

ANNEXURE 'A'

CONDITIONS OF TENDER AND SUPPLY (SECTION II)

1) EFFECT OF CONTRACT:

The contract shall be considered as having come in to force from the date of Notification of Award. The tenderer whose offer is accepted is hereinafter called "the supplier".

2) SECURITY DEPOSIT:

(a) The supplier shall pay within 15 days, security deposit @ 3 % of the value of the order. Supplier will have to pay additional security deposit for the extension of order if issued. If the contract is awarded to authorized dealer, the manufacturer has to submit security deposit otherwise it shall be furnished by that authorized dealer.

(b) Security deposit applicable will be 2% (Two percent) of the order value for the following categories of suppliers :

- i) Units in Maharashtra registered with DGS & D, New Delhi and Controller, Printing and Stationary Kolkata,
- ii) All Government and semi Government institutions under Govt. of Maharashtra and Zilla Parishad in Maharashtra and fully owned undertaking of any State Govt. and Govt. of India only for the items manufactured by such institutions.

(c) Units registered with Directorate of Industries, District Industries Center and Central Stores Purchase Organization, Mumbai and Micro and Small Enterprises registered with N.S.I.C. and Micro, Small and Medium Enterprises Development Institute (MSMED) shall be exempted from payment of security deposit for value of order upto Rs. 25,000/- and If the value of order is above Rs. 25,000 /- then security deposit @ 3% or Rs. 10,000/- whichever is lower will be payable against the contract excluding first amount of Rs. 25,000/-.

The benefits mentioned in (b) to (c) above shall be available only to those items approved during the registration process and subsequent updates in registration upto the date of submission of this tender.

The failure to make payment of security deposit within 15 days as above will be viewed seriously and the contract awarded shall be liable to be terminated at the risk and cost of the supplier and the supplier shall be solely responsible for the consequences arising out of such termination.

The security deposit shall be paid in favour of Purchaser by way of:

- i) Cash or
- ii) Cheque or demand draft on any Nationalized / scheduled bank in Mumbai or
- iii) When the amount exceeds Rs. 5,000/-, Security deposit shall be paid by bank guarantee in the standard form of purchaser from any Nationalized/ scheduled bank valid for 90 (ninety) days from the date of expiry of the guarantee period of last consignment of materials as specified in guarantee clause given in conditions of Tender and supply .

This security deposit in cash/DD or in the form of bank guarantee or otherwise is for the due performance of the material/contract and the same shall be liable to apportion towards amount due or becoming due by the supplier on :

- i. his failure to execute this order or
- ii. any other contract and
- iii. in the event of non fulfillment of the terms and conditions of the contract.
- iv. Non completion of guarantee period of the supplied equipments /material.

The security deposit shall be refunded within 90(Ninety) days from the date of expiry of the guarantee period of last consignment of equipments /material supplied, specified in condition of guarantee stated herein below Sr. No.25 OR within 30 (thirty) days on furnishing of contract performance deposit in the form of cash or DD from any Nationalized /Scheduled bank or from acceptance of bank guarantee furnished by the supplier which is valid for completion of last consignment guarantee period. The PURCHASER shall not be liable to pay any interest or compensation to the contractor for retaining the deposit after the end of said period.

3) **QUALITY OF SUPPLIES:**

All materials supplied shall be strictly as per specification laid down and in accordance with the approved standard samples. In case of any materials for which there are no standard / approved samples, the supplies shall be of the best workmanship and good quality and this office shall be informed of the progress of manufacture of the material.

4) **MATERIAL AND COMPONENTS:**

The material and components not specifically stated in this specification but which are necessary for satisfactory operation of the equipment / items specified, shall be deemed to be included unless specifically excluded and shall be supplied without any extra cost.

5) **SAMPLE BEFORE COMMENCING BULK SUPPLIES (Wherever necessary):**

(A) Before taking up the manufacture of the bulk supply, the supplier shall get one number sample of each item approved and sealed from the Purchaser's Executive Engineer (IW) or its authorized representative, within 15 days from the receipt of the order. No bulk supply should be made unless the sample is approved by the inspecting officer. The supplier shall give advance intimation of 15 days from the date of receipt of order to the Executive Engineer (Inspection Wing), Maharashtra State Electricity Distribution Co. Ltd., Material Management Cell, 1st Floor, 'Prakashgad', Station Road, Bandra (EAST), Mumbai -400 051, for sample approval. The sample so approved, shall be a master sample retained for reference purposes, at supplier's works till the last consignment is despatched.

