective waterproof wrapping and/or packing, as the case may be. Supplier shall take reasonable precautions to assure that quantities, weights and identification, as stated on packing lists, are correct
- b) Marking shall include the following information in sequence on the frame commensurate with the size of package.

To: M/s. BEML Limited, Bangalore, Karnataka State, India - 560075.

Purchase order number

Shipper's mark

Port of discharge

Package number

Identification number

Origin of equipment

Caution marks, if applicable

Net weight, gross weight and cubic measurement

32. PERFORMANCE BANK GUARANTEE

The supplier shall establish **single performance bank guarantee** in the prescribed format issued by M/s. BEML Limited (**APPENDIX 'C'**) herewith in the amount equal to ten percent (10%) of the purchase order price to guarantee performance of the equipment/ material against purchase order in favor of the Purchaser, to be executed and submitted, which will be valid for the warranty period.

The performance bank guarantee has to be furnished by the supplier as per prescribed format covering the entire supplies to be made against this order within 30 days from the date of receipt of purchase order from BEML Limited but not later than 45 days before commencement of supplies pertaining to first delivery schedule indicated in the purchase order.

In the absence of performance bank guarantee to be submitted by the supplier as per contract terms, BEML Limited will not open Letter of Credit in favor of supplier **(Applicable only to foreign supplier(s))** pertaining to the shipment / stores to be supplied as per first delivery schedule indicated in the purchase order. Any delay in submission of performance bank guarantee by the supplier, the subsequent delay in opening in Letter of Credit by BEML Limited and supplies to be effected by the supplier are to the account of the supplier, which attracts liquidated damage charges as per contract terms.

The performance bank guarantee will be released automatically after the expiration of warranty period, if there are no defects claims. If successful final acceptance cannot be completed within the validity of the performance bank guarantee bond, the supplier shall be responsible for extending the validity of the bond as advised by BEML Limited.

Bank Guarantee executed by foreign supplier to be counter guaranteed by any scheduled commercial bank authorized by RBI in India without which the bank guarantee will be treated as invalid. Bank Guarantee can also be executed by supplier through any scheduled commercial bank authorized by RBI.

In case of any performance bank guarantee executed by Indian supplier, the same must be executed only through any scheduled commercial bank authorized by RBI.

In respect of Performance Bank Guarantee, the amount of Guarantee shall be enhanced to include the amount of interest, if any, recoverable from supplier payable to Bank.

No claim shall lie against BEML in respect of interest on Cash Deposits or Govt. Securities or depreciation thereof

BEML shall be entitled to and it shall be lawful on its part to encash the Bank Guarantee in whole or in part in the event of any default, failure or neglect on the part of the supplier in the fulfillment or performance either in full or in part of the Purchase Order. The decision of BEML in this regard shall be final and binding on all concerned.

The Bank Guarantee must be issued on the Structured Financial Messaging System (SFMS) platform.

A separate copy of the BG has to be sent by the issuing bank to the Employer's bank through SFMS. The details of Employer's bank are as under:

STATE BANK OF INDIA
Overseas Branch, No.65,
St. Marks Road,
Bangalore – 560001
IFSC Code: SBIN0006861

Following codes are to be used by issuing bank for the purpose of Confirmation and amendment in Bank Guarantees:

Code	Purpose
MT760	Confirmation of Bank Guarantee
MT767	Amendment in Bank Guarantee

Bank Guarantee issued on the SFMS platform with any other code other than mentioned above for the purpose shall not be acceptable to the Employer.

In respect of Performance Bank Guarantee, the amount of Guarantee shall be enhanced to include the amount of interest, if any, recoverable from supplier payable to Bank.

No claim shall lie against BEML in respect of interest on Cash Deposits or Govt. Securities or depreciation thereof.

BEML shall be entitled to and it shall be lawful on its part to encash the Bank Guarantee in whole or in part in the event of any default, failure or neglect on the part of the supplier in the fulfillment or performance either in full or in part of the Purchase Order. The decision of BEML in this regard shall be final and binding on all concerned.

33. SPARES SUPPORT

- a) Supplier will be required to support the equipments/Materials for a period of ten years from the date of receipt of last supply in respect of supply of spares & accessories.
- b) The supplier has to maintain sufficient number of good quality spares of equipment / component indicated in purchase order (At least 4 cars materials) to immediately replenish the faulty / rejected / short supplies effected to the purchaser as per purchase order.

34. POST-WARRANTY SERVICE

Arrangements for after sales service and maintenance in India onsite during warranty & post warranty period should be clearly indicated providing with name, address, phone, fax, contact person, infrastructure along with spare parts inventory held by your Authorized Technical Service Centre.

