GOVERNMENT OF INDIA
MINISTRY OF RAILWAYS
(RAILWAY BOARD)

No. 2017/RS(I)/954/96/1829 New Delhi, dated 28.12.2017

M/s. Texmaco Rail & Engg. Ltd.,
Belgharia,,
Kolkata – 700 056

Dear Sirs,

Sub: Contract No. 2017/RS(I)/954/96/1829 dated 28.12.2017 for manufacture and supply of various types of wagons.

Ref: (i) E-Tender No. 2017RSI2TC opened on 06.09.2017.

(ii) Your Original e-offer dated 06.09.2017.

(iii) Railway Board's Counter offer of even No. dated 21.12.2017.

(iv) Your unqualified acceptance No. C(15) dated 21.12.2017.

1.0 The President of India, acting through the Executive Director, Railway Stores (S), Ministry of Railways (hereafter called the 'Government') is pleased to place an order on you for manufacture and supply of 1764 wagons against the above referred tender as per details given below:-

2.0 Description, Specification and Rate of items :

RSP Item No.	Description	Specification	Relevant Index Drawing & Design	Quantity (VUs)	Basic Rate per Wagon (₹)
1	2	3	4	5	6
PB – 906/2017-18	25T Axle load Bogie Open Wagon Type 'BOXNS'	WD-02-BOXNHL-2011 of March 2011.	WD-05086-S-01 (latest revision) DESIGN-'F'	298	24,02,000/- (Rupees Twenty Four Lakh Two Thousand only)
PB – 870/2017-18	Bogie Covered Type BCNA Wagon	WD-2-BCNAHSM1-2017	WD-09056-S-01 (latest alteration) DESIGN-'D'	458	23,41,000/- (Rupees Twenty Three Lakh Forty One Thousand only)
PB – 881/2017-18	Bogie Rail Wagon Type 'BRN'	WD-06-BRN-2011 of March, 2011	WD-84013-S-00 (latest alteration) Design-C	156	28,30,000/- (Rupees Twenty Eight Lakh Thirty Thousand only)
PB – 849/2017-18	Bogie Open Wagon Type 'BOSTHS'	WD-02-BOSTHS-2011 of March 2011.	WD-00012-S-00 (latest revision) DESIGN-'D'	574	23,06,000/- (Rupees Twenty Three Lakh Six Thousand only)
PB – 811/2017-18	Bogie Pol Tank Wagon Type 'BTPN'	WD-09-BTPN-2011 of March 2011.	WD-09050-S-00 (latest alteration) DESIGN-'B'	278	23,59,000/- (Rupees Twenty Three Lakh Fifty Nine Thousand only)
			Total	**1764**	

Note: (i) These wagons should conform to the requirements of General Standard Specification No. G - 72 (Rev. 3) of April 2007 with latest revision (up to tender opening date), issued by RDSO.

Total Basic Value of Contract : ₹ 420,89,00,000/- (Rupees Four Hundred Twenty Crore Eighty Nine lakh only). This is exclusive of GST @ 5%.

3.0 **General & Service Tax:** The prices indicated at column 6 in para 2 above are exclusive of GST @ 5%. The firm will submit the following certificate with their bills for payment :

"We hereby declare that additional set offs/ input tax credit to the tune of ₹_____ has accrued and accordingly, the same is being passed on to the purchaser, and, to that effect, the payable amount may be adjusted."

3.1 Any statutory variation in GST within the originally stipulated delivery period will be to purchaser's account.

3.2 Octroi Duty is not payable for which you may obtain exemption certificate from CMM (BI), Eastern Railway, Kolkata wherever necessary. Entry tax will not be reimbursed by the purchaser. Imposition of any fresh taxes/ duties or other levies or increase in any existing taxes, duty or levies on components or raw materials procured by the firm, shall be borne by the contracting firm.

4.0 **PRICE VARIATION:** The price is subject to variation on account of variation in wages and material. The escalation/ de-escalation shall be determined as per Annexure-A. The base month for the purpose of escalation/ de-escalation will be two months prior to tender opening month and is indicated therein. The verification of escalation claims will be done by the Paying Authority on the basis of published indices. Paying Authority will send a copy of verified claims to Railway Board.

