



(Under jurisdiction of Nagpur court only)

WESTERN COALFIELDS LIMITED

(A subsidiary of Coal India Limited & A Government of India Enterprise)

Office of the General Manager(MM)
Materials Management Department,
Coal Estate, Civil Lines
Nagpur 440 001

Ph. PBX : 0712 - 2511381,
2511227 EXT 5587
Fax : 0712 - 2510284
Website : westerncoal.gov.in

Rate Contract No: 11100330520992

Dated: 08.09.2020

To.

BY REGISTERED POST with AD

M/s BLACK DIAMOND EQUIPMENTS PVT.LTD
Plot no. 156-157 ICRC, T P Nagar
KORBA
CHHATISGARH 495677

Vendor Code : 133035
Vendor Type: MSE
Tel No:917759-245024
Mobile: 9977253555

Dear Sir,

Sub:- Rate Contract for Supply of Spares for "Black Diamond" make Secondary Crushers, for the period of two years

- Ref:- 1. Our e-tender no. hq-pur-sp-s007-2020-21 opened on 04.05.2020
2. Tender id : 2020_WCL_169974_1 [e-office file no. 239456]
3. Your offer on portal under Bid id : 513577 and subsequent correspondences on portal

With reference to the above, we are pleased to enter into a RATE CONTRACT with you for supply of Spares for "Black Diamond" make Secondary Crushers to all the Areas of WCL situated in the State of Maharashtra & MadhyaPradesh as per the specification, Price, terms and conditions stipulated hereunder :

Tender item sl.no.	Item Description	ITEM CODE	PART NO	UoM	Basic Rate in Rs.
1.00	HEAD SHAFT	23231990017	BD-400CC-201	Nos	330000.00
2.00	SPROCKET FOR HEAD SHAFT	23231990029	BD400CC202	Nos	125000.00
3.00	HEAD SHAFT BEARING BLOCK ASSLY.	23231990032	BD-400CC-203	Nos	280000.00
4.00	HEAD SHAFT WITH SPROCKET	23231990076	BD-400CC-213	Nos	595000.00
5.00	TAIL SHAFT	23231990091	BD-400CC-301	Nos	285000.00
6.00	SPROCKET	23231990108	BD-400CC-302	Nos	125000.00
7.00	TAIL SHAFT WITH SPROCKET	23231990179	BD-400-CC-313	Nos	550000.00
8.00	WEAR RESISTANT PICKS	23231990352	S-400-412A	Nos	2040.00
9.00	FIXED CUSHER ROLL COMPLETE WITH SHAFT	23231990301	S400-401	Nos	936500.00
10.00	ADJUSTABLE CRUSHER ROLL(TEETH TYPE)	23231990313	S-400-401A	Nos	936500.00
11.00	BEARING BLOCK ASSEMBLY	23231990325	S-400-402	Nos	448350.00
12.00	DUST SEAL	23231990337	S400-406	Nos	9990.00
13.00	STUD TENSION BOLT	23231990143	BD-400CC-309	Nos	8700.00
14.00	STUD TENSION NUT	23231990155	BD-400CC-310	Nos	225.00

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TERMS AND CONDITIONS:

1. RATE CONTRACT :- This is a Rate Contract wherein the rate is fixed and the quantity to be procured during the currency of this Rate Contract is not fixed & will be on, as & when required basis. Supply orders will be placed by DDOs (Direct Demanding Officers) as and when required basis during validity period of Rate Contract. All the orders placed during the validity period of Rate Contract should be executed by Supplier as per terms of Supply order/ Rate Contract. Quantity indicated against each item is only indicative and not final.

2. VALIDITY PERIOD ; This Rate Contract shall be valid for a period of TWO YEARS from the date of issue of this rate contract i.e. from 08.09.2020 to 07.09.2022 (Both days inclusive).

3. OFF TAKE : The RC shall be operative within the total off-take value for WCL at Rs. 4,29,41,321.00 only with the Area wise breakup of approximate off-take for operation of proposed rate contract for the period of two year from the date of issue of the RC, as follows :

SN	Area	Off-take amount (in Rs.)
1	Wani	85,88,264.20
2	Wani North	85,88,264.20
3	Majri	85,88,264.20
4	Nagpur	85,88,264.20
5	WCL HQ	85,88,264.20
	Total	4,29,41,321.00

Instruction to D.D.O.s :- "In case their requirement exceeds off-take value indicated above against their Area they have to send their request for enhancement of off-take value to HQ Purchase who will process the same to obtain approval of competent authority."

4. PRICES : The above mentioned prices are firm and shall remain firm during entire duration of the contract on F.O.R Destination basis, inclusive of Packing, Forwarding, Freight and Insurance charges. The safe arrival of the consignment upto consignee's destination shall be your responsibility.

5. GST : Shall be payable extra as applicable . The present applicable rate of GST is @ 18 %. Input Tax Credit on GST shall be availed by WCL as per GST rules. You shall submit GST complaint invoice enabling WCL to avail Input Tax Credit (ITC) under GST. In case of any failure on your account, the penalty including interest , if any, shall be borne by WCL on ITC shall be recovered from you.

6. Manufacturing Certificate: You have to submit a certificate with supply that "All supplied items are our own make and are manufactured at works located at Plot No. 156-157, I. C. R. C., T. P. Nagar, KORBA(C.G.)495677"

7. DELIVERY :- Delivery should be completed in within four (4) months from the date of placement of order. The delivery period shall be reckoned from the 7th date of placement of order.

No material to be supplied without delivery extension. Request for extension of delivery period to be made within the schedule delivery period. Even if the materials are unloaded at the Stores, the same shall be at the risk and cost of the supplier and shall not be accepted unless the supplier has obtained the extension of delivery period.

Grace Period : A grace period of 25% of original delivery period or 21 days, whichever is earlier, unless specifically disallowed will be applicable.

Where supplies are made within the grace period, there is no necessity for any extension in delivery period and the paying authorities shall make payment without any amendment to the contract delivery period. No liquidated damages are leviable in respect of supplies made within the grace period. The extra expenditure, the purchaser may have to incur on account of increase/fresh imposition of GST/CST/VAT, Excise/Customs Duty etc. which takes place within the above grace period will also not be recoverable from the suppliers.

The grace period is allowed as a matter of grace and is not intended to operate as extension of the

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delivery period and the same will be available only for deliveries and not for offering stores for inspection (in cases of pre- dispatch inspections) which should be made within the original delivery period or the re-fixed date of delivery.

If the stores are tendered for pre-dispatch inspection within the original delivery period stipulated in the contract and the firm delivers the stores within the grace period, the purchaser is bound to accept the stores even though the inspection was completed after the delivery date.

The grace period will only apply to the original contract delivery period/refixed delivery period and will not be applicable once an extension of delivery has been granted.

In case of scheduled delivery period, grace period shall be limited to 25% of original delivery period or 21 days, whichever is earlier, irrespective of delay in particular phase of delivery

8. **Guarantee / Warranty:** The supply shall be covered by the maker's standard guarantee as follows :-
The supplier shall warrant that the parts supplied under the contract / supply order-
-Is new and unused
-Is in accordance with contract specifications
-shall have no defects arising out of design, materials or workmanship.
Bidder will stand guarantee for the parts supplied by them to be free from manufacturing / material / design defects and certify that parts are suitable for fitment on Secondary Crushers supplied by them. They will further guarantee satisfactory performance of the component for a period of 9 (nine) months from the date of supply under normal condition of operation. However, rubber items like hoses, oil seals etc. shall be warranted for six months from the date of supply.
9. **Warranty replacement & Penalty :** Warranty replacement shall be made within 8 weeks from date of intimation failing which penalty @ ½% of the price of stores in arrear for each week or part thereof subject to ceiling limit of 5% shall be charged and recovered from the bidder by the respective DDOs.
10. **Fitment Guarantee:** A fitment guarantee certificate should be submitted to the effect that offered items shall fit and function in the equipment on which they are intended to be used ,without any modification or alteration
11. **PAYMENT TERMS :-** 100% Payment shall be released within 21 days after receipt and acceptance of the goods at the consignee's end or submission of bills by the supplier along with all requisite documents as per provisions of Purchase order/ contract, whichever is later.
12. **DIRECT DEMANDING OFFICERS :-** All Area General Managers or their authorized representative shall be Direct Demanding Officers (DDOs) against this Rate Contract.
- 13 **PAYING AUTHORITY:-** Area Finance Managers of Respective Areas of WCL as per enclosed Annexure-A
14. **CONSIGNEE:-** As per enclosed Annexure-A
15. **SECURITY DEPOSIT :** Exempted being OEM.
16. **INSPECTION :** Final Inspection of the consignment shall be carried out at the respective Areas which will be arranged by the consignee on receipt of the material.
17. **SUBMISSION OF BILLS :** Pre- receipted and stamped invoice for 100% value of each materials with taxes and duties and other charges shall be submitted in "QUADRUPLICATE" to the consignee along with following documents:
1. Consignment note/RR/LR in original.
 2. Warranty/Guarantee certificate.& Fitment Guarantee Certificate.
 3. Delivery challan in original.
 4. GST compliant invoice in Original signed by authorised signatory or dealer's invoice as applicable.
 5. Manufacturing certificate if applicable
 6. Any other document required as per technical specification/Purchase order/Rate Contract.

