

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

**Ref: BR01/RRD/6300028406**

**PROJECT : BMRCL PROJECT**

**SCOPE : Manufacture & supply of**  
**2 Types of Air Spring Seat**

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## 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 (P.T.S.) , which is part of tender
- d) P.T.S. means Procurement technical specification provided by the purchaser.
- e) Specification means technical specifications of the Equipment / Material as set forth in Procurement technical specification (PTS) / technical drawings, which is part of tender.
- f) BEML Limited / Company means "BHARAT EARTH MOVERS LIMITED", a company registered under the Companies Act, 1956 ("The Purchaser" / "The employer ").
- g) "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.
- h) Representative (s) means the person (s) authorized by Supplier to perform the relevant supervision, inspection at the site if required.
- i) "Stores" means the goods and services specified in the Purchase Order.
- j) Words in singular include the plural and vice versa.
- k) 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.
- l) The wording of these conditions shall not affect the interpretation or construction thereof.
- m) 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.
- n) 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.
- o) Bank means any nationalized bank in Republic of India/Commercial Bank of supplier's country wherever applicable.
- p) **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.

- q) **End-Customer / End-user** means M/s. BMRCL or their representative(s).
- r) **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.
- s) **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.) / 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) Please indicate the exact Sales Tax, Customs duty, Excise duty and other levies applicable extra / included in the price. Claim for Excise duty should be supported by original and clear Excise duty gate pass.
- 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 :**
  - i. **Technical bid (without price):** Bidder should have all requisites technical details, with compliance to the Terms and conditions (**Mandate requirement**) 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. Firm has to submit the Integrity pact along with Technical bid mandatorily.**
  - ii. **Commercial Bid:** Should contain only Price and applicable tax details and the same should be uploaded in **BEML SRM e-procurement platform only.**
- b) 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.

### **b) APPLICABLE TO THE INDIAN BIDDERS**

- i. Please note that our terms of payment are 100% on 30 th day for MSME & for others on 61<sup>st</sup> 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.

## **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**

- a) 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.
- b) 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.

- c) 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 your risks and cost apart from levy of liquidated damages.

#### **10. GST (Applicable only to Indian supplier)**

The supplier shall obtain GST opting to pay GST wherever applicable. Clear GST Gate Pass in original shall be forwarded to the purchaser, in respect of each consignment along with dispatch documents. When goods are despatched through Road Transport Carriers, it shall be ensured that the GST No. and date is endorsed on the GC Note binding the carriers to deliver the GST Passes in original to our Stores Department along with the consignment. Wherever excise duty is payable extra, the same shall be reimbursed at actual against production of unqualified GST pass in original as a proof for having paid the duty on the particular consignment. The supplier should ensure that the gate pass accompanies each consignment that are sent to us. In addition a photocopy of Gate passes, in advance along with invoice to be sent to Purchase department in case of payment through Bank. If the terms of payment are other than the above, the photocopy of the Gate Pass with the bills etc., shall be sent to concerned Accounts Department. The GST No. and Date shall be incorporated in the invoice, delivery challan and all other dispatch documents.

Presently BMRL Metro 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 and same to be considered in quoted rates.

#### **11. INSURANCE**

##### **APPLICABLE TO FOREIGN SUPPLIER**

- i. In case of F.O.B. offers, insurance shall be arranged by the purchaser from supplier port till purchaser destination.
- ii. In case of imports of the materials, although the insurance shall be paid by the purchaser, any loss or damage shall be made good 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 to 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.

#### **12. 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 may be 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.***

### **13. OTHER CONDITIONS**

- a) M/s. BEML Limited does 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 embarkation.
- 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 Limited 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 M/s.BEML Limited.

### **14. 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.

### **15. 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.

### **16. 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.

### **17. SUPPLY OF SAMPLE**

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.