4.1 Manner of submission of escalation/ de-escalation claims.

The contractor shall submit the escalation/ de-escalation claims to the Paying Authority by the end of the month following the month in which material were offered for inspection. In the event of contingencies like delay in receipt of price indices etc. the paying authority may at his discretion allow upto maximum one month additionally for submission of escalation/ de-escalation claims. In the event of contractor's failure to submit escalation/ de-escalation claims in the manner as aforesaid, the Paying Authority shall be at liberty to stop further payment till submission of all escalation/ de-escalation claims as per schedule.

5.0 **FREE SUPPLY ITEMS:** No free supply items will be provided to the firm against the subject contract. Steel, CTRBs and Wheel Sets will be purchased by the firm as per the following conditions :

(a) CTRBs will be purchased by the contracting firm from RDSO approved sources only, duly inspected by RDSO/ Lucknow. Documentary evidence to be submitted at the time of inspection of wagons.

(b) Steel items will be purchased by the contracting firm from the integrated steel plants from whom Railway Board is procuring these items, duly inspected by RITES. Documentary evidence to be submitted at the time of inspection of wagons.

(c) Wheel sets will be purchased by the contracting firm from Rail Wheel Factory, Bangalore only. Documentary evidence to be submitted at the time of inspection of wagons.

5.1 (i) On satisfactory completion of inspection of wagons at the works of the manufacturer, RDSO should issue a Dispatch Memo to the Wagon Manufacturer authorizing them to dispatch the wagons.

(ii) On receipt of above Dispatch Memo, Wagon Manufacturer should approach the nominated Train Examination Supervisor for issuance of 'FIT TO RUN' certificate.

(iii) On receipt of request from the Wagon Manufacturers, Train Examination Supervisor/ staff would examine the wagons and will issue the necessary 'FIT TO RUN' certificate for movement of the wagons up to the nearest station.

(iv) On receipt of 'Fitness Certificate' from the Train Examination Supervisor, the Wagon Manufacturer should approach the Station Master to take necessary action for drawing out these wagons from the siding of the Wagon Manufacturer.

(v) The Station Master after drawing out these wagons from the siding of the Wagon Manufacturer would offer the same to the Train Examination Staff for Brake Power check and issuing of BPC so that these wagons can be utilized on the system.

(vi) The Station Master would advise DRM (Mech) of his Division and all concerned about the acceptance of these wagons in good condition based on the Dispatch Memo issued by RDSO and the BPC issued by TXR.

(vii) On receipt of above information from Station Master, DRM (Mech) would advise the owning Railway (the Ultimate Consignee) and all concerned of having accepted and put into the system the wagons supplied by the Wagon Manufacturer.

6.0 **Delivery Schedule** : Supplies of wagons to be supplied by 31.12.2018.

6.1 Delivery of the material is subject to clause 8.1, 11 and 12 of the General Conditions of the contract. However, Ministry of Railways reserves the right to regulate the off take of wagons as well as to re-fix the terminal date of delivery.

6.2 In addition to the terms and conditions of the General Conditions of Contract, the contract shall also be governed by the following condition :

In the event of failure on your part to deliver the wagons by the due date(s), the President of India shall be entitled to deduct as Liquidated Damages and not by way of penalty, a sum equivalent to 2% (two percent) of the price of any stores (including elements of taxes, duties freight etc.) which the contractor has failed to deliver within the period fixed for delivery in the contract or as extended for each month or part of a month during which the delivery of such stores may be in arrears where delivery thereof is accepted after expiry of the aforesaid period, subject to a maximum of ten (10%) percent of value of the delayed supplies.

7.0 F.O.R. Belgharia/ Sodepur

8.0 Place of Manufacture: Agarpara Works, PO - Belgharia, Kolkata – 700 056
Sodepur Works, B. T. Road, PO – Sukchar, Kolkata–700115

9.0 Paying Authority: PFA(RBC), Eastern Railway, Kolkata.

10.0 **Terms of payment** :

(a) 90% payment of the cost at Col. 6 para 2 of the contract will be made on the submission of a bill supported by Inspection Certificate marked "COPY FOR PAYMENT" from RDSO and on proof of delivery.