35. CHANGES IN THE NAME OF FIRM

- a) Where the supplier is a partnership firm, a new partner shall not be introduced in the firm except with the previous consent in writing of the purchaser, which may be granted only up of the execution of a written undertaking by the new partner to perform the purchase order and accept all liabilities incurred by the firm under the purchase order prior to the date of such undertaking. In the event of the supplier's failure to be compiling with this requirement, it shall be lawful for the purchaser to cancel the purchase order and purchase or authorize the purchase of the materials at the risk and cost of the supplier.
- b) On the death or retirement of any partner of the supplier before complete performance of the purchase order, the purchaser may cancel the purchase order and in such case the supplier shall have no claim whatsoever to compensate against the purchaser.
- c) If the purchase order is not determined as provided in sub point (b) above notwithstanding the retirement of a partner from the firm he shall continue to be liable under the purchase order for acts of the firm until a copy of the public notice given by him under the section 32 of the Indian Partnership Act, has been sent by him to the purchaser by registered post acknowledgement due.
- d) The decision of the purchaser as to any matter or thing concerning or arising out of this sub-clause or on any question whether the supplier or any partner of the Supplier firm has committed a breach of any of the conditions in this sub clause shall be final and binding on the supplier.

36. MODIFICATION, ADDITION AND AMENDMENTS

- a) No modification, addition and/or amendment in the terms hereof shall bind on the purchaser & supplier herewith unless these are expressed in writing and duly agreed upon by the purchaser & supplier herewith.
- b) "Apart from the other changes BEML Limited has the sole right to increase/decrease/Change/delete the quantity of the equipment/material at any point of the execution of the purchase order".

37. ASSIGNMENT OF THIRD PARTY

The supplier shall not be entitled without M/s. BEML Limited consent to assign or transfer to a third party all or part of the benefits or obligations of this tender/purchase order. The purchaser have right to accept / decline any such proposals from the supplier without expressing in writing.

38. INVOLVEMNET OF ANY AGENT AND MIDDLEMEN

- a) No involvement of agents or middlemen in India or abroad, except those accredited by ministry of defense, Government of India, in any capacity whatsoever is permitted at any stage in relation with this tender and the resultant purchase order.
- b) Supplier shall confirm that he has not appointed any agent in India to promote the purchase order and that no commission etc is payable to any such agent in connection with this purchase order. Supplier shall also confirm that he has neither paid nor will pay any commission, free or any such charges to any agent in connection with the award and execution of this purchase order. It should be subsequently proved that such a commission, fees or charges has been paid, contrary to the foregoing, buyer shall be entitled to terminate this purchase order forthwith. The buyer shall also be entitled to recover from the seller an amount equal to the commission, fee or any such charge proved, for have been paid.

39. INFRINGEMENT OF PATENTS

- a) The Supplier shall defend and indemnify the Purchaser against any claims, costs or expenses incurred by reason of any infringement of alleged infringement of any letters, patent, registered design, trademarks or trade name by the use of sale of the equipment/material and against all costs or damages which the Purchaser may undergo in legal action for such infringement or for which the Purchaser may become liable in any such action.
- b) The Supplier is not liable for damages if the infringement is due to Purchaser's instructions, the Purchaser's modification of the delivered equipment/material without Supplier's permission, use in manner not covered by the purchase order or the infringement arises out of combination of the equipment with other components.

40. SUPERVISION, TECHNICAL ASSISTANCE AND SERVICE SUPPORT

- a) When the Supplier is requested by the Purchaser through phone, fax, E-mail & in written letter, the Supplier shall, free of charge immediately as soon as possible send relevant supervisor to supervise, advise and cooperate with staff of Purchaser regarding installation, fitting, normal operation and other necessary technical matters of equipment / Materials (including Saturday and Sunday, if necessary). The firms representative shall bring with him the necessary working implements such as tool, test equipment etc. It is the responsibility of the supplier for training BEML Limited personnel's in Installation, commissioning & testing at free of cost for 2 train sets at BEML, Bangalore as well as at DMRC Depot, New Delhi.
- b) During the execution of the contract by the contractor, if the purchaser ("**BEML Limited**") raises the call for deputation of the representative of the contractor ("**The supplier**") reasoning the investigations pertaining to technical fault of the item supplied / installation problem(s) / rework / repair / short supplies / wrong supplies / materials supplied found to be defective or fails to fulfill the requirements of the PO, BEML Limited shall give the supplier notice setting forth details of such defects or failure, and the supplier shall forth with make the defective as good, or after the same to make it comply with the requirements of the PO. Should he fail to do so within a reasonable time not later than 48 hours from the date & time of official intimation from BEML Limited.
- c) BEML Limited reserves right to take alternative action(s) and may reject and replace at the cost of the supplier whole or any portion of the plant at the risk & cost of supplier, as the case may be which is defective or fails to fulfill the requirements. In this regard, BEML reserves rights to en-cash

performance bank guarantee executed by supplier in full or in part(s) to serve the purpose of the equipment / component.