Indicated elsewhere in the order.

18.(a). LIQUIDATED DAMAGES: In the event of failure to deliver or dispatch the equipment/stores within the stipulated date/period in accordance with the terms and conditions and the specifications mentioned in the supply order and in the event of breach of any of the terms and conditions mentioned in this supply order, the Purchaser shall have the right:

(a) To recover from the successful bidder as agreed liquidated damages, a sum not less than 0.5% (Half Percent) of the price of any equipment/ stores which the successful tenderer has not been able to supply as aforesaid for each week or part of a week during which the delivery of such stores may be in arrears limited to 10% (Ten Percent) of the total contract value, or

(b) To purchase elsewhere after due notice to the successful tenderer on the account and at the risk of the defaulting supplier, the equipment/stores not supplied or others of similar description without cancelling the supply order in respect of the consignment not yet due for supply, or

(c) To cancel the supply order or a portion thereof, and if so desired to purchase the equipment/ stores at the risk and cost of the defaulting supplier and also,

(d) To extend the period of delivery with or without penalty as may be considered fit and proper. The penalty, if imposed, shall not be more than the agreed liquidated damages referred to in clause (a) above.

(e) To forfeit the security deposit full or in part.

(f) Whenever under this contract any sum of money is recoverable from and payable by the supplier, the Purchaser shall be entitled to recover such sum by appropriating in part or in whole by deducting any sum or which at any time thereafter may become due to the successful tenderer in this or any other contract. Should this sum be not sufficient to recover the full amount recoverable, the successful tenderer shall pay the Purchaser on demand the remaining balance. The supplier shall not be entitled to any gain on any such purchase.

For the purpose of the calculation of the liquidated damages amount, the basic Free Delivery at Site price shall be considered. For direct imports, the CIP price at Final Place of destination will be considered. Taxes and duties shall not be taken into account for calculation of LD. However, when prices indicated in the order are inclusive of taxes and duties, such prices will be taken for calculation of LD.

(b) Denial Clause:

In case of extension of delivery period, any increase in statutory duties and/or upward rise in prices due to price variation clause and/or exchange rate variation clause, is to be borne by the seller during the extended delivery period, while purchaser reserves its right to get any benefit of downward revisions in statutory duties, PVC and exchange rate variation clause.

19.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 wars or revolutions, hostility, acts of public enemy, civil commotion, sabotage, fires, floods, explosions, epidemics, quarantine restrictions, strikes, lockouts, freight embargoes or act of God (hereinafter referred to "events") provided, notice of the happening of any such event 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, provide further that if the performance in whole or part or 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 to take over from the contractor at a price to be fixed by the C IL /Subsidiary

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Company, 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 excepting such materials, bought out components and stores as the contractor may with the concurrence of the purchaser elect to retain."

20. LOWEST PRICE CERTIFICATE:- You shall certify on the body of each bills/invoices that "the prices charged by us for the supplied items are the lowest prices as applicable to any other Organization / Ministry / Department of the Govt, of India or Coal India Ltd. and /or its Subsidiaries or other PSU or any other private organization."

21. PRICE FALL CLAUSE:- You had undertaken that you have not offered to supply / supplied / is not supplying same or similar product / systems or sub systems at a price lower than this Rate Contract in respect of any Organization / Ministry / Department of the Govt, of India or Coal India Ltd. and /or its Subsidiaries or other P S U or any other private organization during the currency of the contract and if it is found at any stage that same or similar product / systems or sub systems was supplied by the bidder to any Organization / Ministry / Department of the Govt, of India or Coal India Ltd. and /or its Subsidiaries or other PSU or any other private organization at a lower price during the currency of the contract, then that very price will be applicable to the present case and the difference in the cost would be refunded by you to buyer.

(i) The currency of contract will mean the period till completion of supply.

(ii) You shall have to submit a copy of the last (latest) purchase order for the similar /ordered item (s) received by them from any Organization / Ministry / Department of the Govt, of India Coal India Ltd. and /or its Subsidiaries or other PSU or any other private organization, along with the offer.

(iii) It shall be your responsibility to inform the purchaser of offer to supply / supply of the similar /ordered item (s) at a lower rate to any Organization / Ministry / Department of the Govt, of India or Coal India Ltd. and /or its Subsidiaries or other PSU or any other private organization during the currency of the contract.

(iv) You shall submit a certificate along with the bill(s) that you had not offered to supply / supplied the similar /ordered item (s) at a lower rate to any Organization / Ministry / Department of the Govt, of India or Coal India Ltd. and /or its Subsidiaries or other PSU or any other private organization.

22. SHORT CLOSURE OF RATE CONTRACT ; Western Coalfields Limited reserve the right to short close the rate contract at any time.

23. INTEGRITY PACT : Already signed and submitted by you with your offer shall be applicable against this contract.

24. Parallel Rate Contract: WCL reserves the right to enter into parallel rate contract(s) simultaneously at any time during the period of Rate contract with one or more tenderers and also reserves the right to buy any quantity outside the contract in case of urgency arising out at any time during the contract period.

25. Settlement of Disputes through Court of Law of Competent Jurisdiction: *The Courts in whose territorial jurisdiction the place from where Tenders / contract is being issued is located i.e. Nagpur shall be competent to deal with any matter arising out of this NIT / resultant purchase Order/Contract . Therefore any disputes/claims arising out of the NIT with bidders or arising out of the contract entered into with the suppliers will be subject to the jurisdiction of the Nagpur court of law*

26. Termination of the contract for convenience: After placement of contract, there may be some unforeseen situation compelling the purchaser to cancel the contract. In such a case,

1) . The Purchaser, by written notice sent to the Supplier, may terminate the Contract, in whole or in part, at any time for its convenience. The notice of termination shall specify that termination is for the Purchaser's convenience, the extent to which performance of the Supplier under the Contract is terminated, and the date upon which such termination becomes effective.

2). The Goods that are complete and ready for shipment within thirty (30) days of receipt of termination notice by the supplier, shall be accepted by the Purchaser at the Contract terms and

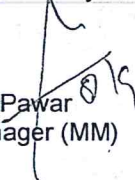
prices. For the remaining Goods, the Purchaser may elect:

- i) To have any portion completed and delivered at the Contract terms and prices; and/or
- ii) To cancel the remainder and pay to the Supplier an agreed amount for partially completed Goods and Services and for materials and parts previously procured by the Supplier.

Unless otherwise specified above, this rate contract shall also be governed by our General Conditions of the Contracts-Annex B" enclosed herewith.

Please acknowledge receipt of this Rate Contract within 15 days and return duplicate copy of this rate contract duly signed with seal of your company as a token of acceptance, otherwise it will be presumed that you have accepted the Rate Contract as per terms and conditions, for execution.

Your faithfully,


Sanjay Pawar
Sr. Manager (MM)

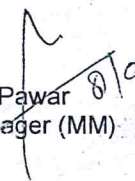
Encl.:


K.S.R. Divakar
Chief Manager (MM)

- i) List of DDO's/Consignee/Paying Authority- Annexure "A"
- ii) General Conditions of the Contract-Annexure "B"
- iii) Signed copy of Integrity Pact

Distribution copy:

1. Area General Managers, All Areas, WCL
2. GM(E&M)HOD/GM(S&C)HOD, WCL Hqrs, Nagpur
3. GM(Fin)/c-I & II, WCL Hqrs, Nagpur
4. SO(E&M)/SO(S&C)/ Depot Officers/AFM/SO(MM), All Areas, WCL :- Order against this rate contract is to be placed only against approved requirement and after obtaining budget certification.
5. GM(MM)HOD, CIL/BCCL/CCL/ECL/SECL/MCL/NCL.
6. Chief Manager (MM)/Admin, WCL HQ, Nagpur: *This rate Contract is issued as per Approval of Empowered Committee of Functional Directors headed by CMD, WCL, in the 24th meeting held on 18.07.2020 under agenda item no.24.6, circulated by Company Secretary vide his note no. 342 dated 17.08.2020*


Sanjay Pawar
Sr. Manager (MM)


K.S.R. Divakar
Chief Manager (MM)