The time allowed for commencing delivery includes the time required for getting the sample approved as above. If, however, 15 days from date of receipt of the intimation for sample approval, the period for commencing / completing the supplies will be considered to have been extended by the excess time taken for intimating the approval. If the approval of the sample is not received from the inspecting officer within 15 days, the supplier shall remind this office for the same in writing.

(B) Consignee's Sample: At the time of inspection, the supplier shall get approved and sealed by the Purchaser's inspecting officer, as many samples as the number of consignees as stated above and each of the approved sample must be forwarded with the first lot being despatched to the respective consignee together with the copy of the relevant inspection report and the related test certificates.

6) **ACCEPTANCE OF SUPPLIES/INSPECTION:**

(a) The supplier shall normally offer at a time, the entire quantity required to be delivered every month as per the delivery schedule indicated at Annexure 'B' of A/T for the purpose of inspection by the Purchaser. However, in exceptional circumstances, the supplier may be allowed to offer quantity at a time not less than 50% of the quantity required to be delivered every month.

(b) Materials shall be inspected by the Purchaser's Executive Engineer/or the representative authorized by the Purchaser before despatch. An intimation in the prescribed proforma about the date on which materials shall be ready for inspection, indicating approximate quantity, shall have to be given to the Executive Engineer (Inspection Wing), Maharashtra State Electricity Distribution Co. Ltd., 'Prakashgad'. 1st floor, Station Road, Bandra (East), Mumbai - 400 051, so as to reach him sufficiently in advance, failing which, the supplier shall be responsible for

delay in delivery on account of inspection. On receipt of such intimation, the materials shall be inspected within 20 days. The materials shall be despatched only after inspection and approval of same by the Inspector. The inspection approval letter shall be valid for a period of **30** days from the date of issue of letter to enable the supplier pack the material and arrange transportation thereof **so that material should be reached at the respective consignee within 30 days from the date of inspection approval letter.** After this period of **30** days, the validity of this inspection approval letter will lapse. If the supplier fails to dispatch or the material is not reached within 30 days to respective consignees, the approval of purchaser is to be sought by the supplier for revalidation of inspection approval letter.

Further the price variation shall be payable limited to the period of original call letter or the actual date of despatch whichever is lower and the liquidated damages for late delivery shall be levied on such delays.

The positive price variation and statutory variations for supplies beyond contractual delivery period will not be allowed.

In case of delay in delivery beyond contractual delivery period, the prices of items supplied will remain firm, where delay is not attributable to MSEDCL, however MSEDCL will recover the negative price variation amount applicable as on contractual due date or actual date of supply whichever is beneficial to MSEDCL.

- (c) The supplier shall notify the names of the consignees to whom the inspected lot would be despatched. The Inspector shall intimate change in destination, if any, at the time of inspection approval and accordingly the material shall be despatched. The supplier shall get the copies of inspection approval letter together with witness certificate duly signed by the concerned Inspecting Officer IN BLUE INK only and also mention reference or inspection approval letter on the challan / invoice, failing which any delay occurred in getting the S.R. Notes from the consignees would be solely to supplier's account.
- (d) Factory address, from which the bidder has to supply the material, shall be as indicated in the latest approved on line vendor registration form on e-tendering through which the bidder has submitted the offer.
- (e) In the event, during the inspection by the Purchaser's Inspecting Officer, if it is observed that the quantity actually offered for inspection is less than the quantity indicated for inspection in the inspection call, the Purchaser shall be entitled to recover from the supplier, the actual expenses incurred for arranging the inspection, and the supplier shall not dispute the amount to be recovered.
- (f) The supplier shall submit the test certificates/reports from any approved laboratory or the laboratory of his own for the respective quantity of material, before despatch. The material shall not be despatched unless and until the test certificates are approved by the Purchaser.
- (g) All the necessary help shall be extended by the supplier to the authorized representative of the Purchaser to carry out testing of equipment/materials.