- d) The supplier is responsible for deputation & safety of contractor's representative to BEML Limited's works / designated location(s) with necessary tool / instruments to investigate and rectify the issues informed by BEML Limited. BEML Limited is not responsible and accountable for any charges / cost incurred by the supplier regarding deputation of representative to BEML Limited works.

41. SEVERABILITY

In the event that any one or more of the provisions contained in this Agreement are for any reason held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision or provisions had never been included. The purchaser/ supplier shall, in good faith, amend this Agreement to provide, to the extent possible, each purchaser/ supplier with the benefits provided by such invalid or unenforceable provision.

42. SAFETY ASSURANCE

- a) Safety is defined as freedom from those conditions that can cause death, injury, occupational illness or damage to or loss of equipment or property, or withdraw the train from service. So all equipment & systems including software, affecting train safety & the safety of train crew and passengers & or identified as being "VITAL" shall be designed according to following principles.
- b) Only such components having a high reliability & predictable failure mode shall be used.
- c) Components must be utilized in such a manner that ensures a restrictive condition rather than a permissive condition which will result from component failure.
- d) Circuits shall be designed such that when a normally energized electric circuit is interrupted or de energized, it will cause the controlled function to assume its most restrictive condition.
- e) System safety equipment design must be such that any single independent component or sub-system failure results in a restrictive condition. Failures that are not independent and those failures which in turn, always, cause others must be considered in combination as a single failure and must not cause a permissive condition.
- f) The supplier should carry out Hazard analysis in accordance with EN 50126-1 primarily or any other international standard in area adequately not addressed by former standard. The supplier shall submit Hazard resolving method to BEML Limited for disposal purpose according to Indian Environmental standard.

43. LIMITATION OF LIABILITY AND PRODUCT LIABILITY

- a) Supplier shall assume full responsibility for, indemnify and hold BEML Limited and BEML Limited's sub-contractors harmless from and against any liabilities, product liabilities, action, demand arising out of death of or injury to any person or damage to any property to have resulted from the defects of the ordered parts which are installed in BEML Limited and BEML Limited sub-contractors' rolling stocks either as original equipment or as spare parts and replacement parts under the control of this agreement.
- b) Supplier further agrees to obtain an insurance coverage from reputable insurers in furtherance of this obligations stipulated herein. Supplier shall provide to purchase certificate of such insurance at purchaser's request. In defending any claims or actions, the parties shall consult and cooperate with each other to protect the integrity of the ordered parts. Supplier shall promptly give notice of any claims or actions and investigate accidents involving any defect in the ordered parts to BEML Limited.

44. CONFIDENTIAL AGREEMENTS & NON-COMPETITION AGREEMENT

- a) The Contractor or his employees or agent or anybody engaged by the Contractor to execute the work shall maintain utmost faith and confidentiality of all information and documents come into their possession or knowledge and shall not divulge such information to any third parties, in any case, without prior written consent of BEML.

In case of placement of purchase order by BEML, the supplier has to execute the CONFIDENTIALITY AGREEMENT in plain paper as per prescribed format by BEML (Refer Appendix E) and shall be issued within 45 days from the date of issuance of purchase order by BEML but not later than 30 days before the first delivery schedule indicated in the purchase order.

BEML must be entitled to prevent breach of the confidentiality agreement & to claim damages in case of any breach. It is hereby mutually agreed that for breach of this agreement, the supplier shall pay without actual proof of damages, a liquidated amount of INR 1,00,00,000

- b) In case of placement of purchase order by BEML, the supplier has to execute the NON-COMPETITION AGREEMENT in plain paper as per prescribed format by BEML (Refer Appendix D) and shall be issued within 45 days from the date of issuance of purchase order by BEML but not later than 30 days before the first delivery schedule indicated in the purchase order.

45. DEFECT LIABILITY PERIOD & SPARES SUPPORT :

- a) Warranty (Defect Liability) period shall start from the date of issue of taking over certificate for each train set "T+M" unit up to 18 months.
- b) The supplier shall enclose the list of D.L.P. Spares with item description and quantity along with the technical bid and the same will be forwarded for to end customer for approval. The List of items approved by end customer are to be stocked at end customer's designated depot during the warranty period at free of cost so as to use the same by end customer during break down of equipment without binding to BEML . The item which is used by end customer should be replenished by the supplier at free of cost at the earliest as end customer will carry out auditing once in 3 months.
- c) The supplier has to deliver D.L.P spares applicable, as below:
In case of foreign suppliers: DDP Basis & delivered at designated depots of DMRC in Delhi depot at free of cost.
In case of Indian suppliers: F.D.D. (Free Door Delivery at designated DMRC depot in depot at free of cost.)