(b) 90% payment of cost in respect of the prototype will be made on the submission of bills supported by Inspection Certificate and an undertaking in the prescribed form as per Annexure-II for its safe custody for the period of its retention.

(c) Bill for the balance 10% of the cost will be paid on the submission by the Contractor duly supported by a certificate by the Divisional Railway Manager (DRM) of receiving Railway that the wagons have been received in complete and good working conditions as mentioned in clause 5.1(vii).

(d) 2% of the admitted escalation claims in terms of clause 4.0 above will be withheld by FA&CAO at the time of making escalation payment till such time the cost of all the alterations, deviations/ relaxation's are assessed and furnished through Final Modification Statement. Also, this escalation payment will be released only after finalization of RAD proposals against this contract.

10.1 Bank Details of the firm :

(a) Name of Bank - State Bank of India, Commercial Branch, Kolkata.
(b) Bank Account number – 32112656549
(c) IFSC code – SBIN0007502
(d) MICR code - 700002120

11.0 **SPECIFICATION AND DRAWING :**

The stock shall be built conforming to specifications and drawings indicated in the order which are obtainable on payment from the RDSO, Lucknow with such modifications as may be required or approved by the Railway Board from time to time during execution of this contract. The cost of wagon vide Col. 6 of para 2 of the order shall have reference to the specification shown in the contract. Any modification to specification or design shall be subject to cost of modification over and above the basic cost which will be claimed for (by either party) and adjusted separately. The decision of the President of India on this shall be final and shall not be a subject to any legal disputes or Arbitration. All such modifications shall be issued by RDSO, Lucknow or Inspection and Liaison Organisation/Kolkata on behalf of the President of India and the contractor shall submit the proposals for the cost differential on account of such modifications to the Ministry of Railways (Railway Board) through Director General Wagon (I&L), RDSO. All references regarding technical matters pertaining to specifications, drawings, design etc. may be made to Director Wagon (I&L), RDSO, Manak Nagar, Lucknow.

12.0 **QUANTITY OPTION CLAUSE:** The purchaser reserves the rights to increase/decrease the ordered quantity up to 30% of the ordered quantity during the currency of the contract on the same price and terms and conditions with suitable extension in delivery period for the Option Clause quantity.

13.0 **CHANGING TYPE-WISE WAGON MIX IN THE ORDER:** Purchaser reserves the right to change type-wise wagon mix in a contract by variation in ordered quantities for different wagons. Such variation would be limited to 30% of the ordered quantity for the wagon within the total contract value. No such variation would be done for the particular type of wagons where the order size is less than 100 wagons.

14.0 **SECURITY DEPOSIT:** The contractor shall deposit as Security Deposit, a sum equal to 1% of the total value of the contract. Security Deposit may be paid in any of the following manner:

(a) Deposit in Cash.
(b) Government Securities to be valued at 5% below the market value.
(c) Deposit receipt of any Nationalized Bank.
(d) Guarantee Bonds executed by any Nationalized Bank.
(e) Demand Draft of any Nationalized Bank.
(f) A deposit in Post Office Savings Bank.
(g) National Savings Certificate.
(h) Defence Deposits.
(i) National Defence Bond.
(j) Bonds of IRFC & KRCL.

In case this is done through a Bank Guarantee, it should be in a format approved by the Paying Authority and a Photostat copy thereof should be sent to this office.

15.0 **WARRANTY/ GUARANTEE:** Warranty/Guarantee period will be 30 months from the date of delivery or 24 months from the date of commissioning whichever is earlier.

16.0 **INSPECTION AND QUALITY CONTROL** :

16.1 **Internal Quality Control:** You would have to appoint, at your own cost, a third party quality control agency (TPQCA) of international repute selected from the standing panel of QCI at each facility on regular basis to provide quality control for brought outs, if not pre-inspected by RDSO, as well as internal manufacture. Stage quality control reports of the TPQCA will be furnished at the time of RDSO inspection. RDSO will be free to carry out spot inspections to verify the effectiveness of TPQCA at any point in the manufacturing process. The detailed guidelines in this regard may be collected from RDSO.