CONSIGNEE & PAYING AUTHORITY DETAILS

ANNEXURE- A

SL NO.	NAME OF THE AREA	POSTAL ADDRESS OF THE CONSIGNEE	POSTAL ADDRESS OF THE PAYING AUTHORITY
1	NAGPUR	The Depot Officer, Regional Stores, Western Coalfields Limited PO: SILEWARA COLLIERY Dist. Nagpur (M.S.)Pin:441 109	The Area Finance Manager, Western Coalfields Limited PO: JARIPATKA NAGPUR (M.S.)Pin:440 014
2	UMRER	The Depot Officer, Regional Stores, Western Coalfields Limited P.O.:Umrer Project Dist. Nagpur (M.S.)Pin:-441204	The Area Finance Manager, Western Coalfields Limited P.O.:Umrer Project Dist. Nagpur (M.S.)Pin:-441204
3	MAJRI	The Depot Officer, Regional Stores, Western Coalfields Limited New Majri , P.O.:Shivaji Nagar, Distt:-Chandrapur-(M.S)Pin: 442 603	The Area Finance Manager, Western Coalfields Limited Majri Area , Kuchna P.O.:Snebul , Via Warora , Distt:-Chandrapur-(M.S)Pin: 442907
4	WANI	The Depot Officer, Regional Stores, Western Coalfields Limited P.O.:GHUGUS COLLIERY Distt:-Chandrapur,(M.S)Pin: 442 505	The Area Finance Manager, Western Coalfields Limited P.O.:TADALI Distt:-Chandrapur,(M.S)Pin: 440206
5	WANI NORTH	The Depot Officer, Regional Stores, Western Coalfields Limited Wani North Area , PO: UKNI, Tahsil: WANI Dist : Yavatmal (MS)Pin : 445 304	The Area Finance Manager, Western Coalfields Limited Wani North Area , PO: UKNI, Tahsil: WANI Dist : Yavatmal (MS)Pin : 445 304
6	CHANDRAPUR	The Depot Officer, Regional Stores, Western Coalfields Limited Durgapur Opencast, P.O.: DURGAPUR Distt,Chandrapur,(M.S) Pin : 442 403	The Area Finance Manager, Western Coalfields Limited P.O. & Dist. Chandrapur, (M.S)Pin : 442 403
7	BALLARPUR	The Depot Officer, Regional Stores, Western Coalfields Limited Ballarpur Area, PO : Sasti Distt:-Chandrapur (M.S) Pin: - 442 701	The Area Finance Manager, Western Coalfields Limited Ballarpur Area PO : Ballarpur - 442701Distt:-Chandrapur (M.S)Pin:- 442701
8	KANHAN	The Depot Officer, Regional Stores, Western Coalfields Limited Kanhana Area, P.O:Dongaria-480553 Distt.:Chhindwara, (M.P)	The Area Finance Manager, Western Coalfields Limited Kanhana Area, P.O:Dongaria-480553 Distt.:Chhindwara, (M.P)
9	PENCH	The Depot Officer, Regional Stores, Western Coalfields Limited Pench Area, P.O: Chandameta-480447 Distt.:Chhindwara, M.P	The Area Finance Manager, Western Coalfields Limited Pench Area P.O: CHANDAMETA-480447 Distt.:Chhindwara, M.P
10	PATHAKHERA	The Depot Officer, Regional Stores, Western Coalfields Limited Pathakhera Area P.O.:Pathakhera Colliery-460449, Distt.:Betul.(M.P)	The Area Finance Manager, Western Coalfields Limited Pathakhera Area P.O.:Pathakhera Colliery-460449, Distt.:Betul.(M.P)

ANNEXURE – “B”**General Conditions of Contract (GCC)****1. Definitions**

In the interpretation of the contract and the general and special conditions governing it, unless the context otherwise requires, the following terms shall be interpreted as indicated below:

- a) “The Contract” means the agreement entered into between the Purchaser and the Supplier including all attachments and appendices thereto and all documents incorporated by reference therein including Invitation to tender, Instructions to tenderers, Acceptance of tender, Particulars and the General and Special Conditions specified in the acceptance of tender;
- b) “Contract Price” means the price payable to the Supplier under the Contract for the full and proper performance of its contractual obligations;
- c) “Goods” means all of the equipment, plant, machinery, and/or other materials which the Supplier is required to supply to the Purchaser under the Contract;
- d) “Services” means those Services ancillary to the supply of the Goods, such as transportation and insurance, and any other incidental Services, such as installation, commissioning, provision of technical assistance, training and other such obligations of the Supplier covered under the Contract;
- e) “GCC” means the Conditions of Contract contained in this section;
- f) “SCC” means the Special Conditions of Contract;
- g) “Purchaser” means the organisation purchasing goods and services, i.e., Coal India Limited or its subsidiaries or areas falling under various subsidiaries of Coal India Limited;
- h) “Purchaser’s country” is India;
- i) “Supplier/Contractor” means the individual, firm or company with whom the contract has been concluded for supplying the Goods and Services under the Contract. The Supplier/Contractor shall be deemed to include its successors (approved by the purchaser), representatives, heirs, executors, administrators and permitted;
- j) “CIL” means Coal India Limited or the Subsidiary Company of CIL or areas falling under various subsidiaries of CIL where Goods are deployed/ used;
- k) “Year” means the Calendar Year.
- l) “Chairman” means the Chairman of Coal India Limited.
- m) “Chairman-cum-Managing Director” means Chairman-cum-Managing Director of any of the Subsidiary Companies of Coal India Limited, presently Central Coalfields Limited, Eastern Coalfields Limited, Western Coalfields Limited, Bharat Coking Coal Limited, Central Mine Planning & Design Institute Limited, South Eastern Coalfields Limited, Northern Coalfields Limited and Mahanadi Coalfields Limited.
- n) “Drawing” means the drawing and plans specified in or annexed to the schedule or specifications.
- o) “Inspector” means any person nominated by or on behalf of the purchaser to inspect supplies, stores or work under the contract or his duly authorized agent.
- p) “Progress Officer” means any person nominated by or on behalf of the Purchaser to visit supplier’s works to ascertain position of deliveries of Goods ordered.
- q) “Materials” shall mean anything used in the manufacture or fabrication of the stores.
- r) “Stores” means the goods specified in the Supply Order or schedule which the supplier/contractor has agreed to supply under contract.
- s) “Test” means such test or tests as are prescribed by the specifications or considered necessary by the Inspector or any agency acting under direction of the Inspector.
- t) “Site” mean the place or places named in the “Supply Order” or such other place or places at which any work has to be carried out as may be approved by the purchaser.
- u) Words denoting the persons shall include any company or association or body of individuals whether incorporated or not.
- v) Words in singular include the plural and vice-versa.
- w) Words denoting the masculine gender shall be taken to include the feminine gender.
- x) “Writing” shall include any manuscript, typewritten or printed statement under or over signature or seal as the case may be.
- y) “Unit” and “Quantity” means the unit and quantity specified in the schedule.
- z) “Purchase Order” or “Supply Order” or “Order” or “Contract” means an order for supply of stores and includes an order for performance. The terms “Supply Order”, “Purchase Order”, “Order” and “Contract” are interchangeable.
- aa) “Particulars” shall mean the following:
- i) Specifications;
 - ii) Drawing;
 - iii) Sealed pattern denoting a pattern sealed and signed by the Inspector;
 - iv) Certified or sealed sample denoting a copy of the sealed pattern or sample sealed by the purchaser for guidance of the Inspector;
 - v) Trade pattern denoting a standard of the ISI or other standardising authority or Coal India Ltd. and/ or any of its subsidiary companies or a general standard of the industry and obtainable in the open market;
 - vi) Proprietary make denoting the product of an individual manufacturer;
 - vii) Any other details governing the construction, manufacture and/or supply as existing in the contract.
- bb) Terms and expressions not defined herein shall have the meanings assigned to them in the Indian Sale of Goods Act, 1930 or the Indian Contract, 1872 or the General Clauses Act, 1897, as amended, as the case may be.

2. Application

These Conditions shall apply to the extent that they are not superseded by provisions in other parts of the Contract.




3. Standards

The Goods supplied under this Contract shall conform to the standards mentioned in the Technical Specifications. Such standards shall be the latest issued by the concerned institution.

4. Use of Contract Documents and Information

4.1. The Supplier shall not, without the Purchaser's prior written consent, disclose the Contract, or any provision thereof, or any specification, plan, drawing, pattern, sample or information furnished by or on behalf of the Purchaser in connection therewith, to any person other than a person employed by the Supplier in the performance of the Contract. Disclosure to any such employed person shall be made in confidence and shall extend only so far as may be necessary for purposes of such performance.

4.2. The Supplier shall not, without the Purchaser's prior written consent, make use of any document or information enumerated in sub-clause 4.1 above, except for purposes of performing the Contract.

4.3. Any document, other than the Contract itself, enumerated in sub-clause 4.1 above shall remain the property of the Purchaser and shall be returned (in all copies) to the Purchaser on completion of the Supplier's performance under the Contract if so required by the Purchaser.

5. Patent Rights

The Supplier shall indemnify the Purchaser against all third-party claims of infringement of patent, trademark or industrial design rights arising from use of the Goods or any part thereof in the Purchaser's country.

6. Security Deposit

6.1. The successful tenderers will have to submit Security Deposit for the 10% value of the total landed value of the contract including all taxes, duties and other costs and charges, without considering Input Tax Credit.