46. WARRANTY

1. All the stores supplied items shall be warranted against any defect and/or faults and design, material, workmanship and drawing. The warranty period for each component shall be 24 months from the date of acceptance or 18 months from date of taking over of each train set by customer, whichever is later.
2. The repair and or replacement of failed components and equipment and installation of repaired /replaced component/equipment shall be undertaken by supplier free of charge at site. The supplier shall bear custom duty, freight charges and all other expenses involved in collection of defective components and equipment from the site, and transportation to the manufacturers works in India or abroad and its return to site after repairs. Further should any design modification be required to any component or equipment as a consequence of failure analysis, the minimum period of warranty i.e., 18 months shall recommends from the date when the modified part is commissioned into service and modification shall be carried out free of charge. In all such cases warranty will be applicable on complete sub-assembly even when only component has been modified/ replaced/ repaired due to design change.

3. All replacement and repairs under the warranty shall be carried out by the contractor promptly and to the complete satisfaction of the engineer on notification of the defect by the employer so that no car is unfit for revenue service for more than 48 hrs, which shall exclude time taken for withdrawal/ induction of trains from/ to revenue services and preparation time (placement of train in workshop, inspection by etc.) for making the defects good. In case any train remains out of revenue operation beyond duration specified above due to reasons attributable to contractor or the failure repeats with in a week time, employer may at his soul discretion impose a penalty on the contractor, commensurate within the revenue and opportunity loss to the employer. Decision of employer shall be final and binding.
4. For each case of deboarding of commuters on account of reasons attributable to the contractor, employer, may at his soul discretion impose a penalty of Rs. 200,000/- (two hundred thousand). Decision of employer shall be final and binding.

47. DIVISION OF PATRONAGE

BEML reserves the right to order any part quantity of the tender quantity/distribute the requirement on more than one source at their lowest offer price. In case of ordering on multiple sources BEML reserves the right to distribute the order on more than one source. In case of division of patronage it will be in the ratio 60(L1):40(L2) for two sources & for three sources L1 (50):L2 (30):L3 (20) at the final L1 price.

48. CUSTOMS DUTY ON INPUT CONTENT IMPORTED BY DOMESTIC BIDDERS TO MANUFACTURE TENDERED ITEMS:

Presently RS15 project is executed under project import registration mode in which case if an indigenous supplier imports some items from outside India, the firm has to register with customs for availing concessional rate of duty i.e. 5% BCD in lieu of 10% BCD through project import registration mode

49. GST TERMS & CONDITIONS:-

1. The Supplier is required to comply with all the applicable provisions of the GST Laws/Rules/Notifications/Circulars and to furnish required documents/details within the prescribed time limit to enable BEML to claim the benefits of GST Input Tax Credit or any other benefit.
2. The Supplier is required to furnish proper Invoice/Supplementary Invoice/Debit Note/Credit Note in the form and manner prescribed under GST Laws/Rules/Notifications/Circulars containing all the particulars mentioned therein and within the prescribed time limit as per prevailing GST Laws/Rules/Notifications/Circulars. In case of non-compliance by the Supplier, BEML shall not make any payment towards GST against such invoice until it is complied with within the timeline prescribed under GST Laws/Rules/Notifications/Circulars, and also subject to BEML being in a position to avail GST Input Tax Credit as per applicable GST Laws/Rules/Notifications/Circulars.
3. In case of discrepancy in the data uploaded by the Supplier in the GSTN portal or in case of any shortages or rejection in the supply, BEML will notify the Supplier of the same. Supplier has to rectify the data discrepancy in the GSTN portal or issue Credit note (details to be uploaded in GSTN portal) for the shortages or rejections in the supplies, within the prescribed time limit to enable BEML to avail GST Input Tax Credit.
4. In case, the availment of GST Input Tax Credit by BEML is delayed for any reason other than those attributable to BEML, interest at applicable rate as prescribed under GST Laws/Rules/Notifications/Circulars for such delays shall be recovered from the Supplier.
5. In case Supplier delays declaring such invoice in his GST Return and GST Input Tax Credit availed by BEML is denied or reversed subsequently as per GST Laws/Rules/Notifications/Circulars, GST

amount paid by BEML towards such reversal as per GST Laws/Rules/Notifications/Circulars shall be recoverable from Supplier along with applicable interest.