16.2 Director General, RDSO, Manak Nagar, Lucknow or his nominee will be the final Inspecting Authority for the purpose of this contract. At least four weeks notice must be given to the inspecting Authority to enable them to arrange inspection.

16.3 Prototype wagons, wherever required, should be manufactured and got cleared from RDSO within 3 months.

16.4 The cost of test at Government Test House or other institutions will be to contractor's account.

16.5 Each wagon going out of manufacturing facility against this contract shall be rated by RDSO against an objective Quality Score Sheet after completion of regular inspection. Maximum score will be 100 and the actual score achieved by a wagon will be maintained by RDSO inspection wing and painted on the end wall of wagon by the manufacturer.

Each month, an overall average monthly quality score for each manufacturer across all his works will be calculated by RDSO and detailed score sheets will be submitted to Railway Board on monthly basis. This will be applicable only for wagons manufactured against Railway orders.

17.0 **PAYMENT AND MAINTENANCE OF ACCOUNT** : Paying Authority indicated in Para 9.0 will maintain account and arrange all the payment in terms of clause 8.1 and 12 of General Conditions of contract.

18.0 **TERMS AND CONDITIONS** : The contract shall be governed by the General Conditions & Special Conditions of Contract for manufacture of wagons as

enclosed (Annexure - I & IA) and Indian Railways Standard (IRS) Conditions of contract.

19.0 The contract is issued by order and in the name of the President of India.

20.0 **ACKNOWLEDGEMENT**: Please convey your unconditional acceptance addressed to the President of India through Executive Director, Railway Stores (Steel) Ministry of Railways (Railway Board), Rail Bhavan, New Delhi endorsing a copy of the same to the Paying Authority, Inspecting Authority, Chief Materials Manager(BI), Eastern Railway, Kolkata and Director Railway Stores (I&S), 3, Koilaghat Street, Kolkata within 7 days from the date of issue of this contract. One copy each of the contract duly signed by authorized signatory on each page must be returned to the Executive Director Railway Stores (S), Ministry of Railways, Railway Board, New Delhi, Paying Authority and Director Railway Stores(I&S), Railway Board, Kolkata.

DA: As above

Yours faithfully,

(G.S.Raja)
Director, Railway Stores (W),
For & on behalf of President of India

No. 2017/RS(I)/ 954/96/1829 New Delhi, dated 28.12.2017

Copy to:-

1) PFA(RBC), Eastern Railway, Kolkata for information and necessary action in terms of Para 2.0, 3.0, 4.0 6.0, 10.0, 14.0 & 17.0 of the subject contract read with other relevant clauses. Payment may be made only after receipt of unqualified acceptance from the firm and security deposit and against the original Inspection Certificate inscribed with the words "Copy for Payment" from RDSO and on proof of delivery.

2) Dy. C&AG (Railways), Room No. 224, Rail Bhavan, New Delhi.

3) Director of Audit, Eastern Railway, Kolkata.

4) A/Cs.IV(BO), RS(B), RS(PF&EC), F(S)I, M(N) ,RS(T) & RS(S) Branches of Railway Board.

For Financial Commissioner/ Railways

No. 2017/RS(I)/954/96/1829 New Delhi, dated 28.12.2017

Copy forwarded to:-

1) General Manager (Mech.), All Indian Railways.

2) CMM (BI), Eastern Railway, Kolkata for necessary action.

3) Director General, RDSO, Manak Nagar, Lucknow.

4) Director (I&L), RDSO, 3 Koilaghat Street, Kolkata – 700 001. He may undertake inspection only after receipt of unqualified acceptance from the firm & to inscribe the words "COPY FOR PAYMENT" on the original copy of Inspection Certificate.

5) Director, Railway Stores (I&S), Railway Board, 3 Koilaghat Street, Kolkata – 700 001 – for necessary action.

6) Deputy Director Finance(Stores)-I, Room No.429, Rail Bhavan, New Delhi.