7) RIGHT TO CARRY OUT INSPECTION DURING MANUFACTURING:

The Purchaser at its option, will inspect the material ordered during its process of manufacturing including the inspection of raw materials and will request the supplier to carry out such tests as may be necessary to ensure proper quality of the material. The samples of components of the material shall be subject to quality check by the inspecting officer during manufacturing.

8) RIGHT TO REVISE DESPATCH INSTRUCTIONS, DELIVERY SCHEDULE AND TO DEFER SUPPLIES:

- i) The Purchaser reserves its right to revise the despatch instructions issued alongwith the order, at the time of giving final clearance for despatch after inspection of the material. If such change in destination is not intimated at the time of inspection approval or waiver of inspection, the supplier

shall despatch the material as per the despatch instruction in accordance with A/T indicated by him in the inspection call letter.

ii) The Purchaser reserves its right to change the delivery schedule of the contract either by reducing the monthly lot upto 60% of the agreed lot or by increasing the same upto 120% of the agreed lot with prior two months notice and the Purchaser shall not be liable to pay any compensation/damages on account of such change in delivery schedule.

iii) The Purchaser reserves its right to defer the balance supply to be received against the order by giving two months notice for a maximum period of 6 months. In such an event, the delivery period for the deferred material shall be deemed to be extended proportionate to the period of deferment and the Purchaser shall not be liable to pay any compensation/ damages on account of such deferment of deliveries.

9) WAGON LOADS/TRUCK LOADS:

Quantity to be despatched to consignee may not necessarily be in full wagon load/truck load and may be part load as per the Purchaser's requirements.

10) ROAD TRANSPORT:

In case the supplier prefers to despatch the materials by road transport at his risk and cost and without any extra cost to the Purchaser, the materials shall be accepted only during office hours on working days. The supplier should ensure that the goods reach the stores sufficiently in advance so as to arrange their unloading during office hours, failing which, the Purchaser shall not be liable for unloading and for inconvenience caused to the transport contractor in the form of detention etc. Unloading at stores shall be arranged by the consignee.

11) PAYMENT OF FREIGHT CHARGES:

Railway Receipt should be prepaid. In case the freight is not prepaid, the freight charges paid plus applicable taxes, if any shall be recovered from the supplier with additional 'TWENTY PERCENT' amount of freight.

12) CLEAR RAILWAY RECEIPT:

Packing used shall be conforming to specifications/conditions laid down by the railways and clear railway receipt shall be obtained by the supplier without any ambiguity, so as to facilitate proper clearance of goods at destination.

13) DESPATCH INTIMATION:

The supplier shall inform telegraphically to the consignee details of despatch giving RR/ LR No., Wagon/Truck No., Type of wagon, craneable consignment or otherwise, total value of consignment, etc. to facilitate the consignee to arrange for clearance of goods.

14) BILL OF MATERIALS:

The supplier shall furnish bill of materials for each type of equipment/material offered which should be consistent with the drawing, sample, specification and guaranteed technical particulars. The copies of the bill of materials should always be enclosed alongwith the bill submitted by the supplier for payment wherein he should specifically mention the materials / components despatched out of the bill of materials, if the equipment is not sent in totality. Where the equipment/material to be supplied consist of more than one component, the supplier claiming payment for equipment/materials shall certify that all components of the equipment/ material have been supplied in full for the quantity indicated in the invoice. Part payment shall not be allowed.

15) PACKING LIST:

Each package shall contain, in waterproof cover, the detailed list indicating the order reference, date, list of content and reference to the approved bill of materials. Each item contained in the package shall be described sufficiently to enable identification of the quantity, weight etc. There should not be any alteration in the packing list incorporated in the order, copy of the packing list should be sent to all the consignees, Chief Engineer (M.M.Cell) as well as G.M. (F&A-SB) and should be enclosed with the bills along with other documents.