## **18. 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 DEPUTY GENERAL MANAGER,  
MATERIALS MANAGEMENT DEPARTMENT (METRO PROJECTS),  
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](mailto: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 Deputy General Manager,  
BEML Limited, Bangalore Complex,  
PB No.7501, New Thippasandra post,  
Bangalore, Karnataka, India,  
Postal Code - 560 075

**19. 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.

## **20. 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. Any supplies made ahead of this schedule are liable for rejection at the discretion of BEML. 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.

## **21. 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, sales tax, excise duty, 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.

## **22. LAWS APPLICABLE**

The P.O. shall be governed by the Laws of India for the time being in force or as amended from time to time. The making of all stores supplied must comply with the requirements of Indian Acts relating to trade and merchandise marks and all the rules made under such acts.

## **23. 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.

## **24. 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.

## **25. JURISDICTION**

**The court of Karnataka State only shall have jurisdiction to deal with and decide any legal matter of dispute whatsoever arising out of this Purchase Order.**

## **26. ARBITRATION**

All other disputes / differences except as to any matters the decision of which is specially provided for by these conditions or any other special conditions of the P.O. whatsoever arising between the

parties out of or relating to the contract meaning and operation or effect of the contract or the breach thereof shall be settled by Arbitration in accordance with the rules of Arbitration of the Indian Council of Arbitration and the award made in pursuance thereof shall be binding on the parties. The place of arbitration shall be 'Bangalore'

The supplies under this purchase order shall, if reasonably possible, continue by mutual agreement during the arbitration proceedings and no payment due to or payable by BEML be withheld only on account of the pendency of such proceedings.

## **27. FORCE MAJEURE CLAUSE**

- a) BEML shall in addition its power under other clauses to determine this Purchase Order have power to terminate its liability there under at any time by giving a notice of reasonable time (Generally 14 days time) in writing to the supplier of the Company's desire to do so and upon the expiration of the notice the Purchase Order shall be determined without prejudice to the rights of the parties accrued to the date of determination.
- b) Further in the event of any situation arising out of or caused by any act which is beyond the control of BEML, which results in stoppage of production, or in the event of any policy decision made in the interest of the Company which may necessitate the short closure of the Purchase Order, the Company by giving a notice of reasonable time (Generally 14 days time) to the supplier, can terminate the purchase order without prejudice to the rights of the parties accrued to the date of termination.
- c) In the event of any unforeseen event directly interfering with the supply of equipment arising during the currency of the purchase order, such as war, hostilities, acts of the public enemy, civil commotion, sabotage, fire, floods, explosions, epidemics, quarantine restrictions, strikes, lockouts or acts of god, the supplier shall, within a week from the commencement thereof, notify the same in writing to the purchaser with reasonable evidence like newspaper cuttings, government press release copy, police complaints copy, letter issued by Chamber of commerce regarding accidents, etc. thereof if the force majeure condition (s) mentioned above be in force for a period of 90 days or more at any time, the purchaser shall have the option to terminate the purchaser order on expiry of 90 days of commencement of such force majeure by giving 14 days communication/ correspondence to the supplier in writing. In case of such termination, no damages shall be claimed by purchaser/ supplier against the other, save & except those, which had occurred under any other clauses of this purchase order prior to termination.

## **28. RIGHT TO VARY QUANTITIES**

- a) In general, BEML Limited 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.
- b) BEML Limited also reserves right and at its discretion may advice the supplier in writing about increase of the total quantity up to 60 cars worth value of materials. The exact incremental quantity details will be intimated later date, but not later than **December , 2020**. The supplier shall be required to supply increased ordered quantities at the contracted terms & conditions and determined prices as detailed in purchase order.

## **29. 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.

## **30. LANGUAGE**

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

### 31. 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 Purchaser'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 Purchaser 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 purchaser.
- 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.

### 32. 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**

### 33. PERFORMANCE BANK GUARANTEE

- a) 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.
- b) 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.