(G.S.Raja)
Director, Railway Stores (W)

ANNEXURE-A

COMPOSITE MATERIAL AND WAGE ESCALATION CLAUSE-
Base month 2 month prior to tender opening month i.e. July, 2017.

The increase/decrease in the price of wagons quoted for would be governed by the following escalation formula:-

$$P_1 = \frac{P_o}{100} * \left(20 + 18*\frac{C_1}{C_o} + 17*\frac{MS_1}{MS_o} + 45*\frac{L_1}{L_o}\right)$$

Where,

P_1 = Escalated-escalated price.
P_0= Base price

C_1 = The index number of whole sale prices in respect of item "Castings" Base 2011-12 compiled by Economic Adviser to the Govt. of India for the calendar month, two months prior to the call for inspection of the wagons. For instance wagons offered for inspection in November, 2015 the Index number for the month of September, 2015 will be applicable.

C_0= Above whole sale price index for "Castings" applicable for the Base month.

MS_1= The index number of whole sale prices in respect of item "Mild Steel Flat" Base 2011-12 compiled by Economic Adviser to the Govt. of India for the calendar month, two months prior to the call for inspection of the wagons. For instance wagons offered for inspection in November, 2015 the index number for the month of September, 2015 will be applicable.

MS_0= Above whole sale price index for "Mild Steel Flat" applicable for the Base month.

L_1= All India Consumer price index for industrial worker compiled by Labour Bureau, Ministry of Labour for calendar month two months prior to the call for inspection of the wagons. For instance wagons offered for inspection in November, 2015 the Index number for September, 2015 will be applicable.

L_0= All India Consumer Index industrial workers applicable for the Base month.

2. In case P_1 is greater than P_o, the difference P_1 minus P_0 shall constitute the amount due to the contractor toward escalation on cost of wages and material. Otherwise, the difference P_1 minus P_0 shall constitute the amount to be recovered from the contractor as de-escalation.

3. The decision of the President of India in regard to wage and material escalation under the clause shall be final and not be subject to legal dispute or arbitration.

ANNEXURE - I

GOVERNMENT OF INDIA
MINISTRY OF RAILWAYS
(RAILWAY BOARD)

Indian Railways General Conditions of Contract for the Manufacture and Supply of Wagons

1.0 Through these conditions the terms :

(i) "The Work" includes materials of every kind and every stage of their preparation necessary for carrying out the contract.

(ii) The "Inspection Officer" means the person, firm or department nominated by the President of India to inspect the work on his behalf and the deputies of the Inspecting Officer so nominated.

(iii) The "Contractor" means the person, firm or company on whom the order for the wagons are placed and shall be deemed to include the contractor's successors (approved by the President of India), representatives, heirs, executors and administrators as the case may be unless excluded by the terms of the contract.

(iv) The "Sub-Contractor" means any person, firm or company from whom the contract may obtain any materials or fittings to be used in the construction and manufacture of the work.

(v) "Drawings" means the drawings exhibited or provided for the guidance of the contractor.

2.0 **PARTIES** :

The parties to the contract are the contractor and the President of India, named in the contract.

3.0 **EXECUTION OF THE CONTRACT** :

The whole contract is to be executed in the most approved and workmanlike manner to the entire satisfaction of the President of India or the Inspecting Officer who both personally and by any deputy appointed on his behalf shall have powers to reject any of the work of which he may disapprove, and his decision thereon and on any question as to the true intent and meaning of the specification or drawings of the work necessary for the proper completion of the contract shall be final and conclusive.

4.0 **TRANSFER AND SUBLETTING OF THE CONTRACT :**

(a) The contractor shall not sublet (otherwise than that which may be customary in the trade concerned) transfer, assign or otherwise part with directly or indirectly, to any person whatsoever this contract or any part thereof, without the previous written permission of the President of India.

(b) The contractor shall be entirely responsible for the work executed by the sub-contractor, if any, to the entire satisfaction of the Inspecting Officer and for his timely execution of the contract in all respects.

5.0 **CONTRACTOR'S RESPONSIBILITIES :**

The contractor shall be solely responsible for the execution of the contract in all respect in accordance with the conditions of contract notwithstanding any approval with the Inspecting Officer may have given of materials or other parts of the work involved in the contract or of test carried out either by the contractor or by the Inspecting Officer.