16) VERIFICATION OF MATERIAL SUPPLIED:

The Purchaser shall have the option to carryout various tests including type tests as per specification on the samples selected at random from the supplies effected, to ensure that the supplies conform in quality and workmanship to the relevant specification. The testing shall be done at independent laboratory at Purchaser's cost. Due notice shall be given to supplier for such sample selection and such testing thereof to enable him to be present for the same if so desired by him. If the supplier or his authorized representative fails to attend the sample selection and testing, the same shall be carried out unilaterally by the Purchaser and the result thereof shall be binding upon the supplier. In case the sample selected from the supplies fails to withstand the required tests, then

- I. for the first time failure of sample,
 - (a) supplier shall have to replace the full quantity of the respective inspected lot supplied to various Stores and lying unused at Stores.
 - (b) for the quantity already accepted against the order and used, deduction in price of 10% of the value of material supplied plus applicable taxes, if any shall be made AND
- II. in respect of further supplies made against the order, if failure of sample is noticed (i.e. second time failure against the order),
 - (a) the quantity lying unused at various Stores shall be rejected.
 - (b) for the quantity already accepted against the order and used, deduction in price of 10% of the value of material supplied plus applicable taxes, if any shall be made,
 - (c) balance quantity against the order including the rejected quantity shall be cancelled without any liability on either side,
 - (d) the firm will be debarred from dealing with the Purchaser irrespective of grounds for debarring in MSEDCL debar policy as per Section-IV.

17) REPLACEMENT OF GOODS LOST, BROKEN OR DAMAGED:

Notwithstanding anything herein contained, the supplier undertakes to be responsible for the safe arrival of the materials in good condition and without any loss or damage at the final destination and until the same be actually delivered to and received by the Purchaser at its stores or other place of final destination and for this purpose, materials carried by railways or other carrier shall be deemed to be so carried at the risk of the supplier. In case of transit damage/shortages, the payment shall be made only for the quantity received in good and working condition and the consignee shall lodge claims with carriers and transfer the same to the supplier with all necessary documents for settlement of the same with carriers at the supplier's end. The transit damages/shortages/losses reported by the consignee shall be repaired/replaced by the supplier duly inspected, free of cost, within one month from the date of such intimation of breakages/shortages/losses without waiting for settlement of the claims from carrier or insurance co. etc.

18) REPLACEMENT OF REJECTED MATERIALS:

If, on inspection at the final destination, the Purchaser discovers any loss in the materials supplied or that they are received in damaged condition or that in the opinion of the Purchaser, they are not of the contracted quality or specification, the Purchaser shall be entitled (notwithstanding that the property in the materials shall have passed on to the Purchaser) to refuse to accept or reject the materials altogether and claim damages or cancel the contract and buy its requirements from any of its suppliers stipulating earliest possible delivery and in accordance with its tender system against the supplier and recover the damages if any, from the supplier from any outstanding sums that may be due to the supplier from the Purchaser against this contract or against any of the contract entered into with the supplier, without prejudice to other

rights and remedies available to it in law and reserving always to itself the right to forfeit the security deposit placed by the supplier for the due fulfillment of the contract.

In case the stores/materials are found not in accordance with the prescribed specifications and/or the approved sample, the same will be rejected and the supplier shall replace the rejected stores/materials free of cost within one month from the date of intimation. The replacement of goods shall also have to be got inspected as per inspection clause. Further if the stores/ equipment supplied becomes incomplete on account of either rejection or short supply of its components, the complete cost of the stores/equipment shall be recovered from supplier's bills without notice.

19) TOLERANCE IN QUANTITY TO BE SUPPLIED:

Variation in quantity to be supplied against confirmed order shall be permissible upto FIVE PERCENT PER ITEM PER CONSIGNEE limited up to order quantity.

20) MATERIAL DESPATCHED AND PROGRAMME:

A statement as under indicating despatches effected during every month shall be furnished to this office along with the programme of manufacturing/despaches during the following two months. In the event of no despatch, the statement shall contain nil information. This statement should reach this office on or before 7th of succeeding month addressed to Chief Engineer(M.M.Cell),Mumbai-400051,[Attention :Supdt. Engineer (M.M.Cell)].