- c) 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.
- d) 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.
- e) Bank Guarantee executed by supplier to be counter guaranteed by any Nationalized Public sector bank in India without which the bank guarantee will be treated as invalid. Bank Guarantee can also be executed by supplier through any schedule commercial Bank approved by RBI.
- f) 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.
- g) No claim shall lie against BEML in respect of interest on Cash Deposits or Govt. Securities or depreciation thereof
- h) 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.

#### **34. 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.

#### **35. 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.

#### **36. 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.

### **37. 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".

### **38. 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.

### **39. 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.

### **40. 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.

### **41. 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 BMRCL Depot, Bangalore.
- 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.

#### **42. 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.

#### **43. 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.

#### **44. 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.

#### **45. CONFIDENTIAL AGREEMENTS**

In case of placement of purchase order by BEML Limited, the supplier has to execute the CONFIDENTIALITY AGREEMENT and NON-COMPETITION AGREEMENT as per prescribed format by BEML Limited, which will be issued within 15 days from the date of issuance of purchase order from BEML Limited but later on that 30 days before the first delivery schedule indicated in the purchase order.

#### **46. DEFECT LIABILITY PERIOD & SPARES SUPPORT :**

- a) Warranty period (Defect Liability) shall be 24 months from the date of commissioning of train sets / metro cars.
- 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 BMRC in Bangalore at free of cost.  
In case of Indian suppliers: F.D.D. (Free Door Delivery at designated BMRC depot in Bangalore at free of cost.)

#### **47. WARRANTY**

All the stores supplied shall be warranted against any defect and/or faults and design, material, workmanship and drawing. The warranty period for each component shall be 40 months from the date of delivery to BEML Limited by the supplier or 24 months from each trainset handover to BMRC whichever is Later.

**1) Obligation of the supplier:**

- a) The supplier agrees, subject to the terms and conditions of the purchase order to perform efficiently and faithfully all of the work and to design, manufacture, supply, testing and commissioning of tendered / ordered items complying with technical specification(s) pertaining to each item and to supply consumable spares and to supply or provide all equipment, materials, labour and other facilities requisite for or incidental to the successful completion of the works and in carrying out all duties and obligations imposed by the purchase order.
- b) The supplier shall ensure full compliance of all laws and statutes in India with regard to the purchase order and shall be solely responsible for the same. He shall submit copies of acknowledgment evidencing filing of returns every year and shall keep the employer fully indemnified against liability of tax, interest, penalty etc. of the contractor in respect thereof, which may arise.

**2) Notices:**

All notices called for by terms of the purchase order shall be in writing in English language and shall be delivered by hand or by registered mail, acknowledgment due, to the party's addresses given below. All notices shall be deemed to be duly made when received by the party to whom it is addressed at the following addresses or such other addresses as such party may subsequently notify to the other:

**The purchaser : M/s. BEML Limited,  
(Formerly, M/s. Bharat Earth Movers Limited),  
Bangalore Complex,  
PB No.: 7501, New Thippasandra Post,  
Bangalore, Karnataka, India, Postal Code: 560075.**

**3) Integration**

The purchaser and the supplier agree that the purchase order, together with the other contract documents, expresses all of the agreements, understandings, promises, and covenants of the parties, and that integrates, combines, and supersedes all prior and contemporaneous negotiations, understandings, and agreements, whether written or oral and that no modification or alteration of the purchase order shall be valid or binding on either party, unless expressed in writing and executed with the same formality as the purchase order, except as may otherwise be specifically provided in the contract documents.