6. If BEML has not paid/short paid to the Supplier for any invoices within the time limit prescribed under GST Laws/Rules/Notifications/Circulars due to non-compliance of GST Laws/Rules/Notifications/Circulars by Supplier or any other reason attributable to Supplier and leads to any GST Input Tax Credit reversal by BEML, any losses/expenses/cost/penalty, etc incurred by BEML shall be recoverable from the Supplier.
7. Wherever applicable, BEML will have the right to deduct "Tax Deducted at Source" at the rate prescribed under the GST Laws/Rules/Notifications/Circulars and to remit the same to the Government.
8. In case of supplies made under Reverse Charge Mechanism, the Supplier needs to comply with the provisions under the GST Laws/Rules/Notifications/Circulars in terms of supply of Goods/Services and raising of invoice, so as to enable BEML to remit applicable GST to Govt., within the prescribed time limit and avail GST Input Tax Credit on the same. If the Supplier fails to comply with the above and as a result if BEML incurs any losses/expenses/cost/penalty, BEML shall be entitled to recover the same from the Supplier. Further the Supplier has to mention that "the liability of payment of GST amounting to Rs is on the Recipient of Service" in the invoice raised on BEML.
9. The Supplier is required to comply with the E-Way Bill Provisions under GST Laws/Rules/Notifications/Circulars. If the Supplier fails to comply with the said provisions and as a result if BEML incurs any losses/expenses/cost/penalty, BEML shall be entitled to recover the same from the Supplier.
10. In case of materials/goods issued to Supplier for Job Work, the Job Work Supplier is required to return the goods within the time limit prescribed in the Purchase Order. If the Job Work Supplier fails to return the goods as above, BEML will be entitled to raise a GST Supply Invoice on the Job Worker Supplier with applicable interest as per the provisions of GST Laws/Rules/Notifications/Circulars. In such cases, BEML will be entitled to recover all such GST/interest on GST /losses/expenses/cost/penalty, etc. incurred by BEML along with interest from the Job Work Supplier. Further in such cases where the GST invoice has been raised by BEML, on return of such goods after the prescribed time limit, the Job Work Supplier needs to return the same under GST invoice.
11. GST portion of the invoice shall be released only upon the Supplier declaring such invoice in his GST Return and payment of GST thereof to appropriate government and satisfying all the conditions mentioned above. However, in case the Supplier wishes to obtain the payment of GST portion also along with the payment of the base value of the invoice, Supplier has the option to submit Bank Guarantee of an amount equivalent to the GST portion of the invoice plus 3 months' interest at prevailing rate of interest under GST Laws/Rules/Notifications/Circulars as applicable in case of reversal of GST Input Tax Credit. Such Bank Guarantee shall be valid till 30th September of the next financial year or filing of GST Annual Return by Supplier/Vendor (for which such invoice pertains to), whichever is earlier. BEML will release Bank Guarantee only when the Supplier declaring such invoice in his GST Return and remittance of GST thereon to the Govt. In case the Supplier fails to fulfill the required conditions resulting in BEML not been able to avail GST Input Tax Credit Bank Guarantee shall be encashed and such GST amount along with interest and any other cost/loss incurred by BEML shall be recoverable from Supplier.
12. The Supplier have the option to give one Bank Guarantee of appropriate value after considering his estimated value of GST involved in invoices raised on BEML instead of Bank Guarantee for each

Contract/Invoice. In case of payment through LC, suitable provisions/clause will be inserted while opening LC to ensure compliances of above conditions. However, if at any point of time value of such Bank Guarantee falls short of GST plus interest thereof, Supplier will have to either furnish Bank Guarantee for Differential value or such shortfall value of Bank Guarantee vis-à-vis GST plus interest thereof shall be withheld till Suppliers fulfils its obligations specified under above clauses.

13. BEML will be entitled to recover all losses/expenses/cost/penalty, etc. incurred by BEML along with applicable interest from the Supplier due to reasons other than those attributable to BEML.

14. If the Supplier is a Composition/Unregistered Dealer, the Supplier needs to comply with the provisions under the GST Laws/Rules/Notifications/Circulars in terms of supply of Goods/Service and raising of invoice. In case, the Supplier fails to comply with the above and as a result if BEML incurs any losses/expenses/cost/penalty, BEML shall be entitled to recover the same from the Supplier along with applicable interest.