6.2. The Security Deposit shall be in the form of a Bank Demand Draft or in the form of a Bank Guarantee in the prescribed format from a RBI Scheduled Bank in purchaser's country (on a non-judicial stamp paper) within 15 days from date of notification of award or placement of order.

6.3. The Security Deposit shall be in the same currency(ies) in which contract is to be signed/ issued. In case of multi-currency contract, separate Security Deposit Bank Guarantee (SDBG) in respective currency for required value as above shall be submitted.

6.4. In case of equipment, SDBG shall not be individual equipment wise. However, multiple Bank Guarantees for Security Deposit shall be permissible provided value of all the SDBGs totals to 10% of the contract value, and all are submitted simultaneously within the specified time schedule and all of them are in the same prescribed format of SDBG without linking to any particular equipment.

6.5. The SDBG shall remain valid up to 3 months after completion of supplies and acceptance of materials by the consignee in case of supply contracts and in case of contracts for equipment involving installation and commissioning, 3 months after the supply and commissioning of all the equipment covered in the contract.

6.6. If the successful tenderer fails to deposit the security deposit within 15 (fifteen) days from date of notification of award/ placement of order, another opportunity may be given to them for submission of Security Deposit within next 15 days. If the successful tenderer still fails to deposit the security deposit within the extended period but executes the supplies within scheduled delivery period, the submission of Security Deposit may be waived, as the purpose of submission of SD is fulfilled.

If the Supplier fails to deposit the SD within the extended period and no supplies are made, the order shall be cancelled and the case shall be processed to order elsewhere at firm's risk and cost. Moreover, the firm's performance is to be kept recorded for future dealings with them. Further, if during execution of the contract, the firm fails to extend the Bank Guarantee for Security Deposit, suitably as required, the same shall be recorded as unsatisfactory performance for future dealings apart from taking any other penal action as may be deemed fit by CIL.

6.7. In cases where the successful tenderer did not submit the security deposit even within the extended period for SD submission but has supplied the materials either in full or in part after the extended period for SD submission, the SD may be deducted from the first bill or in case of insufficient amount from subsequent bill(s) of the supplier till the full SD amount is deducted. Further, a penalty equivalent to 0.5% (half percent) of SD amount for delay of each week or part thereof (period of delay is to be calculated from the 31st day from the date of notification of award/ placement of order to the date of receipt of full SD/deduction of full SD) shall be levied subject to a maximum of 10% of the contract value.

6.8. Security Deposit will be released with the approval of HOD of MM Department/ Area GM within 30 days after completion of supplies and acceptance of material by the consignee in case of supply contractor after successful commissioning and on receipt of confirmation of Performance Bank Guarantee(s) for all the equipment covered in the contract in case of contracts for equipment and all those items/ goods involving installation and commissioning and PBG.

6.9. Security Deposit may be converted into Performance Bank Guarantee (PBG) wherever PBG is required at the option of the supplier. At the time of conversion of security money into PBG, it should be ensured that the amount of PBG should not be less than 10% of landed value of order. Wherever Security Deposit is converted into PBG, the operation of such SDBG/ Performance BG shall be guided by Performance Bank Guarantee Clause.

6.10. All Central/State Government Organization/PSUs shall be exempted from submission of Security Deposit. OEM/OES shall also be exempted from submission of Security Deposit in case of procurement of Spare Parts for equipment against Single Tender Enquiry/Open/Limited Tenders.

6.11. Submission of Security Deposit is exempted for the contracts having value upto Rs.2 lakhs.

6.12. The SDBG will be submitted Through Structured Financial Management System (SFMS).

7. Performance Bank Guarantee

7.1. Wherever applicable, the successful bidder shall be required to furnish a Performance Guarantee equivalent to 10% value of the total landed value of the contract including all taxes, duties and other costs and charges, without considering Input Tax Credit.

7.2. The Performance Guarantee shall be in the form of a Bank Guarantee issued by a RBI scheduled bank in India in the prescribed format on a non-judicial stamp paper.

7.3. The Performance Bank Guarantee (PBG) shall be in the same currency (ies) in which contract has been signed. In case of multi-currency contract, separate PBG in respective currency for required value shall be submitted.

7.4. If the contract is for procurement of equipment, the PBG (s) may be submitted equipment wise also. For this purpose, the value of each equipment will be worked out by dividing the total value of contract for a particular item of NIT, worked out as per provisions contained in clause-7 above, by the number of equipment ordered for that particular item of the NIT.

7.5. The PBG (s) shall remain valid till 3 months after the completion of warranty period.

7.6. The PBG shall be submitted sufficiently in advance (say 3-4 weeks) to enable its verification from the issuing bank, before submission of the invoice for 80% payment of the particular goods/ equipment(s).

7.7. The release of the Performance Bank guarantee(s) after above indicated period, shall be subject to satisfactory performance of the equipment/ items during the warranty period and fulfillment of contractual obligations failing which, action for further

extension or encashment of PBG, as deemed suitable shall be taken. The Performance Bank Guarantee shall be released after expiry of validity period if no claim is pending, with the approval of the concerned HOD (MM)/ Area GM.

7.8. In case of procurement of equipment, if the successful tenderer which does not have the After Sales Service Support facilities in India like Depot/ Warehouse for supply of spare parts, Workshop facilities for servicing and repair of assemblies, sub-assemblies and equipment, availability of trained technical manpower etc., training facilities for providing training to CIL's personnel, wherever required, additional Performance Bank Guarantee for the 30% value of the total landed value of the contract including all taxes, duties and other costs and charges shall have to be submitted. This 30% PBG will be released after establishment of After Sales Service Support facilities in India subject to confirmation of the same by concerned Head of Technical Department. However, the supplier shall have to submit PBG for 10% of the total contract value to be kept valid for the remaining period of the contract plus 3 months processing period before release of 30% PBG. This 10% PBG will be released after satisfactory performance of all equipment/ items and fulfillment of contractual obligations including warranty obligations.

7.9. The PBG will be submitted through Structured Financial Management System (SFMS).

8. Inspections and Tests

8.1. The Purchaser or its representative shall have the right to inspect and/or to test the Goods to confirm their conformity to the Contract Specifications at no extra cost to the Purchaser. Generally, the Goods shall be of the best quality and workmanship and comply with the contract or supply order in all respect. The Technical Specifications shall specify what inspections and tests the Purchaser requires and where they are to be conducted. The Purchaser shall notify the Supplier in writing, of the identity of the inspectors). The Purchaser reserves the right, at the Purchaser's cost, to depute its own inspectors) and/or to engage any other third party inspecting agency, to conduct inspections and tests pursuant to the Contract. Sufficient time, atleast 30 days in advance will be given for inspection.

8.2. The inspections and tests may be conducted on the premises of the Supplier, at point of delivery and/or at the Goods' final destination. If conducted on the premises of the Supplier, all reasonable facilities and assistance, including access to drawings and production data, shall be furnished to the inspectors at no charge to the Purchaser. However, any drawing and proprietary information provided for this purpose shall remain in control of the supplier. The inspector shall have full and free access at the supplier's works for the purpose of carrying out inspection. The Inspector shall have the right to put all the stores or materials forming part of the same or any part thereof to such tests as he may think fit and proper. The supplier shall not be entitled to object, on any ground whatsoever, to the method of testing adopted by the Inspector. Unless otherwise provided for in the contract, all stores/materials expended in test will be to supplier's account. In the event of Goods found acceptable by the Inspector during inspection, he shall furnish the supplier with necessary copies of Inspection notes for attaching to the supplier's bill.

8.3. Should any inspected or tested Goods fail to conform to the Specifications, including acceptance tests and periodic tests to verify guaranteed performance, the Purchaser may reject the Goods, and the Supplier shall either replace the rejected Goods or make alterations necessary to meet Specification requirements free of cost to the Purchaser within thirty days of such rejection. Replaced or altered goods shall be subjected to repeated inspection or tests to demonstrate conformity with the Specifications. In the event that replacement or alteration is not done within thirty day period as aforesaid, or, replaced or altered goods fail to demonstrate conformity with the Specifications in repeated inspections or tests as aforesaid, the Purchaser reserves the right to terminate the Contract in part or in whole and the Supplier shall repay forthwith to the Purchaser all monies paid including all costs incurred in the inspection and tests; in respect of Goods and Services associated therewith, for which the termination is applicable and, subsequently remove the same from the Purchaser's Site at the Supplier's cost.

8.4. Any Goods rejected at a place other than the premises of the supplier, shall be removed by the supplier within 14 days of the date of receipt of intimation of such rejection. The Inspector may call upon the supplier to remove what he considers to be dangerous, infected or perishable Goods; within 48 hours of the receipt of such intimation. The rejected stores shall under all circumstances lie at the risk of the supplier from the moment of rejection and if such stores are not removed by the supplier within the above mentioned period, the Inspector/Purchaser may either return the same to the supplier at the supplier's risk and cost (a public tariff rate) by such mode of transport as the Purchaser or Inspector may select or dispose of such stores at the supplier's risk on his account and retain in such portion of the proceeds as may be necessary to cover any expense incurred in connection with such disposal. The purchaser shall also be entitled to recover handling and storage charges for the period during which the rejected stores are not removed.