**4) Agreement**

The supplier has agreed to design, execute, complete, test and commission (including Integrated Testing and commissioning) and remedy any defect in the works upon the terms and conditions contained in the purchase order. At the request of the purchaser ("BEML Limited") and pursuant to the terms of the Contract, "The supplier" has agreed to enter into the warranty agreement as under:

**NOW IT IS AGREED AS FOLLOWS:**

- a) The supplier hereby warrants and undertakes that :
  - i. He will design, execute, complete, test and commission (including Integrated Testing and Commissioning) and remedy any defect in the works in accordance with the terms of the Contract; and
  - ii. He owes a duty of care to the purchaser in relation to the performance of its duties under the Contract; and he will replace free of cost to the purchaser any defect or failure of equipment provided in the works during the defect liability period; and
  - iii. He agrees that should any design modification be required to any equipment or component as a consequence of failure analysis, the period of 18 months shall

re-commence from the date when the modified part is commissioned into service if the date of modification is later than the date of taking over of each train set / 'T+M' unit by the end customer, and such modification shall be carried out free of cost to the purchaser in all cars; and

- iv. He shall maintain in the manufacture & supply of spares (including those of his Sub-Contractors / Vendors) for the equipments supplied in the purchase order for at least 10 years from the date of completion of the contract.
- b) The liability of the companies comprising the supplier under this Warranty shall be joint and several and shall not be released, diminished or in any way affected by any independent inquiry or investigation into the Works or any matter related to the purchase order whether carried out by or on behalf of the purchaser / end customer or any liability or right of action which may arise out of such inquiry or investigation.
- c) In so far as the copyright or other intellectual property rights in any plans, calculations, drawings, documents, materials, plant, know-how and other information relating to the Works shall be vested in the supplier, the supplier grants to the purchaser his successors and assigns a royalty free, non-exclusive and irrevocable licence (carrying the right to grant sub-licences) to use and reproduce any of the works designs or inventions incorporated and referred to in such documents or materials and any such know-how and information for all purposes relating to the Works or the Mass Rapid Transport System – Phase Three including without limitation the design, manufacture, installation, completion, testing and commissioning (including Integrated Testing and Commissioning) reinstatement, extension and the remedy of any defect in the Works. To the extent that beneficial ownership of any such copyright or other intellectual property rights is vested in anyone other than the supplier, the supplier shall use best endeavours to produce that the beneficial owner thereof shall grant a like licence to the purchaser. For the avoidance of doubt, any such licence granted shall not be determined if the supplier shall for any reason cease to be employed in connection with the Works.
- d) The provisions of this Warranty shall be without prejudice to and shall not be deemed or construed so as to limit or exclude any rights or remedies which the purchaser may have against the supplier, whether in tort or otherwise.
- e) Nothing contained in this Warranty shall vary or affect the supplier's rights and obligations under the purchase order.
- f) The address for service of all documents arising out of or in connection with this Warranty shall be upon the purchaser at BEML Limited whose registered office is at BEML Soudha, 23 / 1, 4<sup>th</sup> Main, S.R.Nagar, Bangalore, Karnataka, India, Postal Code – 560027.
- g) The Purchaser and the supplier may change their respective nominated addresses to another address in India but only by prior written notice to each other. All notices must be in writing.
- h) This Warranty shall be governed by and construed according to the laws for the time being in force in India.
- i) **Dispute :**
  - i. Any dispute or difference of any kind whatsoever between the purchaser and the supplier arising under out of or in connection with this Warranty shall be referred to arbitration in accordance with the Conciliation and Arbitration rules set out in the General Conditions of purchase order "Dispute" as defined in the purchase order shall be deemed to include any such dispute or difference between the purchaser and supplier.
  - ii. In the event that the purchaser is of the opinion that the issues in such a dispute or difference will or may touch upon or concern a dispute or difference arising under out of or in connection with the purchase order ("the Contract Dispute") then provided that an arbitrator has not already been appointed to clause 47-4-i-i , the purchaser may by notice in writing to the supplier require and the supplier shall be deemed to have consented to the

referral of such dispute or difference to arbitrator to whom the Contract Dispute has been or will be referred.

- iii. Save as expressly otherwise provided, the arbitrator shall have full power to open up, review and revise any decision, opinion, instruction, notice, order, direction, withholding of approval or consent, determination, certificate, statement of objections relating to the dispute.
- iv. Subject to foregoing provisions of this **clause 47-4-i** the purchaser and the supplier agree to submit to the jurisdiction of the courts of India at Bangalore.