50. **Public Procurement :**

Preference to Make in India Policy: The procurement and placement of order is subject to Public Procurement (Preference to Make in India) Order 2017 issued by the Ministry of Commerce and Industry, Department of Industrial Policy & Promotion, Government of India vide No.P-45021/2/2017-B-E-II dt 15th June 2017. The full details of the order can be seen at <http://dipp.nic.in/whats-new/public-procurement-preference-make-india-order-2017>

- a) The bidder should indicate whether they are claiming purchase preference under Public Procurement Policy –preference to 'Make in India 'order 2017 as per format given in Appendix H.
- b) The local supplier means a supplier or service provider whose product or service offered for procurement meets the minimum local content of 50%.
- c) Local Content means the amount of value added in India which shall be the total value of the item procured (excluding net domestic Indirect taxes) minus the value of imported content in the item (including all customs duties) as a proportion of the total value in percent
- d) If L-1 is not a local supplier, the lowest bidder among the local suppliers will be invited to match the L-1 price subject to local supplier's quoted price falling within the margin of Purchase preference.

COMPLIANCE REPORT(To be submitted along with Technical Bid)**R.F.Q. Reference : BR01/RRD/****Firm :****Item details :**

Sl. No.	Terms / Clause	Complied	Not Complied	Remarks
1.	GLOSSARY, DEFINITIONS & INTERPRETATIONS			
2.	SCOPE OF SUPPLY			
3.	QUALIFYING REQUIREMENTS OF THE TENDERERS			
4.	TENDER SUBMISSION CONDITION			
5.	SUBMISSION OF OFFER IN TWO-BID SYSTEM (TECHNICAL & COMMERCIAL OFFER SEPARATELY)			
6.	PAYMENT			
7.	FIRM PRICE			
8.	AUTHORITY OF PERSONS SIGNING DOCUMENT			
9.	SECRECY			
10.	INSURANCE			
11.	COUNTER TERMS AND CONDITION			
12.	OTHER CONDITIONS			
13.	ACCEPTANCE & ACKNOWLEDGEMENT			
14.	QUALITY & WORKMANSHIP			
15.	IDENTIFICATION OF ITEMS / PIECES			
16.	SUPPLY OF SAMPLE			
17.	DOCUMENT SUBMISSION CLAUSE			
18.	FALL CLAUSE			
19.	DELIVERY, LIQUIDATED DAMAGES FOR LATE DELIVERY AND RISK PURCHASE CLAUSE			
20.	INSPECTION & CONSEQUENCE OF REJECTION			
21.	LAWS APPLICABLE			
22.	INDEMNITY			
23.	BRIBES AND GIFTS			
24.	JURISDICTION			
25.	ARBITRATION			
26.	FORCE MAJEURE CLAUSE			

27.	RIGHT TO VARY QUANTITIES			
28.	RAW MATERIALS ARRANGEMENT			
29.	LANGUAGE			
30.	TAX CLAUSE			
31.	PACKING AND MARKING			
32.	PERFORMANCE BANK GUARANTEE			
33.	SPARES SUPPORT			
34.	POST-WARRANTY SERVICE			
35.	CHANGES IN THE NAME OF FIRM			
36.	MODIFICATION, ADDITION AND AMENDMENTS			
37.	ASSIGNMENT OF THIRD PARTY			
38.	INVOLVEMNET OF ANY AGENT AND MIDDLEMEN			
39.	INFRINGEMENT OF PATENTS			
40.	SUPERVISION, TECHNICAL ASSISTANCE AND SERVICE SUPPORT			
41.	SEVERABILITY			
42.	SAFETY ASSURANCE			
43.	LIMITATION OF LIABILITY AND PRODUCT LIABILITY			
44.	CONFIDENTIAL AGREEMENT & NON COMPETETION AGREEMENT			
45.	DEFECT LIABILITY PERIOD & SPARES SUPPORT			
46.	WARRANTY			
47.	DIVISION OF PATRONAGE			
48.	CUSTOM DUTY			
49.	GST TERMS & CONDITIONS			
50.	PUBLIC PROCUREMENT			

Authorized signatory with company seal / stamp

CONTACT DETAILS OF THE SUPPLIER

(To be filled and submitted by supplier along with the technical bid)

1) Contact Person details in Marketing Office

- (a) Name :
- (b) Designation :
- (c) Telephone :
- (d) Fax :
- (e) Mobile :
- (f) Email :

2) Head Office :**3) Complete address including the website:****4) Details of the proposed plant from where item is to be supplied:****5) Complete address of the Plant including Website:****6) Contact person details in plant**

- (a) Name :
- (b) Designation :
- (c) Telephone :
- (d) Fax :
- (e) Mobile :
- (f) Email :

7) Bank Details: (Will used during L/C Execution)

- a) Name of the Bank :
- b) Full Address of the Bank :
- c) Suppliers Account Number and Type :
- b) IBAN No :
- e) Swift Code :