8.5. The Purchaser's right to inspect, test and where necessary, reject the Goods after the Goods' arrival in the Purchaser's country shall in no way be limited or waived by reason of the Goods having previously been inspected, tested and passed by the Purchaser or its representative prior to the Goods' shipment from the Supplier's premises.

8.6. Nothing in this clause shall in any way relieve the Supplier of any warranty or other obligations under this Contract.

9. Packing and Marking

9.1. The Supplier shall provide such packing of the Goods as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the Contract. The packing shall be sufficient to withstand, without limitation, rough handling during transit and exposure to extreme temperatures, salt and precipitation during transit and open storage. Packing case size and weights shall take into consideration, where appropriate, the remoteness of the Goods' final destination and the absence of heavy handling facilities at all points in transit.

9.2. All packing cases, containers, packing and other similar materials shall be supplied free by the Supplier and these shall not be returned unless otherwise specified in the Contract/Purchase order.

9.3. The packing, marking and documentation within and outside the packages shall comply strictly with such special requirements as shall be expressly provided for in the Contract, including additional requirements, if any, specified in the contract and in any subsequent instructions ordered by the Purchaser. Packages will be stamped with identification marks both outside the packages as well as on the contents inside. Packages containing articles liable to be broken by rough handling like glass or machinery made of cast iron will be marked with cautionary works like 'Fragile' 'Handle with care'.

9.4. The marking of the Goods must comply with the requirements of the law relating to Merchandise Mark, in force in India.

9.5. Packing instructions: The Supplier will be required to make separate packages for each consignee. Each package will be marked on three sides with proper paint with the following:

- i. Project;
- ii. Contract No;
- iii. Country of origin of Goods;
- iv. Supplier's name;
- v. Packing list Reference Number;
- vi. The gross weight, net weight and cubic measurement;
- vii. Consignee Name and Address;

9.6. A complete list of contents in each package called the packing list will be prepared and one copy of the packing list shall be inserted inside the package.

10. Delivery and Documents

10.1. The delivery period stipulated in the Contract/Purchase Order shall be deemed to be the essence of the contract and delivery of the Goods must be completed within the specified period.

10.2. Delivery of the Goods shall be made by the Supplier in accordance with the terms specified in the Schedule of Requirements. The delivery of Goods shall be deemed to take place on delivery of the Goods in accordance with the terms of the contract after approval of Goods by the Inspector.

10.3. For purposes of the Contract, "EXW", "FOB", "FCA", "CFR", "CIF", "CIP" and other trade terms used to describe the obligations of the Parties shall have the meanings assigned to them by the prevailing edition of *Incoterms* on the date of tender opening, published by the International Chamber of Commerce, Paris.

10.4. The details of shipping documents to be furnished by the Supplier are specified below:

(a) For Imported Goods:

Within forty eight (48) hours of shipment, the Supplier shall notify the Purchaser, Port Consignee and Ultimate Consignee by fax and email, full details of the shipment including Contract number, description of Goods, quantity, the vessel, the bill of lading number and date, port of loading, date of shipment, port of discharge, etc. The Supplier shall deliver by express courier service the following documents to the Purchaser, with a copy to the Port Consignee and Ultimate Consignee:

- i. Supplier's shipping invoice showing Contract Number, Goods description, quantity, unit price, total amount and GST number of ultimate consignee;
- ii. Clean on-board bill of lading indicating the Importer-Exporter Code (IEC) of the concerned Subsidiary Company of CIL and non-negotiable bill of lading;
- iii. Packing list identifying contents of each package;
- iv. Manufacturer's/Supplier's warranty /guarantee certificate;
- v. Manufacturer's Test & Inspection certificate;
- vi. Certificate of Country of Origin issued by the Chamber of Commerce of Manufacturer's Country;
- vii. Documentary evidence of marine freight & marine insurance

The above documents shall be sent by supplier well in advance, so that the same are received by the Purchaser at least one (1) week before arrival of the Goods at the port or place of arrival and, if not received, the Supplier will be responsible for any consequent expenses.

(b) For Domestic Goods from within India:

Upon dispatch of the Goods to the consignee, the Supplier shall notify the Purchaser and Ultimate Consignee and deliver by express courier service the following documents to the Purchaser with a copy to the Ultimate Consignee:

- i. Supplier's invoice showing Contract Number, Goods description, quantity, unit price, total amount;
- ii. Railway receipt/ Transporter's consignment note /acknowledgement of receipt of Goods from the consignee(s);
- iii. Manufacturer's/Supplier's warranty / guarantee certificate;
- iv. Manufacturer's Test & Inspection certificate;

The above documents shall be provided by the supplier at the time of arrival of the Goods at the consignee's end. In case of delay, the Supplier will be responsible for any consequent expenses.

11. Insurance

11.1. Wherever necessary, the goods supplied under the contract, shall be fully insured in a freely convertible currency against loss or damage incidental to manufacture or acquisition, transportation, delivery, storage and erection and commissioning at site (wherever applicable) in the manner specified in the contract. The insurance is to be done for coverage on "all risks" basis including war risks and strike clauses. The amount to be covered under insurance should be 110% of the invoice value to take care of the overall expenditure to be incurred by the purchaser for receiving the goods at the destination.

11.2. Where delivery of imported goods is required by the purchaser on CIF/CIP basis, the supplier shall arrange and pay for marine/air insurance, making the purchaser as the beneficiary. Where delivery is on FCA/ FOB/ CFR basis, marine/air insurance shall be the responsibility of the purchaser.

11.3. In case of domestic supplies on Free Delivery at site/FOR Destination basis, the supplier has to arrange insurance at its cost. For Ex-works and FOR station of dispatch contracts, it is the responsibility of the purchaser to arrange for insurance.

11.4. Where the delivery of the Goods is on CIP basis, the supplier shall deliver the goods at the named place of destination at its own risks and costs. CIL has no obligation to the supplier for arranging insurance. However, CIL will provide the supplier upon request, with necessary information for obtaining insurance.

11.5. Where the delivery of the Goods is on FOR destination Basis, the supplier shall deliver the goods at the FOR destination site at its own risks and costs. CIL has no obligation to the supplier for arranging insurance. However, CIL will provide the supplier upon request, with necessary information for obtaining insurance".

12. Transportation

12.1. In case of FOB (Port of Shipment) contracts, the purchaser has to arrange transportation its own cost and risk.

12.2. In case of CIF (Port of Destination) contracts, transport of the goods to the port of destination in the Purchaser's country, as shall be specified in the contract, shall be arranged and paid for by the Supplier, and the cost thereof shall be included in the Contract Price. In case of inland transportation of goods, the same is to be done through registered common carriers only.

12.3. In case of CIP (Final Place of Destination) contracts, transport of the goods to the port of destination and further to the named place of Final Destination in the Purchaser's country, as shall be specified in the contract, shall be arranged and paid for by the Supplier, and the cost thereof shall be included in the Contract Price. In case of inland transportation of goods, the same is to be done through registered common carriers only.

12.4. In case of FOR Destination contracts, transport of goods to the Destination site shall be arranged and paid for by the supplier and the cost thereof shall be included in the contract price. Transportation of goods is to be done through registered common carriers only.

13. Warranty

13.1. The Supplier warrants that the Goods supplied under the Contract are new, unused, of the most recent or current models and that they incorporate all recent improvements in design and materials unless provided otherwise in the Contract. The Supplier further warrants that all Goods supplied under this Contract shall have no defect arising from design, materials or workmanship or from any act or omission of the Supplier that may develop under normal use of the supplied Goods in the conditions prevailing in the purchaser's country.

13.2. This warranty shall remain valid for twelve (12) months from the date of Commissioning of the equipment.

13.3. The Purchaser shall promptly notify the Supplier in writing of any claims arising under this warranty. The Supplier shall,

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within thirty days, repair or replace the defective Goods or parts thereof, free of cost at the ultimate destination. The Supplier shall take over the replaced parts/Goods at the time of their replacement. No claim whatsoever shall lie on the Purchaser for the replaced parts/Goods thereafter.

13.4. If the Supplier, having been notified, fails to remedy the defect(s) within thirty days, the Purchaser may proceed to take such remedial action as may be necessary, at the Supplier's risk and expense and without prejudice to any other rights which the Purchaser may have against the Supplier under the Contract.

14. Payment

14.1. Specific payment terms may be stipulated in the NIT and the resultant contracts depending on the nature of goods to be procured, as per provisions contained in Chapter-22.