The supplier shall remedy defects if any at his / their own cost or replace free of charge such stores when called upon to do so by BEML who shall state in writing in what respect the stores are defective. BEML reserves the right for

- i. Acceptance of the proposal of the supplier to remove the defects by reworking and
  - ii. Subjecting the reworked / replaced goods to inspection by BEML at their works.
- 5) Wherever and whenever defect(s) or fault(s) should appear during the warranty period, Supplier shall, at its discretion, repair or replace the defective equipment / components at free of charge in site to the complete satisfaction of BEML Limited / End user. The warranty period for respective replacement part(s) or additional material(s) supplied for the repairs shall be 18 month after repair or replacement. Further, if any design modification be required to any component, equipment as a consequence of failure analysis, the minimum period of warranty (i.e.) 24 months shall recommence from the date when the modified is commissioned in to service and the modification shall be carried out free of charge. In all such cases warranty will be applicable on complete finished product as a whole even when only a component has been modified / replaced / repaired due to design change
  - 6) The supplier shall be responsible for any defect or failure attributable to defective design, material or workmanship during the warranty period.
  - 7) The supplier shall bear custom duty, freight charges, insurance and all other expenses involved in collection of defective components and equipment from the site, and transportation to the manufacturer's works in India or abroad and its return to site after repairs.
  - 8) ***All replacement and repairs under the warranty shall be carried out by the supplier promptly and to the complete satisfaction of the engineer on notification of the defects by the end-user so that no car is out of revenue service for more than 48 hours. In case of any train remains out of revenue operation beyond specified duration above due to reasons attributable to supplier, BEML Limited may at his sole discretion impose a penalty on the supplier commensurate with the revenue and opportunity loss to the end-customer BMRL. The decision of BEML Limited shall be final and binding.***
  - 9) The supplier should extend the warranty period by a period (will be specified at the time required) after the supplies are completed, during which the equipment / material or any part of the supplies cannot be used, for the purposes for which they are intended, by reason of a defect or damage.
  - 10) If the defect or damage is such that it cannot be remedied expeditiously on the site and if the end-user gives consent, the supplier may, remove from the site for the purposes of repair any part of the equipment/material, which is defective or damaged. This consent may require the supplier to increase the amount of performance security by the full replacement cost of these items or to provide other appropriate security acceptance to the purchaser.
  - 11) If any defect or damage is one requiring immediate attention from safety / environmental view point / operational viewpoint, the purchaser has the authority to proceed with rectification in any manner suitable and deduct such sums from the suppliers Bill or purchase order whichever is active.

- 12) The period of 24 months shall re-commence from the date when the modification part/equipment/material is commissioned into service if the date of modification is later than the date of taking over of last train-set and such modification shall be carried out free of cost to the supplier / end-user.
- 13) Claim for shortage in quantity and/or defective quality of the equipment, if any, shall be notified in writing to the Supplier within two (2) months from the date of arrival of the equipment / material. The Supplier shall provide such short shipped and/or defective parts at Purchaser's factory free of charge promptly after the confirmation of the shortage and / of defect by both parties. But, spare parts should be noticed in writing to the Supplier within 1 week after BEML Limited /End-User inspects at BEML Limited Bangalore works.
- 14) All expenses incurred in relation to return of the defective parts by Supplier's request to the Supplier and replacement or repaired equipment to India, including ocean or air freight charge, inland transportation cost and all other costs incurred in India, shall be borne by Supplier.
- 15) Supplier shall bear reasonable costs for removal and installation, mutually agreed between Supplier and Purchaser prior to rectification of such defect.
- 16) All technical reports and information from Supplier should be submitted to the purchaser prior to dispatch of equipment / material discussed with the Purchaser but not later than schedule for submitting it to End-User.
- 17) In case the Supplier fails to fulfill his obligations as mentioned above during the Warranty Period, within a reasonable time after the Purchaser has notified the Supplier in writing of such a defect, the works considered necessary can be executed by the Purchaser or by the End-user according to the Suppliers instruction and manuals in any manner appropriate, and the reasonable cost of such works shall be borne by the Supplier. In this regard, BEML Limited reserves rights and its discretion can en-cash the performance bank guarantee submitted by the supplier as whole or part.
- 18) The Supplier at his expense and care shall supply onsite all spare parts, consumables and other items that will be required for the correction of defects during the warranty period in accordance with purchaser's specification.
- 19) For the implementation of the whole Project effectively, Supplier shall reserve sufficient number of warranty spares of the needed parts of components and/or equipments at its own costs, which is repaired and/or replaced from commission stage to the completion of warranty period. For the project such parts will be taken from the stock in (Suppliers workshop).
- 20) 95% uptime during warranty period is to be ensured, failing which the warranty period will be extended for the period for which equipment was under breakdown. Please note that you have to attend to repair/service the equipment/system within 48 hours of breakdown call during the warranty period.
- 21) **Any penalty imposed by end-customer BMRCL towards De-boarding of commuters for the reasons attributable to the manufacturing defect will be passed on to the supplier account.**