MONTHLY STATEMENT:

- I. Name of Supplier:
II. Reporting Month:

Sr No.	A/T No.	Material	Item No. As Per A/T	Consignee	RR/LR Delivery Challan No. With date	Date of Actual Receipt of Material	Qty. Despatched Between 26 th of Preceding month and 25 th of the Reporting month	Programme of supply during the next 2 months
1	2	3	4	5	6	7	8	9

Consolidated details of the above information shall be furnished to office of the Chief Engineer (M.M.Cell) after completing the supplies of a particular order. The copy of this consolidated information shall invariably be forwarded to the respective consignees, failing which, security deposit paid against the contract shall not be released.

21) SUBMISSION OF BILLS:

No payment shall be made for the supply of equipment/item in part components.

22) PAYMENT OF BILLS:

100% payment of the Contract price will be paid by A/c payee cheques within 120 days from the date of receipt of entire lot as scheduled in commencement period or in monthly delivery schedule of material at the stores in good condition. However, in respect of only those entities which qualify for 45 days payment period under the Micro, Small and Medium Enterprises Development Act, 2006, 100% payment of the Contract price will be paid by A/c payee cheques within 45 days from the date of receipt of entire lot as scheduled in commencement period or in monthly delivery schedule of material at the stores in good condition. The material is to be tested / measured by the field Officers / Consignees wherever provided for. Date of issue of cheques shall be the date of payment. Following documents will have to be forwarded to the G.M. (F&A-SB), Maharashtra State Electricity Distribution Co. Ltd., Prakashgad, Station Road, Bandra (East), Mumbai - 400 051 along with bills in triplicate with copy to the

consignees, to facilitate payment.

- (i) Invoice issued in accordance with the provisions of GST Invoice Rules.
- (ii) Certificate of proper despatch
- (iii) Xerox copy of despatch document (i.e. RR/LR).
- (iv) Inspection / TC Approval.
- (v) E Way Bill, copy of acceptance letter of bank guarantee for security deposit, authority of exemption thereof.
- (vi) Detailed packing list.
- (vii) Bill of materials.
- (viii) The relevant document in support of price variation claim.
- (ix) Xerox copy of monthly despatch statement required as per clause 20 above.

Where required by the Purchaser, the successful tenderer must send the operation and maintenance manuals, test certificates, drawings etc. for the material ordered. These should be sent immediately after despatch of material and a statement to that effect should be made in the invoice. Failure to comply with this provision will result in delay in payment of the bill.

The supplier shall forward the original R.R./ L.R. direct to the consignee along with various documents as stated below in this clause. The original bill shall be forwarded to the G.M. (F&A-SB), Prakashgad, Bandra (E) and marked ORIGINAL. The bill should indicate the GST registration no. and date held by him under the GST Law. The Purchaser shall not be responsible for delay in payment of bills if the supplier fails to comply with any of the above requirements.

Supplier's copy of S.R.Note will be forwarded by the consignees through their respective Major Stores for supplier's record towards acknowledgement of receipt of material. Accounts copy of S.R. Note will be forwarded by the respective Major Stores to G.M. (F&A-SB) for payment.

Wherever the payment is to be effected against Material Receipt Intimation (MRI) and if the supplier fails to forward the documents such as inspection report, bill of materials, approved drawings, etc. alongwith the invoice to the respective consignees, the MRI issued will be a qualified one and no payment shall be made against the said MRI.

The whole of the first lot as well as monthly lot when delivered in installments, the date of delivery and due date of payment will be counted after the receipt of the entire lot along with following documents complete in all respect by the consignee:

- i) Copy of invoice/challan
- ii) Packing list
- iii) Approved sample(if applicable)
- iii) Original copy of RR/LR
- iv) Inspection approval letter signed by the Inspecting Officer in Blue ink along with copies of routine/acceptance test certificate or copy of letter of waiver of inspection as the case may be.

The Purchaser at its discretion, shall arrange for payments as above from its own sources or alternatively under ICICI line of credit / IDBI rediscounting scheme / D.D.S. of SIDBI as per terms of ICICI / IDBI / SIDBI as may be applicable, in which case, co-acceptance charges/stamp duty shall be to Purchaser's account.