PERFORMANCE BANK GUARANTEE

Bank Guarantee No.....
 Dated
 Amount
 Valid up to
 Claim up to

The General Manager (Materials- Management)
 BEML
 Bangalore Complex
 PB No 7501
 New Thippasandra
 Bangalore 560075

1. This deed of Guarantee made this day of..... (Month& year) between Bank of..... (Hereinafter called the "Bank") of the one part, and BEML LIMITED (Hereinafter called "the Employer") of the other part.
2. Whereas BEML LIMITED has awarded the contract for..... (Name of work as per PO) (Hereinafter called the "Contract") to..... (Name of the Contractor) (Hereinafter called "the Contractor").
3. AND WHEREAS the Contractor is bound by the said Contract to submit to the Employer a Performance Security for a total amount of.....(Amount in figures and words).
4. Now, We the Undersigned.....(Name of the Bank) being fully authorized to sign and to incur obligations for and on behalf of and in the name of.....(Full name of Bank), hereby declare that the said Bank will guarantee the Employer the full amount of Rs. (Amount in figures and words) as stated above.
5. NOW THEREFORE, We hereby affirm that we are the Guarantor and responsible to you, on behalf of the Contractor and we hereby unconditionally, irrevocably and without demur undertake to immediately pay to the Employer upon first written demand and without cavil or argument, any sum or sums within limits of.....(Amount of Guarantee) as aforesaid without reference to the Contractor and without your needing to prove or show grounds or reasons for your demand for the sum specified therein. The Bank shall pay to the Employer any money so demanded notwithstanding any dispute/disputes raised by the Contractor in any suit or proceedings pending before any Court, Tribunal or Arbitrator/s relating thereto and the liability under this Guarantee shall be absolute and unequivocal.
6. This Guarantee is valid till.....(The initial period for which this Guarantee will be valid must be for at least 6-months (six months) longer than the anticipated expiry date of defect liability period as stated in Clause 45 & Warranty period as stated in Clause 46 of GTC.
7. At any time during the period in which this Guarantee is still valid, if the Employer agrees to grant a time extension to the Contractor or if the Contractor fails to complete the Works within the time of completion as stated in the Contract, or fails to discharge himself of the liability or damages or debts as stated under Para 5, above, it is understood that the Bank will extend this Guarantee under the same conditions for the required time on demand by the Employer and at the cost of the Contractor.

8. The Bank agrees that no change, addition, modifications to the terms of the Contract Agreement or to any documents, which have been or may be made between the Employer and the Contractor, will in no way release us from the liability under this Guarantee; and the Bank, hereby, waives any requirement for notice of any such change, addition or modification to the Bank.
9. The Guarantee here in before contained shall not be affected by any change in the Constitution of the Bank or of the Contractor.
10. The neglect or forbearance of the Employer in enforcement of payment of any moneys, the payment whereof is intended to be hereby secured or the giving of time by the Employer for the payment hereof shall in no way relieve the bank of their liability under this deed.
11. The expressions "the Employer", "the Bank" and "the Contractor" hereinbefore used shall include their respective successors and assigns.
12. Notwithstanding anything contained herein:
 - (a) Our liability under this Bank Guarantee shall not exceed Rs.....
(Rs.....)
 - (b) This Bank Guarantee shall be valid up to.....
 - (c) We are liable to pay the Guarantee amount or part thereof under this Bank Guarantee only & only if you serve upon us a written claim or demand on or before

In witness whereof I/We of the bank have signed and sealed this Guarantee on the.....day of..... (Month & year) being herewith duly authorized.

For and on behalf of theBank

Signature of Authorized Bank officials

Name :

Designation.....

Stamp/Seal of the
Bank.....

Signed, sealed and delivered for and on behalf of the Bank by the above
namedin the presence of:

Witness 1.

Signature.....

Name.....

Address.....

Witness 2. Signature.....

Name.....

Address.....

NON-COMPETITION AGREEMENT

(To be executed on plain paper and to be submitted along with the technical bid)

THIS NON COMPETITION AGREEMENT is made and executed on this the.....day ofat Bangalore **BETWEEN** M/s BEML Ltd, a Government of India undertaking, having its Registered office at No.23/1, "BEML SOUDHA", 4th Main Road, Sampangirama Nagar, Bangalore – 560 027 (hereinafter called "**BEML**") and manufacturing units at Kolar Gold Fields, Mysore and Bangalore, which expression shall unless repugnant to the subject or context thereof mean and include its representatives, administrators, successors and assigns etc of the **FIRST PART**.

AND

M/s.....Company, with its Registered Office at..... and manufacturing unit at.....represented by their Shri..... a lawful Attorney, residing at.....(hereinafter called "**VENDOR**") which expression shall unless repugnant to the subject or context thereof mean and include its representatives, administrators, successors and assigns etc of the **SECOND PART**.