6.0 **INDEMNITY :**

The contractor shall at all times indemnify the President of India against all claims which may be made in respect of the said work for infringement of any right protected by patent, registration of design or trade mark provided always that in the event of any claim in respect of an alleged breach of patent, registered design or trade mark being made against the President of India, he shall notify the contractor of the same and the contractor shall be at liberty but at his own expense, to conduct negotiations for the settlement of any litigation that may arise therefrom.

7.0 **DRAWING :**

If any dimensions figured upon drawing differ from those obtained by scaling the Drawing, the dimension as figured upon the drawings shall be taken as correct.

8.0 **PROGRESS OF THE WORK :**

If for any reason whatsoever other than those specified in clause 13 below the contractor's preparation for the commencement of the work or any portion of it, or his subsequent rate of progress be so slow, that in the opinion of the Inspecting Authority whose decision shall be final, the contractor shall be unable to complete the work as agreed upon or should the contractor fail to deliver the vehicles in conformity with the contract in any respect fail to perform the contract except for any reason other than those specified in clause 13 below, or should be adjusted insolvent, or have receiving order made against him or made or enter into any arrangement or composition with his creditors, or suspend

payment or being a company is wound up (either compulsory or voluntary), the President of India shall have the power to terminate the contract by notice in writing, in which case the contractor shall be held liable for liquidated damages for delay and for any expense, loss or damage which the President of India may be put to incur or sustain by reason of the termination mentioned above. 14 days notice shall be given to the contractor if the contract is terminated before the expiry of the stipulated date of delivery or the extension thereof.

8.1 **FAILURE AND TERMINATION:**

If the contractor fails to deliver the wagons or any installment thereof within period fixed for such delivery in the schedule or as extended or at any time repudiates the contract before the expiry of such period, for any reason whatsoever other than those specified in clause 13 below, the President of India may without prejudice to his other rights:

(a) recovery from the contractor as agreed liquidated damages and not by way of penalty a sum as specified in clause 12 below, or

(b) to cancel the contract or a portion thereof and if so desired to have the vehicles manufactured or authorize the manufacture of the vehicles not so delivered or other of a similar description (where vehicles exactly complying with particulars are not in the opinion of President of India which shall be final readily procurable) at the risk and cost of the contractor.

9.0 **RELAXATIONS/ ALTERATIONS/ DEVIATIONS IN THE WORK:**

9.1 President of India may require alterations/ deviations to be carried out in the work during its progress as he may deem necessary. All such alterations/ deviations shall be allowed by the President of India or the Research, Design and Standards Organization on behalf of the President of India. No relaxations/ deviations/ alterations in the work during its progress shall be made by the contractor unless the same have been permitted by the Research Design and Standards Organization or the President of India. The escalation/ de-escalation in cost resulting from such relaxations/ alterations/ deviations shall be mutually agreed upon by the parties prior to the commencement of the work failing which the decision of the President of India in this regard shall be final and binding on the contractor.

9.2 A consolidated statement incorporating all the relaxations/ alterations/ deviations made during the execution of the order separately for each type of wagon with the financial implications as already agreed upon as well as not agreed to between the parties or where the cost of escalation/ de-escalation could not be decided earlier shall be submitted by the contractor duly certified by the RDSO to the President of India immediately but in any case not later than three months

from the date of the completion of the order for each type of wagon. After due consideration of the final implications of all such relaxations/ alterations/ deviations as per the aforesaid final statement, the President of India shall determine the amount, if any, that shall be, on the account payable to/ recoverable from the contractor. The decision of the President of India in this regard shall be final and shall not be subject to any legal proceedings/ arbitration.

9.3 If the contractor defaults in submission of the aforesaid statement within the time frame stipulated in clause 9.2 above it shall be open to the President of India, in its discretion, to assess the estimated amount of de-escalations in the cost of each type of wagon recoverable from the contractor in terms of the relaxations/ alterations/ deviations permitted to the contractor without any further reference to him. The decision of the President of India in this regard shall be final and shall not be subject to any legal proceedings/ arbitration.