14.2. Payment for Indian Agency Commission

The payment of Indian Agency Commission, if any, involved, may be considered in case of necessity, subject to compliance of the Government of India guidelines issued from time to time. Agency commission, if any, shall be paid in equivalent Indian Rupees, after erection and commissioning of the equipment, wherever applicable, within twenty-one days of submission of bills along with following documents:

(A) Copy of foreign principal's invoice.

(B) Copy of bill of lading.

(C) Certificate from State Bank of India regarding Bill selling exchange rate ruling on the date of bill of lading (in case of bank holiday on date of bill of lading, Bill Selling exchange rate on next working day shall be considered).

(D) In case of procurement of equipment, commissioning certificate signed by the concerned officials of the Project and countersigned by the Area General Manager and HOD of Technical Dept, of the subsidiary company, where the equipment has been deployed.

14.3. In order to enable the purchaser to avail Input Tax Credit as per applicable Indian laws, the supplier shall furnish all the necessary documents to the consignee / paying authority as required, failing which the equivalent deduction will be made from the supplier's bills. In case of successful bidder(s), if at the time of supply, it is found that Input Tax Credit as per Invoice (Credit available to CIL / Subsidiary on this account) is less than the "Input Tax Credit Amount" declared in the Price Bid, the differential amount between the two shall be deducted from the Supplier's bills while making payment to them. If the evaluation of the supplier has been made considering the concessional rate of customs duty applicable for import from certain countries under trade agreements / treaties with Govt, of India, all the required documentation for availing concessional customs duty and subsequent customs clearance etc. will be provided by the supplier failing which the equivalent deduction will be made from their bills.

15. Changes in Order

The Purchaser may at any time, by a written order given to the Supplier, make changes within the general scope of the Contract in any one or more of the following:

a) drawings, designs or specifications, where Goods to be furnished under the Contract are to be specifically manufactured for the Purchaser;

b) the method of shipment or packing;

c) the place of delivery; and/or

d) the place of Services to be provided by the Supplier.

16. Contract Amendments

Subject to relevant clause of GCC, no variation in or modification of the terms of the Contract/ Purchase Order shall be made except by written amendment issued against the Contract/ Purchase Order.

17. Assignment

The Supplier shall not assign, in whole or in part, its obligations to perform under this Contract, except with the Purchaser's prior written consent. However, the consent of the Purchaser shall not relieve the supplier from any obligation, duty or responsibility under the contract.

18. Subcontracts

The Supplier shall notify the Purchaser in writing of all subcontracts awarded by it to discharge the works under this Contract. Such notification, in the original bid or later, shall not relieve the Supplier of any liability or obligation under the Contract and the supplier will be solely responsible for all obligations under the contract.

19. Delays in the Supplier's Performance

19.1. Delivery of the Goods and performance of Services shall be made by the Supplier in accordance with the time schedule prescribed by the Purchaser in the Schedule of Requirements.

19.2. If at any time during performance of the Contract, the Supplier or its Subcontractor(s) should encounter conditions impeding timely delivery of the Goods and performance of Services, the Supplier shall promptly notify the Purchaser in writing of the fact of the delay, its likely duration and its cause(s). As soon as practicable after receipt of the Supplier's notice, the Purchaser shall evaluate the situation and may at its discretion extend the Supplier's time for performance, with or without liquidated damages, by way of an amendment to the Contract/ Purchase Order.

19.3. Except as provided under Force Majeure clause, a delay by the Supplier in the performance of its delivery obligations shall render the Supplier liable to the imposition of liquidated damages, unless an extension of time is agreed upon pursuant to relevant clause without the application of liquidated damages.

20. Liquidated Damages

20.1. In the event of failure to deliver or dispatch the equipment/stores within the stipulated date/period in accordance with the terms and conditions and the specifications mentioned in the supply order and in the event of breach of any of the terms and conditions mentioned in the supply order, the Purchaser shall have the right:

(a) To recover from the successful bidder as agreed liquidated damages, a sum not less than 0.5% (Half Percent) of the price of any equipment/ stores which the successful tenderer has not been able to supply as aforesaid for each week or part of a week during which the delivery of such stores may be in arrears limited to 10% (Ten Percent) of the total contract value, or

(b) To purchase elsewhere after due notice to the successful tenderer on the account and at the risk of the defaulting supplier, the equipment/stores not supplied or others of similar description without cancelling the supply order in respect of the consignment not yet due for supply, or

(c) To cancel the supply order or a portion thereof, and if so desired to purchase the equipment/ stores at the risk and cost of the defaulting supplier and also,

(d) To extend the period of delivery with or without penalty as may be considered fit and proper. The penalty, if imposed, shall not be more than the agreed liquidated damages referred to in clause (a) above.

(e) To forfeit the security deposit fully or in part.

(f) Whenever under this contract any sum of money is recoverable from and payable by the supplier, the Purchaser shall be entitled to recover such sum by appropriating in part or in whole by deducting any sum or which at any time thereafter may become due to

the successful tenderer in this or any other contract. Should this sum be not sufficient to recover the full amount recoverable, the successful tenderer shall pay the Purchaser on demand the remaining balance. The supplier shall not be entitled to any gain on any such purchase.

20.2. For the purpose of the calculation of the liquidated damages amount, the basic FOR Destination price shall be considered. For direct imports, the CIP price at Final Place of destination will be considered. Taxes and duties shall not be taken into account for calculation of LD. However, when prices indicated in the order are inclusive of taxes and duties, such prices will be taken for calculation of LD.

21. Termination for Default and breach of contract

21.1. The Purchaser, without prejudice to any other remedy for breach of Contract, by written notice of default sent to the Supplier, may terminate the Contract in whole or in part:

- (a) If the supplier fails to deliver any or all of the stores within the time period(s) specified in the contract, or any extension thereof granted by the Purchaser; or
- (b) If the supplier fails to perform any other obligation under the contract within the period specified in the contract or any extension thereof granted by the purchaser; or
- (c) If the Supplier, in the judgement of the Purchaser, has engaged in corrupt or fraudulent practices in competing for or in executing the Contract.

21.2. For the purpose of this Clause:

- (i) "corrupt practice" means the offering, giving, receiving or soliciting of anything of value to influence the action of a public official in the procurement process or in contract execution; and
- (ii) "fraudulent practice" means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the Purchaser, and includes collusive practice among Bidders (prior to or after bid submission) designed to establish bid prices at artificial non-competitive levels and to deprive the Purchaser of the benefits of free and open competition.

21.3. In the event the Purchaser terminates the Contract in whole or in part, pursuant to relevant clause, the Purchaser may procure on such terms and in such manner as it deems appropriate, Goods or Services similar to those undelivered, and the Supplier shall be liable to the Purchaser for any excess costs for such similar Goods or Services. However, the Supplier shall continue performance of the Contract to the extent not terminated.

22. Force Majeure

22.1 Force Majeure means an event beyond the control of the supplier and not involving the supplier's fault or negligence and which is not foreseeable. Such events may include, but are not restricted to, acts of the purchaser either in its sovereign or contractual capacity, wars or revolutions, hostility, acts of public enemy, civil commotion, sabotage, fires, floods, explosions, epidemics, quarantine restrictions, strikes, lockouts, freight embargoes and act of God.

22.2 If there is delay in performance or other failures by the supplier to perform its obligation under the contract due to an event of a Force Majeure and the contract is governed by Force Majeure Clause, the supplier shall not be held responsible for such delays/failures.

22.3 In such a situation, the supplier shall promptly notify the purchaser in writing of such conditions and the cause thereof, duly certified by the local Chamber of Commerce or Statutory authorities, the beginning and end of the causes of the delay, within twenty one days of occurrence and cessation of such Force Majeure Conditions. Unless otherwise directed by the purchaser in writing, the supplier shall continue to perform its obligations under the contract as far as reasonably practical and shall seek all reasonable alternative means for performance not prevented by the Force Majeure event.

22.4 If the performance in whole or in part or any obligation under this contract is prevented or delayed, by any reason of Force Majeure for a period exceeding sixty days, either party may at its option terminate the contract without any financial repercussion on either side.

22.5 For delays arising out of Force Majeure, the supplier will not claim extension in completion date for a period exceeding the period of delay attributable to the causes of Force Majeure.

22.6 There may be a Force Majeure situation affecting the purchaser also. In such a situation, the purchaser is to take up with the supplier on similar lines as above for further necessary action.

22.7 The contract shall be governed by the following 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 wars or revolutions, hostility, acts of public enemy, civil commotion, sabotage, fires, floods, explosions, epidemics, quarantine restrictions, strikes, lockouts, freight embargoes or act of God (hereinafter referred to "events") provided, notice of the happening of any such event 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, PROVIDED FURTHER that if the performance in whole or part or 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 to take over from the contractor at a price to be fixed by the CIL/Subsidiary Company, 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 excepting such materials, bought out components and stores as the contractor may with the concurrence of the purchaser elect to retain."

23. Termination for Insolvency

The Purchaser may at any time terminate the Contract by giving written notice to the Supplier if the Supplier becomes bankrupt or otherwise insolvent. In this event, termination will be without compensation to the Supplier, provided that such termination will not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to the Purchaser.