#### **48. 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.

## COMPLIANCE REPORT

1) R.F.Q. Reference : BR01/RRD/6300028406

2) Firm :

3) Item details : 2 Types of Air Spring Seat

S1. 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.	CENTRAL EXCISE (Applicable only to Indian supplier)			
11.	INSURANCE			
12.	COUNTER TERMS AND CONDITION			
13.	OTHER CONDITIONS			
14.	ACCEPTANCE & ACKNOWLEDGEMENT			
15.	QUALITY & WORKMANSHIP			
16.	IDENTIFICATION OF ITEMS / PIECES			
17.	SUPPLY OF SAMPLE			
18.	DOCUMENT SUBMISSION CLAUSE			
19.	FALL CLAUSE			
20.	DELIVERY, LIQUIDATED DAMAGES FOR LATE DELIVERY AND RISK PURCHASE CLAUSE			
21.	INSPECTION & CONSEQUENCE OF REJECTION			
22.	LAWS APPLICABLE			
23.	INDEMNITY			
24.	BRIBES AND GIFTS			
25.	JURISDICTION			
26.	ARBITRATION			



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

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

M/s. BEML Limited,  
Bangalore Complex,  
P.B. No. 7501  
New Thippasandra,  
Bangalore – 560075.

1. BEML LIMITED, Bangalore Complex, P.B. No. 7501, New Thippasandra, Bangalore – 560018 (hereinafter called as “BEML”) have entered into agreement/Contract/Order No. ----- Dt : ----- (hereinafter called “the said Agreement/the said Contract/the said Order”) with M/S -----, (hereinafter called “the said Contract/Supplier(s)”), for list of parts as enclosed to this Bank Guarantee and as per EDT 1781
2. Whereas under the terms of the said Agreement/Contract/Order, the contract/Supplier is required to furnish a Performance Bank Guarantee for **value \_\_\_\_\_ (Amount in words)** towards the due fulfillment of the terms and conditions during the agreed time period or extension thereof, and also satisfactory performance of the items supplied to BEML during warranty period as per the warranty terms stipulated in the Agreement/Contract/Order.
3. Accordingly We, **{Banker Name & Address}** (hereinafter referred to as “the Bank”) at the request of M/s. ----- do hereby undertake to pay to BEML Limited an amount not exceeding **value \_\_\_\_\_ (Amount in words)** on the failure of Contractor / Supplier in performance of their obligations as per the terms and conditions of the Agreement/Contract/Order including the satisfactory performance of the item during warranty period as per the warranty terms stipulated in the Agreement/Contract/Order.
4. We, **{Banker Name & Address}** do hereby unreservedly, irrevocably undertake to pay the amounts due and payable under this guarantee without any demur, merely on demand from BEML, immediately on such demand stating that the amount claimed is due by way of non performance/unsatisfactory performance by the contract with respect to the terms and conditions of the Agreement/Contract/Order including failure in satisfactory performance of the items supplied/services rendered under the warranty terms stipulated in the Agreement/Contract/Order. 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 **value \_\_\_\_\_ (Amount in words)**.
5. We undertake to pay to BEML Limited an amount not exceeding **value \_\_\_\_\_ (Amount in words)** so demanded notwithstanding any dispute or disputes raised by the contractor(s)/supplier(s) in any suit or proceeding pending before any court or Tribunal relating thereto our liability under this guarantee being absolute and unequivocal.
6. We, **{ Banker Name & Address }** further agree that the guarantee herein contained shall remain in full force and effect during the period that would be taken for the performance of the said Agreement/Contract/Order and that it shall continue to be enforceable till all the dues of BEML Limited under or by virtue of the said Agreement/Contract/Order have been fully paid and its claims satisfied or discharged or till BEML Limited certifies that the terms and conditions of the said Agreement/Contract/Order have been fully and properly carried out by the said Contractor/Supplier(s) and accordingly discharges this guarantee.