10.0 **INSPECTION** :

Before the contractor start with any new order for construction of goods wagons, a pattern wagon or prototype should be prepared and put for inspection to the Officer nominated by the Railway Board for this purpose. The bulk manufacture will only be started after the prototype has been approved. The contractor shall inform the Railway Board at least one month in advance of the likely date by which the prototype would be ready. The prototype wagon shall be retained by the contractor for reference during the currency of the contract where the wagons on order are being manufactured for the first time. If the contractor had already manufactured a similar wagon before under a contract with the Railway Board, the RDSO may at their discretion permit the prototype to be released before completion of the order. Building of a prototype may not be necessary when the contractor is continuing with the same type of wagon after finishing one order and starting with another one, but permission to omit this step in such cases shall be obtained by the contractor before commencing production..

The contractor shall inform the Inspecting officer when work is ready for the Inspection giving him sufficient notice to enable him to inspect the same without retarding the progress of the work. No work shall be considered completed in accordance with the terms of the contract until the Inspecting Officer shall have certified in writing that it has been inspected and approved by him.

Irrespective of any inspection and tests made by the Inspecting Officer, the contractor shall provide adequate supervision at all stage of the work and examine all parts for accuracy before inspection is commenced. He shall also provide facilities and space satisfactory to the Inspecting Officer to lay out for his inspection parts to be used in the work at such stages of manufacture as he may direct and shall satisfy the Inspecting Officer that adequate provision has been made (i) to carry out his instructions fully and with promptitude, (ii) to ensure that parts required to the inspected before use and not used before inspection and

(iii) to prevent rejected parts being used in error. Where parts previously not approved have been rectified or altered such parts shall be segregated for separate inspection and approval before being used in the work.

11.0 **Delivery** :

The contractor shall deliver the wagons free on rails at the place or places detailed in the contract not later than the date or dates specified therein.

The time and the date specified in the contract or as extended for the delivery of the wagons shall be deemed to be the essence of the contract and delivery must be completed not later than t he date(s) so specified or extended

12.0 **LATE DELIVERY** :

In the event of contractor's failure to deliver of the vehicles by the due date(s), the President of India shall be entitled to deduct as Liquidated Damages and not by way of penalty a sum at the rate of two per cent of cost of each vehicles for each and every month for which delivery is delayed beyond the delivery date specified in the contract, subject to a maximum 10% of the value of delayed consignment. The President of India shall also be entitled to deduct (if so desired) in addition, the costs of inspection as certified by the Inspecting authority (whose decision shall be final) which may be incurred after the date on which the vehicles ought to have been delivered.

If such failure to deliver any of the vehicles by the due date mentioned above is due to any of the force majeure conditions in clause 13 or due to any cause which the President of India considers reasonable, the president of India may either allow such additional time as he considers to be justified by the circumstances of the case and may forgo the whole or such part of his claim for damages as he may consider reasonable (his decision thereon being final) or may terminate the contract in which case no damage shall be claimable by either party.

13.0 **Force Majeure Condition** :

13.1 Force Majeure means an event beyond the control of the supplier and not involving the supplier's fault or negligence and which is not forseeable. 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, and freight embargoes. However, it should not be used by a party to effectively to escape liability for bad performance.

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

If a Force Majeure situation arises, the supplier shall promptly notify the purchaser in writing of such conditions and the cause thereof within twenty one days of occurrence of such event with reasonable evidence thereof. 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.

If the performance in whole or in any 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.

There may be a Force Majeure situation affecting the purchase organization only. In such a situation the purchase organization is to take up with the supplier on similar lines as above for further necessary action.

14.0 **CHARGES FOR WORK NECESSARY FOR COMPLETION OF THE CONTRACT :**

The contractor shall pay all charges for stamping, painting, marking weighing, protecting or preserving patent rights, drawings, photographs, pamphlets, models and gauges and for all such measures as the President of India or the Inspecting Officer may deem necessary for the proper completion of the contract, though special provisions therefore may not be made in the specifications or drawings.