Any amount more than Rs. One Lakh can be transferred to the bank Account of the supplier electronically. For this RTGS (Real Time Gross Settlement) provision, following information is to be furnished by the tenderer in the required documents of the online offer.

1. Name of the Company
2. Name of the Bank & Branch with address where the amount is to be transferred.
3. Current Account Number (15 digits)
4. RTGS No. / (IFSC Code) (Indian Financial Security Code)
5. MICR Code of the Bank
6. Company's email ID
7. Contact Name & Telephone No.

23) TAXES :

(A) Notwithstanding the fact that contract price is inclusive of GST :

(i) GST shall be paid at actuals on the basis of due date of delivery or actual date of supply whichever is lower against documentary evidence.

(ii) Variation in GST on bought out items shall not be entertained.

(B) Structural changes in and due to 'Input Tax Credit' Scheme : -

(i) In the event of any structural change occurred in the Input Tax Credit Scheme after the date of submission of the tender till the currency of the contract, the benefit out of such change shall be passed on to the purchaser.

(ii) In the event of 'Input Tax Credit' being extended by the GST Law which were otherwise ineligible for claiming Input tax credit thereof, the seller should advise the purchaser about the additional benefits accrued or any variation thereof, through a letter containing such details and computation within such time as may be agreed between both the parties i.e. Supplier & MSEDCL.

24) DEDUCTION:

Any amount or amounts which become payable by the supplier to the purchaser under a particular contract, shall be deducted by the purchaser from any amount/amounts due or becoming due to the supplier under the same or any other contract and shall be adjusted against dues to the Purchaser.

25) GUARANTEE:

Goods offered shall be guaranteed for a period of 24 months from the date of commissioning or 30 months from the date of dispatch whichever is earlier. The stores/ materials found defective within the above guarantee period shall be replaced/repared by the supplier free of cost, within one month of receipt of intimation. If the defective store/materials are not replaced/repared within the specified period as above, the Purchaser shall recover an equivalent amount plus 15 % supervision charges(Plus GST as may be applicable) from any of the bills of the supplier. Further, in case of repeated failures of equipments / material, the Purchaser reserves the right to debar / disqualify the supplier for future tenders / orders irrespective of grounds for debaring in MSEDCL debar policy as per Section-IV.

26) LIFTING OF REJECTED/DAMAGED MATERIALS:

- a) On failure to replace or repair the transit damaged or rejected material within one month from the date of intimation as required under tender, it shall be deemed to have concluded that such material is finally rejected. The damaged/rejected material shall be lifted by the supplier within 30 days from the date of receipt of notice to that effect from the concerned consignee on reimbursement to the Purchaser of the cost of the material / equipment, if any, already paid in terms of payment clause in the contract and actual expenses incurred by the consignee towards octroi, handling, demurrage/wharfage/undercharges, freight, insurance premium etc. The Purchaser shall not be responsible in any case for the loss, destruction, damage, deterioration of the material after expiry of the said 30 days period.
- b) If the supplier fails to lift the material within this period, the material will remain with the Purchaser at the cost and risk of the supplier. Supplier shall, therefore, be liable to pay ground rent @ 0.1% (Plus GST as may be applicable) per day of purchase cost of the material to be lifted from the date of intimation of rejection till the actual date of lifting.
- c) The Purchaser will be also free to dispose of such material, after the period of said 30 days, by Public auction/Tender notice/Destruction as may be deemed fit and storage charges @ 0.1 % (Plus GST as may be applicable) per day of purchase cost will be recovered from the date of intimation of rejection of materials till the date of realization of the sale amount/physical removal of the material

besides the actual expenses incurred as referred to at (a) above.

- d) Notwithstanding what is contended in the foregoing clauses, the supplier shall be liable to pay the Purchaser the cost and expenses incurred by the Purchaser, if any, including ground rent and the same shall be appropriated and recovered from the sale proceeds.

27) LIQUIDATED DAMAGES FOR LATE DELIVERY:

In case the materials are not delivered within the period stipulated in the order, the supplier shall be liable to pay at the discretion of the competent authority of the Purchaser, the liquidated damages to the Purchaser upto half percent per week or part of week Plus applicable taxes, if any on the price subject to a maximum of cumulative ceiling of 10% reckoned on the contract value of such complete portion or section of the plant, equipment or material delayed and also the portion supplied which could not be brought into commission due to any part thereof not having been delivered in time. Due consideration may be given in the levy of liquidated damages for reasons absolutely beyond the control of the supplier, for which documentary evidence shall be produced to the satisfaction of the competent authority of the Purchaser.