7. We, { **Banker Name & Address** }, further agree with BEML Limited that BEML Limited 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 Agreement or to extend time to performance by the said Contractor/Supplier(s) from time to time or to postpone for any time or from time to time any of the powers exercisable by BEML Limited against the said Contractor/Supplier(s) and to forbear or enforce any of the terms and conditions relating to the said Agreement/Contract/Order and we shall not be relieved from our liability by reason of any such variation, or extension being granted to the said Contractor/Supplier(s) or for any forbearance, act or omission on the part of BEML or any indulgence by BEML Limited to the said Contractor / Supplier(s) or by any such matter or thing whatsoever which under the law relating to sureties would, but for this provision, have effect of so relieving us.
8. We, { **Banker Name & Address** } lastly undertake not to revoke this guarantee during its currency except with the previous consent of BEML Limited in writing and agree that any change in the constitution of the said Contractor(s)/Supplier(s) or the said Bank shall not discharge the Bank of its liability under this deed.
9. The validity of Bank guarantee shall be up to { **Warranty period** } and such date shall cover the period warranty of all the supplies towards the list of items as enclosed to this bank guarantee, also the period of defect liability/warranty period for last batch of supplies. The Bank Guarantee shall remain valid for the period up to which the contractor is obliged for due performance of the said Agreement/Contract/Order including the warranty period.
10. This Bank Guarantee shall be governed by and constitute in accordance with Indian law and shall be subject to exclusive Jurisdiction of Indian Courts.

Notwithstanding anything contained herein above:

1. Our liability under this guarantee shall not exceed **value \_\_\_\_\_ (Amount in words)**
2. This Bank Guarantee shall be valid up to and including { **Warranty period** }
3. We are liable to pay the guaranteed amount or any part thereof under this Bank Guarantee only and only if you serve upon us a written claim or demand on or before the {**Warranty period**}

Date.....

Signature.....

Place ..... Printed

Name.....

Witness.....

(Designation)

.....

(Bank's Common Seal)

**NON-COMPETITION AGREEMENT**

(To be executed on Stamp paper of value of Rs. 200/-)

**THIS NON COMPETITION AGREEMENT** is made and executed on this the.....day of .....at Bangalore **BETWEEN** M/s.BEML Ltd, a Government of India undertaking, having its Registered office at No.23/1, “BEML SOUDHA”, 4th Main Road, Sampangiram 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 by .....the **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 Limited**

**For M/s.**

**WITNESS:**

**1.**

**1.**

**2.**

**2.**

**CONFIDENTIALITY AGREEMENT**  
**(To be typed in Rs.100 value document)**

This Confidentiality Agreement is made and entered into between M/s BEML Limited, (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 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 Limited 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 Limited**

**For M/s. XXXX**

**WITNESS:**

1.

1.

2.

2.