24. Termination for Convenience

24.1 The Purchaser, by written notice sent to the Supplier, may terminate the Contract, in whole or in part, at any time for its convenience. The notice of termination shall specify that termination is for the Purchaser's convenience, the extent to which performance of the Supplier under the Contract is terminated, and the date upon which such termination becomes effective.

24.2 The Goods that are complete and ready for shipment within thirty (30) days after the Supplier's receipt of notice of termination shall be accepted by the Purchaser at the Contract terms and prices. For the remaining Goods, the Purchaser may elect:

- a) to have any portion completed and delivered at the Contract terms and prices; and/or
- b) to cancel the remainder and pay to the Supplier an agreed amount for partially completed Goods and Services and for materials and parts previously procured by the Supplier.

25. Governing Language

The Contract shall be written in English language. All correspondence and other documents pertaining to the Contract which are exchanged by the Parties shall be written in the same language.

26. Taxes and Duties

26.1 A foreign Supplier shall be entirely responsible for all taxes, duties, license fees and other such levies imposed outside the Purchaser's country. The foreign supplier shall also be responsible for all taxes & duties in Purchaser's country legally applicable during execution of the contract other than those which are to be paid by purchaser, as specified in as per relevant clause of NIT.

26.2 A Domestic Supplier shall be entirely responsible for all taxes, duties, licence fees etc., incurred until the execution of the contract, other than those which are to be paid by purchaser, as specified in as per relevant clause of NIT.

27. Limitation of Liabilities

27.1 Notwithstanding anything herein to the contrary, no party shall be liable for any indirect, special, punitive, consequential or exemplary damages, whether foreseeable or not, arising out of or in relation to this contract, loss of goodwill or profits, lost business however characterised, any/ or from any other remote cause whatsoever.

27.2 The supplier shall not be liable to the purchaser for any losses, claims, damages, costs or expenses whatsoever arising out of or in connection with this contract in excess of the contract value of the equipment supplied hereunder which caused such losses, claims, damages, costs or expenses.

27.3 However, the limitation of liability of the supplier indicated above shall not apply to Liquidated damages.

28. Settlement of commercial disputes in case of contracts with Public Sector Enterprises/ Govt. Dept.(s)

28.1 In the event of any dispute or difference relating to the interpretation and application of the provisions of commercial contract(s) between CPSEs and Government Departments/ Organizations (excluding disputes concerning Railways, Income Tax, Customs & Excise Departments), such dispute or difference shall be taken up by either party for its resolution through Administrative Mechanism for Resolution of CPSEs Disputes (AMRCD), as per the guidelines stipulated in the Office Memorandum No. 4(1)/2013- DPE(GM)/FTS-1835 dated 22.05.2018 of Department of Public Enterprises, Ministry of Heavy Industries and Public Enterprises, Govt, of India.

28.2 In case of contract with a Public Sector Enterprise or Govt. Dept., the following Arbitration Clause shall be incorporated in the contract:-

"In the event of any dispute or difference relating to the interpretation and application of the provisions of commercial contracts between Central Public Sector Enterprises (CPSEs)/ Port Trusts inter se and also between CPSEs and Government Departments/ Organizations (excluding disputes concerning Railways, Income Tax, Customs & Excise Departments), such dispute or difference shall be taken up by either party for resolution through AMRCD as mentioned in DPE OM No. 4(1)/2013-DPE(GM)/FTS- 1835 dated 22.05.2018."

29. Progress Reports

29.1 The Supplier shall from time to time render such reports concerning the progress of the contract and/or supply of the stores in such form as may be required by the Purchaser.

29.2 The submission, receipt and acceptance of such reports shall not prejudice the right of the Purchaser under the contract nor shall operate as an estoppel against the Purchaser merely by reason of the fact that he has not taken notice of or objected to any information contained in such report.

30. Provisions of CIL's Purchase Manual

The provisions of CIL's Purchase Manual and its subsequent amendments (Available on CIL's website, www.coalindia.in) shall also be applicable, if not specified otherwise in this Bid document.

31. Applicable Law

The Contract shall be governed by the laws of the Republic of India, unless otherwise specified in the bid document.

32. Jurisdiction of Courts

32.1 Irrespective of the place of delivery, the place of performance or place of payment under the contract, the contract shall be deemed to have been made at the place from where the acceptance of tender or supply order has been issued.

32.2 The courts of the place from where the acceptance of tender has been issued shall alone have jurisdiction to decide any dispute arising out of or in respect of the contract.

33. Notices

33.1 Any notice given by one Party to the other pursuant to this Contract shall be sent to the other Party in writing or facsimile to be confirmed in writing, to the other Party's address. For the purpose of all notices, the following shall be the addresses of the Purchaser and the Supplier (as indicated in the Contract / Order)

33.2 A notice shall be effective when delivered or on the notice's effective date, whichever is later.

33.3 In case of change in address, the Supplier shall immediately notify the same to the Purchaser in writing. The supplier shall be solely responsible for the consequences of omission to notify the change of address to the Purchaser.

PRE CONTRACT INTEGRITY PACT

This Pre-bid Pre-contract Agreement (hereinafter called the Integrity Pact) is made on 30TH day of the month of APRIL 2020, between, on one hand, Western Coalfields Limited acting through Shri S.K. Batra, General Manager (MM) HOD., (hereinafter called the "BUYER / PRINCIPAL"), which expression shall mean and include, unless the context otherwise requires, his successors in office and assign) of the First Part and M/s. **BLACK DIAMOND EQUIPMENTS PVT. LTD., Plot No. 156-157, I.C.R.C., T. P. Nagar, Korba(C.G.)-495677** represented by **Shri Tapas Kumar Pal, Chief Executive Officer** (hereinafter called the "BIDDER/Seller/ Contractor" which expression shall mean and include, unless the context otherwise requires, his successors and permitted assigns) of the Second Part.

WHEREAS the BUYER proposes to procure **Spares for "Black Diamond " Make Secondary Crushers** (Name of the Stores/Equipment./Item) and the BIDDER/Seller is willing to offer/has offered the stores and

WHEREAS the BIDDER is a private company/public company/Government Undertaking/partnership/registered export agency, constituted in accordance with the relevant law in the matter and the BUYER is a Central Public Sector Unit.

NOW, THEREFORE,

To avoid all forms of corruption by following a system that is fair, transparent and free from any influence/prejudiced dealings prior to, during and subsequent to the currency of the contract to be entered into with a view to :-

Enabling the BUYER to obtain the desired said stores/equipment at a competitive price in conformity with the defined specifications by avoiding the high cost and the distortionary impact of corruption on public procurement, and

Enabling BIDDERS to abstain from bribing or indulging in any corrupt practice in order to secure the contract by providing assurance to them that their competitors will also abstain from bribing and other corrupt practices and the BUYER will commit to prevent corruption, in any form, by its officials by following transparent procedures.

The parties hereto hereby agree to enter into this Integrity Pact and agree as follows :-

Section 1 - Commitments of the Buyer / Principal

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

- a. No Employee of the Principal, personally or through family members, will in connection with the tender for or the execution of contract, demand, take a promise for or accept, for self or third person, any material or immaterial benefit which the person is not legally entitled to.
- b. The Principal will, during the tender process treat all Bidder(s) with equity and reason. The Principal will in particular, before and during the tender process, provide to all Bidder(s) the same information and will not provide to any Bidder(s) confidential / additional information through which the Bidder(s) could obtain an advantage in relation to the tender process or the contract execution.
- c. Principal will exclude from the process all known prejudiced persons.

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

Section 2 - Commitments of Bidder(s) / Contractor(s)

(1) The Bidder(s) / Contractor(s) commit themselves to take all measures necessary to prevent corruption. The Bidder(s) / Contractor(s) commit themselves to observe the following principles during participation in the tender process and during the contract execution.

- a. The Bidder(s) / Contractor(s) will not, directly or through any other person or firm, offer, promise or give to any of the Principal's employees involved in the tender process or the execution of the contract or to any third person any material or other benefit which he / she is not legally entitled to, in order to obtain in exchange any advantage of any kind whatsoever during the tender process or during the execution of the contract.

Black Diamond Equipments Pvt. Ltd.

Auth. Signatory

Cotn...P/2...