15.0 **WARRANTY/GUARANTEE**

If within 30 calendar months after delivery to the President of India or 24 months from the date of commissioning whichever is earlier, any vehicles be found defective, the President of India after certifying in writing that such a defect arises from inferiority of material or workmanship, or from imperfect protection or other default on the contractor's part, shall be at liberty to remedy the defect in case contractor fails to rectify the defect within 30 days of issue of such intimation and deduct from any money due to the contractor (or to the extent such money are insufficient to cover such deficiency from the contractor on demand) such amount as the chief Mechanical Engineer or any Officer on his behalf shall certify to be the fair cost to the work which in his opinion (which shall be final and not be subject matter for legal disputes or arbitration) has arisen from the default of the contractor, notwithstanding any certificate previously given or any, advance made by the President of India to the contractor as herein provided on account thereof.

16.0 **BRIBES COMMISSION ETC. :**

Any bribe, commission, gifts or advantage given, promised or offered by or on behalf of the contractor or his partner, agent or servant, or any one on his or their behalf, to any Officer, servant, representative or agent of the President of India, or any person on his or their behalf, in relation to obtaining or to the execution of this or any other contract with the President of India shall in addition to any criminal liability he may incur, subject the contractor to cancellation of the contract, and all other contracts with the President of India and also payment of any loss resulting from any such cancellation like extent as is provided in case of cancellation under clause 8.1 thereof and the President of India shall be entitled to deduct the amounts so payable from any money otherwise due to the contractor under the contract or any other contract or otherwise recover the same from the contractor. Any question or dispute as to the commission of any offence under this clause shall be decided by the President of India in such manner and on such evidence or information as he shall think fit and sufficient, and his decision shall be final.

17.0 **RECOVERY OF SUM DUE :**

Whenever any claim for the payment of a sum of money arises out of or under the contract against the contractor, the President of India shall be entitled to recover such sum by appropriating any sum then due or which at any time thereafter may become due to the contractor under the contract or any other contract with the President of India or any person contracting through the President of India if such sum even be not sufficient to cover the full amount recoverable, the contractor shall on demand pay to the President of India the balance remaining due.

For the purpose of this clause, where the contractor is a partnership firm, the president of India shall be entitled to recover such amount by appropriating in whole or in part any sum due to any partner of the firm whether in his individual capacity or otherwise.

18.0 **ARBITRATION :**

As per Para 2900 of IRS conditions of Contract.

19.0 **LAWS GOVERNING THE CONTRACT :**

(a) This contract shall be governed by the laws of India for the time being in force.

(ii) Irrespective of the place of delivery, the place of performance or place of payment under the contracts, the contract shall be deemed to have been made at the place from which the acceptance of tender has been issued.

20.0 **POWERS** :

All powers reserved by the President of India, under the above conditions will be exercised by the Executive Director, Railway Stores (Steel), Ministry of Railways (Railway Board), New Delhi, General Manager or Chief Administrative officer of Indian Railways concerned.

21.0 The marginal headings of these conditions of contract shall not effect the constructions thereof.

ANNEXURE - I A

SPECIAL CONDITIONS OF CONTRACT FOR MANUFACTURE OF WAGONS

1. **FREE SUPPLY ITEMS:** No free supply items will be provided to the firm against the subject contract. Steel, CTRBs and Wheel Sets will be purchased by the firm as per the following conditions :

(a) CTRBs will be purchased by the contracting firm from RDSO approved sources only, duly inspected by RDSO/ Lucknow. Documentary evidence to be submitted at the time of inspection of wagons.

(b) Steel items will be purchased by the contracting firm from the integrated steel plants from whom Railway Board is procuring these items, duly inspected by RITES. Documentary evidence to be submitted at the time of inspection of wagons.

(c) Wheel sets will be purchased by the contracting firm from Rail Wheel Factory, Bangalore only. Documentary to be submitted at the time of inspection of wagons.

2. **Allocation of Wagons** : Marking particulars and other details will be advised by the nominated officer of the local railway.

3. **JURISDICTION OF COURTS**

The Delhi Courts only shall have exclusive jurisdiction over any dispute arising out in respect of this contract.

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