The Purchaser shall be entitled to deduct/recover the amount of liquidated damages from the current bill payable to the supplier or any other amount due or payable to him against this or any other contract.

For computing the liquidated damages for delayed supplies, the date of railway receipt or the date of receipt of materials at stores in case of road transport, shall be the date of delivery.

In case the Purchaser does not arrange for inspection of material within 20 days from the date of receipt of inspection call in its office, the period of more than 20 days will not be considered for levy of liquidated damages. For computing the period taken for inspection in such cases, the relevant date mentioned in the inspection certificate issued by the inspecting officer would be considered.

27.1 ORDER PLACED ON TIME PREFERENCE BASIS (WHEREVER APPLICABLE):

In case of order on time preference basis (i.e. orders given at higher rate on delivery period considerations only) if order is given at higher rate of L-2 (or L-3 etc.), then the payment at higher rates will be made provided the firm makes supplies within the stipulated time period. In case of delay in supplies, the payment will be made at the rates offered by L-1. In addition, Clause No. 27 above for Liquidated Damages for late delivery will also be applicable.

27.2 FORCE MAJEURE CLAUSE:

If, at any time, during the continuance of this contract the performance in whole or in part by either party of any obligation under this contract shall be prevented or delayed by reason of any war, hostility, acts of the public enemy, civil commotion, sabotage, fires, floods, explosions, epidemics, quarantine restriction, strikes, lock-outs or acts of God (hereinafter referred to as "events"), provided notice of happening of any such eventuality is given by either party to the other within 21 days from the date of occurrence thereof, neither party shall by reason of such event, be entitled to terminate this contract nor shall either party have any claim for damages against the other in respect of such non-performance or delay in performance; and deliveries under the contract shall be resumed as soon as practicable after such event has come to an end or ceased to exist, and the decision of the purchasing officer as to whether the deliveries have been so resumed or not, shall be final and conclusive, provided further that if the performance in whole or part of any obligation under this contract is prevented or delayed by reason of any such event for a period exceeding 60 days, either party may at its option terminate the contract PROVIDED ALSO that if the contract is terminated under this clause, the purchaser shall be at liberty take over from the contractor at a price to be fixed by the purchasing Officer which shall be final all unused, undamaged and acceptable materials, bought out components and stores in course of manufacture in the possession of the contractor at the time of such termination or such portion thereof as the purchaser may deem fit accepting such material, bought out components and stores as the contractor may with the concurrence of the purchaser elect to retain.

28) ACCEPTANCE OF LOWER FORD RATE OFFERED IN SUBSEQUENT TENDER :

During contractual delivery period of supply , the quoted rates with PV / without PV shall remain the same , however for same specification of material if the rates will receive lower in another subsequent tender in extended period of contract then it is binding on the supplier to supply the same material at lower rate for balance quantity of material i.e. in case if price bid of next subsequent tender of similar technical specification is opened and FORD rate found lower than the ongoing contracts this FORD rate shall be made applicable for the balance quantity beyond contractual delivery period. Further the purchaser reserves the right to allow the supplier to deliver the quantity or otherwise beyond the contractual delivery period.

However other stipulations of clause No. 27 of Section-II i.e. Annexure-A will remain unchanged.

29) PERFORMANCE OF CONTRACT:

The Purchaser will not be in any way liable for non-performance either in whole or in part of any contract or for any delay in performance thereof in consequence of strikes, shortage, non-availability of raw materials, combination of labour or workmen or lockout, breakdown or accident to machinery or accidents of whatever nature, failure on the part of the railways to supply sufficient wagons to carry essential raw materials etc. and finished products from the stores, subject to the provision and stipulation made in condition No. 27 as stated above i.e. Liquidated damages for late delivery.