Tender No WCL-hq-pur-sp-s007-2020-21

:2::

b. The Bidder(s) / Contractor(s) will not with other bidders into any undisclosed agreement or understanding, whether formal or informal. This applies in particular to prices, specification, certifications, subsidiary contracts, submission or non submission of bids or any other actions to restrict competitiveness or to introduce cartelisation in the bidding process.

c. The Bidder(s) / Contractor(s) will not commit any offence under the relevant IPC / PC Act; further the Bidder(s) / Contractor(s) will not use improperly, for purposes of competition or personal gain, or pass on to others, any information or document provided by the Principal as part of the business relationship, regarding plans, technical proposals and business details, including information contained or transmitted electronically.

c. The Bidder(s) / Contractor(s) of foreign origin shall disclose the name and address of the Agents / representatives in India, if any. Similarly the Bidder(s) / Contractor(s) of Indian Nationality shall furnish the name and address of the foreign principals, if any. Further details as mentioned in the " Guidelines of Indian Agents of Foreign Suppliers" shall be disclosed by the Bidder(s) / Contractor(s). Further as mentioned in the Guidelines all the payments made to the Indian agent / representative have to be in Indian Rupees only. The guidelines and terms and conditions for Indian Agents of Foreign supplier shall be as per the provisions at Annexure I of this document.

e. The Bidder(s) / Contractor(s) will, when presenting their bid, disclose any and all payments made, is committed to or intends to make to agents, brokers or any other intermediaries in connection with the award of the contract.

f. Bidder(s) / Contractor(s) who have signed the Integrity Pact shall not approach the Courts while representing the matter to IEMs and shall wait for their decision in the matter.

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

Section 3 – Disqualification from tender process and exclusion from future contracts.

If the Bidder, before contract award, has committed a transgression through violation of Section 2 or in any other form such as to put his reliability or credibility as Bidder into question, the Principal is entitled to disqualify the Bidder from the tender process or to terminate the contract, if already signed for such reason.

(1) If the Bidder / Contractor / Supplier has committed a transgression through a violation of Section 2 such as to put his reliability or credibility into question, the Principal is also entitled to exclude the Bidder / Contractor / Supplier from future contract award processes. The imposition and duration of the exclusion will be determined by the severity of the transgression. The severity will be determined by the circumstances of the case. In particular the number of transgressions, the position of the transgressors within the company hierarchy of the Bidder and the amount of the damage. The exclusion will be imposed for a minimum of 6 months to maximum of 3 years.

(2) A transgression is considered to have occurred if the Principal, after due consideration of available fact and evidences within his / her knowledge concludes that there is reasonable ground to suspect violation of any commitment listed under Section 2 i.e. " Commitments of Bidder(s) / Contractor(s)

(3) The bidder accepts and undertakes to respect and uphold the Principal's absolute right to resort to impose such exclusion and further accepts and undertakes not to challenge or question such exclusion on any ground, including the lack of any hearing before the decision to resort to such exclusion is taken. This undertaking is given freely and after obtaining independent legal advice.

(4) If the bidder / contractor / supplier can prove that he has restored / recouped the damage caused by him and has installed a suitable corruption prevention system, the Principal may revoke the exclusion prematurely.

Section 4 – Compensation for Damages:

(1) If the Principal has disqualified the Bidder(s) from the tender process prior to the award according to Section 3, the Principal is entitled to demand and recover the damages equivalent to Earnest Money Deposit / Bid Security.

(2) If the Principal has terminated the contract according to Section 3 or if the Principal is entitled to terminate the contract according to Section 3, the principal shall be entitled to demand and recover from the contract liquidated damages of the contract value or the amount equivalent to performance Bank Guarantee.

Section 5 – Previous Transgression

(1) The bidder declares that no previous transgression occurred in the last three years with any other company in any country conforming to the anti corruption approach or with any Public Sector Enterprise in India that could justify his exclusion from the tender process.

(2) If the Bidder makes incorrect statement on this subject, he can be disqualified from the tender process or action can be taken as per the procedure mentioned in " Guidelines of Indian Agents of Foreign Suppliers" of business dealings".

Black Diamond Equipments Pvt Ltd
Auth. Signatory

Cont...P/3...

Tender No WCL-hq-pur-sp-s007-2020-21

:3:

Section 6 – Equal treatment of all Bidders / Contractors / Subcontractors

- (1) In case of Sub-Contracting, the Principal Contractor shall take the responsibility of the adoption of Integrity pact by the Sub-Contractor.
- (2) The Principal will enter into agreements with identical conditions as this one with all Bidders and Contractors
- (3) The Principal will disqualify from the tender process all bidders who do not sign this pact or violate its provisions.

Section 7 – Criminal Charge against violating Bidder(s) / Contractor(s) / Subcontractor(s)

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

Section 8 - Independent External Monitors

- (1) The Principal appoints competent and credible Independent External Monitor for this Pact after approval by Central Vigilance Commission. The task of the Monitor is to review independently and objectively, whether and to what extent the parties comply with the obligations under this agreement
- (2) The Monitor is not subject to instructions by the representatives of the parties and performs his / her functions neutrally and independently. The Monitor would have access to all Contract documents, whenever required. It will be obligatory for him / her to treat the information and documents of the Bidders / Contractors as confidential. He / She reports to the Chairman, Coal India / CMD, Subsidiary Companies.
- (3) The Bidder(s) / Contractor(s) accepts that the Monitor has the right to access without restriction to all project documentation of the Principal including that provided by the Contractor. The Contractor will also grant the Monitor, upon his / her request and demonstration of a valid interest, unrestricted and unconditional access to their project documentation. The same is applicable to Sub-Contractors.
- (4) The Monitor is under contractual obligation to treat the information and documents of the Bidder(s) / Contractor(s) / Sub-Contractor(s) with confidentiality. The Monitor has also signed declarations on "Non-Disclosure of Confidential Information" and of "Absence of Conflict of Interest". In case of any conflict of interest arising at a later date, the IEM shall inform Chairman, Coal India Ltd / CMD Subsidiary Companies and recuse himself / herself from that case.
- (5) The Principal will provide the Monitor sufficient information above all meeting among parties related to the Project provided such meeting could have an impact on the contractual relations between the Principal and the Contractor. The parties offer to the Monitor the option to participate in such meetings.
- (6) As soon as the Monitor notices or believes to notice a violation of this agreement he / shee will so inform the management of the Principal and request the Management to discontinue or take corrective action or to take other relevant actions. The monitor can in this regard submit non binding recommendations. Beyond this, the monitor has no right to demand from the parties that they act in a specific manner, refrain from action or tolerate action.
- (7) The Monitor will submit a written report to the Chairman, Coal India Limited / CMD Subsidiary Companies within 8 to 10 weeks from the date of reference or intimation to him by the Principal and should the occasion arise, submit proposals for correcting problematic situations.
- (8) If the Monitor has reported to the Chairman, Coal India Limited / CMD, Subsidiary Companies a substantiated suspicion of a offence under relevant IPC / PC Act and the Chairman, Coal India Limited / CMD, Subsidiary Companies has not, within the reasonable time taken visible action to proceed against such offence or reported it to the Chief Vigilance Officer, the Monitor may also transmit this information directly to the Central Vigilance Commissioner.
- (9) The word 'Monitor' would include both singular and plural.

Section 9 – Pact Duration

This Pact begins when both parties have legally signed it. It expires for the Contractor 12 months after the last payment under the contract and for all other Bidders 6 months after the contract has been awarded. Any violation of the same would entail disqualification of the bidders and exclusion from future business dealings.

If any claim is made / lodged during this time, the same shall be binding and continue to be valid despite the lapse of this pact as specified above, unless is discharged / determined by Chairman Coal India Limited / CMD, Subsidiary Companies.

Black Diamond Equipments Pvt. Ltd.

Auth. Signatory

Cont...P/4...

Tender No WCL-hq-pur-sp-s007-2020-21

44

Section 10 – Other Provisions

(1) Changes and supplements as well as termination notices need to be made in writing. Side agreement have not been made.

(2) If the Contractor is a partnership or a consortium, this agreement must be signed by all partners or consortium members.

(3) Should one or several provisions of this agreement turn out to be invalid, the remainder of this agreement remains valid. In this case, the parties will strive to come to an agreement to their original intentions.

(4) Issues like Warranty / Guarantee etc shall be outside the purview of IEMs

(5) In the event of any contradiction between the Integrity pact and its Annexure, the clause in the Integrity Pact will prevail.

Section 11 - Facilitation of Investigation

In case of any allegation of violation of any provisions of this pact or payment of commission, the Buyer or its agencies shall be entitled to examine all the documents including the Books of Accounts of the Bidder and the Bidder shall provide necessary information and documents in English and shall extend all possible help for the purpose of such examinations.

Section 12 – Law and Place of Jurisdiction

This pact is subject to Indian Law. The place of performance and jurisdiction is the seat of the Buyer.

Section 13 – Other Legal Actions

The actions stipulated in this Integrity pact are without prejudice to any other legal actions that may follow in accordance with the provisions of the extant law in force to any civil or criminal proceedings.

For & on behalf of the Principal

For & on behalf of the Bidder / Contractor

(Office Seal)

Place: Nagpur

Date : 30.04.2020

(Office Seal)



Witness 1: Shri S. Dey (Finance Manager)

Witness 2: Shri Aditya Jain (Production Manager)

Black Diamond Equipments Pvt. Ltd.
156, Indira Commercial Complex,
T. P. Nagar, KORBA (C. G.)

Sanjay Pawar
Sr. Manager (MM)

K.S.R. Divakar
Chief Manager (MM)