NOW THIS AGREEMENT WITNESSETH AND IT IS AGREED BY AND BETWEEN THE PARTIES HERETO AS UNDER:

Whereas, BEML will place Purchase Order No.....Dated.....on the **VENDOR** for supply of which products are exclusively manufactured to the designs and specifications of BEML.

In pursuance of the placement of the above Purchase Order on M/s.....or M/s.....or any other Authorized Dealer / Distributor of or any person authorized bythe **VENDOR** hereby agree and undertake not to quote or supply.....to any other parties in India and as such the **VENDOR** is prohibited to quote or supply the products specified in the instant Agreement. In contravention of this term, The **VENDOR** or any other Authorized Dealer / Distributor / Agent of or any person authorized by the **VENDOR** were to quote and supply.....to any other parties in India and / or abroad,

BEML would, **after giving a reasonable opportunity to explain such quote and supply** be entitled to levy a penalty to the extent of loss occasioned to BEML.

This Non-Competition Agreement will be valid for a period of five years from the date of placement of Purchase Order by BEML on the **VENDOR** and for all Government / Quasi-Government companies in India and all non-Government Companies in India and abroad.

Disputes if any, arising between the parties in connection with this Non-Competition Agreement or any other matters connected therewith, the same will be mutually discussed and settled, failing which, the disputes shall be referred to a Sole Arbitrator to be appointed by BEML. The Arbitration proceedings shall be in accordance with the provisions of Arbitration and Conciliation Act, 1996 and Rules framed thereunder. The place of Arbitration shall be at Bangalore and all Arbitration proceedings shall be conducted in English language and governed by the above said Act and Rules framed thereunder. Courts at Bangalore shall alone have sole jurisdiction to decide any issue arising out of the Arbitration or this Non-Competition Agreement.

IN WITNESS WHEREOF THE PARTIES HERETO HAVE SET THEIR RESPECTIVE HANDS AND SEALS ON THE DAY, MONTH, AND YEAR FIRST ABOVE WRITTEN.

For BEML

For M/s.

WITNESS:

1.

1.

2.

2.

CONFIDENTIALITY AGREEMENT

(To be typed on plain paper and submitted along with the technical bid)

This Confidentiality Agreement is made and entered into between M/s BEML, (hereinafter referred to as BEML), a Govt. of India Undertaking under Ministry of Defence, having its Registered Office at BEML Soudha, No.23/1, 4th Main, Sampangirama Nagar, Bangalore – 560 027 and M/s ----- (hereinafter referred to as XXXX) having its Registered Office at..... M/s. BEML, has been patronizing XXXX for components / spares listed in Annexure hereto. A need has been felt to revitalize the business relationship for mutual advantage.

- 1) It is mutually, therefore, agreed that the following shall form part of the terms and conditions for continued business:
 - a) The supplier shall not divulge to anyone else except under the authority and for the purposed of BEML, all information such as technical data, specifications, drawings, models of specimens furnished / supplied by BEML for the purpose of manufacture or in connection with developmental activities, constitute the property of BEML and the supplier shall keep them in strict confidence. This has been explicitly stated in all the details to the supplier through Purchase Order / Drawings etc., released.
 - b) The supplier shall not supply the components / spares exclusively manufactured for BEML with the Technical Data / Specifications / assistance furnished by BEML and shall not disclose my initiations, development of adaptations thereof to anyone else except with the written consent of BEML.
 - c) BEML shall be entitled to prevent breach of the above and to claim damages in case of any breach. It is hereby mutually agreed that for breach of this agreement the Vendor shall pay, without actual proof of damages, a liquidated amount of Rs. 1.00 Crore (Rupees One Crore only).
 - d) **ARBITRATION:** In the event of any question or disputes arising under these conditions or any other terms and conditions of contract or in connection with this contract (except as to any matters the decision of which is specially provided for by these conditions) the same shall be referred to an award of a Sole to be appointed by BEML with the consent of the Contractor / Vendor Supplier and the Arbitration proceedings of Arbitration and Conciliation Act 1996. The Courts in Bangalore alone shall have jurisdiction to deal and decide any legal matter or dispute whatsoever arising out of this Contract.
- 2) BEML shall be entitled to prevent breach of the above and to claim damages in case of any breach.
- 3) The Signatories hereto declare that they have the sanction and power to execute and deliver this binding agreement.

IN WITNESS WHEREOF, the parties hereto have set their respective hands to this Confidentiality Agreement on written in the presence of Witness.

For BEML

For M/s. XXXX

WITNESS:

1.
2.

1.
2.