30) PERFORMANCE DEPOSIT: (Wherever applicable)

- 30.1 After the first consignment is effected and when the 100% payment thereof becomes due to the contractor, he will have to furnish contract performance deposit as mentioned in Clause 30.2 below for proper fulfillment of the contract for balance period of contract upto expiry of guarantee period.
- 30.2 The contract performance deposit shall be of an amount equal to 10% of the contract value and shall be paid by all the types of contractors. The Security Deposit paid by the contractor shall be refunded on furnishing the contract performance deposit within 30 days. The contract performance deposit shall be furnished in the prescribed form.
- 30.3 The contract performance deposit shall be refunded within 90 days from the date of expiry of the guarantee period of the equipment supplied. The purchaser shall not be liable to pay any interest or compensation to the contractor for retaining the deposit after the end of the said period.
- 30.4 The contract performance deposit is intended to secure the performance of the contract for guarantee period of the equipment supplied. However, it is not to be construed as limiting the damages stipulated in other clauses of the contract.

31) POWER OF ATTORNEY:

It will be obligatory on the supplier to communicate the revocation of Power of Attorney, if any, after submission of offer till the execution of contract failing which the act/s & action done by the agent/representative shall be deemed to be the valid act/s & action of the tenderer/ supplier.

32) JURISDICTION:

Any disputes or difference arising under, out of or in connection with this tender or contract if concluded, shall be subject to the exclusive jurisdiction of the "Courts" in Mumbai.

33) TERMINATION OF CONTRACT :

- 1) The decision of the Purchaser shall be final as regards the acceptability of the stores supplied by the supplier and the Purchaser shall not be required to give any reason in writing or otherwise at any time for the rejection of the stores/materials.

- 2) In case the contractor/supplier fails to deliver the stores/material or any consignment thereof within the contracted period of delivery or in case the stores/materials are found not in accordance with the prescribed specification, approved samples and the performance of the supplied material is not found satisfactory, the Purchaser shall exercise in discretionary power either,
- (a) to purchase from elsewhere, after giving due notice to the contractor, at the risk of contractor, such stores/material not so delivered or other of similar description, without canceling the contract in respect of consignment not yet due for delivery,
- OR
- (b) to cancel the contract reserving Purchaser's right to recover damages Plus GST as may be applicable.
- (c) notwithstanding that the powers under (a) and (b) referred above are in addition to the rights and remedy available to the Purchaser under the General Law of India relating to contract.
- (d) Purchaser reserves right to recover damages against risk purchase or 10 % value of non-supplied material plus applicable taxes, if any whichever is higher.

In the event of risk purchase of stores of similar description, the option of the Purchaser shall be final. In the event of action taken under (a) or (b) above, the supplier shall be liable for any loss which the Purchaser may sustain on that account but the supplier shall not be entitled to any saving on such purchases made against default.

- 3) Further contract can be terminated in case of sub-standard /poor quality material.

34) **SUSPENSION OF THE SUPPLIER:**

During the execution of the supply if the events as under happens then the supplier shall be suspended:-

- a) If the enquiry conducted by CBI or any other investigating Agency and recommended for suspension.
- b) If the Purchaser finds the offense of moral turpitude committed by the supplier.
- c) If it is found that supplier has attempted some irregular/illegal activities to gain the order.

35) **REMOVAL FROM LIST OF REGISTERED VENDORS:**

In the event of disqualification, as the case may be, the bidder will be de-listed for that particular item/s from the list of registered vendors of MSEDCL's e-tendering system for the disqualified period. On expiry of disqualified period the bidder, if he desires, shall have to register again after following the prevailing registration process.

36) TAX DEDUCTED AT SOURCE:

The purchaser shall deduct tax at source in accordance with the provisions of the GST laws as and when the same is notified

NOTES:

- (i) In respect of Micro, Small and Medium Enterprises, best efforts will be made for payment within 45 days from date of submission of invoice along with requisite documents after the delivery of entire lot. However, no claim for interest will be entertained in case of delay in payment beyond 45 days. The Micro, Small and Medium Enterprises who are ready to accept this payment term may only quote. No dispute in this regard will be entertained.**
- (ii) After completion of order, the claims of whatsoever nature lodged after 30 days from the last date of payment will not be entertained.**